



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

August 24, 2015

Ms. Laura Sanborn
2845 Bennoch Rd
Alton, ME 04468

RE: MRC-Fiberight Applications for Solid Waste Processing Facility (#S-022458-WK-A-N), Air Emission License (#A-1111-71-A-N), State Stormwater Permit (#L-26497-NJ-B-N), Site Location of Development Act Minor Revision (#L-26497-26-C-M) and Natural Resources Protection Act Individual Permit (#L-26497-TG-A-N)

Dear Ms. Sanborn:

Thank you for your letter dated August 3, 2015, regarding the above-referenced applications for permits for a municipal solid waste (MSW) processing and recycling facility (Facility) in Hampden, ME. The Municipal Review Committee (MRC) and Fiberight have jointly filed applications to construct and operate the Facility, which will be designed to accept up to 650 tons per day of in-state MSW.

Staff reviewed your letter requesting that the Department hold a public hearing for the proposed project. According to the Department's Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2 § 7, "the Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a public hearing will assist the decision maker in understanding the evidence." Your request refers to concerns regarding the authority of MRC to develop the facility, the authority of MRC to use the tip fee stabilization funds to finance MRC's portion of this project, the lack of showing that MRC member municipalities will enter into contracts to bring waste to the facility, and the lack of showing that Fiberight has markets for the products from the process. Staff reviewed your request and advised me that it does not contain credible conflicting technical information regarding licensing criteria to support a public hearing. Therefore the Department has determined that there is insufficient justification to hold a public hearing for the pending application in this instance. Nonetheless, we will continue to welcome and consider any comments submitted during the review of this application.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

The Department will be holding a public meeting in the Hampden area to receive comments about this project. These meetings will be open to everyone and are designed to provide an opportunity for everyone to offer comments about the project.

Again, thank you for your letter. If you have further questions please contact the project manager, David Burns, at dave.e.burns@maine.gov.

Sincerely,



Patricia W. Aho
Commissioner

cc: Greg Louder, MRC
Craig Stuart-Paul, Fiberight
Denis St. Peter, CES
David Burns, DEP
Karen Knuuti, DEP
Lynn Muzzey, DEP
Tiffany LaClair, DEP

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF THE

APPLICATIONS FOR:)	
)	
SOLID WASTE)	
PROCESSING FACILITY;)	
)	
AIR EMISSION LICENSE;)	REQUEST FOR HEARING
)	BY LAURA SANBORN
STATE STORMWATER)	
PERMIT; AND)	
)	
NATURAL)	
RESOURCES PROTECTION ACT)	
INDIVIDUAL PERMIT)	
)	
SUBMITTED BY THE MUNICIPAL)	
REVIEW COMMITTEE AND/OR)	
FIBERIGHT, RELATING TO A)	
PROPOSED SOLID WASTE)	
PROCESSING AND RECYCLING)	
FACILITY IN HAMPDEN, MAINE)	

I, Laura Sanborn, an interested member of the public, hereby request that the Department of Environmental Protection ("DEP" or "Department") hold a hearing on the several license applications recently submitted by the Municipal Review Committee ("MRC") and Fiberight, LLC, in connection with a proposed Solid Waste Processing and Recycling Facility in Hampden, Maine ("Fiberight Facility").

I. The Department Should Schedule a Hearing on these Applications on Its Own Initiative.

First, the Department should hold a hearing in these matters on its own initiative, because there exists credible conflicting information regarding some of the licensing criterion and it is likely that a hearing will assist the Department in understanding the evidence. See 06-096 CMR Chapter 2, Section 7(C). The potential impact of this project, alone, should commend a hearing, given that the project (1) will have an environmental or economic impact in more than one municipality, territory, or county; (2) Involves an activity not previously permitted or licensed in the State; and (3) Is likely to come under significant public scrutiny. Compare 06-096 CMR Chapter 2, Section 17(C) (criteria for which Board of Environmental Protection should assume jurisdiction over application).

II. A Hearing Otherwise Should Be Scheduled.

If neither the Department nor the Board sends these applications to hearing on their own initiative, then this is a written request for hearing being made pursuant to 06-096 CMR Chapter 2, Section 7(A).

A. Interest in the Application

06-096 CMR Section 2, Section 7(A) states that a request for hearing must indicate “the interest of the person filing the request”. My interest in this matter comes from my roles as a Penobscot County resident and Penobscot County Commissioner, although I am not filing this request in my official

capacity as Commissioner. Approval of the pending applications could fundamentally alter the way the member municipalities of the MRC, cited as 187 in number by the MRC, will deal with their solid waste after 2018. Approval could change the solid waste disposal landscape in a significant portion of the state, including multiple municipalities in Penobscot County as well as the unorganized territories in Penobscot County for which my Commission is responsible. Approval could also impact the viability of the existing program for disposal being used by the municipalities, namely the processing of waste by the PERC plant located in Orrington, perhaps, if the Hampden facility and its relatively untested technology fails, leaving nothing in its place for a period other than landfilling options. Given the potential impacts and the various issues with the pending applications outlined below, the approval process for this facility should be vigorous, thorough, and maximize the opportunity for input.

B. A Hearing is Warranted

There Exist Multiple Questions as to whether MRC has the Financial and Technical Ability to Develop the Project

38 M.R.S.A. § 1310-N, which governs licensure of new solid waste facilities, and the relevant DEP regulations (Chapter 400), require applicants to affirmatively demonstrate that they have the financial and technical ability to develop the project. The applicant must also show that they have sufficient “title, right, or interest” in the property at issue. There appear to be several

questions about whether the MRC, which has a substantial role in this project, has the authority to pursue these licenses or to use the trust funds outlined in their application as a substantial portion of the financing of this project, among other issues.

A. The Authority of the MRC, and its Member Municipalities, to Develop the Hampden Facility or File and Pursue These License Applications is in Question

In April, 2014, the MRC filed an Application for Determination of Public Benefit for a proposed landfill to be located in Argyle or Greenbush. One of the issues that came out during that application process was whether MRC had the authority to file and pursue the application. See Opposition Memo filed on behalf of State Representative Anita Peavey Haskell on April 18, 2014.

It does not appear that the MRC has made any showing in its recent applications about its authority to pursue those applications or to develop the Hampden facility in general, including its authority to enter into the option to purchase real estate submitted with the application. It has been argued that MRC's statutory authority as a regional association is limited to "facilitating" the disposal of solid waste, and it does not appear to extend to disposing of the waste itself or investing in or having an ownership interest in a facility. See 38 M.R.S.A. § 1304-B(5-A). Indeed, the statute suggests that doing so would be impermissible and it does appear that it would be a conflict for the MRC to represent municipalities in connection with waste disposal contracts with facilities that the regional association owns or in which it has an investment interest.

If the MRC has been given authority by the member municipalities to enter into the option contract or otherwise pursue this project on their behalf, either through powers of attorney or actual resolutions by the appropriate bodies of the member municipalities, then the MRC should make a showing as to this authority, with an opportunity for public comment and a hearing on the issue, before being permitted to proceed. It seems at least questionable, given the current economic climate facing municipalities and recent, significant reduction in revenue-sharing funds from the State, that they would vote to undertake the risks associated with development of a project such as the Hampden facility.

B. The MRC has not Affirmatively Demonstrated its Authority to Use the Funds in the Tip Fee Stabilization Fund for the Purposes of this Project.

The \$4,230,000 in funds that the MRC is to contribute to this project (See Materials in Attachment 7 to the Solid Waste Application) is to come from the Tip Fee Stabilization Fund. I understand that these funds are held in trust by the MRC for the member municipalities in conjunction with the development and operation of the PERC plant in Orrington. The MRC has provided no information about the nature of this fund, the MRC's duties – to the member municipalities or the other partners in the PERC facility – with respect to these funds, whether it has the ability to use the funds for this project, and it has provided no evidence that all of the member municipalities have authorized the use of these funds for this project. This is another critical issue that deserves public scrutiny and a hearing.

C. The MRC has made no showing with respect to the Likelihood the Member Municipalities will enter into Contracts with the New Facility

The application opens with a project description, which states that the Hampden facility is needed, in part, because of the expiration of the existing contracts between PERC and the MRC member municipalities. The expiration of the contracts, alone, does not necessitate a new facility, with all its environmental and other impacts. The PERC plant will not vanish with the expiration of the contracts and my understanding is that it will continue to operate well past 2018. Indeed, I note the 2013 testimony by Greg Louder of the MRC in connection with the matter of Juniper Ridge Landfill (#S-020700-WD-BC-A), cited in Representative Haskell's memo referenced above, in which he stated:

The PERC facility provides reliable disposal capacity for MSW with known and predictable technical and economic performance and an outstanding record of environmental performance. The Charter Municipalities and the State of Maine would benefit greatly if the PERC facility can continue providing such capacity into the indefinite future.

. . . With the existing waste disposal agreements set to expire in five years, the MRC has pursued and continues to look for creative means to cost-effectively extend its current relationship with PERC.

The application materials indicate that the MRC has now made a determination that the Hampden facility would be more advantageous to the member municipalities than continuing to deliver waste to the PERC plant after 2018. There is no evidence that the member municipalities have made this determination. Indeed, it is hard to discern how they could, as the terms for

disposing of solid waste in Orrington after 2018 are still being negotiated. The success of the Hampden facility depends on whether the MRC can cause joining municipalities to enter joinder agreements with the Hampden facility to ensure an adequate supply of solid waste to that facility. No showing has been made that this is likely and this factual issue deserves public scrutiny and a hearing.

D. No Showing Has Been Made Regarding the Market for the Products of the Fiberight Process.

In the application materials, Fiberight claims that its process converts 80% of the solid waste stream to biomethane or post-hydrolysis solids/ biomass fuel. The viability of the operation, obviously, will depend on the market for such products. Indeed, the report from the University of Maine Forest Bioproducts Research Institute ("FBRI"), included in the solid waste facility application, noted that the final products chosen and the market for them would have a large impact on the economics for the project. The report noted that the "claimed hydrolysis efficiency [from the Fiberight process] is somewhat lower than that reported for other biofuel feedstock processing technologies" and that a "Maine specific market analysis is recommended if biomethane, sugars, and biomass are planned to be significant end products from the plant". UMaine FBRI Report, at 1. No such analysis appears to have been conducted.

Furthermore, there is an indication that a market for plastic film is a prerequisite for the plan operating "in the black". See 12/10/2014. Letter

from Michael Bilodeau, Process Development Center, University of Maine, at 3 (submitted with application as part of Attachment 13). No evidence of the nature of this market, or the market for the recyclables recovered from the process in general, appears to have been provided.

This is a critical and complex issue and the Department would benefit from public input and a hearing on the issue prior to making any decision on the pending license applications.

Conclusion

For the reasons stated above, the approval of the Hampden facility proposed by MRC/Fiberight should be preceded by a hearing that will permit the public and other interested parties to test the assertions being made in the pending applications, with competing evidence if necessary, to permit the Department to make a fully-informed decision on the issues set forth herein.

I reserve the right to raise additional issues for hearing and additional public comment, including information relating to any new materials submitted or any additional points made by the applicants or others during this process.

I appreciate the Department's consideration.

Dated:


Laura Sanborn