



Natural Resources Council of Maine

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To: Julie Churchill, Project Manager, Maine Department of Environmental Protection
From: Sarah Lakeman, Sustainable Maine Project Director, Natural Resources Council of Maine
Subject: Comments on draft Solid Waste licenses for the proposed MRC/Fiberight solid waste processing facility
Date: July 5, 2016

NRCM does not support the DEP solid waste draft license for the proposed MRC/Fiberight facility. Many of the findings made within the draft license appear to be based on unsubstantiated assertions of the applicant, rather than grounded on solid data. NRCM believes that implementing new, untested technology at this size and scale should be held to stricter standards than those presented in the draft licenses. This facility could have substantial impacts on municipal budgets, landfill capacity, air and water quality, and wildlife habitat, and could undermine Maine's established Solid Waste and Food Recovery Hierarchies. DEP should treat these technological risks and potential impacts more seriously than is currently reflected in the draft license. We encourage DEP to incorporate the following points and requests into the draft:

6. Financial Ability: We have several points of clarification and suggestions for DEP's analysis of financial commitments to operating the proposed facility.

A) We understand that the Municipal Review Committee (MRC) will be responsible for land acquisition; road and stormwater facilities; water and sewer utilities; and natural gas, electric, and telecommunications utilities. MRC will cover costs for these responsibilities with their *Tip Fee Stabilization Fund*. This fund has accumulated over time through contributions from MRC member municipalities for the purpose of helping stabilize budget planning in the face of changing waste disposal costs. The member municipalities therefore have equity in the MRC in the form of this fund, and still have the right to retrieve their allotted shares if they do not select MRC/Fiberight for waste disposal post-2018. As such, NRCM believes that this fund technically belongs to the member towns and that money used from this fund is in fact an investment by the towns. We find it important to make this distinction because aside from a memo buried on the MRC website, many municipalities and taxpayers were led to believe that they are *not* obligated to invest, or take financial risk, in the proposed facility by signing the joinder agreement with MRC, but in effect they are. Towns are gambling on this facility with taxpayer funds, and we believe that DEP should be aware of this and clarify the source of the *Tip Fee Stabilization Fund* within the license.

B) We've reviewed the brief "*Intent to Fund*" letter submitted by Covanta on behalf of the Fiberight project, which appears to be more of a "*Letter of Interest*" that is partially based on MRC's ability to secure adequate tonnage to operate the facility. At the time of that letter, we understand that the tonnage estimates were based on the ability of MRC/Fiberight to contract with municipalities to receive a minimum of 150,000 tons per year. Based on current reporting, we understand that MRC/Fiberight has only received commitments for 98,263 tons per year, and has adjusted their goal amount to be a minimum 110,000 tons per year. We also have concerns that some of the tonnage that MRC/Fiberight is counting on is in fact waste that towns may or may not have the right to guarantee to the proposed facility. Therefore, we believe that DEP should have given reference to the amount of waste likely to go to the proposed facility through

municipal contracts, since upfront investment, ability to operate a profitable facility, and financial risk depend on securing a necessary volume of waste.

To that point, while it appears that DEP believes MRC/Fiberight has the means to fund the land acquisition and facility infrastructure, it does not appear that any analysis was made concerning ability of the facility to remain financially viable into the future. Significant variables could affect the economics of this facility, including changes in tonnage, energy prices, and possible changes in state policies. NRCM believes that an additional DEP analysis of operating costs and projected revenue would be appropriate and is a necessary part of determining financial ability.

7. Technical Ability: NRCM finds this section of the draft license to be very troubling. There is no apparent analysis of the technical aspects of the facility, but rather a mere review of the resumes of the individuals involved in the technical processes. We do not doubt that these individuals possess strong credentials; however, we have serious concerns with the blanket statement made by DEP that *“Fiberight has demonstrated the technical ability to operate a similar, smaller scale MSW processing facility located in Lawrenceville, Virginia.”* We do not believe operation of a very small, pilot project facility in Virginia demonstrates in any way the ability of Fiberight to build and operate a commercial operation of the scale proposed for Maine. If DEP has data that supports its finding, we ask that you draw our attention to it.

NRCM and many Maine municipalities were led to believe by the applicant that the test facility in Virginia was a smaller version of the same facility proposed in Hampden, and that the Virginia facility has demonstrated diversion rates of up to 80 percent. Fiberight states on its website that *“...our fully-integrated plant in Virginia has proven an 80% or greater recycling rate can be achieved.”* However, after receiving annual reporting information from the Virginia Department of Environmental Quality, it appears that, annually, the facility has yet to achieve higher than a 42.8% diversion rate, and only achieved a 4.99% diversion rate in 2014.

After this information was made public, the CEO of Fiberight backpedaled and said this in an email to town officials: *“It is important to note that the Virginia plant is a research and development facility whose main purpose is to gather data, and is not a commercial production plant.”* And goes on further to say *“...the Virginia plant is a demonstration plant, intended for scientific research to support commercial applications, and that the plant is limited in production by the batch pulper we installed. Further, we have stated that the wet cellulose produced by the plant is not used as a biomass fuel as is the design basis for Hampden, because we did not install a biomass boiler at the plant. We have however produced multiple batches of this material so that it could be tested for permitting a biomass boiler for Hampden.”* This clarification by Fiberight should be sending up red flags at the DEP and across the MRC communities because it contradicts the applicant's fundamental sales pitch here in Maine, which is that their Virginia facility is operating in a way that is similar to what they are proposing to build in Hampden.

Additionally, the Virginia facility has processed very little waste in comparison with what they propose to do in Hampden. The Virginia facility processed an average of 286.2 tons of waste per year, with an average annual recycling rate of 26.4 percent during 2012-2015. The applicant claims that they can achieve a 70-80% diversion rate operating at 650 to 950 tons per day and a minimum of 110,000 tons per year in Hampden—which is a scale up of 384 to 1 from the test plant—but all publicly available data does not support this assertion. Even if reaching 70-80%

diversion rates in small batches is possible, as they claim, we believe that drawing information from tiny test batches and assuming that you will get the same results at a scale of at least 384 times greater is highly risky and ill-advised.

We have serious concerns about whether a 70-80% diversion rate can be reached at the scale of the proposed facility in Hampden, and we do not believe that Fiberight has provided the public with sufficient data to show that this level of performance can be achieved. This “guaranteed” high rate of diversion is a key reason why many towns have chosen to sign on with the company, and is referred to many times in this draft license by DEP as a reason why this facility meets license criteria. We request that DEP provide additional public information and evidence of the demonstrated technical ability of the facility to achieve high rates of diversion at the proposed scale which would support the claims of the applicant. If DEP cannot identify this information, then NRCM believes that it would be reason enough to ultimately reject the application.

8. Disclosure of Civil or Criminal Record: NRCM is concerned that the CEO of Fiberight did not originally disclose EPA Clean Water Act violations and a consent decree in Iowa due to an ethanol spill in a nearby creek. Instead, this information was brought to the attention of DEP just days before this draft license was released. The Fiberight CEO submitted a letter stating that since he didn’t have a controlling interest in the company, it wasn’t *technically* related to waste processing, and it *legally* didn’t require him to disclose the information. He also says that since the company entered into a consent decree, it means it admitted doing nothing wrong and therefore did not have to share the information. It is difficult for us not to conclude that the Fiberight CEO intentionally withheld this information, which we believe is relevant to DEP’s understanding of the applicant and of Fiberight’s environmental record.

11. Air Quality: This section refers primarily to odor, and pays little regard to other air quality or climate impact factors that could affect human health and the environment. Therefore we are perplexed by DEP’s brief analysis, which simply states “*The Department finds that there will be no unreasonable adverse effects on air quality and/or climate due to the proposed project.*” We do not believe that this finding is supported by the discussion about odor in this section of the draft license. Further, NRCM has concerns about evidence suggesting that there are wide data gaps, inconsistent lab tests, selective sampling, and other testing issues that could render the air quality permit incomplete or invalid. We ask that DEP supply additional public information to support the statement referenced above.

18. Operations Manual: The ethanol spill in Iowa revealed that there was no adequate Spill Prevention, Control, and Countermeasure (SPCC) plan, no adequate stormwater pollution plan, failure to conduct proper employee training, failure to inspect stormwater pollution controls – all of which indicate this company’s careless attitude toward environmental laws and regulations and preventing pollution. NRCM is not surprised that there was a spill. If this facility receives final permits, which NRCM does not support, then we believe DEP must ensure that proper operations manuals and spill prevention and control plans are in place.

20. Solid Waste Management Hierarchy

A. General: DEP is required by law to use Maine’s Solid Waste Management Hierarchy when making licensing decisions. Specifically, a permit should not be issued if it undermines the waste

hierarchy. Based on that criteria, we do not believe that the Fiberight facility should receive a permit. We are troubled that the facility is only required to meet a 50% diversion rate, since Maine's three existing waste-to-energy facilities have historically reached much greater rates of diversion and have plenty of existing capacity to process the waste intended to instead go to this facility. We suggest that DEP increase the minimum diversion rate requirement to 70 percent.

B. Reduction: We do not find that the applicant has provided sufficient proof to substantiate its claim that the facility will supporting existing source separation programs at the municipal level, and incorporate new programs moving forward. For evidence to the contrary, one need look no further than the "tonnage thermometer" displayed prominently on the applicant's website that celebrates an ever-growing commitment of waste to be sent to the facility. Maine already has three waste processing facilities that are reliant on receiving waste to remain financially viable, and we do not need a fourth.

We are particularly concerned about the ability of MRC communities to continue to move forward with the development of organic waste *reduction* programs. Separating organic waste, like uneaten food, from the rest of the waste stream enables people to see what they were wasting and, in fact, leads to buying and storage changes that reduce food waste overall. There is a growing effort and interest around the state in ways to decrease the amount of food that is wasted at the source, and make sure food ultimately gets eaten. At present, it appears that the financial viability of the proposed facility relies on the status quo of wasted food within the MRC communities, which based on national estimates likely is at a minimum of 20 and possibly as high as 60 percent of the food grown and purchased for consumption. Because the Fiberight facility depends on organic materials for its biomass operation, it presumably will be adverse to efforts within MRC towns to substantially reduce food waste. If this is accurate, it would mean that the state overall is trying to move in one direction while a substantial set of communities (those within MRC with contracts for Fiberight) would be moving in another direction.

Since Fiberight's business model relies on more waste, we request that DEP solicit more specific information from MRC/Fiberight that describes how they *"have supported and will continue to support the existence and incorporation of programs to encourage waste reduction at the source."* To date, the applicant has not been forthcoming with specific ways in which the company will do this besides choosing not to financially penalize towns that deliver less waste than promised. This is a good policy, but is also would be financially risky for Fiberight because it could jeopardize their tonnage goals. Thus, we are not convinced that Fiberight would allow aggressive source separation of organic waste and an ambitious food waste recovery initiative aimed at reducing food waste within its contracted towns.

C. Reuse: The draft license states that *"Programs to encourage waste reuse are implemented at the local level by municipalities with an emphasis on education, outreach, and technical assistance to residents and the incorporation of local waste reuse programs. The MRC and Fiberight are committed to ensuring these existing programs remain in place."* NRCM requests that DEP solicit more information from the applicant that specifically describes how they intend to do so.

D. Recycling: NRCM is concerned about the quality of the recycled commodities that would be retrieved from the "second pass" at the Fiberight facility. Fiberight claims that they have the

ability to pull additional materials out of the waste stream for recycling. However, anyone involved in the recycling industry knows that recyclers are more inclined to buy safe, clean recycled material rather than materials that have been contaminated with animal waste, food scraps, grease, dirty diapers, pesticides, pharmaceuticals, and sour milk and other potentially contaminating products found in household garbage bags. Therefore, this “second pass” material may ultimately be rejected by recyclers and not actually recycled into new products, which is the primary reason for recycling.

We also are very concerned with the message that a “second pass” at recycling sends to the public. We believe that many people will stop recycling all together because they think that it will just be pulled out later instead, so they needn’t bother anymore. This would be a major step in the wrong direction for Maine.

We also are concerned that this “second pass” message could prevent new pay-as-you-throw (PAYT) programs from starting in MRC communities. PAYT is the most successful way to reduce waste and increase recycling in a community. If residents believe that they don’t *have* to recycle separately, then they will be less inclined to support a PAYT program which, by design, incentivizes the separation of waste from recyclables. Further, since Fiberight relies on keeping organic waste mixed in with the other waste, it provides yet another reason not to adopt PAYT. Households that separate organic material and recyclable materials from their garbage tend to generate very little waste, and thus they require few PAYT trash bags and save money. Requiring that households keep organics and trash mixed together is a great argument *against* PAYT. This also would be a step in the wrong direction for the state, away from waste reduction and toward a throwaway mentality.

Another cause of concern with the Fiberight “second pass” recycling process is that paper and paper products in the waste stream will not be recovered for recycling with this facility and will instead be sent through the digester. This moves paper and paper product recycling to a lower rung on the hierarchy. Another step in the wrong direction.

E. Composting: NRCM is concerned with the statement in the draft license which reads, “*MRC and Fiberight are expecting some local programs may voluntarily select to transition their organics management activities to the proposed processing facility.*” Local composting can be done very cheaply (particularly when compared with Fiberight’s \$70 tip fee) and has many other benefits including returning nutrients to the soil which supports local food production, and growing new composting businesses. The Maine DEP is actively promoting local composting initiatives. Fiberight cannot be a successful company without stymieing the growth of the composting industry in member communities. As such, we are perplexed as to how DEP could possibly endorse this shift away from local composting programs within such a large portion of the state.

In addition, MRC/Fiberight joinder agreements with municipalities state: “*In recognition of the importance of organic waste delivered to the Fiberight Facility, as of the Effective Date, Joining Member shall not, (i) without first providing to the MRC not less than sixty (60) days’ notice of such proposed change and consulting with the MRC with regard to such change prior to any implementation, and (ii) without the prior consent of the Company, initiate new programs, or significantly and materially expand existing programs, to divert organic components from MSW*

for management through facilities or programs other than the Facility, but may continue to operate existing programs substantially as operated as of the Effective Date.”

This clause discourages and gives MRC the authority to ultimately prevent towns from adopting potentially cheaper local solutions to remove organic material from the waste stream and manage separately after the effective date. If DEP and MRC/Fiberight truly don't want to undermine or conflict with municipal waste management efforts, particularly for organics which are such a heavy, expensive part of the MSW stream, then we believe that DEP should require removal of this clause from the joinder agreements.

F: Waste Processing: Again, we do not believe that there is sufficient evidence to suggest that the proposed facility is able to reach the 70-80% diversion rate at the size and scale proposed in Hampden. We believe that DEP should conduct a more thorough analysis regarding this claim, and raise the minimum threshold from 50% diversion to 70%. Please refer to our comments in the “technical ability” section above.

G. Land Disposal: We are concerned about the ability of the facility to meet the claimed diversion rate. Any contaminated recyclables that can't be sold on the recycling market may also end up in the landfill, which is of concern.

NRCM is also skeptical about the company's claims regarding the amount of time it would take to construct the facility and get it up and running. Until this happens, all of the municipal solid waste of the MRC member communities post-2018 MSW will be going directly into a landfill, perhaps for years. Given the track record of Fiberight in Iowa, we would not be surprised to see it take longer than anticipated. This is particularly troublesome because these communities may be relying on Fiberight to manage their recycling and organic materials, and may not be taking adequate steps to prevent these materials from going into the landfill. We would suggest that DEP urge MRC towns to take precautions to ensure that recyclable and organic materials don't end up in the landfill should Fiberight not be available.