

# FARRELL, ROSENBLATT & RUSSELL

ATTORNEYS AT LAW  
61 MAIN STREET  
P.O. BOX 738  
BANGOR, MAINE 04402-0738

ANGELA M. FARRELL  
NATHANIEL M. ROSENBLATT  
THOMAS A. RUSSELL  
JON A. HADDOW  
GREGORY P. DORR  
ROGER L. HUBER

TELEPHONE (207) 990-3314  
TELECOPIER (207) 941-0289  
e-mail: info@frrlegal.com

August 16, 2014

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: Municipal Review Committee, Inc.'s Application for Public Benefit  
Determination – Comments from Town of Greenbush***

Dear Karen:

As you know, this firm represents the Town of Greenbush, Maine (the "Town") in connection with Municipal Review Committee, Inc.'s ("MRC") efforts to locate a solid waste disposal facility in Greenbush or Argyle. This letter is intended to serve as the Town's formal comments on MRC's Application for a Determination of Public Benefit ("Application") currently pending before the Maine Department of Environmental Protection ("DEP").

## **INTRODUCTION**

As detailed in our prior letters to the DEP, the Town asserts that the DEP must dismiss MRC's application because Maine law prohibits the processing and approval of new commercial solid waste disposal facilities, including those owned and operated by so-called Regional Associations like MRC. Even if Regional Associations were exempt from the ban on commercial solid waste disposal facilities, MRC would not so qualify because under 38 M.R.S.A. § 1303-C(24)(B) only Regional Associations that are organized "for the purpose of owning, constructing or operating a solid waste disposal facility" may do so. Unfortunately, MRC was not (and is not) organized for that purpose.

In addition to the foregoing arguments (and without waiving the same), the Town asserts that the Commissioner must also find that the proposed solid waste disposal facility does not provide a substantial public benefit and deny MRC's application.

### **APPLICABLE LAW**

Title 38 M.R.S.A. § 1310-AA establishes the process and standards for determining whether a proposed solid waste disposal facility provides a substantial public benefit. 38 M.R.S.A. § 1310-AA reads as follows:

**Standards for determination.** The commissioner shall find that the proposed facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility or the acceptance of waste that is not generated within the State:

- A. Meets immediate, short-term or long-term capacity needs of the State. For purposes of this paragraph, “immediate” means within the next 3 years, “short-term” means within the next 5 years and “long term” means within the next 10 years. When evaluating whether a proposed facility meets the capacity needs of the State, the commissioner shall consider relevant local and regional needs as appropriate and the regional nature of the development and use of disposal capacity due to transportation distances and other factors;
- B. Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy as set out in section 2101;
- C. Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; and
- D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted.

### **BURDEN OF PROOF**

MRC carries the burden to prove by a preponderance of the evidence that its proposed solid waste disposal facility provides a “substantial public benefit.” For the reasons set forth in this letter, MRC has utterly failed to satisfy that burden. With respect to capacity, MRC has demonstrated only that it would “prefer” to have its own solid waste disposal facility so that it can control its usage; unfortunately, that is not the test. The test is whether *another* solid waste disposal facility is necessary in this region in order to meet demonstrated needs of the State.

MRC has failed to demonstrate why the existing solid waste disposal facilities, three of which are State-owned, do not already adequately satisfy the State's needs.

MRC's entire argument is one of economics, not need. Understandably, MRC wants to keep its members' disposal costs as low as possible. For the past 20+ years, MRC's member municipalities have, effectively, paid below market rates for disposal of their solid waste. MRC's members have enjoyed those favorable rates due, in large part, to the Power Purchase Agreement between PERC and Emera. That PPA is set to expire, however, in 2018. MRC seems to equate its "need" to keep costs low with the State's landfill capacity needs. Those are false equivalents. The mere fact that MRC's members may, as a result the PPA's expiration, pay closer to "market rates" post-2018 for disposal of their solid wastes is completely irrelevant to the central question; namely: does MRC's proposed facility meet any immediate, short-term, or long term capacity needs of the State.

MRC has also failed to carry its statutory burden to prove by a preponderance of the evidence that its planned solid waste disposal facility promotes the State's solid waste management hierarchy. While we understand that the Public Benefits test applies only to the landfill component of MRC's project, the law does specifically require that MRC demonstrate how the proposed facility promotes the State's solid waste management hierarchy. Unfortunately, it is impossible to discern from MRC's application whether the landfill component promotes the solid waste management hierarchy because the application contains a dearth of information about the processing component of MRC's operation leading, except for landfilling. MRC's application does contain a few ideas about how the waste *might* be processed, but those ideas are purely speculative. MRC offers no concrete plans whatsoever. For the most part, MRC's suggested technologies are completely untested in New England and, in some cases, the United States.

Interestingly, even MRC acknowledges the speculative nature of its proposal. In its Application, MRC states that capacity is necessary

to provide the MRC the flexibility to accept a range of types and quantities of waste that might need to be land filled in the event that the measures for achieving the maximum practical level of diversion are less successful than had been projected.

(Application, page 1-15). MRC has no idea what technology it will use. As a result, MRC cannot specify what types of waste and how much of each type of waste will require landfilling. It is, quite simply, impossible to make a capacity determination in the vacuum created by the lack of specific information. Indeed, there is no guarantee that the waste would be processed *at all* before disposal.

MRC certainly makes a compelling case that there is a *private* benefit to be served by its proposed solid waste disposal facility. Under MRC's proposal, it will have sole access and control to its own "private" landfill. As such, it will have maximum ability to control its members' solid waste disposal costs. Again, we understand MRC's desire to control its

members' costs. One's ability to control its own costs, however, is not what the Public Benefits-test is all about. In order to satisfy the *Public* Benefits test, MRC must show that the State, not MRC, has immediate, short-term or long-term capacity needs and that the proposal fulfills some or all of those needs. As detailed below, the State has no immediate, short-term, or long-term capacity needs in the region and, therefore, no needs to fulfill. MRC has failed to carry its burden to demonstrate otherwise.

## **CAPACITY NEEDS**

### **I. MRC has failed to demonstrate that the proposed facility meets immediate, short-term, or long-term capacity needs of the State, as required by 38 M.R.S.A. § 1310-AA (3)(A).**

MRC must demonstrate that its planned solid waste disposal facility meets the State's immediate, short-term, or long-term capacity needs. For the reasons set forth below, it has failed to do so.

#### **A. MRC's entire application is premised on the unfounded notion that PERC will not be operational post-2018.**

As a preliminary matter, it is important to understand that MRC's entire capacity analysis is premised on the notion that PERC will cease operating post-2018. This unfounded claim is based on the assumption that PERC cannot operate without MRC's continued participation. MRC offers no factual support for this assumption, only its self-serving declarations. Furthermore, those assumptions are completely contrary to the evidence presented to the Department; namely, PERC's repeated demonstration that it can (and will) continue to operate with or without MRC's continued involvement.

Importantly, MRC is merely a limited partner in PERC, not an owner. As such, MRC has no authority to speak on PERC's behalf. MRC certainly has no authority to commit PERC on post-2018 operations. Despite efforts to sound authoritative on the matter, MRC presents absolutely no evidence to support its claim that PERC will be non-operational post-2018 and that, as a result, the disposal capacity offered by PERC will be unavailable.

PERC is a 25.5 megawatt, 1,000 tons-per-day, waste-to-energy processing facility operating at full capacity. Contrary to MRC's claim, it is not just going to simply disappear in 2018. PERC insists that it *will* remain open and operational post-2018, whether or not some of the MRC communities choose to leave. At PERC's informational meeting held on June 17, 2014, regarding their post-2018 planning, they assured the general public of their facility's ability to adapt in regards to the tonnage they receive and process, therefore continuing forward as a viable option post-2018.

MRC's has the sole burden to demonstrate by a preponderance of the evidence that PERC will cease operation post-2018. MRC fails in that regard. In fact, in its application MRC

concedes that the only reason it eliminates PERC as having disposal capacity post-2018 is because "there could be no assurance that the PERC Facility in its current configuration, and under current business arrangements extended as is, can continue to be a feasible component of a long-term system of MSW management that complies with the hierarchy and with the MRC vision []." (Application, page 2-1). In essence, MRC has decided to move away from PERC because of *business reasons*, not because PERC will not have ample disposal capacity post-2018.

MRC's conclusion lacks any real factual support, however. To the contrary, the evidence demonstrates that in 2013 the MRC municipalities delivered only 179,176.75 tons of MSW to the PERC facility. (Application - Appendix C). According to the State Plan, PERC has the capacity to dispose of 304,000 tons of MSW annually (Application - Appendix E, Table 5) and is currently running at near capacity. In 2013, PERC disposed of over 300,000 tons of MSW. Clearly, MRC is not PERC's only source of MSW. Based upon those numbers alone, PERC's post-2018 closure seems unlikely.

Additionally, MRC acknowledges that not all 187 of its member entities are willing, or even likely, to move with them to the proposed facility. According to its Executive Director, Greg Louder, "it is possible that not all of the member municipalities will necessarily utilize the proposed facility, due to transportation costs, proximity to competing facilities, and other factors." (Letter from Greg Louder to MDEP, dated May 20, 2014). Obviously, PERC would be one of those competing facilities, further strengthening the position that PERC has every incentive to remain open and operational post-2018.

Parenthetically, residents in attendance at DEP's public meeting, held July 2, 2014, expressed genuine disfavor for the importing of out-of-state waste. PERC confirmed publicly, at its own informational meeting held on June 17, 2014, that the importation of out-of-state waste will likely end at its facility once the power generation demands imposed by the PPA cease and the currently subsidized disposal rates disappear.

This is especially beneficial to the State in multiple ways; one of the largest of those being an extension in the lifetime of the Juniper Ridge Landfill. The current capacity analysis in regards to Juniper Ridge's disposal capacity lifetime as found in the State Plan is 6 years from now. However, this is estimated using the tonnage of waste that PERC is currently disposing of, *which includes out of state waste*. Importantly by not accepting such high tonnage post-2018 the lifetime of Juniper Ridge, where PERC disposes of its residuals, will be *further* extended because PERC will not have nearly as much residual to dispose of as previously estimated by the DEP.

In short, all indications are that PERC will remain operational post-2018 and MRC has failed to prove otherwise by a preponderance of the evidence.

**B. The State of Maine has no immediate, short-term, or long-term landfill capacity needs.**

Before determining whether MRC's proposal *fulfills* any immediate, short-term, or long-term landfill capacity needs, one must first examine whether there are any such needs. The State's solid waste needs are set forth in the latest *State of Maine Waste Management and Recycling Plan* dated January, 2014 ("State Plan") and the *Solid Waste Generation and Disposal Capacity Report for Calendar Year 2012*, dated January, 2014 ("Capacity Report"), both prepared by the Maine's State Planning Office.

The purpose of the State Plan is to identify the need in the State for current and future solid waste disposal capacity by type of solid waste, including identification of need over the next 5-year, 10-year, and 20-year periods. Title 38 M.R.S.A. § 2123-A(4)(Supp. 2014). The Department has previously interpreted the 5, 10, 20 year time frames to equate to immediate, short-term, and long-term, respectively. We follow the Department's lead in that regard.

Absent from the current version of the State Plan is an expressed need for solid waste disposal capacity. Given that the DEP's duty is to identify need *if there is any*, this omission must be presumed intentional. Indeed, the DEP concludes that the strategies it proposes in the plan are aimed towards, among other things, "[...] extend(ing) the lifespan of Maine's *existing* landfill capacities." (State Plan, Sec. VI)(Emphasis added).

Importantly, the DEP included in the State Plan a table that sets forth the available licensed MSW disposal capacity in the State of Maine through 2032, as well as one that displays the years of remaining lifetime for existing landfills. As demonstrated by these tables, capacity to both process and landfill MSW through 2032- *17 years away*- exists in the State of Maine.

Pursuant to M.R.S.A. § 1310-AA (3)(A) substantial public benefit can only be determined if the proposed facility meets immediate, short term, or long-term capacity needs- the long term horizon being defined as 10 years away. As the DEP's own data demonstrates, there is zero demonstrated need for solid waste disposal capacity in the State Plan in the next 10 years.

**C. MRC acknowledges that its proposal does not fulfill any immediate landfill capacity needs.**

As noted above, the term "immediate" means within three years of the date of filing an Application for Determination of Public Benefit or, in this case, 2017. The State Plan does not show an immediate need for MSW disposal capacity. Furthermore, the existing Waste Disposal Agreements obligate MRC's member municipalities to deliver, and PERC to accept, the MSW generated by the member municipalities. So, not only are there no immediate landfill capacity needs in the State of Maine, MRC would not fulfill those needs if there were. MRC acknowledges these facts in its Application for Public Benefit Determination. (Application, page 2-2).

**D. MRC failed to demonstrate that the proposed increase in landfill capacity attendant to its project meets any *short-term* capacity needs of the State.**

As noted above, the term “short-term” means within five years of the date of filing an Application for Determination of Public Benefit or, in this case, 2019.

Regarding short-term need, MRC attempts to use its assumed (but unsubstantiated) closure of PERC as the rationale behind its claim of short-term disposal capacity need. However, as discussed above, the PERC facility will not close in 2018, but will likely remain open and operational with more than sufficient disposal capacity available.

Furthermore, Juniper Ridge has ample space to satisfy the region’s short-term disposal needs. According to the State Plan, Juniper Ridge has the capacity to dispose of solid waste through 2021, and Juniper Ridge is not alone in that ability. Norridgewock, Hatch Hill, Bath, Brunswick, Presque Isle, and Tri- Community landfills and Ecomaine and Lewiston WTE plants all have ample solid waste disposal capacity post-2019 and *well beyond*- many into the long-term capacity marker, according to the State Plan.

MRC’s claim of short-term disposal capacity need, despite proof to the contrary, reveals MRC’s true motivation. As previously expressed, MRC has not demonstrated a public need for a new landfill in the State, but rather only its own desire to be able to *control* a landfill. “Need” and “desire to control” are two entirely different beasts. One is applicable to the review criteria for an Application for Public Benefit Determination; the other, bluntly put, is completely irrelevant.

MRC’s driving desire to control its own landfill is evidenced by the lack of due diligence it performed in evaluating the State’s existing capacity. MRC apparently made no attempt to reach out to Juniper Ridge before filing the Application to even discuss the possibility of working with Juniper Ridge to dispose of MRC’s waste post-2018. We presume that MRC simply did not want to hear about Juniper Ridge’s capacity. In its June 30, 2014 letter to the DEP, the Bureau of General Services and NEWSME made clear that they *do* have disposal capacity available, and they would *certainly* be willing to work with MRC to dispose of its solid waste in the short term. Specifically, the Bureau of General Services and NEWSME stated:

Bureau of General Services (BGS) and New England Waste Services of ME, Landfill Operations, LLC (NEWSME) are certainly willing to discuss with the MRC, if they so desire, a modification of the MSW tonnage limit and an expansion of the time period for MSW disposal to the end of the current licensed capacity at JRL in order to address the MRC’s short term (5 years) MSW disposal needs from 2019- 2021.

(Bur. Gen. Services/NEWSME letter to DEP, date June 30, 2014).

In its obvious haste to secure its own landfill, MRC has failed to take even the most basic steps to prove a lack of available capacity.

**E. MRC failed to demonstrate that the proposed increase in landfill capacity attendant to its project meets the long-term capacity needs of the State.**

As noted above, the term “long-term” means within ten years of the date of filing an Application for Determination of Public Benefit or, in this case, 2014.

With respect to the State’s long-term capacity needs, MRC merely repeats its argument that “the MRC cannot rely on the disposal capacity associated with the PERC facility after the schedules date for expiration of the Waste Disposal Agreements on March 31, 2018” and that all other facilities with capacity available throughout the State are not options due to varying, undisclosed “factors”. (Application, page 2-3)

First, as discussed above, PERC *will* be an option post-2018 in terms of disposal capacity for the State of Maine and MRC has failed to demonstrate otherwise.

Second, in their June 30, 2014 letter to the DEP, the Bureau of General Services and NEWSME clarified to the DEP that if the MRC were to build a processing facility (or if they did not and elected to remain at PERC), BGS/NEWSME would *still* be willing to work with MRC in regards to its disposal capacity needs for the long term (next 10 years), pending the approval of Juniper Ridge’s entire available capacity expansion. Specifically, BGS and NEWSME stated:

[b]eyond the current licensed capacity, BGS and NEWSME are also working towards an expansion of JRL as was anticipated in the 2004 Operating Services Agreement (OSA) between the state and Casella. The DEP issued a Determination of Environmental Feasibility for a 21.9 million cubic yard expansion of JRL on April 13th, 2007. A Public Benefit Determination Partial Approval (JRL PBD) for a 9.35 cy expansion of JRL was approved by the DEP Commissioner on January 23rd, 2012. *The JRL PBD could be modified to provide for disposal of MRC’s long-term (10 years) disposal needs in the JRL expansion. However, no PBD modification would be required to accept residuals from an MRC processing facility that accepts only in state waste in the JRL expansion.*

(Bur. of Gen. Services letter to MDEP, June 30, 2014)(Emphasis added).

Interestingly, MRC has supported this expansion in the past. In so doing, MRC has demonstrated its confidence in the available disposal capacity at Juniper Ridge, as well the feasibility of its use by MRC member municipalities. In his pre-filed direct testimony in connection with Juniper Ridge’s Application for Public Benefit Determination, Greg Lounder explicitly stated that “the Casella-PERC contract includes an option for the PERC private partners to arrange disposal service for MSW from Charter Municipalities at the Juniper Ridge Landfill for a 10 year term starting in 2018.” This is a solution so perfect for the situation at hand that it needs be explored deeper by both the MRC *and* the DEP before any determination regarding MRC’s pending application is made.



Yet, as plainly demonstrated by the Bureau of General Services and NEWSME's letter to the DEP, MRC failed to make the necessary effort to further discuss this potential solution before the filing of its Application for Determination of Public Benefit for an entirely new landfill in the State.

Simply put, MRC has not done its homework when it comes to ruling out all other options for disposal capacity before embarked on its efforts to construct its own landfill. While a new landfill controlled by MRC may be in its best interest, it is not in the State's or the region's. Unfortunately for MRC, the ability to control a landfill is not amongst the review criteria for determining the existence of a substantial public benefit.

## **II. MRC failed to demonstrate why existing landfills don't work.**

The remainder of M.R.S.A. § 1310-AA (3)(A) provides that:

[w]hen evaluating whether a proposed facility meets the capacity needs of the State, the commissioner shall consider relevant local and regional needs as appropriate and the regional nature of the development and use of disposal capacity due to transportation distances and other factors.

A large piece of MRC's argument as to why they desire to construct a new landfill revolves around transportation distances to other landfills around Maine that *do* have remaining capacity, and the potential hurdle that this presents. We agree, reasonably so, that not *every* landfill in the State of Maine is a feasible option for the MRC communities at this time. That being said, there are two large and state owned landfills that do provide to the MRC both the necessary capacity into the future and are centrally located for their member communities. These are Carpenter Ridge Landfill and Juniper Ridge Landfill.

### **Carpenter Ridge Landfill**

Carpenter Ridge Landfill is located in Lincoln, Maine. In its application, MRC chose to exclude Carpenter Ridge from its calculations regarding future solid waste disposal capacity in the State of Maine, even though as according to the State's data, Carpenter Ridge has a projected lifespan of 18 years when developed; far beyond the long term capacity horizon. The fact that the State has chosen not to develop this large but currently untapped capacity is evidence that the DEP has determined that the disposal capacity is simply *not needed* to date. This is further exemplified by the fact that, as according to the state, the current purpose of the landfill is to act as a "safety net" for future development. The untapped potential at Carpenter Ridge fully suits MRC's disposal needs without licensing an entirely new landfill in the State; the license at Carpenter Ridge is current and ready for development.

Furthermore, contrary to MRC's self-serving claims, the location of Carpenter Ridge is entirely economical in terms of travel distances for disposal. MRC states that "the size and

location of Carpenter Ridge Landfill presents transportation challenges that are inconsistent with the MRC service area," but yet produces no evidence to demonstrate it believes this to be so. The fact of the matter is, that Carpenter Ridge is located proximate to both proposed disposal sites, Greenbush and Argyle. Furthermore, from a practical perspective, Carpenter Ridge is located immediately off Interstate 95 and access to the site would not involve trucks travelling over busy town and city roads, as would be the case with both Greenbush and Argyle.

MRC seems to believe that these two areas are located centrally enough within their service area to host a processing facility, and therefore it makes sense that Carpenter Ridge Landfill would also be centrally located enough to act as a disposal site for MRC's processed MSW. What does not make sense, is MRC's request to build an entirely new landfill when Carpenter Ridge is in their backyard- just up the highway with at least 18 years of capacity potential untapped and ready for development.

We understand why transportation distances are and should be an important consideration in the solid waste disposal citing analysis. Economics dictate that towns in the southern part of the State cannot transport waste up north, and vice versa. This is reasonable. However, this is not situation at hand. Regarding MRC's proposal, there is a currently licensed landfill (i.e., Carpenter Ridge) located only 25 miles away from the proposed facilities - not 200 miles.

To accept MRC's argument regarding transportation costs is to insure that the State of Maine will have many more landfills dotting the landscape because every processing facility, transfer station, etc. will elect to have one in their backyard for the sake of convenience. Title 38 M.R.S.A. § 1310-AA (3)(A) is not about convenience, it is about balancing need. In short, 25 miles is not excessive, by any stretch of the imagination.

In appropriate pursuit of the State Plan and the Solid Waste Management Hierarchy, transportation of residual waste to already existing landfills such as Carpenter Ridge is a small expense that need be paid in order to minimize solid waste land disposal impacts on the State and local communities. Maximum diversion of all solid waste is stated repeatedly as a top priority in both the hierarchy and the State Plan.

If decisions regarding the future of solid waste disposal are made based entirely on monetary factors, then the State will not make any substantial progress towards this maximum diversion effort. Responsible solid waste disposal is a costly activity, and need be recognized as such. Only by bearing the true cost of disposing of solid waste will e communities be incentivized to works towards minimum garbage production and maximum material diversion. How is this goal to be achieved if the State encourages bargain disposal approaches through facilitating artificially cheap pricing options? Obviously, MRC's biggest objective is to secure the most favorable bottom line. Unfortunately in terms of waste disposal, the course of action that leads to the lowest bottom line and the course that will most faithfully support the Solid Waste Management Hierarchy and State Plan are not aligned; and it is for this reason, among many, that MRC has failed to satisfy its burden that the proposed solid waste disposal facility meets the criteria of "substantial public benefit."

## Juniper Ridge Landfill

Juniper Ridge Landfill is located in Old Town, Maine and has been operating as the land filling location for PERC's front end and incineration waste for the past 20+ years. First and foremost, this obviously demonstrates that Juniper Ridge's location is practical in terms of MRC's service area, as it has been servicing MRC's communities over two decades with no major transportation issues arising.

MRC excluded the Juniper Ridge Landfill from any post-2018 capacity calculations, justifying the dismissal by inaccurately stating that according to the State Plan "the Juniper Ridge Landfill will reach its capacity in 2017". This is entirely inaccurate. Rather, in accordance with the DEP's data in Appendix E Table 6 of the State Plan (2012), it was calculated that Juniper Ridge had a remaining 9 years of capacity, or 2021. This untapped potential that is available well beyond 2018 and should have been considered in MRC's calculations regarding true solid waste disposal capacity for the future of the State.

Furthermore, in 2012 NEWSME and Casella filed for an expansion of the Juniper Ridge Landfill, asking for expansion approval to gain 21.9 million cubic yards of capacity, with an estimated 20 years of site life. After review of the application and available landfilling capacity around the State, the DEP determined only *partial* approval of this application- allowing for an expansion of just 9.35 million cubic yards, with a lifespan of 8 to 11 years. This Department Order of Partial Approval was delivered on January 31, 2012- only 2 short years ago. After an amendment to the application a finalized Department Order which granted this same partial expansion was issued on December 20, 2013- only a little over a year and a half ago.

According to the DEP's Order, only partial approval was issued because:

[t]he Commissioner finds it reasonable to determine that the full 21.9 million cubic yards of disposal capacity sought by the applicant *is not needed to meet the State's immediate, short term, or long term capacity needs.*

(Emphasis added).

As determined by the DEP, the State was simply *not* in need of the entirety of the requested extra capacity for land filling in the immediate, short term, or long term time frame. Since state disposal capacity has been utilized predictably since that determination, we fail to comprehend how, out of thin air, an immense statewide need for an entire new landfill could have arisen in such a short time period. And, indeed, it has not.

Furthermore, on June 19, 2014- just a little over a month ago- the operators of the Juniper Ridge Landfill appealed the DEP's decision of only partial approval of the requested capacity to the Board of Environmental Protection ("BEP"). The DEP gave to the BEP for consideration a "Staff Memorandum" and "Staff Recommendation/Draft Board Order." In its memorandum, the DEP stated that "[t]he Department recommends that the Board . . . affirm the Department's

decision to approve the disposal of 81,900 tons of MSW until March 31, 2016 at JRL as contained in Department Order #S-020700-WD-BC-A.”

By asking the Board to affirm and move forward with the Department’s original decision on the matter of the expansion of Juniper Ridge, the DEP simultaneously and effectively restated and reinforced their faith in their original conviction that there is *not* a need for solid waste disposal capacity in the state of Maine that would warrant the fully requested expansion, as stated in the original Department Order.

The DEP advanced this opinion only a month and a half ago. Undoubtedly it would be in full contradiction of this Department Order to now, only a short while later, determine *substantial* public benefit resulting from building an *entirely new* landfill.

If the DEP truly finds that more disposal capacity has become necessary in the last month and a half, there is more capacity available for further expansion at the Juniper Ridge Landfill. Importantly, expanding an existing landfill to its full potential before licensing an entirely new landfill would be more in accordance with the priorities of the State Plan, one of which we know to be, as previously stated in this letter, extending the lifespan of Maine’s *existing* landfill capacity.

### **SOLID WASTE MANAGEMENT HIERARCHY**

**MRC has failed to demonstrate that the proposed facility promotes the solid waste management hierarchy as set out in section 2101 in accordance with Title 38 M.R.S.A § 1310-AA (3)(B).**

The only element of MRC’s proposed processing facility subject to the Public Benefit Determination is the landfill. Thus, MRC bears the burden to demonstrate that the landfill component promotes the Solid Waste Management Hierarchy in order to secure a favorable determination. MRC, perhaps recognizing its inability to make such a showing, largely ignores the landfill and focuses, instead, on the remaining components of its proposed facility.

MRC concedes as much in its application, acknowledging that it provides detail on the other components of the proposal in order to demonstrate consistency with the State Plan and State of Maine Solid Waste Management Hierarchy.” (Application, page 1-1). Setting aside the important fact that the other (non-landfill components) of MRC’s proposal are speculative and largely unproven, MRC obviously felt the need to include a discussion of those components because the landfill component, on its own, fails to promote the State’s Solid Waste Management Hierarchy, as required.

Similarly, in the section of its Application entitled “Consistency,” MRC attempts to demonstrate how and why the landfill is consistent with Solid Waste Management Hierarchy (and State Plan), but that discussion devolves into a vague and irrelevant discussion of MRC’s vision for the future as it pertains to the other components of its proposal, not the landfill. MRC

goes into considerable detail regarding its speculative technologies that could conceivably implemented at the processing facility, but little regarding the component at issue (i.e., the landfill).

While MRC's speculative plans make for interesting reading, they are just that . . . speculative plans. MRC provides no assurances that its proposals will ever come to fruition, much less guarantees. The technologies cited, while certainly attention-grabbing and hopeful, are neither certain nor proven. MRC's inability to formally commit to any specific technology is important. Worst case, if none of the technologies pan out, then *all* of the solid waste MRC accepts will be landfilled. Such an outcome is plainly inconsistent with the State's Solid Waste Management Hierarchy. More subtly, because MRC has not committed to any particular technology, it is impossible to consider that technology as satisfying the State's Solid Waste Management Hierarchy, as MRC proposes.

It is the policy of the State to use the order of priority in the hierarchy as a guiding principle in making decisions related to solid waste management. Landfills are the last rung on the hierarchy and, accordingly, must be a disposal method of last resort. For the DEP to determine *substantial* public benefit resulting from a new landfill being constructed before any of the other rungs on the hierarchy have been proven to be satisfied, renders the hierarchy meaningless and is in direct contradiction of Title 30 M.R.S.A. § 2101(1).

Furthermore, MRC's 187 municipal members are currently disposing of their solid waste at PERC's waste-to-energy facility, an incinerator. Under the solid waste hierarchy, incineration is favored *before* land disposal. MRC, however, is looking to force a shutdown of an operating incineration facility and take its municipalities (though as expressed earlier, it is not known who would actually follow) and build a new landfill. Given that there is no supporting evidence at this time that the rest of the processing facility is going to exist, determining substantial public for this application would consequently be supporting moving down the hierarchy-from incineration to land filling-directly contradicting the statutory expectations of the DEP to only determine public benefit when it is in *promotion* of the hierarchy, meaning *advancement* of rank or position.

### **CONSISTENCY WITH STATE PLAN**

**MRC has failed to demonstrate that the proposed solid waste disposal facility is consistent with the State Plan, as required by Title 38 M.R.S.A. § 1310-AA (3)(B).**

First, as previously noted, it is the landfill component at issue, *not* the balance of MRC's proposed processing facility. Nonetheless, in its Application section on State Plan consistency, MRC opts to focus on the processing facility, generally, and almost completely ignores the landfill. MRC only finds State Plan "consistency" by reference to its "development approach" in Application - Section 1.2. Application - Section 1.2, entitled, "The Planned System for Solid

Karen Knuuti, Environmental Specialist

August 16, 2014

Page 14 of 15

Waste Management”- and discusses all of the pieces of their futuristic planned system, not just the landfill (i.e., the only relevant and certain component of the proposed system).

The actuality is that while they paint a rosy picture of the rest of its planned system, there is no proof that it is actually going to exist. MRC should not be able to use its idealistic goals as real evidence of being consistent with the State Plan and the DEP should not consider the MRC’s optimistic dreaming as relevant to the public benefit determination process.

Moreover, as expressed above, a role of the State Waste Management Plan is to “identify the need in the State for current and future solid waste disposal capacity by type of solid waste, including identification of need over the next 5-year, 10-year, and 20 year periods.” As previously discussed, no need for disposal capacity was identified within the State Plan.

### **EXISTING FACILITIES IN GREENBUSH**

While perhaps irrelevant to MRC’s pending Application for Determination of Public Benefit, there is one important and undisputable fact that is important to the residents of Greenbush that has gone unnoticed. That is, when it comes to being a dumping ground for the region’s waste, the Town of Greenbush has already done more than its fair share. The Town’s position on the proposal is not so much “not in my backyard,” but rather, “not in my backyard . . . again.”

The Town of Greenbush is home to three waste disposal sites. Some active, some inactive. First, Greenbush is home to a low-level radioactive waste site owned and operated by the State of Maine. That radioactive waste disposal site is approximately 3,600 square feet in area and is located on Gould Ridge Road, approximately three-quarters of a mile north of the Scott’s Corner. The site was used by the University of Maine for burial of low-level radioactive wastes from 1960 to 1977. The wastes were the result of biological and chemical experiments at the University of Maine. The wastes were buried annually in 19 separate pits in a 40 x 40 foot area. The site was licensed for burial activity through a Nuclear Regulatory Commission Type A license (#18-01475-15 held by the University of Maine. A second disposal site is located on the Cardville Road. This second site is a municipal landfill which was closed in the mid-1990s. The third site is a currently licensed and operating landfill and transfer station located off the East Ridge Road.

In short, not only has Greenbush served the region by hosting the radioactive waste site, it has also largely taken responsibility for its own solid waste disposal needs. It seems patently unfair to, again, call upon the residents of the Town of Greenbush to bear the brunt of the Town’s disposal needs. It is telling that, at MRC’s request, area towns are writing form letters of support for MRC’s project, none of those towns are offering to host the disposal facility.

**CONCLUSION**

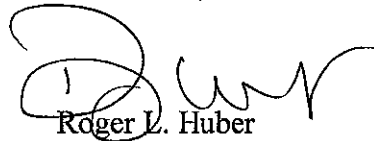
We respectfully request that DEP dismiss MRC's application because Maine law prohibits the processing and approval of new commercial solid waste disposal facilities, including those owned by Regional Associations like MRC. Even if Regional Associations were exempt from the commercial landfill ban, MRC would not so qualify because under 38 M.R.S.A. § 1303-C(24)(B) only those Regional Associations that are organized "for the purpose of owning, constructing or operating a solid waste disposal facility" may do so. MRC is not organized for that purpose.

Should the DEP determine that MRC and its proposed solid waste disposal facility are exempt from the existing commercial landfill ban, we ask that MRC's Application for Public Benefit Determination be denied because MRC has utterly failed to carry its burden to prove by a preponderance of the evidence that its proposed solid waste disposal facility provides a "substantial public benefit."

Thank you for your consideration. Please let me know if you have any questions or would like further clarification of the Town of Greenbush's position on the Application.

Very truly yours,

FARRELL, ROSENBLATT & RUSSELL



Roger L. Huber

cc: Town of Greenbush  
Distribution List