

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) 941-0239
e-mail: rlh@frrlegal.com

July 8, 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 – Prohibition on Approval of New Commercial Solid Waste
Disposal Facilities***

Dear Karen:

This letter is in strict reply to the Municipal Review Committee's June 30, 2014 letter challenging our claim that MRC's pending proposal is subject to the ban on processing and approval of new commercial solid waste disposal facilities (i.e. 38 M.R.S.A. § 1310-X). This reply is limited in scope to the new issues raised in MRC's response.

MRC's entire response can be summed up as follows: Regional Associations are authorized to own, construct and operate solid waste disposal facilities . . . MRC is a Regional Association . . . therefore, MRC is legally entitled to create a new solid waste disposal facility despite there being on statewide ban on such facilities. MRC simply repeats this argument over and over in the apparent hope that it will eventually be accepted as true. It's not. As explained below, Regional Associations *are* authorized to own, construct and operate solid waste disposal facilities, *but only if* they are "organized for that purpose." 38 M.R.S.A. § 1303-C(24)(B). MRC was *not* organized for that purpose. Furthermore, even those Regional Associations that are so organized are not exempt from the ban on the establishment of *new* commercial solid waste disposal facilities. Until that ban is lifted or Regional Associations are specifically added to the list of exempt entities, duly organized Regional Associations can only own, construct (i.e., expand) or operate *existing* solid waste disposal facilities, such as Dolby or Carpenter Ridge.

MRC argues that our suggested approach to statutory interpretation (i.e., plain language/strict construction), if adopted, would render meaningless the statutory provision authorizing Regional Associations to own and operate a solid waste disposal facilities in the first

instance (i.e., 38 M.R.S.A. § 1303-C(24)(B)). MRC posits that because Regional Associations are statutorily authorized to own, construct and operate solid waste disposal facilities that they must, *ipso facto*, be exempt from the ban on such facilities set forth in 38 M.R.S.A. § 1310-X.

Regional Associations are creatures of statute. As such, they enjoy only that authority which the Maine Legislature confers upon them. Under the law, duly authorized Regional Associations can own, construct and operate solid waste disposal facilities. That authority, however, must be read in the context of the statewide ban on new commercial solid waste disposal facilities. Given the statewide ban, Regional Associations cannot establish *new* commercial waste disposal facilities until the ban on such facilities is lifted or the law is otherwise amended to specifically exclude Regional Associations from its strictures. Does that render the authorization to “own, construct and operate” meaningless, as suggested by MRC? No. Duly organized Regional Associations can still purchase (i.e., own) and operate *existing* solid waste disposal facilities, such as the Dolby or Carpenter Ridge landfills. Regional Associations that own and operate an existing solid waste disposal facility are likewise authorized under the statute to construct expansions to those facilities.

Furthermore, while Title 38 M.R.S.A. § 1303-C(24) authorizes Regional Associations to “own, construct and operate” solid waste disposal facilities, that authorization only applies to Regional Associations that are “organized under Title 13, chapter 81 or Title 13-B, *for that purpose.*” 38 M.R.S.A. § 1303-C(24)(B)(emphasis added). While MRC is organized under Title 13-B, MRC is most definitely *not* also organized for the purpose of “owning, constructing or operating” a solid waste disposal facility.

The purposes for which MRC was organized are set forth in Article II, Section 2.2 of the Amended and Restated Bylaws of Municipal Review Committee, Inc. (Revised as of October 25, 2006). A copy of Article II, Section 2.2 is attached for your quick reference. Importantly, MRC's Bylaws make absolutely no mention of having been formed for the purpose of “owning, constructing or operating” a solid waste disposal facility. None. Indeed, even MRC's own broad-ranging promotional information is silent with regard to any such authority or intent. (*See* attached MRC website information). Thus, even if Regional Associations were exempt from the new commercial landfill ban, MRC would still not qualify because it was not formed for the purposes of “owning, constructing or operating” such a facility as required by Title 38 M.R.S.A. § 1303-C(24)(B).

In its June 30, 2014 response, MRC accuses the Town of Greenbush of “selectively plucking language out of context” from MRC's Bylaws. That claim seems odd given that (1) the Town provided the Department with a *complete* copy of MRC's Bylaws and encouraged the Department to review those Bylaws, in their entirety, for any indication of such authority; and (2) that portion of the Bylaws to which MRC points as supporting its claim of authority (see below) was actually included in the Town's packet. Nonetheless, MRC cites to the following as evidence that it was established “for the purpose of owning, constructing and operating” a solid waste disposal facility:

[t]he mission of this corporation is to better 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. (Art. II, Section 2.1) – MRC Letter, pg. 5

[t]he purpose of this corporation shall be to promote long-term solutions to the problems associated with the disposal of municipal waste and to assist and act as liaison in behalf of interested communities in their dealings with the Penobscot Energy Recovery Company (“PERC”) (MRC’s Art. of Incorporation) - MRC Letter, pg. 5.¹

There is a significant difference between “promoting” long-term solutions to the problems associated with the disposal of municipal waste and actually owning, constructing, and operating a solid waste disposal facility. To “promote” means to “advocate on behalf of.” Promoting is not the functional equivalent of owning or operating. We suspect that many a member of MRC expected that they were agreeing to “own, construct or operate” a solid waste disposal facility when they signed onto the all-purpose corporate mission statement set forth above.

It is telling that the MRC, in making its argument that it was formed for the purpose of “owning, constructing or operating” a solid waste disposal facility does not even cite to the “purposes” section of its own Bylaws (i.e., Section 2.2). Rather, MRC is forced to rely on its broad, virtually all-encompassing Mission Statement and Articles of Incorporation for some semblance of support. It is even more telling that despite an unlimited amount of time to find some shred of support in its Bylaws and corporate documents all MRC could come up with in the end were a couple of broad, non-specific statements. Those statements are so broad as to be virtually meaningless. There is simply no way that those statements can be fairly construed to support MRC’s claim that it was formed “for the purpose of owning, constructing or operating a solid waste disposal facility.”

Perhaps the best evidence that the MRC was formed for purposes other than ownership, construction or operation of a solid waste disposal facility exists within its own organic corporate filing. The statutory provision authorizing Regional Associations to “own, construct or operate” a solid waste disposal facility provided they are organized for that purpose was enacted in 1989. P.L., 1989, ch. 869, § A-5.² The MRC was formed in 1991. Despite the existence of authorizing language at the time of MRC’s formation, MRC chose not to organize for that purpose. Furthermore, MRC amended its Bylaws in 2006 and, again, chose not to include any language regarding “owning, constructing or operating” a solid waste disposal facility.

¹ / We find it ironic that MRC would accuse the Town of “selectively plucking language out of context,” but then fail to include in its June 30, 2014 response the balance of the statement in its Articles of Incorporation which makes clear that MRC’s was established to represent its municipal members in their dealing with PERC.

² / “Regional Associations” were initially authorized in the immediately preceding legislative session. See P.L. 1989, ch. 585, § 4.

We suspect that the MRC chose not to organize for the purpose of "owning, constructing or operating" a solid waste disposal facility because, at its name suggests, MRC was really formed to

[a]ct as a liaison for and representative of the members, which members are commonly known interchangeably as "Charter Municipalities" and "Member Municipalities," with the Penobscot Energy Recovery Company, Limited Partnership ("PERC") and Bangor Hydro- Electric Company ("Bangor Hydro").

(Amended and Restated Bylaws of Municipal Review Committee, Inc., Article II, Sec. 2.2(1). And, indeed, all of the rest and remaining purposes set forth in MRC's Bylaws (i.e., Section 2.2) are consistent with, and in furtherance of, serving as a liaison between its members and PERC.

It seems patently obvious that the aptly-named Municipal "Review" Committee was formed for purposes other than "owning, constructing or operating" a solid waste disposal facility, new or existing, and is now simply trying to retrofit a square peg into a round hole.

In summary, the plain language of the law prohibits the processing and approval of new commercial solid waste disposal facilities. All new solid waste disposal facilities are deemed commercial, except an enumerated few. New solid waste disposal facilities owned, constructed or operated by Regional Associations are not among those few exceptions. The law does allow duly organized Regional Associations to purchase, expand and operate an existing solid waste disposal facility, but it does not allow those same Regional Associations to establish *new* facilities. Even assuming that Regional Associations could establish new commercial landfills, MRC would still not be able to do so because it was not organized "for the purpose of owning, constructing or operating a solid waste disposal facility," as is specifically required under Title 38 M.R.S.A. § 1303-C(24)(B). Thus, MRC, as currently constituted, has no legal right to own, operate or expand an existing solid waste disposal facility, much less establish a new commercial solid waste disposal facility.

Very truly yours,

FARRELL, ROSENBLATT & RUSSELL



Roger L. Huber

Enclosures

cc: Town of Greenbush
P. Andrew Hamilton, Esq.
Jon Doyle, Esq.
Emily Green, Esq., AAG

AMENDED AND RESTATED
BYLAWS
OF
MUNICIPAL REVIEW COMMITTEE, INC.

(Revised as of October 25, 2006)

ARTICLE I
Name, Location and Corporate Seal

Section 1.1 The name of this corporation shall be Municipal Review Committee, Inc., and it shall be located in Bangor, County of Penobscot, State of Maine.

Section 1.2 The corporate seal shall be the common wafer seal unless otherwise determined by the Board of Directors.

ARTICLE II
Mission and Purpose

Section 2.1 The mission of this corporation is to better 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. Members may include counties, refuse disposal districts, public waste disposal corporations and other quasi-municipal entities in addition to municipalities.

Section 2.2 The purpose of this corporation on a continuous basis shall be to promote the common good and general welfare of the people of its members in the following manner on a regular basis:

1. Act as a liaison for and representative of the members, which members are commonly known interchangeably as "Charter Municipalities" and "Member Municipalities", with the Penobscot Energy Recovery Company, Limited Partnership ("PERC") and Bangor Hydro-Electric Company ("Bangor Hydro");

2. Review PERC's monthly and annual financial performance and operating reports;
3. Review quarterly tipping fee adjustments by PERC;
4. Review projected/documented utilization of Capital and Maintenance Reserve Account ("CMRA") monies;
5. Oversee the CMRA;
6. Review and verify calculation by PERC of cash and performance credits to be provided to Charter Municipalities under the Waste Disposal Agreements between each such Member Municipality and PERC (each individually an "Agreement" and collectively the "Agreements") as those Agreements may be amended from time to time;
7. Review any changes proposed by PERC to the line item definitions in the operating Profit and Loss Report;
8. Review of Sampling Methodology and PERC's compliance with performance standards;
9. Review of the financial operating information of Bangor Hydro and monitoring the operations of Bangor Hydro, as well as the process of the deregulation or restructuring of the electric power industry in Maine and its impact on Bangor Hydro; and
10. Perform such additional acts and functions as the Board of Directors deems necessary and/or desirable to effectuate the mission and general purpose of the corporation and the administration of the Agreements and any other instruments or agreements ancillary or collateral thereto.
11. With regard to so-called Equity Charter Municipalities who have further modified their respective waste disposal agreements with PERC by executing a Second Amended, Extended and Restated Waste Disposal Agreement prior to September 30, 1998:
 - A. Receive or direct cash distributions from PERC or its trustee (sometimes called "Performance Credits") and determine the

6. Review and recommend appropriate action pursuant to any request by PERC to assign its rights and responsibilities under the Agreements;
7. Establish an escrow account for accrued but unpaid Performance Credits;
8. If appropriate, consent to refinancing that may materially affect performance credits, book value of the PERC facility, or distributable cash;
9. Represent Charter Municipalities in arbitration of disputes arising under the Agreements including, consenting to be bound by such arbitration;
10. Periodically review and evaluate the fairness and practical aspects of the allocation of various benefits and risks among its members encumbrant in their respective waste disposal agreements and other relationships;
11. Interface with FAME and other lenders to PERC concerning the administration of loans and other credit relationships with PERC.

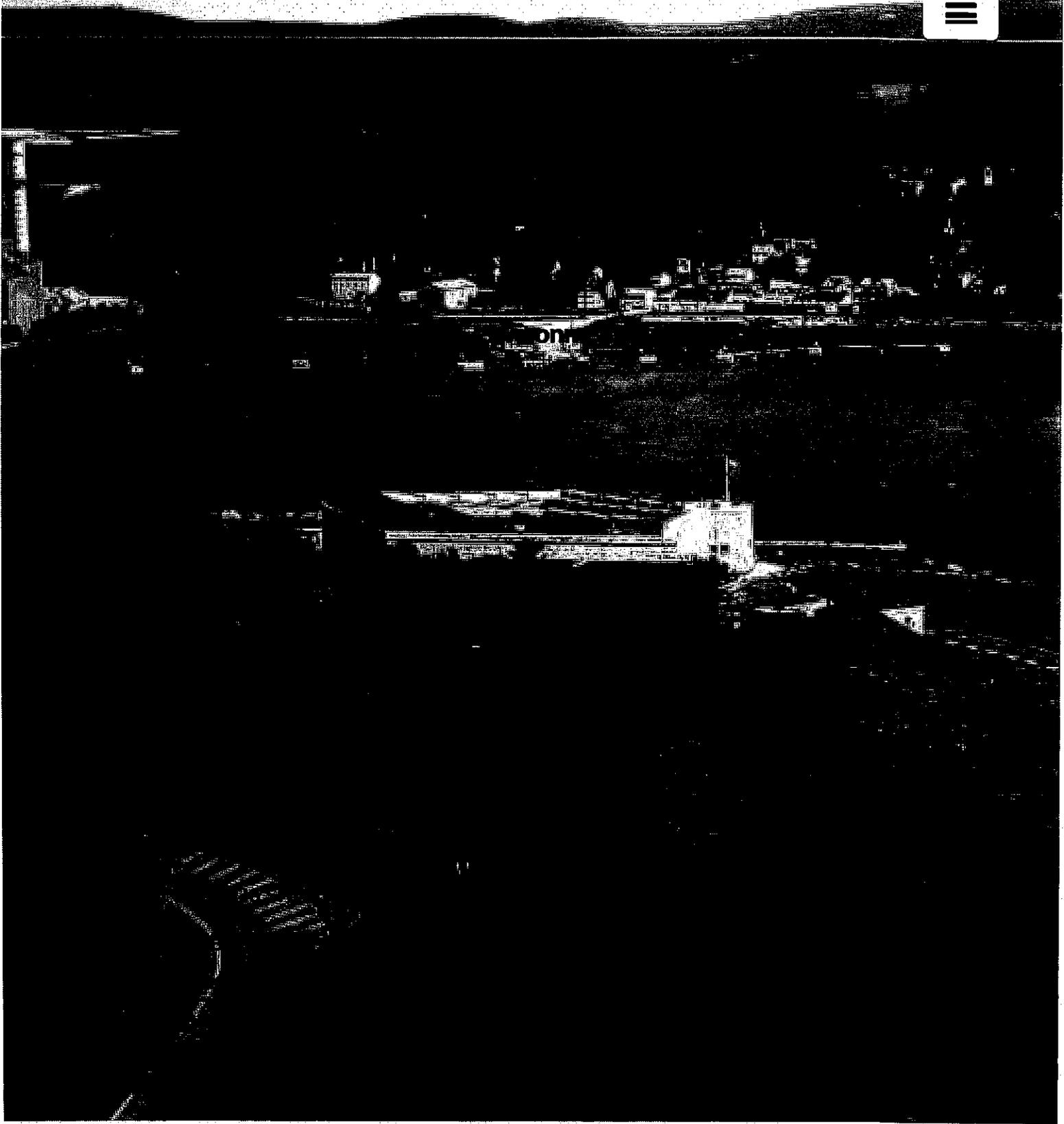
Section 2.3 This corporation shall have all the powers, rights and duties normally incident to such corporations and all other rights granted to corporations organized under Title 13-B of the Maine Revised Statutes, as well as the powers, rights and duties granted by Title 38, Section 1304-B, subsection 5-A of the Maine Revised Statutes.

ARTICLE III Membership

Section 3.1 Designation of Members. The corporation shall have three classes of members: (1) Original Charter Municipalities; (2) Amending Charter Municipalities; and (3) Equity Charter Municipalities, as those terms are defined in the municipalities' respective Waste Disposal Agreements with PERC and otherwise set forth in the Articles of Incorporation as amended from time to time or as set forth in the bylaws, as may be amended from time to time. Only municipalities and counties, inclusive of public



[\(http://mrcmaine.org/\)](http://mrcmaine.org/)



[MRC \(/about/#MRC\)](#)

[PERC \(/about/#PERC\)](#)

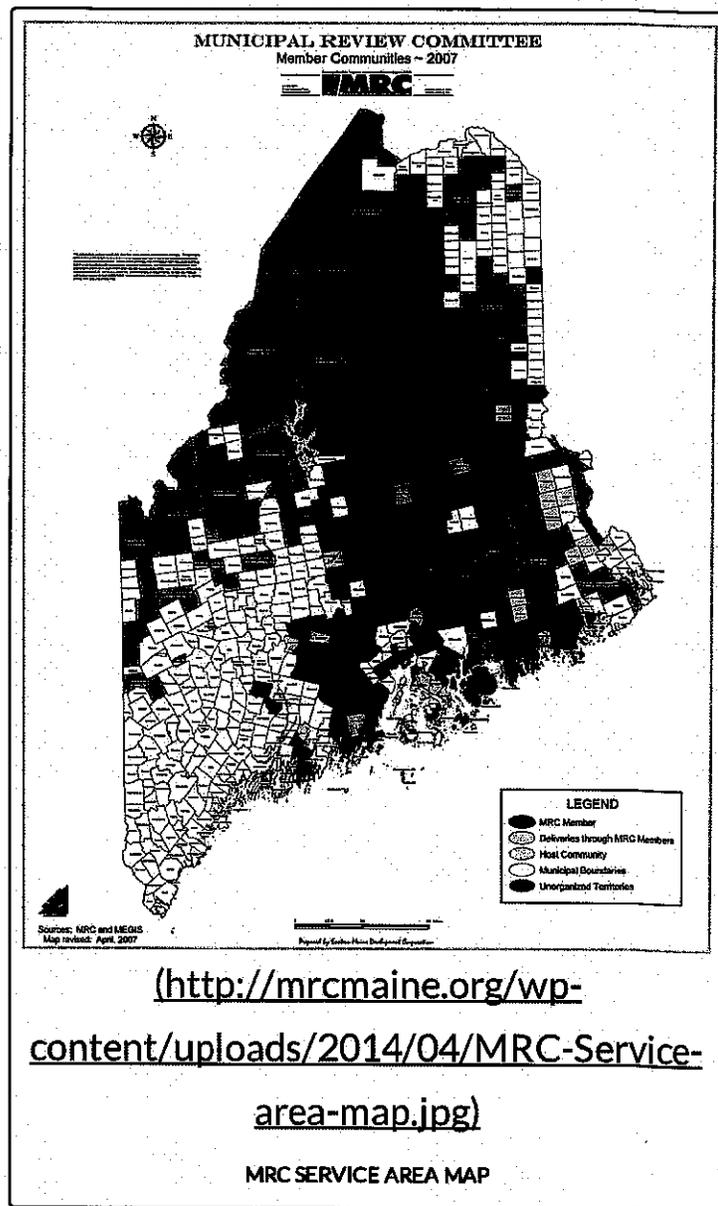
[Mission of MRC \(/about/#mission\)](#)

[The PERC Facility \(/about/#PERC-Facility\)](#)

MRC

MRC, which stands for Municipal Review Committee, Inc., is the name of a non-profit organization comprised of the municipalities and inter-municipal entities that send their MSW to the PERC facility. The MRC was formed in 1991 to work with the PERC partnership to improve facility operating and economic performance. Since then, the MRC has worked with the private

owners of PERC to upgrade the facility, achieve a high level of environmental performance, and keep disposal costs down. As part of these efforts, 86 municipal entities, known as the Equity Charter



Municipalities, have made investments in PERC such that they now own 25.5214 percent of the limited partnership interests (and 22.9693 percent of the overall partnership interests) in the PERC partnership. The MRC has also maintained an "open door policy" to welcome new charter municipalities such that it now serves 187 municipalities throughout central and eastern Maine that have contracts to send MSW to the PERC facility through 2018. The MRC continues to work with the private partners in PERC, and with the management of the PERC facility, on a wide variety of matters, including continuation of the Maine policy to support a hierarchy of waste disposal options; maintenance of the facility to ensure that it continues its high level of operational, environmental and economic performance; and extension of business arrangements beyond their current expiration in 2018.

PERC

PERC (<http://www.percwte.com/>), which stands for Penobscot Energy Recovery Company, LP., is the name of the private partnership that owns and operates a waste-to-energy facility in Orrington, Maine. The PERC facility accepts municipal solid waste (MSW), processes the MSW into refuse-derived fuel (RDF), burns the RDF in boilers to produce steam, and uses the steam to run turbine-generators that generate electricity. In 2012, the PERC facility accepted and processed 311,630 tons of MSW and generated nearly 166,261 MWh of electricity. The partners in PERC include the general partner, USA Energy Group, LLC, based in Minneapolis, MN; a private partner with limited partnership interests, PERC Holdings, LLC, also based in Minneapolis; and 86 Maine municipal entities that have limited partnership interests as explained below. Our meetings are open to the public and advertised in advance. All of our minutes and agendas are available online. In addition, we are planning an

aggressive outreach and education plan to all of our member communities. Our past success has been the result of the partnership with towns and cities across Maine and our future success depends on that same partnership. When we are done with our planning work, every MRC member community will get to decide whether or not to participate in this new solution.

Mission of MRC

The municipal users of the PERC facility (/about/#PERC-Facility) include 187 cities, towns and inter-municipal districts in central and eastern Maine. Each has made a firm commitment to deliver MSW to the PERC facility for disposal pursuant to a Waste Disposal Agreement that continues through 2018. MRC members include 86 Equity Charter Municipalities that entered into such disposal agreements before September 1998, and 47 New Charter Municipalities that became members since that time. The MRC keeps MSW disposal affordable by

- Keeping tip fees (<http://mrcmaine.org/municipalities/#tip-fees>) down.
- Inviting additional Maine municipalities to join the MRC.
- Sending cash rebates (<http://mrcmaine.org/municipalities/#cash-distributions>) to the Charter Municipalities on a quarterly basis. The rebates, which are funded by profits from PERC facility operations, are shared with all Charter Municipalities such that average net disposal costs (that is, tip fees net of the rebates) achieve the target values set by the MRC Board.
- Maintaining cash reserves

[\(<http://mrcmaine.org/resources/#accounting-records>\)](http://mrcmaine.org/resources/#accounting-records) to fund the cash rebates and other authorized activities.

- Controlling its own operating budget ([\(<http://mrcmaine.org/resources/#operating-budget>\)](http://mrcmaine.org/resources/#operating-budget)) in order to keep dues low.

The MRC acts on a long-term basis by working with the private partners of PERC to

- Ensure that the PERC facility sustains a high level of performance ([\(/resources/#Facility-Performance\)](/resources/#Facility-Performance)).
- Make the waste disposal agreements and other business arrangements work for all involved parties through their expiration in 2018.
- Plan now to extend, amend or replace these business arrangements for at least 10 years beyond 2018 ([\(/post-2018\)](/post-2018)).

The MRC ensures that MSW disposal at the PERC facility is environmentally sound by

- Monitoring the facility's environmental performance ([\(/resources/#environmental-performance\)](/resources/#environmental-performance)) on an ongoing basis. As a member of the PERC Oversight Committee, the MRC reviews weekly and monthly performance reports; reviews and votes on the facility's annual operating budget; reviews and votes on capital and major maintenance projects; and ensures that actions are taken, and investments made, to avoid or address appropriately all potential environmental impacts.
- Reporting ([\(/resources/#Environmental-Performance\)](/resources/#Environmental-Performance)) to the

membership on the facility's environmental performance, including the results of annual stack tests of air emissions, continuous emissions monitoring

(http://en.wikipedia.org/wiki/Continuous_emissions_monitoring_system); ash testing; and other monitoring and compliance activity.

- Actively representing the Charter Municipalities before the Maine Department of Environmental Protection (<http://www.maine.gov/dep/>), the Joint Standing Committee on Natural Resources (http://www.maine.gov/legis/house/jt_com/enr.htm), the Governor's Office of Energy Independence and Security (<http://www.maine.gov/oeis/publications.html>), and in other public forums.

The PERC Facility

The PERC facility



Penobscot Energy Recovery Company

(<http://mrcmaine.org/wp-content/uploads/2014/04/PERC-Facility.bmp>) has generated electricity from the combustion of MSW since 1988. The facility is located on a 42-acre site in an industrial area off Route 15 in Orrington, Maine. The facility is operated by a staff of 75

highly-trained operators, maintenance specialists, engineers, and administrative and management staff overseen by an experienced plant manager.

In 2012, the facility processed 311,630 tons of MSW to deliver 166,261 MWh of electricity to the grid – enough energy to supply the needs of more than 25,000 Maine homes.

Trucks delivering MSW to the facility are weighed at the scales (<http://mrcmaine.org/wp-content/uploads/2014/04/13-TrucksIn.jpg>) before entering the enclosed tipping building (<http://mrcmaine.org/wp-content/uploads/2014/04/14-Tipping-Floor2.jpg>), where the MSW is deposited on the tipping floor. Air from the tipping building is collected and filtered (<http://mrcmaine.org/wp-content/uploads/2014/04/TipFloorAirFilter.jpg>) to control odors during the tipping process.

The MSW (<http://mrcmaine.org/wp-content/uploads/2014/04/MSW.jpg>) is then processed into refused-derived fuel (<http://mrcmaine.org/wp-content/uploads/2014/04/27-RDF-to-Blrs.jpg>) (RDF) through a series of steps (<http://mrcmaine.org/wp-content/uploads/2014/04/16AProcessFlowDiagram.jpg>) that include:

- Inspection to remove bulky items that require pre-processing and unprocessable items (e.g., propane cylinders) that must be handled separately.
- Loading onto either of two conveyor belts to be shredded in a flail mill.
- Conveyance past a magnet for recovery and recycling of ferrous metals.

- Separation in trommels and disk screens (<http://mrcmaine.org/wp-content/uploads/2014/04/22-Trommel2.jpg>) of the fine glass and grit particles that are diverted for landfill disposal, and of oversize items that require additional size reduction in a secondary shredder.
- Conveyance to either of two Riley boilers (<http://mrcmaine.org/wp-content/uploads/2014/04/PERBoilerDiagram.jpg>) for controlled combustion.

The heat from combustion of the RDF is used to generate steam. The steam runs a 25-MW turbine-generator that generates electricity. The electricity in excess of what is used to run the facility is then stepped up to a voltage of 115 kV for export to the New England power grid.

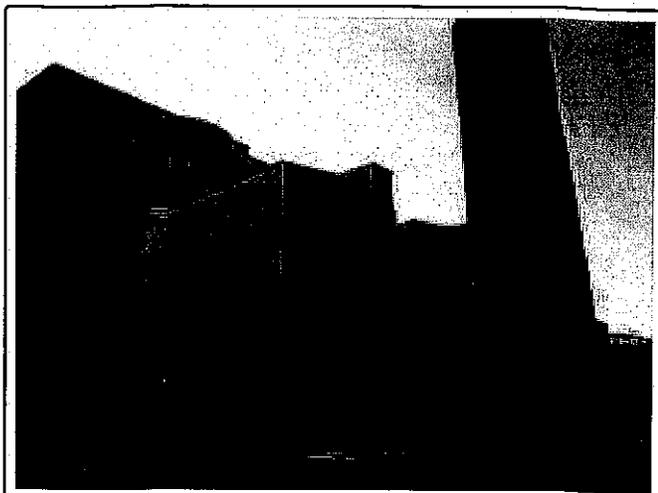
About 20 percent of the incoming RDF consists of materials that are removed from the boiler in the form of combustion ash. The ash, which is inert and non-putrescible, is then sent to a landfill for disposal. The ash is tested consistently to ensure that it is not hazardous.

Boiler operations (<http://mrcmaine.org/wp-content/uploads/2014/04/28aPERCBoilerDesignPoint.jpg>) are controlled carefully to ensure that the MSW is combusted completely, and to minimize the emissions of combustion products such as nitrogen oxides (NO_x), carbon monoxide (CO) and trace organic compounds. The control room operators monitor and control literally hundreds of parameters, including the rate for feeding MSW into the boilers; the volume and source of combustion air; the speed of the grate for moving fuel through the boilers; the use of #2 oil as supplementary fuel to control boiler temperatures; and many, many more.

The facility also incorporates lime spray-dryer absorbers (dry scrubbers) and fabric filters (baghouses) for each boiler. The dry scrubbers remove sulfur oxides (SO_x) and other acid constituents from the exhaust gases to prevent emissions that would otherwise contribute to acid rain. Particulates, and trace metals and organics that

attached themselves to the particulates, are removed from exhaust gases in the baghouses. Temperatures are monitored at each process step from the MSW feed through the boiler and the pollution control equipment all the way through the facility's stack, and exhaust gases are monitored continuously, to ensure that emissions stay well within permitted requirements.

The facility has a safety program administered by the full-time on-site safety director to provide training on all required areas of safety. The plant also has its own fire safety squad



<http://mrcmaine.org/wp-content/uploads/2014/04/ScrubberBaghouseSta>

SPRAY-DRYER ABSORBERS (DRY SCRUBBERS) AND FABRIC FILTERS (BAGHOUSES)

[HOME \(HTTP://MRCMAINE.ORG/\)](http://MRCMAINE.ORG/)
[FREQUENTLY ASKED QUESTIONS \(HTTP://MRCMAINE.ORG/FAQ/\)](http://MRCMAINE.ORG/FAQ/)
[POST 2018 PLANNING \(HTTP://MRCMAINE.ORG/POST-2018/\)](http://MRCMAINE.ORG/POST-2018/)
[CONTACT US \(HTTP://MRCMAINE.ORG/CONTACT/\)](http://MRCMAINE.ORG/CONTACT/)

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