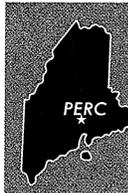


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December 24, 2015

Ms. Julie Churchill, Project Manager  
Maine Department of Environmental Protection  
Division of Technical Services  
Bureau of Remediation and Waste Management  
State House Station 17  
Augusta, Maine 04333-0017

**RE: MRC and Fiberight pending application DEP# S-022458-WK-A-N. MRC Response to MDEP on the December 3, 2015 NRCM Memorandum**

Dear Ms. Churchill:

This letter is in response to the Memorandum from the Natural Resource Council of Maine (NRCM) to the Maine Department of Environmental Protection (MDEP) dated December 3, 2015. In general, the proposed project will achieve an extremely high level of consistency with the solid waste management hierarchy (38 M.R.S. § 2101), as well as other applicable State goals, policies, statutes, and regulations. The NRCM memorandum misinterprets terms of an early draft of the contract without recognizing how the contract specifically acknowledges, in clear language, the rights for municipalities to continue, expand and add waste reduction and recycling programs.

The Municipal Review Committee (MRC) on behalf of its 187 communities conducted an international review of available and viable approaches to solid waste management that would best achieve the State's goals, policies, and requirements set forth in 38 M.R.S. §1302 (Declaration of Policy), 38 M.R.S. §2101 (Solid Waste Management Hierarchy), 06 096 CMR Chapter 400.N. (Solid Waste Management Hierarchy), and 06 096 CMR 409.2.C. (Recycling and Reuse Standards). The Declaration of Policy states, among other things:

- “[I]t is in the best interests of the State to prefer waste management options with lower health and environmental risk”;
- “[N]ew technologies and industrial developments are making recycling and reuse of waste an increasingly viable and economically attractive option which carries minimal

risk to the State and the environment and an option which allows the conservation of the State's limited disposal capacity”;

- “Municipal waste recycling and disposal facilities have not been developed in a timely and environmentally sound manner because of diffused responsibility for municipal planning”; and
- “Sound environmental policy and economics of scale dictate a preference for public solid waste management planning and implementation on a regional and state level”;

The Solid Waste Management Hierarchy requires an “integrated approach to solid waste management ... based on the following order of priority:

- A. Reduction of waste generated at the source, including both amount and toxicity of the waste;
- B. Reuse of waste;
- C. Recycling of waste;
- D. Composting of biodegradable waste;
- E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and
- F. Land disposal of waste.”

The Recycling and Reuse Standards require consistency with the *State Waste Management and Recycling Plan* with one of its stated priorities being to “Encourage the development of new infrastructure for separation from the waste stream and utilization of organics, including composting and technologies such as anaerobic digestion.”

The MRC's proposed post-2018 approach to solid waste management achieves and meets these goals, policies, and requirements. The MRC's approach utilizes the existing local infrastructure to reduce, reuse, and recycle waste (e.g., swap shops, recycling centers, source separation areas, etc.). The MRC approach avoids guaranteed maximum tonnage (GAT) penalties with individual municipalities, which currently provide a disincentive to reduce, reuse, and recycle waste. The MRC approach explicitly provides flexibility to municipalities and sub-regional disposal districts to implement solid waste programs (e.g., pay-as-you-throw, curbside recycling, single-stream recycling) that are successfully reducing, reusing, and recycling waste. The MRC approach provides an economic incentive to municipalities, residences, and businesses to locally reduce, reuse, and recycle waste in order to reduce their disposal costs because a per ton fee (tipping and transportation) is charged for waste that is transported and delivered to the Fiberright facility. Moreover, the processing charge established for acceptance of source separated recyclables delivered to the Fiberright facility will, by contract, be required to stay below one-half of the tip fee for MSW disposal in effect at the time.

The MRC approach is an “integrated approach to solid waste management” at a sufficient “regional” size to address the “economics of scale” necessary to implement the advanced “technologies” for additional “separation from the waste stream and utilization of organics.” The advanced technologies within the Fiberight facility include a material recovery facility (MRF) that separates aluminum, ferrous and other metals, and plastics for reuse and recycling; and pulping, washing, hydrolysis, and anaerobic digestion to convert the organics to usable products (e.g., PHS fuel and biogas). The Fiberight facility will achieve approximately 80% recycling and conversion of the waste that is delivered to the facility in addition to the waste reduction, reuse and recycling that is achieved locally. The Fiberight facility will achieve a much higher recycling and conversion rate “with lower health and environmental risk” than all other waste management options that the MRC evaluated and could have chosen to implement.

Specific responses:

- 1) *Fiberight technology prevents paper products, food scraps, and other organic material found in the waste stream from being recycled or composted and instead uses these materials as an energy source—which is a clear violation of the hierarchy. Part of the reason Maine prioritizes recycling over other waste processing methods is to reduce pressure on virgin resources and save embodied energy in our materials by using those materials as inputs into new products.*

The Fiberight technology and associated contracts do not prevent paper products, food scraps, and other recyclables from being recycled or composted locally. In fact, each local community is encouraged and allowed to have waste reduction and recycling programs that work locally. The proposed MRC approach recovers material from the waste stream at a higher level in the hierarchy compared to current practice as well as other available approaches. The technology does not prevent waste from being recycled or composted at the local level; it provides additional opportunities to capture, utilize, and convert materials that historically have been landfilled or incinerated in a waste-to-energy facility. MRC and Fiberight clearly support and encourage local waste reduction and recycling programs. It is no small feat that the biogas produced in this process provides a readily usable substitute for fossil carbon in an array of applications. *See Response to #3 for specific examples.*

The advanced technologies within the Fiberight facility include a material recovery facility (MRF) that separates aluminum, ferrous and other metals, and plastics for reuse and recycling; as well as pulping, washing, hydrolysis, and anaerobic digestion to convert the organics to usable products (e.g., PHS fuel and biogas). The Fiberight facility will achieve approximately 80% recycling and conversion of the waste that is delivered to the facility in addition to the waste reduction, reuse and recycling that is achieved locally. The Fiberight facility will achieve a much higher recycling and conversion rate “with lower health and

environmental risk” than other available and implementable waste management options.

Additionally, the NRCM refers to legislation that was passed by the 126<sup>th</sup> Maine Legislature (“LD 1483”) that created a new waste facility licensing criterion requiring the practices of the facility be consistent with the solid waste management hierarchy. However, in passing LD 1483, the Environment and Natural Resources Committee simply adopted the existing practice of the DEP in regulatory matters – to include consistency with the hierarchy as a licensing review criterion for new waste facilities.

The NRCM claims that the Fiberight facility proposal somehow violates the hierarchy. However, the Fiberight facility is more consistent with the hierarchy than any other system currently in or that has been proposed in the State of Maine.

- 2) *Fiberight’s mixed-waste processing could undermine recycling efforts and degrade the quality of materials collected for recycling. NRCM is very concerned that the “one bin for all waste” system could cause some communities to discontinue successful source-separated recycling and composting programs and prevent new programs from being started. The quality of the recycled material is extremely important for a strong recycling economy, and buyers of recycled commodities pay a higher price for materials that have not been contaminated with household trash.*

As noted above, this technology supplements the local recycling programs. The MRC approach provides flexibility to municipalities and sub-regional disposal districts to implement solid waste programs (e.g., pay-as-you-throw, curb-side recycling, single-stream recycling) that are successfully reducing, reusing, and recycling waste. The MRC approach provides an incentive to municipalities, residences, and businesses to locally reduce, reuse, and recycle waste in order to reduce their disposal costs because a per ton fee (tipping and transportation) is charged for waste that is transported and delivered to the Fiberight facility.

- 3) *Fiberight’s mixed-waste collection option could undermine pay-as-you-throw (PAYT) programs, which are one of the most effective ways to reduce waste and equitably distribute disposal costs in a community. Some towns may find that they will save on transportation costs by mixing recycling back in with regular trash. In that event, it’s likely that PAYT programs could be repealed or not considered because it would negate the reason to pay per bag if recycling separately was no longer an option.*

As noted above, this technology supplements the local recycling programs. The process simply provides for a second pass to recyclables that were not recycled at the local level. The MRC approach explicitly provides flexibility to municipalities and sub-regional disposal districts to implement solid waste programs (e.g., pay-as-you-throw, curb-side recycling, single-stream recycling) that are successfully reducing, reusing, and recycling waste. The MRC approach provides an incentive to municipalities, residences, and businesses to locally reduce, reuse, and recycle waste in order to reduce their disposal costs because a per ton fee (tipping and

transportation) is charged for waste that is transported and delivered to the Fiberight facility.

We cannot speculate on the financial situation of every Joining Member, but globally speaking, we do not feel that Fiberight's mixed-waste collection option undermines PAYT programs. The Joinder Agreement is specifically crafted to allow Joining Members to continue and expand PAYT programs while retaining provisions that will enable the facility to be financed. NRCM's statement to that effect (which relies on false statements in a memo from the general partner of PERC, who is opposing the project) is simply wrong. In this context, the draft Joinder Agreement includes the following provision that the NRCM did not mention and that the memo from the general partner of PERC deliberately ignored:

“Joining Member may institute "pay as you throw" or similar waste reduction programs at its discretion without prior approval from the MRC so long as all MSW generated within its borders and under its control continues to be delivered to the Facility.” Joinder Agreements, Section 3.4(b)

Similarly, the Master Waste Supply Agreement provides a covenant to the Joinder Agreements that the NRCM did not mention and that the memo from the general partner of PERC deliberately ignored:

“...will not be construed to limit the right of any Joining Member to continue to operate existing programs substantially as operated as of the Effective Date or to institute "pay as you throw" or similar waste reduction programs in its discretion so long as all MSW generated within its borders and under its control continues to be delivered to the Facility.” Master Waste Supply Agreement, Section 3.1(iv).

Furthermore, in the context of achieving transportation cost savings by mixing recyclables with “regular trash,” we disagree. Communities that have recycling programs bear the cost of transporting their recyclables to the final destination, and in the same way would have to pay increased transportation cost if recyclables are mixed with “regular trash.” Communities would also lose recycling revenue and pay higher waste disposal tipping fees if recyclables are mixed with “regular trash.”

- 4) *MRC's contractual arrangements with municipalities contain “Delivery Diversion Charges” that would penalize municipalities for reducing tonnage brought to the facility. These provisions would discourage waste reduction—the most important rung on the hierarchy. Municipalities would also not be allowed to initiate any new recycling or organics programs without prior consent of the MRC. This provision could prevent advancements in recycling and composting in the State, which is a clear violation of the hierarchy, and also could prevent municipalities from potential cost saving programs.*

The NRCM completely misinterprets the plain language describing the purpose and intent of the concept of Delivery Diversion Charges. As set forth in Sections 3.1 and 3.2 of the Joinder Agreement, Delivery Diversion Charges would be levied by the MRC only against Joining Members that deliberately send Acceptable Waste to a competing waste-to-energy facility or solid waste landfill. Such charges would NOT be levied against any Joining Member that reduces its tonnage brought to the facility as a result of waste reduction or recycling programs. The response regarding waste reduction programs was provided previously in the response to Item #3 above.

Further, the draft Joinder Agreement does not require MRC consent to initiate new recycling or organics programs. Again, NRCM's statement to that effect, which relies on false statements in a memo from the general partner of PERC, is simply flat-out wrong. Rather, the Joinder Agreement requires the Joining Member to provide notice of the program to the MRC and to consult with the MRC prior to implementation, so that the Joining Member has a full understanding of the potential impacts of the proposed program.

Finally, any Joining Member that wishes to start up new organics diversion programs can plan to do so at its discretion, and can set its Estimated Delivery Amount at below historical MSW deliveries to PERC in order to allow for the future impacts of the program on MSW deliveries. In this context, the MRC is encouraging Joining Members to consider and plan for those programs today rather than defer such programs decisions indefinitely.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Gregory A. Louder', written in a cursive style.

Gregory A. Louder  
Executive Director

Copies: Denis St. Peter, CES, Inc.  
Craig Stuart-Paul, Fiberight, LLC