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June 30, 2014

Ms. Karen Knuuti
Environmental Specialist, Bureau of Remediation and Waste Management
Department of Environmental Protection
Eastern Maine Regional Office
106 Hogan Road
Bangor, Maine 04401

**RE: MRC Application for Public Benefit Determination, DEP# S-022432-W5-A-N;
Response to Town of Greenbush Letters dated June 10, and 20, 2014**

Dear Karen:

I am writing on behalf of the Municipal Review Committee (“the MRC”), in response to the letters from counsel for the Town of Greenbush, the first dated June 10, 2014 (the “Greenbush Letter”), and the second dated June 20, 2014 (the “Supplemental Letter”).

With respect to the MRC’s Application for Determination of Public Benefit submitted to the Department, the Greenbush Letter generally asserts that the MRC lacks statutory authority to own and operate a solid waste disposal facility—a claim that is simply wrong. Most of the arguments raised in the Greenbush Letter were previously addressed in my correspondence to you dated May 30, 2014. To avoid duplication, I refer you to that letter and supporting materials for the MRC’s full position as to the source and scope of its authority to own and operate a solid waste disposal facility. More specifically, please see my responses to your questions numbered 5 and 7, including the memorandum at Tabs 5 and 7.

However, there are certain issues raised in the Greenbush Letter to which the MRC must respond in order to clarify the record.

Statutory Interpretation

In an approach that is similar to the one USA Energy took in its submission, the Greenbush Letter resorts to an overly narrow interpretation of 38 M.R.S. § 1303-C(6) - the subsection which lists exemptions to the commercial solid waste disposal moratorium - and examines this subsection in isolation, thereby ignoring the statutory context in which the subsection is found and to which the subsection relates. Such a narrow

approach, if adopted, would render meaningless 38 M.R.S. § 1303-C(24)(B) which grants to regional associations like the MRC explicit authority to own and operate a solid waste disposal facility. Well settled principles of statutory interpretation do not permit a party to pick and choose among various statutes, subsections, or sentences in order to read them in isolation. “Even a plain language reading of a statute,” as urged in the Greenbush Letter, “requires us to consider the provision at issue in light of the entire relevant statutory scheme. Multiple provisions must also be read to provide a cohesive result.” *In re Adoption of Tobias D.*, 2012 ME 45, ¶ 15, 40 A.3d 990 (citation omitted); *see also FPL Energy Maine Hydro LLC v. Dept. of Env’tl Prot.*, 2007 ME 97, ¶ 11, 926 A.2d 1197 (“the agency’s interpretation . . . is entitled to great deference and will be upheld unless the statute plainly compels a contrary result”).

The Greenbush Letter emphasizes that the MRC is made up of a significant number of municipalities, implying that the Legislature did not intend such a large group of municipalities to collectively own or operate a solid waste disposal facility. This assertion could hardly be more wrong. Not only is there *no* evidence that the Legislature meant to treat single municipalities any differently than regional associations, the Legislature has affirmatively expressed an overarching policy goal of encouraging municipalities to join together in order to address solid waste disposal on a regional or state level. *See* 38 M.R.S. § 1302 (recognizing the failure of individual municipal-owned solid waste disposal facilities to develop “in a timely and environmentally sound manner . . . and that sound environmental policy and economics of scale dictate a preference for public solid waste management planning and implementation *on a regional and state level*”(emphasis added)).

Underscoring this overarching policy goal, the Legislature has expressly mandated that the pertinent statutes are to be “construed liberally.” 38 M.R.S. § 1302.

The Supplemental Letter claims that the list of exemptions in Section 1303-C(6) should be read narrowly “under general rules of statutory construction” applicable to all statutory exemptions. *See* Supp. letter at 1. There is no such general rule of statutory construction. Each statute - and its exemptions - should be read, aside from its plain language, based on its own unique underlying purposes and policies. In fact, the cases cited in the Supplemental Letter support this assertion. The interpretive rule regarding tax exemptions applies to tax exemptions only. *Hurricane Island Outward Bound v. Town of Vinalhaven*, 372 A.2d 1043, 1046 (Me. 1977) (citing the rule of construing tax exemptions narrowly and listing tax-related cases only). And, the Freedom of Access Act contains a specific statutory mandate, completely inapplicable to other statutes, that its provisions “be liberally construed and applied to promote its underlying purposes and policies . . . [that] public proceedings . . . be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly.” 1

M.R.S.A. § 401. There is neither logic nor a statutory canon to support a conclusion that all statutory exemptions should be read narrowly.

The Supplemental Letter also argues that prohibiting MRC from owning and operating a solid waste disposal facility, because it is a regional association as opposed to a public waste disposal corporation or a refuse disposal district, would somehow work to advance the public policy underlying the Maine Hazardous Waste, Septage and Solid Waste Act (the “Act”) of reducing waste and promoting recycling. This argument defies logic; whether MRC is formed as a regional association or as a corporation or district has nothing to do with whether its proposed facility will or will not further the State policy of reducing waste and encouraging recycling.¹

Moreover, the Greenbush Letter and the Supplemental Letter contend that the municipal exception to the definition of a commercial solid waste disposal facility set forth in 38 M.R.S. § 1303-C(B-2) should be read narrowly to include only a single municipality that processes solid waste generated within that municipality’s geographical boundaries. *See* Greenbush Letter at 4. This contention is in direct contradistinction to the language of 38 M.R.S. § 1303-C(B-2) that expressly contemplates municipally-owned facilities accepting waste generated “within the State” and even, under certain conditions, waste generated outside the State. Greenbush’s view also stands in stark contrast to the findings and purpose of the Legislature which clearly is to encourage development of disposal facilities on a regional and state level and specifically to allow regional associations to own and operate solid waste disposal facilities to accomplish this purpose.

Indeed, consistent with the policy goal that municipalities join together and address solid waste disposal on a regional or state level, the Legislature has devised multiple methods for municipalities to do so—in the form of regional associations, public waste disposal corporations, and refuse disposal districts. *See* 38 M.R.S. § 1304-B(5) & (5-A) (“[n]otwithstanding any law, charter, ordinance provision or limitation to the contrary,” municipalities and other entities may form public waste disposal corporations or other regional associations); 38 M.R.S. § 1702 (stating it is “the policy of the State to encourage the development of refuse disposal districts . . . so that those districts may

¹ The Supplemental Letter also states that land disposal is at the “bottom of the list of solid waste management priorities” under the Act. *See* Supp. Letter at 2. While MRC does not dispute this assertion, MRC strongly objects to any inference that its proposed facility presupposes a return to the lowest level of the solid waste management hierarchy. This conclusion is premised on the erroneous assumption that the MRC intends to simply dispose of its members’ unprocessed MSW in a landfill. As thoroughly described in MRC’s Application for Public Benefit Determination, MRC’s proposal does nothing of the sort and actually envisions an integrated solid waste disposal system that will utilize state-of-the-art technology to increase recycling and remove and reuse organics from the waste stream, thereby addressing the upper tiers of the hierarchy currently left unaddressed by waste to energy technology.

economically construct and operate refuse disposal systems to assist in the abatement of pollution and to enhance the public health, safety and welfare of the citizens of the State”).

Regional associations advance this policy objective. They are expressly authorized by statute to own and operate solid waste disposal facilities, and allowing them to do so comports with the objectives of the Act.

Greenbush’s Omission of Pertinent Legislative History

The Greenbush Letter also takes a selective approach to legislative history, reciting the sections it wants you to consider while omitting others that are more relevant. It correctly states that the original statutory definition of regional associations in section 1303-C(24) was formulated at the same time as the commercial solid waste disposal facility moratorium was enacted, with its list of corresponding exemptions.² See P.L. 1989, ch. 585, §§ E 4, 34. The Greenbush Letter fails to mention, however, that section 1303-C(24)(B), which grants authority to nonprofit corporations made up of municipal entities, like the MRC, to form a regional association “for the purpose, among other permissible purposes, of owning, constructing or operating a solid waste disposal facility,” was enacted *after* the moratorium on commercial solid waste disposal facilities and the corresponding list of exemptions was passed. P.L. 1989 ch. 869, § A-5.

The Town of Greenbush argues that the Legislature could have included regional associations in its list of exemptions if it wanted to, and that their absence from the list means the Legislature thought about including them, but chose not to. There is no support in the legislative history, however, for this conclusion. In fact, had the Legislature wanted the list of exemptions to be exclusive, it could have made that intention clear - but it did not. It could have said, for example, that the exemptions were the “sole” or “only” exception to the moratorium language. It did not. In *Eagle Rental, Inc. v. City of Waterville*, 632 A.2d 130 (Me. 1993), the Law Court noted that “the presence in other exemption provisions of such limiting language illustrates that, when the Legislature so intends, it is quite able to restrict the availability of certain . . . exemptions.” *Eagle Rental*, 632 A.2d at 131.³

Here, while section 1303-C(6) does not explicitly mention regional associations, the significance assigned to that omission by the Town of Greenbush is undercut by the Legislature’s clear grant of authority to regional associations to own and operate solid

² The original list of exemptions was found in section 1303-C(7). That subsection has since been re-numbered as section 1303-C(6). See P.L. 1999, ch. 525 §§ 1 & 2.

³ The court in *Eagle Rental* also held that “[i]t is . . . a well established principle of statutory construction that a statute must be interpreted in light of the real purpose of the legislation.” *Eagle Rental*, 632 A.2d at 131.

waste disposal facilities *after* it had fashioned its list of exemptions to the moratorium. *See In re Dunleavy*, 2003 ME 124, ¶ 15, n. 5, 838 A.2d 338 (citing “the general rule that a more recent statutory enactment controls when in conflict with an earlier statutory enactment”). Moreover, there is no legislative history of any opposition to regional associations owning and operating solid waste disposal facilities. Here again, the Town of Greenbush has made the tactical decision to offer an overly narrow legislative argument which ignores the greater context and underlying purpose of the statute as a whole. Whatever logic may adhere to such a narrow interpretation of the cited provisions when viewed in isolation, that logic falls away when held to the light of the Legislature’s overarching policy goals and the broader statutory context of the measures it adopted.

MRC’s Corporate Purpose and Authority

The Greenbush Letter asserts that, even if some regional associations are exempt from the commercial solid waste disposal facility moratorium, the MRC does not qualify because it was not formed “for the purpose . . . of owning, constructing or operating a solid waste disposal facility . . .” (citing Section 1303-C(24)(B)). The Greenbush Letter claims that the MRC’s Bylaws “make absolutely no mention of, or even a hint at, owning, constructing or operating a solid waste disposal facility,” and states that the MRC was formed merely “for the purpose of reviewing and overseeing its members’ interactions with the Penobscot Recovery Company, or PERC.” Greenbush Letter at 2-3, 5 (emphasis omitted).

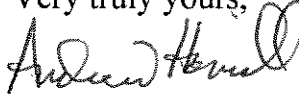
Here, once again, the Town of Greenbush has selectively plucked language out of context. In this case, the quoted language from the MRC’s bylaws omits the bylaw language preceding it which declares a much broader mission, “to ensure the continuing availability to its members of long-term, reliable, safe and environmentally sound methods of solid waste disposal at a stable and reasonable cost.” *See* MRC Bylaws § 2.1. Similarly, the MRC’s Articles of Incorporation define the purposes of the corporation to include, in addition to acting as a liaison between its member communities and PERC, to “promote long term solutions to the problems associated with the disposal of municipal waste.” This broader mission is unquestionably consistent with the ownership and operation of a solid waste disposal facility. While the MRC’s Bylaws contain other, more specific statements of purpose, many of which relate specifically to PERC, those more specific provisions are best viewed as an evolving set of guidelines that are amended from time to time to reflect then-current tasks and issues facing the MRC. *Cf.* 13-B M.R.S. § 601 (stating that bylaws may be amended by a board of directors, and “may contain any provisions for the regulation and management of the activities of a corporation not inconsistent with law or the articles of incorporation”). The MRC Bylaws are likely to be amended again, as they have been before, in order to reflect the MRC’s current efforts to fulfill its general mission of ensuring the continuing availability

to its members of long-term, reliable, safe and environmentally sound methods of solid waste disposal.

Finally, the Greenbush Letter incorrectly states that section 1304-B(5-A) does not authorize regional associations to own or operate solid waste disposal facilities, overlooking the language in section 1304-B that authorizes municipalities to invest funds and participate in owning one or more solid waste disposal facilities, or an entity that owns one or more solid waste disposal facilities. 38 M.R.S. § 1304-B(5-A)(D). A regional association - which is just such an entity - is explicitly authorized to make “investment and reinvestment in the entities described in paragraph D,” and to “[p]urchase, sell and otherwise deal with ownership interests . . . for the purpose of making any purchase, in the entities described in paragraph D” 38 M.R.S. § 1304-B(5-A)(E)(5). Read together, the intent of these provisions could hardly be more clear.

In conclusion, we simply ask the Department to read the statute as a whole, consistent with traditional notions of statutory interpretation, and to consider its underlying purpose. Similarly, we ask that the MRC’s Articles of Incorporation and Bylaws be read in a similar light. When read in that light, we believe the standing of the MRC to apply for the public benefit determination now before the Department will be self-evident.

On behalf of the MRC I want to thank the Department for its continued attention to this important matter. Please contact Greg Lounder, Denis St. Peter, or me if you have any further questions.

Very truly yours,

P. Andrew Hamilton

Cc: Greg Lounder
Denis St. Peter
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Jon Doyle, Esq.