

To: Ms. Julie M. Churchill, Project Manager, Maine Department of Environmental Protection

From: Kenneth A. Smith, Resident, Lamoine, ME

Subject: Comments Re: Draft Solid Waste License for Municipal Review Committee, Inc. and Fiberight LLC, dated June 13, 2016

Date: July 1, 2016

The following comments are identified by the same section and paragraph number/letter designations used in the draft License.

1. APPLICATION SUMMARY

1.B. History

(3) This paragraph categorizes Fiberight's Lawrenceville, Virginia facility as Fiberight's "current operations." It is important to note that this is a 50 ton per day "demonstration plant" (Fiberight's own words) with limited periods of significant continuous operations and does not fully reflect the equipment planned for the proposed Hampden, ME facility.

3. PROJECT DESCRIPTION AND SITE DESIGN

First Paragraph:

- This paragraph states that "*The proposed processing facility is being designed to process 650 tons per day of MSW.*" Attachment 13 of the original application and the March 8 and March 30, 2016, Revisions all indicate that "*the facility will be designed to accept up to 950 tons and process **up to 650 tons of MSW per day***" (***emphasis added***). The draft License language of 650 tons per day could be interpreted to be an average. The required process equipment sizing and design hourly capacity will be different for each interpretation. This is an important distinction when assessing the facility's ability to handle seasonal waste variations, which will be discussed in a subsequent comment. **Therefore, Fiberight should identify which is correct and the draft License language modified if appropriate. If the 650 ton per day is to be considered as an average, then the hourly capacities will need to justify that choice.**
- The capacity issue raised by this paragraph brings to light the related issue of overall planned plant capacity, which also needs to be addressed. When the Application and Revisions were submitted, the planned annual capacity was 180,000 tons per year of MSW, of which a minimum of 150,000 tons would be guaranteed by the MRC. More recently, the MRC has indicated that the facility will still be viable at 110,000 tons per year of MSW and proposed that it proceed on this basis if MSW commitments do not

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meet the originally-intended target. **This raises the question of whether or not the DEP is able to issue a Solid Waste License based on the initially-intended capacity if the processing equipment capacity is to be downsized (which is the basis of the MRC’s viability assessment at 110,000 tons per year) and, as a result, unable to process at the 650 tons per day level.**

6. FINANCIAL ABILITY

Maine Solid Waste Management Rules, Chapter 400 (“General Provisions”), Section 4.B (“Financial Ability”) requires the following:

(2) *Submissions. The application **must include** evidence that affirmatively demonstrates that the applicant has the financial ability to undertake the proposed project, including the following information, when appropriate (**emphasis added**):*

(b) Evidence that funds are or will be available to design, construct, operate, maintain, close and (if applicable) accomplish post-closure care of the solid waste facility, or to contract for the same, including the following:

*(i) When a financial institution is the funding source, **the application must include** (**emphasis added**):*

a. A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified and sufficient amount of funds and the uses for which the funds may be utilized; or

*b. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of “**intent to fund**” from the appropriate funding institution. Evidence of financing must be provided prior to project construction. (**emphasis added**)*

6.B. Fiberight

The first sentence of the second paragraph of the draft License states that:

*“Fiberight has provided a letter of ‘**Intent to Fund**’, dated December 18, 2015, from Covanta Energy, LLC (“Covanta”) stating that Covanta is engaged with Fiberight to **support** the development, financing, construction and operation of the proposed processing facility” (**emphasis added**).*

The last sentence of this paragraph also states that:

*“Covanta.....has confirmed their **interest in supporting** Fiberight with project finance in the form of an equity investment in the proposed processing facility” (**emphasis added**).*

The last sentence more accurately identifies the nature of the letter and clearly demonstrates that Fiberight has **NOT** provided the required “**letter of ‘Intent to Fund,’**” only a **letter of interest** in providing an equity investment.

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6.C. Other

The draft License references two other letters of “Intent to Fund” provided by DTE Energy (dated June 11, 2015) and Argonaut Private Equity (dated June 17, 2015) and notes that, if either entity is utilized for funding, “..... *their involvement with the proposed project will be in the form of project financing only, acting as a financial institution*” (*emphasis added*). Therefore, as required by Chapter 400, Section 4.B, **the application must include the letters of intent**, which apparently have not been provided publically.

In its June 2105 application, Fiberight noted the following in Attachment 7 (“Financial Ability”):

*“Fiberight is currently working with a national energy utility affiliate and a private equity and venture capital firm to secure financing for the Project that will be conditioned upon receiving governmental approvals. A confidential intent to fund letter from both entities has been provided during the pendency of the due diligence period associated with this project financing effort. **At the termination of this due diligence period, Fiberight will supplement the Application with an updated intent to fund letter and/or additional evidence of project financing.** If necessary, Fiberight will provide MDEP with sufficient evidence of financing prior to construction of the Project.”*
(emphasis added)

The letters of “Intent to Fund” referenced in the draft License, or subsequent revisions thereto, need to be made public and included as part of the Application in accordance with the provisions of Chapter 400, Section 4B. Only then will the public be able to assess whether or not they are actually the required letters of “Intent to Fund” or merely letters of interest.

7. TECHNICAL ABILITY

7.B. Fiberight

The first two sentences of the draft License state that:

“Fiberight will be responsible for daily operations of the processing facility. Fiberight has demonstrated the technical ability to operate a similar, smaller scale MSW processing facility located in Lawrenceville, Virginia.”

As indicated in the previous Section 1 comments, the Lawrenceville, Virginia facility is a “demonstration plant” with limited periods of significant continuous operations and does not fully reflect the equipment planned for the proposed Hampden, ME facility. Although Fiberight

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certainly has some well qualified employees, it does not presently have the integrated team required to operate the proposed facility on its own. Fiberight has stated its intention to use Covanta to fulfil this role. As long as Covanta, or similarly qualified solid waste processing company, does fill this role, then the facility operations portion of the Technical Ability requirements will have been satisfied.

7.H. Covanta

The third and fourth sentences of the draft License state that:

*“Covanta **will support** the development, financing, construction, operation, and maintenance of the proposed processing facility. Covanta’s role in the proposed processing facility **will be investor and operator.**” (emphasis added)*

The third sentence appears to have been extracted from the previously referenced December 18, 2015, letter from Covanta, except the words “will support” were substituted for “is engaged with Fiberight to support.” Although this may appear to be a minor issue, Covanta has yet to directly state, publically, in writing, what its roles **will be**. Fiberight’s responses to my repeated requests for such validation from Covanta have been to simply state that Covanta will make its roles in the Project public in June. **Since Covanta’s involvement is, in my opinion, critical to this Project, written confirmation of its intended roles should be obtained and appropriately assessed prior to issuing a final Solid Waste License.**

11. AIR QUALITY

The sixth line of the first paragraph in the draft License states that *“The tipping floor is designed with storage capacity for **approximately** 2 days of MSW receipts and” (emphasis added)*. This is different than in the second paragraph of Section 3, which states *“...**up to** 2 days of inside storage capacity.”* They should be made consistent.

17. PROCESS DESIGN

Maine Solid Waste Management Rules, Chapter 409 (“Processing Facilities”), Section 2.B (“Processing Facility General Design Standards”) requires the following:

(2) *“Design Capacity: The facility design must include processing systems and storage areas of sufficient capacity to accommodate seasonal throughput of all materials that are delivered to and generated by the facility.”*

Although Fiberight has provided me and others with conflicting information regarding the planned facility design capacities, the Application and Supplements thereto (collectively, the “Application”) has not been revised to reflect any such information. Therefore, to determine

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compliance with the above Chapter 409 requirement, it was necessary to use a combination of information actually contained in the Application and information that had been provided to me verbally and in writing. Where conflicts existed between what was presented in the Application and other information, the information in the Application was used. From Attachment 13 (“Process Design Information”) of the March 30 submittal, the daily MSW processing capacity identified was “up to 650 tons.” From Attachment 1 (“Description”) of the original June 2015 submittal, the hourly MSW processing capacity for the Materials Recovery System was identified as 45 tons. I used Fiberight’s stated intention of operating two, eight hour shifts per day, five days per week and one shift on Saturday, or 11 eight hour shifts per week. I used six years of PERC monthly MSW delivery tonnage data to determine that the average peak monthly delivery tonnages were approximately 20% higher than the annual average monthly delivery tonnages (weekly deviations would have been even higher). **The results showed that, even at an optimistic 80% capacity factor, the 45 ton per hour and 650 daily processing capacities would not be sufficient to handle peak monthly MSW delivery tonnages, even for the minimum 150,000 ton per year MRC waste delivery commitment.**

Fiberight was made aware of this problem in early April and planned to address it, but, as noted earlier, the Application has not been revised to reflect any such intentions. Therefore, to properly assess compliance with this Chapter 409 requirement, Fiberight needs to supplement its Application with the following information:

- Planned annual MSW processed
- Average and maximum hourly design capacities for the MSW infeed conveyor (per line if more than one)
- Number of MSW processing lines
- Number of planned shifts per day, days per week and hours per shift

******* END OF COMMENTS *******