

IN THE MATTER OF

MUNICIPAL REVIEW COMMITTEE, INC.) PUBLIC BENEFIT
ARGYLE TOWNSHIP OR GREENBUSH) DETERMINATION
PENOBSCOT COUNTY, MAINE)
NEW SECURE LANDFILL)
DEP# S-022432-W5-A-N)
DENIAL)

Pursuant to the provisions of the *Maine Hazardous Waste, Septage, and Solid Waste Management Act*, 38 M.R.S.A. §§ 1301-1319-Y; the *Solid Waste Management Hierarchy*, 38 M.R.S.A. § 2101; *Solid Waste Planning*, 38 M.R.S.A. §§ 2122-2124-A; and the Department's *Solid Waste Management Regulations, General Provisions*, 06-096 CMR 400 (last amended July 20, 2010), the Department of Environmental Protection ("Department") has considered the application of the MUNICIPAL REVIEW COMMITTEE, INC. ("MRC") with its supportive data and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- A. Application: MRC, a nonprofit corporation with a membership composed of towns, cities, counties (on behalf of unorganized townships), refuse disposal districts, public waste disposal corporations, and other quasi-municipal entities, has applied for a determination of public benefit for a new secure landfill to be located in either Argyle Township ("Argyle") or Greenbush, Maine.
- B. History: MRC was formed in 1991 (then called the Committee to Analyze PERC) by a group of municipalities that sent municipal solid waste ("MSW") to the Penobscot Energy Recovery Company, LP ("PERC") waste-to-energy incinerator in Orrington. MRC currently represents 185 municipalities and 2 counties in their dealings with PERC, and owns approximately 23% of the PERC limited partnership. MRC is governed by a Board of Directors that is elected by the MRC membership. The MRC members' individual waste disposal contracts with PERC will expire in March 2018; PERC's contracts for sale of electrical power to Emera Maine will expire later in 2018. For several years, MRC has been planning for waste management after contract expiration, and is now moving forward with its post-2018 plans.
- C. Summary of Proposal: MRC proposes to develop a new landfill in Argyle or Greenbush with a footprint of 25 to 70 acres that would provide 2.55 to 9.75 million cubic yards of solid waste disposal capacity. MRC expects this would provide 30 years of use, assuming a disposal rate of

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85,000 to 325,000 cubic yards (or 51,000 to 195,000 tons) of waste per year. The landfill would serve only the needs of the MRC member municipalities and other Maine municipalities currently sending waste to PERC (who may want an alternative to PERC after 2018, presuming that PERC will reduce or cease operations at that time). MRC proposes to use the landfill for disposal of some or all of the following wastes: MSW; construction and demolition debris (“CDD”); special waste; oversized bulky waste (“OBW”); and residue from a planned but indeterminate waste processing facility/technology.

MRC emphasizes that the landfill would be one part of an integrated solid waste management system. The second part of the system would include either: a waste processing facility that would use emerging technology to process mixed MSW and recover recyclables, chemical products and/or fuel; or a strategy to maximize local diversion of materials from the waste stream. The third part of the system would include continuation of, or successors to, existing programs and systems used by municipalities to collect, process and/or transfer MSW, organic materials, and recyclable materials.

2. APPLICABLE LAW

The applicable law for determination of public benefit is 38 M.R.S.A. § 1310-AA, which establishes the process and standards to be used in determining whether a proposed new or expanded solid waste disposal facility provides a substantial public benefit.

- A. Process: The law requires the Commissioner to consider the state plan, written information submitted in support of the application and any other written information the Commissioner considers relevant. The law also requires the Commissioner to hold a public meeting in the vicinity of the proposed facility to take public comments and to consider those comments in making the determination, and to accept written public comment during the course of processing the application.
- B. Standards: In order for the Commissioner to find that the proposed facility or proposed acceptance of waste generated out of state provides a substantial public benefit, the applicant must demonstrate to the Commissioner that the proposed facility or acceptance of waste not generated within the state:
 - Meets the immediate, short-term or long-term capacity needs of the state. “Immediate” is defined as within the next 3 years; “short-term” is within the

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next 5 years and “long-term” is within the next 10 years. 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;

- Is consistent with the state waste management and recycling plan and promotes the solid waste management hierarchy (“waste hierarchy”);
- Is not inconsistent with local, regional, or state waste collection, storage, transportation, processing or disposal; and
- (only for facilities proposing to accept waste not generated in the state), facilitates the operation of the facility and operation would be precluded or significantly impaired if the waste was not accepted.

3. TITLE, RIGHT, OR INTEREST

MRC has submitted purchase options for both parcels of property under consideration for a landfill. The Argyle property purchase option was signed on February 6, 2014, and has a term of 3 years, with the ability to renew for 2 successive 1-year terms. The Greenbush purchase option was signed on September 19, 2013, and has a term of 2 years, with the ability to renew for 3 additional 1-year terms. The Commissioner finds that MRC has provided adequate evidence of title, right, or interest in the parcels of property under consideration.

4. PUBLIC PARTICIPATION

The Department has accepted written public comments throughout the course of processing the application. The Department received requests for a public hearing, including a petition in opposition to MRC’s proposal signed by 132 residents of the Town of Greenbush. In accordance with 38 M.R.S.A. § 1310-AA(2), the Commissioner held a public meeting on July 2, 2014 in Old Town, Maine. Comments were received verbally and in writing at the meeting, and a digital recording was made of the meeting, which is part of the project file.

Many municipal entities and one individual have expressed support for the application, providing the following reasons:

- the landfill is part of MRC’s plan for an integrated waste management system that will be consistent with the waste hierarchy in that it will increase waste diversion and minimize disposal;
- MRC must have the landfill component to pursue the rest of the plan for an integrated waste management system;

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- a landfill will be needed to handle the material left over after diversion and provides security;
- the integrated waste management system would be controlled by municipalities, who would manage it as a protected resource, respectful of the host community;
- this project is a collaborative effort of the 180+ MRC municipalities to manage waste responsibly and cost effectively in the long-term;
- incorporating new technology will help establish new waste management options for the future;
- it is expected that MRC will find the most financially feasible regional alternative that meets the requirements of state law for disposal of MSW; and
- if MRC’s plan is not approved, municipalities will be forced to landfill MSW or to send it to PERC, but PERC will be prohibitively expensive to use in the future, and it may cease to operate, thereby creating a waste disposal problem.

Those commenting in opposition to the application included individuals, the Natural Resources Council of Maine, the Toxics Action Center, the Penobscot Nation, the Maine Bureau of General Services/New England Waste Services of ME Landfill Operations, LLC (owner/operator of Juniper Ridge Landfill, hereafter “JRL”), PERC, and the Town of Greenbush. Those that commented in opposition focused on a wide range of topics, described generally below. Many people supported the concept of reducing waste, utilizing a regional approach, or use of new technology or a new perspective on waste management, but opposed construction of a landfill. Some of the comments received addressed topics outside the criteria for public benefit determination.

Members of the Penobscot Nation commented that approval of the Argyle site would interfere with cultural and traditional practices of the Penobscot Nation, would have severe adverse effects on the citizens, lands, waters, natural resources, and economic development plans of the Penobscot Nation, and would amount to a taking. In addition, some members commented that the matter should have been brought before the Maine Indian Tribal-State Commission.

The Department received comments regarding the legal authority of MRC to proceed. This issue is addressed in Finding of Fact #5 below.

The Department received comments regarding whether MRC’s proposed landfill constitutes a future commercial solid waste disposal facility pursuant to 38 M.R.S.A. §§ 1310-X and 1303-C(6). The comments suggest that in the event that the proposed facility is a commercial solid waste disposal facility, the Department may not approve the application. This issue is addressed more thoroughly in Finding of Fact #5 below.

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Comments regarding the need for additional disposal capacity:

- other alternatives should be considered before proposing new landfill capacity (such as continuing negotiations with PERC; use of capacity at other landfills, including JRL; use of the East Millinocket mill site for the waste processing facility, with Dolby and/or Carpenter Ridge landfill for the landfill component; use of, rather than disposal of residue);
- there is not enough information in the application to determine what MRC's capacity needs are (MRC has not provided any details about the proposed integrated waste management system);
- MRC proposes a landfill lifespan of 30 years, while the Department's public benefit timeframe is 3, 5, and 10 years;
- JRL's recently approved public benefit determination was limited to 10 years of capacity, so MRC should be held to the same limit;
- MRC's assertions that it could manage a landfill better or that it might cost less than existing options are not sufficient justification for new landfill capacity;
- MRC's proposal appears to be motivated by a desire to circumvent available capacity for a cheaper option that is at the bottom of the waste hierarchy; and
- the Maine Bureau of General Services and New England Waste Services of ME Landfill Operations, LLC state that JRL can accommodate MRC's residue disposal needs with its licensed capacity and in the expansion it is pursuing, and could meet MRC's MSW disposal needs with modifications to its existing license and its PBD for the expansion.

Comments regarding the waste hierarchy:

- the project is not in accordance with the waste hierarchy (landfills are the lowest priority);
- use of a mixed waste processing facility will decrease the quality of recyclables and encourages increased disposal rather than waste reduction;
- having a cheap and convenient disposal location incentivizes waste production and disposal and undermines the waste hierarchy;
- transporting waste far from the point of generation reduces incentives to minimize disposal since the people cannot see the effects of disposal; and
- MRC proposes the use of unproven emerging technology; thus, its viability is questionable.

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Comments regarding consistency with local, regional, or state waste management:

- there is not enough information in the application to determine if MRC’s proposal is inconsistent with existing waste management methods;
- the driving force behind this project is to maintain current disposal costs for MRC members, but cost should not be a factor; and
- this project will compete with PERC, an existing entity, and could result in closure of PERC.

Comments regarding out-of-state waste:

- if this plan goes forward, PERC may need to import waste, increasing the amount of out-of-state waste coming to Maine; and
- existing disposal capacity would last longer if no out-of-state waste was imported.

Comments and questions regarding other public benefit determination issues:

- whether there is a time limit for a determination of public benefit;
- whether a determination of public benefit could transfer to another entity;
- not all of the towns signing MRC’s resolution to proceed with post-2018 planning understood that it meant pursuing creation of a landfill; and
- equal consideration should be given to comments from all participants in the waste production and disposal system.

Comments not relevant to the Department’s review processes:

- the proposed use of the Argyle property is not acceptable under the current Land Use Planning Commission zoning, and rezoning would be necessary before MRC could proceed.

Comments not relevant to public benefit determination review criteria, but that would be considered during review of a waste processing facility or landfill application:

- the project would have adverse effects on wildlife and fisheries habitat;
- both sites contain floodplains and extensive wetland areas, including the Alton bog near the Argyle site and Sunkhaze Meadows National Wildlife Refuge near the Greenbush site;
- a landfill has potential for air, soil, wetland, surface water, and ground water contamination in the vicinity, and for undoing efforts to restore the Penobscot River;
- MRC’s proposal would result in increased traffic, with accompanying emissions; and increased traffic would create risks to bicyclists, motorcyclists, horseback

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riders, and hikers who currently use Southgate Road in Argyle, and to bicyclists and walkers along the Greenfield Road in Greenbush;

- roads to both potential sites were not constructed to handle the expected traffic and will be damaged, and roads to both potential sites are subject to seasonal flooding and posted weight limits;
- MRC’s proposal would result in increased noise and odors;
- such a facility would be inconsistent with the surroundings;
- the nearest non-volunteer fire departments are far enough away that a fire could spread before they could arrive and control it; and
- a landslide not far from the Greenbush site casts doubt on the suitability of that site.

Comments not relevant to public benefit determination review criteria, landfill application review criteria, or processing facility review criteria:

- MRC did not involve the public, or use a public process, such as requesting bids on site availability, in its process of choosing landfill sites, and it relied too heavily on distance from Bangor in choosing potential sites;
- MRC’s voting structure is unfair to small towns (larger municipalities have more votes);
- the economic effect of a landfill on tourism and fishing should be considered;
- MRC’s proposal would adversely affect peace and quality of life in the area, as well as property values and insurance rates;
- MRC should conduct a biophysical analysis of energy and material flows through the proposed waste processing facility;
- approval of the public benefit determination could result in pre-permitting a site for an intermodal facility associated with the proposed east-west highway;
- in order to produce the same amount of energy from ethanol (derived from anaerobic digestion of trash) and from electricity (generated in a waste-to-energy incinerator), much more trash is needed for the ethanol method; and
- MRC had the opportunity to bid on operation of JRL, but chose instead to pursue a limited-term residue [from PERC] disposal contract with Casella in return for supporting Casella’s bid.

5. LEGAL ARGUMENTS

The public comments submitted throughout the course of processing the application raised several legal issues to which the applicant responded in writing. In particular, the Department received numerous written comments from the law firm of Doyle & Nelson,

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hereafter “Doyle & Nelson,” representing a state representative and various petitioners, and from the Town of Greenbush. Legal issues raised include: whether MRC has sufficient authority from its membership to apply for a public benefit determination; whether MRC has statutory authority to apply for a public benefit determination; and whether MRC’s proposed landfill would be a commercial solid waste disposal facility subject to the statutory moratorium on new solid waste disposal facilities.

A. Whether MRC has authority to apply for a Public Benefit Determination.

1. Membership authorization: MRC’s application states that a large proportion of its membership supported a resolution to proceed with post-2018 planning, and that the post-2018 planning includes submission of the application for determination of public benefit.

Doyle & Nelson argues that MRC has provided insufficient evidence that it has authority on behalf of its member municipalities to submit this application. Doyle & Nelson questions which of the municipalities that MRC purports to represent are actually “members,” and states that MRC has not established that the MRC Board of Directors can submit an application for public benefit without approval of its member municipalities’ legislative bodies. Doyle & Nelson states that the resolution signed by some of MRC’s member municipalities does not resolve that MRC prepare, file and submit an application for the siting and development of a new landfill

MRC responds that its articles of incorporation, broad mission, and bylaws establish its authority to apply for a determination of public benefit. Article II, “Mission and Purpose” of its bylaws describes its mission as “. . . 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.” In addition, Section 2.2(10) of its bylaws includes among the purposes of the corporation, “[p]erform 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.” MRC argues that the resolution adopted on December 11, 2013 by its Board of Directors is consistent with MRC’s bylaws, and provides sufficient authority for MRC to submit an application for determination of public

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benefit. MRC states that it has received, and continues to receive, signed resolutions from communities demonstrating their support.

2. Statutory Authorization: Doyle & Nelson argues that MRC lacks statutory authority to develop and own a landfill, and therefore to apply for this public benefit determination. Doyle & Nelson states that 38 M.R.S.A. § 1304-B(5-A)(D) authorizes the municipal *members* of a regional association to invest funds in and participate in the ownership of a solid waste disposal facility. However, Doyle & Nelson argues that a regional association itself is not specifically authorized to invest in and own disposal facilities. According to Doyle & Nelson, the statute provides that the purpose of a regional association is to *facilitate* the disposal of solid waste, not to actually dispose of the solid waste. Moreover, the limited nature of MRC’s statutory authority is reinforced by 38 M.R.S.A. § 1304-B(5-A)(E) and (F), which list functions regional associations may perform *on behalf of their members*. Doyle & Nelson further notes that if the Legislature intended for regional associations to own solid waste disposal facilities, there would have been no need to create public waste disposal corporations, as described in 38 M.R.S.A. § 1304-B(5).

MRC responds that it derives its statutory authority to own a disposal facility, and therefore to apply for a public benefit determination, primarily from 38 M.R.S.A. §§ 1303-C(24) and 1304-B(5-A). MRC argues that it is a regional association as defined in 38 M.R.S.A. § 1303-C(24), which provides that owning, constructing, or operating a solid waste disposal facility is a permissible purpose of a regional association. Moreover, 38 M.R.S.A. § 1304-B(5-A)(E)(5) expressly authorizes regional associations to “[p]urchase, sell and otherwise deal with ownership interests” in solid waste disposal facilities. In addition, 38 M.R.S.A. § 1304-B(5-A)(D) states that any member or members of a regional association may invest in or participate in ownership of “(1) one or more solid waste disposal facilities; [or] (2) an entity that owns one or more solid waste disposal facilities.”

- B. Whether MRC’s proposed facility constitutes a commercial solid waste disposal facility: 38 M.R.S.A. § 1310-X prohibits the department from approving an application for a new commercial solid waste disposal facility. 38 M.R.S.A. § 1303-C(6) defines “commercial solid waste disposal facility” as “a solid waste disposal facility except as follows: . . .”, and provides a list of exceptions.

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Because solid waste facilities owned by “regional associations” are not expressly listed, the Department asked MRC to clarify which exception would apply, thereby allowing it to own a new solid waste disposal facility.

The Town of Greenbush also raises this issue, arguing that MRC’s proposed facility constitutes a new commercial solid waste disposal facility because “regional associations” are not listed as an exemption to the statute’s definition of “commercial solid waste facility.” According to the Town of Greenbush, in statutory construction, the express listing of certain things implies the exclusion of others not listed, and statutory exemptions must be strictly and narrowly construed. Moreover, the Town of Greenbush argues that the ban on solid waste disposal facilities is intended to be very broad in order to advance the State’s solid waste hierarchy.

Pursuant to 38 M.R.S.A. § 1303-C(6)(B-2), certain solid waste facilities “owned by a municipality” are not commercial solid waste disposal facilities. The Town of Greenbush argues that MRC does not fall within this exception. The Town of Greenbush argues a landfill owned by and serving a single municipality is not the same thing as a facility owned by a regional association serving many municipalities and other governmental units. Moreover, interpreting this section such that the singular “municipality” includes the plural “municipalities” as 1 M.R.S.A. § 71(9) allows in some circumstances, “is inconsistent with the plain meaning of the enactment,” the Town of Greenbush argues. Additionally, the exception for a municipally-owned solid waste disposal facility only applies if the municipality controls the decisions regarding the type and source of waste accepted at the facility. The Town of Greenbush argues that in MRC’s case, neither Argyle nor Greenbush would control the type or source of waste accepted at the facility.

The Town of Greenbush acknowledges that some regional associations may own, construct, and operate a solid waste disposal facility pursuant to 38 M.R.S.A. § 1303-C(24). However, it argues that MRC does not meet that definition of “regional association” because MRC was not formed for the purpose of owning a solid waste disposal facility. The Town of Greenbush states that MRC’s mission and purposes are more consistent with those of “other regional associations” established under 38 M.R.S.A. § 1304-B(5-A) (which refers to facilitating disposal of waste, as described in Finding of Fact # 5.A.2, above), and notes that MRC’s bylaws state it has the powers granted by § 1304-B(5-A), but make no mention of § 1303-C(24). In addition, the Town of Greenbush argues that even if

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some regional associations can own and operate solid waste disposal facilities, the ban on new commercial landfills in §1310-X would still prohibit them from establishing *new* disposal facilities.

MRC responds that its facility would not be a commercial solid waste disposal facility as defined in 38 M.R.S.A. § 1303-C(6) because the proposed facility falls within the exception for facilities “owned by a municipality.” MRC is a regional association comprised of municipalities and other public entities, and the municipalities will meet the requirements for the exception by collectively controlling “decisions regarding the type and source of waste that is accepted, handled, treated and disposed at the facility.” Although the statute uses the singular term “municipality,” 1 M.R.S.A. §71 provides that “words of the singular number may include the plural,” and here, such a construction is consistent with the statutory authorizations set forth in 38 M.R.S.A. §§ 1303-C(24)(B) and 1304-B(5-A).

Moreover, MRC argues that the various provisions of statute must be read in conjunction with one another, and read in the context of the statute’s underlying purposes and policies. MRC points out that in 38 M.R.S.A. §1302, the Legislature states its purpose is to encourage solid waste management planning and implementation on a regional level, and provides that the relevant statutes should be construed liberally. MRC argues that to conclude that the exception for municipally-owned solid waste disposal facilities does not apply to facilities owned by regional associations of municipalities would render 38 M.R.S.A. §§ 1303-C(24)(B) and 1304-B(5-A) meaningless and undermine the statute’s policy and the Legislature’s intent.

MRC argues that the Town of Greenbush’s argument limiting a regional association to ownership or operation of an *existing* facility is unsupported by the statutory scheme. MRC also argues that it is a regional association as defined in 38 M.R.S.A. § 1303-C(24), because the purposes for which it was formed were broad enough to encompass ownership or operation of a solid waste disposal facility. MRC points out that its bylaws are dynamic and periodically amended, and in fact were amended on July 23, 2014, to provide that a purpose of MRC is to identify “alternative waste disposal options . . . including . . .any and all actions incident to the development, ownership, financing and/or operation of a new integrated solid waste management facility.”

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C. Department analysis:

1. Whether MRC has authority to apply for a public benefit determination:
 The December 11, 2013 resolution adopted by MRC’s Board of Directors, in conjunction with Section 2.2(10) of MRC’s bylaws, enabling the Board of Directors to perform such acts and functions determined to be necessary, adequately demonstrate authorization from MRC’s membership to apply for a determination of public benefit. Additionally, the broad language in MRC’s bylaws and articles of incorporation (“ensure continuing availability . . . of long-term . . . methods of solid waste disposal” and “promote long-term solutions to the problems associated with disposal of municipal solid waste”), including the July 23, 2014 amendments, indicate the approval of MRC’s member municipalities

The definition of “regional association” in 38 M.R.S.A. § 1303-C(24)(B) provides that one permissible purpose of a regional association is to own a solid waste disposal facility. The Department concludes that MRC has adequately demonstrated that it is a duly formed regional association, and as such, concludes that MRC may own and operate a solid waste disposal facility.

2. Whether proposed facility is a commercial solid waste disposal facility:
 The Legislature encouraged a regional approach to solid waste management in 38 M.R.S.A. § 1302, and provided several ways for municipalities to organize in order to commonly manage solid waste in 38 M.R.S.A. § 1304-B(5) and (5-A), including regional associations. Further, in defining commercial solid waste disposal facility in §1303-C(6), the Legislature exempted facilities owned by public entities such as refuse disposal districts, public waste disposal corporations, and municipalities. In light of these provisions and the statute’s expressed policy, the Department concludes that the Legislature’s intent in prohibiting future commercial solid waste disposal facilities was to draw a line between commercial-type facilities and non-commercial, public facilities. The Department notes that, pursuant to the statutory context as a whole, the facility proposed by MRC, a regional association comprised of municipalities and municipal-like entities, would be a non-commercial, public facility, and would fall within the statute’s exception for facilities owned by municipalities. Therefore, the Department concludes that

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MRC’s proposed landfill is not subject to the moratorium on future commercial solid waste disposal facilities.

- D. Commissioner findings: The Commissioner finds that MRC, as a regional association comprised of municipal entities, has sufficient legal authority to apply for this determination of public benefit. The Commissioner also finds that the proposed landfill is not subject to the moratorium on future commercial solid waste disposal facilities.

6. CAPACITY NEEDS

To determine whether the proposed landfill provides a substantial public benefit, the Commissioner must determine, first, whether the applicant has demonstrated that the proposed landfill meets the immediate, short-term or long-term needs of the State.

- A. Application: MRC asserts that the proposed landfill is necessary to meet the short-term and long-term capacity needs of the State of Maine. MRC evaluated the capacity expected to be provided in the short- and long-term by existing licensed solid waste disposal facilities in Maine, which include waste-to-energy incinerators, state owned landfills, municipally-owned landfills, and a commercial landfill.

MRC’s Evaluation of Disposal Capacity Options: MRC’s evaluation of capacity need included substantial consideration of its perceived need to develop a secure landfill that MRC owns and controls as a necessary part of its vision for development of the integrated waste management system.

MRC members currently send MSW to the PERC waste-to-energy incinerator in Orrington. MRC asserts after 2018 PERC will have no available disposal capacity because PERC cannot continue as a viable alternative beyond 2018 with its current configuration and business arrangements. MRC does not consider the other two waste-to-energy incinerators in Maine to be viable options because their capacity is taken up by current users, their distance would lead to increased transportation costs and environmental impacts due to fuel consumption and emissions, and due to other factors such as disruptions to existing infrastructure.

MRC considers the 3 state-owned landfills unable to provide disposal capacity for 2018 or beyond. MRC estimates that JRL will reach capacity in 2021 if not earlier, and that it could not accept the full range of MSW MRC may want to

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landfill. MRC considers the Carpenter Ridge landfill capacity to be unavailable because it has not been developed, and MRC does not expect it to be developed by 2018. In addition, Carpenter Ridge’s size and location present transportation challenges, and it is only licensed to accept sludge, ash, and oily waste. MRC states that Dolby Landfill also lacks the licensed capacity for the full range of waste types and quantities that MRC anticipates needing to landfill, that its licensed capacity could not easily be increased, and that the distance would increase transportation costs as well as environmental impacts due to fuel consumption and emissions.

MRC states that the municipally-owned MSW landfills do not provide available capacity since they have dedicated their capacity to current users, and the full range of types and quantities of waste produced by MRC members is larger than what they are licensed to accept, in addition to issues related to distance as described above, and disruptions to existing solid waste management infrastructure.

MRC regards the capacity provided by the only Maine commercial landfill, Crossroads Landfill in Norridgewock, as non-viable due to distance, lack of MRC ownership and control, and its perceived inability to support the development and operation of the integrated waste management system MRC proposes to develop.

MRC states that all existing landfills could not collectively provide capacity to accept all post-diversion MSW from all MRC municipalities, and that some municipalities would need to haul MSW to out-of-state landfills. MRC therefore asserts that there exists a short- (from 2018 to 2019) and long-term need for disposal capacity.

In summary, MRC expressed that the inclusion of a secure landfill owned and controlled by the MRC is the safety net that will make it possible for MRC to develop and operate an integrated waste management system. MRC asserts that reliance on a landfill it does not own (including use of a state-owned landfill) would not allow for the level of ownership and control MRC needs, and that use of an existing landfill could not support development and operation of the integrated waste management system MRC envisions. Moreover, MRC expects that it could operate its own landfill such that disposal costs would be less than at another landfill, and the lower disposal costs could offset potentially higher processing costs at the intended waste processing facility.

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MRC's Expected Waste Types, Sources, and Volumes: MRC asserts that the majority of waste that it proposes to landfill will be what remains after diversion of materials from MSW. The type, source, and quantity of waste that will be landfilled will depend on the type and capacity of the integrated waste management system developed by MRC as well as factors including the composition of MSW delivered and degree of success in diverting various components. MRC intends to design the processing element(s) of its integrated waste management system to handle 180,000 tons per year of MSW.

One option MRC is considering for the processing component of its integrated waste management system is the use of a facility or facilities to recover high-value recyclables, possibly produce biogas by anaerobic digestion of organics, and to produce processed engineered solid fuel, liquid fuel, or chemical products from collected mixed waste. This option might include a number of small collection facilities that would prescreen material before sending on to the main processing facility. MRC is especially interested in one particular emerging technology developed by Fiberright; use of the Fiberright technology (anaerobic digestion of organics, recovery of recyclable materials, and production of cellulosic sugars or ethanol) might result in diversion of 80% or more of incoming waste. MRC states any residue would be landfilled, as would unprocessed MSW in the event of oversupply of MSW to the waste processing facility, waste processing facility shutdowns for repairs or maintenance, casualty events, underperformance or failure of the waste processing facility, diversion efforts falling short of goals, or disruptions in the markets for products. The residue quantity could range from approximately 10% to 75% of the incoming waste, or 16,000 to 89,000 tons per year of residue. MRC has also included an allowance for 20,000 tons per year of MSW bypass under this scenario.

With respect to other options for its integrated waste management system, MRC is also considering diversion of materials at the local level, followed by landfilling the remaining undiverted MSW. For this scenario, MRC has proposed to provide capacity for landfill disposal of all undiverted MSW (158,000 to 180,000 tons per year). For either this scenario, or the one in which MRC develops a processing facility, MRC also proposes to provide capacity to landfill small amounts of special waste, CDD, and OBW from member municipalities that are currently disposed in other landfills.

In summary, combined waste quantities for the possible non-landfill components of MRC's integrated waste management system range from 51,000 to 195,000

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tons per year. MRC proposes to provide capacity for: 20,000 to 180,000 tons per year of MSW; up to 15,000 tons per year of special waste, CDD, and OBW; and 0 to 89,000 tons per year of residue. Using MRC’s assumed in-place density within the landfill of 1,200 pounds per cubic yard, the volume would be 85,000 to 325,000 cubic yards per year. MRC proposes in this application to develop a landfill with enough capacity to dispose of the full range of waste types and quantities it has identified for 30 years, including capacity to landfill all of the unprocessed MSW in the event that the other parts of its plan are not fully realized. Thus, MRC proposes to develop a landfill with a total disposal capacity of 2.55 to 9.75 million cubic yards.

- B. Department Review: 38 M.R.S.A. § 1310-AA requires the Commissioner to consider the state plan prepared in accordance with 38 M.R.S.A. § 2122, written information submitted in support of the application, public comments received at the public meeting and during processing of the application, and any other written information the Commissioner considers to be relevant. The Department considered those sources, including information submitted in 2013 solid waste facility annual reports, during review of the application. As stated by MRC, the short-term and long-term time periods are assumed to begin with the date of application (2014), rather than the date MRC intends to begin using the proposed landfill (2018). In accordance with 38 M.R.S.A. § 1310-AA(3), the short-term time period runs until 2019, and long-term until 2024. In this order, the term “capacity” refers to either volume of space at a landfill or the quantity of material a waste-to-energy or processing facility is allowed to accept.

State Plan and Licensed Capacity: The most recent state plan, titled the “Maine Materials Management Plan, 2014 State Waste Management and Recycling Plan Update & 2012 Waste Generation and Disposal Capacity Report,” dated January 2014, identifies existing solid waste disposal and management capacity in Maine and the potential for expansion of that capacity, as well as the need for current and future disposal capacity over the next 5-, 10-, and 20-year periods, as required by 38 M.R.S.A. § 2123-A. Disposal capacity includes that provided by waste-to-energy incinerators, as well as landfills. According to the state plan, waste-to-energy incinerators (PERC in Orrington, Mid-Maine Waste Action Co. [“MMWAC”] in Auburn, and ecomaine in Portland) have approximately 544,000 tons per year of licensed capacity (approximately 304,000 tons per year provided by PERC). This remains consistent in the short- and long-term. The state-owned landfills (JRL, Carpenter Ridge, and Dolby) provide an estimated 6.8 million cubic yards of capacity. The commercial landfill, Crossroads Landfill, has

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approximately 3.7 million cubic yards of capacity. Municipally-owned MSW landfills (Augusta, Bath, Brunswick, Presque Isle, and Tri-Community in Fort Fairfield) provide approximately 4.3 million cubic yards of disposal capacity. Two municipally-owned ash landfills (ecomaine and Lewiston) provide approximately 1.8 million cubic yards of disposal capacity. These figures are based on licensed capacity as of year-end 2013, except for Lewiston (year-end 2012). The state plan assumes that the annual demand for disposal capacity will remain the same over the immediate, short-, and long-terms; therefore, years of remaining capacity at landfills are estimated based on the current annual rate of use.

Based on current usage rates as of 2013 annual reports, JRL's current licensed capacity would be reached in 2021. JRL has received a determination of public benefit for a 9.35 million cubic yard expansion (Department order #S-020700-W5-AU-N, dated January 31, 2012), which would extend its lifespan to 2035. Based on the information provided in a preliminary information report, the Department issued a decision on April 13, 2007 that none of the siting criteria of 06-096 CMR 401.1(C)(2) prohibit the proposed landfill expansion. Dolby currently has minimal use and Carpenter Ridge has no current users, since it has not yet been developed, so their lifespans are unknown. Crossroads is expected to reach capacity in 2026. The municipally-owned MSW landfills are expected to have from 16 to 74 years of life remaining. The municipally-owned ash landfills are expected to have 3 to 35 years of life remaining.

Department Analysis of Capacity Need: PERC is a licensed waste-to-energy incinerator that currently accepts the MSW from MRC member municipalities and other municipalities in the area, and out-of-state waste. Although the MRC members' disposal contracts with PERC will expire in 2018, it will continue to have licensed capacity sufficient to handle the MRC members' MSW. PERC has provided comments on this application to the Department that state it will continue to have capacity to accept the MSW generated in its service area after 2018. Although there are outstanding questions concerning potential increases in tipping fees at PERC after 2018, the Department concludes that this fact does not eliminate PERC from consideration in the context of capacity. It is possible that if MRC members cease sending waste to PERC, PERC's capacity would be used by out-of-state sources of MSW, or that PERC would reduce its operations by 50%, to one processing line and one boiler, rather than two.

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Based on the 2013 usage rate, JRL will fill its currently licensed space by 2021. JRL may accept at its currently operating landfill 81,800 tons per year of unprocessed MSW until March 2018. JRL currently accepts residue from PERC (ash, front end process residue (“FEPR”), and OBW); in 2013, PERC sent approximately 114,500 tons of residue to JRL. JRL may currently accept CDD, a limited amount of unprocessed MSW, MSW bypass, and special wastes. MRC acknowledges that JRL would be able to accept residue from MRC’s waste processing facility, but states it could not accept the maximum quantity of unprocessed MSW potentially needing disposal. The Department agrees JRL should not be relied on to accept 180,000 tons per year of unprocessed MSW for 30 years. The Department notes that, based on the limited information provided in the application, the residue from the MRC waste processing facility will include waste classified as FEPR and possibly waste classified as special waste. The JRL facility is licensed to accept both FEPR and special waste. The Department also recognizes that modifications to one or more licenses for the JRL facility would be needed if provisions for the ongoing disposal of some currently unknown quantity of MSW is needed in the future. However, the Department notes that at the time the license for JRL was transferred to the State of Maine, JRL was intended to potentially serve as a backup location providing disposal capacity for MSW bypass in the event one or more of the in-state incinerators suffered an event requiring MSW to be diverted elsewhere, and to generally meet the disposal needs of the state of Maine. The Department asserts that establishment of another landfill within 10 miles of JRL to meet the perceived capacity needs of a segment of the state’s population that is closest to JRL is inconsistent with JRL’s purpose of providing backup disposal capacity and with the legislative intent of a public benefit determination.

MRC discounts Carpenter Ridge landfill as available capacity because it has not yet been constructed and is only licensed for sludge, ash, and oily waste. However, it is licensed capacity (1.8 million cubic yards), as is the capacity provided by Dolby landfill (400,000 cubic yards). MRC also argues that Carpenter Ridge landfill is too small. Carpenter Ridge’s licensed capacity is just under the low end of MRC’s estimated need for 30 years but could accommodate MRC’s 10 year capacity need if it achieved the increased diversion rate it expects with the integrated waste management system. The Department agrees that Carpenter Ridge could not accommodate landfilling primarily unprocessed MSW for 30 years, and further notes that long-term land disposal of unprocessed MSW that has historically been incinerated rather than landfilled would be an unreasonable use of landfill capacity, including capacity at state-owned landfills.

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MRC also states that Carpenter Ridge’s location presents transportation challenges. The Carpenter Ridge site is in T2 R8 NWP, 28 miles further north on Interstate 95 than the exit MRC would use to access the Argyle site. For comparison purposes, the approximate distance from PERC, the current waste destination, to the Argyle site is 30 miles. Current MRC member municipalities include municipalities as far away from PERC as Mars Hill (approximately 150 miles), Baring Plantation (approximately 100 miles), Machias (approximately 90 miles), Boothbay (approximately 90 miles), Winthrop (approximately 85 miles), and Monson (approximately 60 miles). Transportation distance has not kept these municipalities from using PERC for many years. Since transportation distance has not kept MRC municipalities from utilizing available disposal capacity at PERC, the Department notes that similar transportation distances should not now be used to eliminate a facility from consideration of available capacity.

All Maine landfills, including the municipally-owned landfills, are licensed for a certain final elevation, not in terms of quantity of waste they may accept per year. MRC argues that the municipally-owned MSW landfills do not provide available capacity because the quantity of MSW produced by MRC members is larger than what they are licensed to accept. MRC also asserts that these landfills pose transportation issues. The Department notes that the municipally-owned landfills could provide capacity for MRC towns near to them. The Department notes that the landfills are located within and at the periphery of the MRC service area, and therefore the distances do not render their capacities unavailable. The Department asserts that the capacity of municipally-owned MSW landfills is available capacity.

The state plan indicates that Crossroads Landfill has capacity in the short- and long-term. MRC considers it unavailable due to distance, lack of MRC ownership and control, and its perceived inability to support the development and operation of the integrated waste management system MRC proposes to develop. The Department notes that while the location would be further for some municipalities, it would be closer for others, similar to the municipally-owned MSW landfills or Carpenter Ridge.

While MRC asserts that a single centralized disposal location owned and operated by MRC is necessary to make the waste processing facility cost-effective, the Department notes that MRC could have considered use of multiple disposal options based on MRC members’ proximity to the various landfills and waste-to-energy incinerators. In addition, MRC did not consider that events causing a

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disruption at the waste processing facility element of the integrated waste management system would result in only short-term increases in the amount of unprocessed MSW to be landfilled.

While MRC argues that the state-owned landfills do not allow for the level of ownership and control MRC needs, and that using the state-owned landfills could not support development and operation of the integrated waste management system MRC proposes to develop, the Department notes that the standards provided in 38 M.R.S.A. § 1310-AA(3) for review of an application for a determination of public benefit do not allow for consideration of an applicant's desire for ownership and control of its own disposal.

Uncertainties: There are a number of uncertainties that require consideration in the review of this application. While the current membership of MRC is known, the membership as of 2018 is not known to the Department or to MRC. The application states that the majority of waste it will landfill will be what remains after diversion of materials from MSW. As described above, MRC has not yet determined what its integrated waste management system will be, or who will own and operate it. The types and quantities of wastes needing disposal are unknown; MRC only provided estimated ranges for quantities of different types of waste. MRC's application identifies one option under consideration as landfilling all MSW without prior processing or significantly increased diversion. If MRC decides to pursue a waste processing facility or some type of emerging technology, its full-scale viability is unknown. These factors make it difficult to accurately determine what MRC's capacity needs are. The Department notes that planning for the development of a regional system/facility/approach to increase waste diversion prior to submission of an application for determination of public benefit and application for development of a landfill would allow for an understanding of MRC's true capacity needs. Due to these uncertainties, in order to evaluate MRC's capacity need, the Department considered several potential scenarios, described below. For the purposes of this evaluation, only the capacity of PERC, JRL (with and without the 9.35 million cubic yard expansion), and Crossroads was considered, since these facilities provide the bulk of the available capacity. As noted elsewhere in this finding, additional capacity is also available at other solid waste disposal facilities.

- Scenario 1: No change from current situation (MRC municipalities continue to use PERC, and JRL and Crossroads continue to accept approximately the same quantity of waste as they did in 2013).

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- Scenario 2: MRC develops a Fiberright facility, accepting 180,000 tons of MSW per year and generating 78,466 tons of residue per year, which is disposed at JRL. PERC shuts down, and the Maine-generated MSW that went to PERC but that does not go to the MRC facility goes to Crossroads landfill (15%) and JRL (85%).
- Scenario 3: MRC develops a Fiberright facility, accepting 180,000 tons of MSW per year and generating 78,466 tons of residue per year; PERC continues to operate at full capacity; and JRL and Crossroads continue to accept approximately the same quantity of waste as in 2013, plus JRL accepts all waste from the MRC Fiberright facility.
- Scenario 4: MRC develops a waste processing facility accepting 180,000 tons per year and producing 124,000 tons per year of residue; PERC continues to run at approximately full capacity; and JRL and Crossroads continue to accept approximately the same quantity of waste as in 2013, plus JRL accepts all waste from the MRC waste processing facility.
- Scenario 5: MRC does not proceed with its integrated waste management system and PERC shuts down. All Maine MSW that went to PERC goes to landfills, with 15% to Crossroads and 85% to JRL.
- Scenario 6: MRC does not proceed with its integrated waste management system and PERC shuts down. All Maine MSW that went to PERC goes to JRL.

In the following table, “tons” is abbreviated as “T”; “cubic yards” is abbreviated as “cy”. “Year” is abbreviated as “yr”. Juniper Ridge’s capacity is assumed to include the existing 4,600,000 cubic yards of capacity. The capacity of JRL plus the expansion to JRL currently being pursued is shown separately; these numbers cannot be added together to produce a cumulative capacity. Density of waste placed in Crossroads in the future is assumed to be approximately equal to the density it reported in 2013 (2100 lb/cy). Density of waste in JRL in the future is assumed to be equal to the density it reported in 2013 (1800 lb/cy).

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	Facility	Capacity	Waste received per year	Volume used per year	Lifespan
Scenario 1	PERC	304,000 T/yr	223,000 T MRC area 265,000 T all Maine	n/a	Until use ceases
	JRL	4,637,000 cy	606,000 T	643,000 cy	7.2 years
	JRL plus expansion	13,950,000 cy	606,000 T	643,000 cy	21.7 years
	Crossroads	3,680,000 cy	299,000 T	284,000 cy	13.0 years
Scenario 2	JRL	4,637,000 cy	612,216 T	680,240 cy	6.8 years
	JRL plus expansion	13,950,000 cy	612,216 T	680,240 cy	20.5 years
	Crossroads	3,680,000 cy	311,750 T	296,900 cy	12.4 years
Scenario 3	PERC	304,000 T/yr	~300,000 T/yr	n/a	Until use ceases
	JRL	4,637,000	684,466 T	760,517 cy	6.1 years
	JRL plus expansion	13,950,000	684,466 T	760,517 cy	18.3 years
	Crossroads	3,680,000	299,000 T	284,000	13.0 years
Scenario 4	PERC	304,000 T/yr	~300,000 T/yr	n/a	Until use ceases
	JRL	4,637,000 cy	730,000 T	811,100 cy	5.7 years
	JRL plus expansion	13,950,000 cy	730,000 T	811,000 cy	17.2 years
	Crossroads	3,680,000	299,000 T	284,000 cy	1.0 years
Scenario 5	JRL	4,637,000 cy	686,750 T	763,100 cy	6.0 years
	JRL plus expansion	13,950,000	686,750 T	763,100 cy	18.3 years
	Crossroads	3,680,000 cy	338,750 T	338,750 cy	10.9 years
Scenario 6	JRL	4,637,000 cy	726,500 T	807,200 cy	5.7 years
	JRL plus expansion	13,950,000	726,500 T	807,200 cy	1.3 years

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The Department concludes that in each of the scenarios evaluated, sufficient capacity exists through 10 years without a new landfill.

- C. Commissioner Findings: The Commissioner finds that MRC’s evaluation of disposal capacity was substantially influenced by its stated need for a landfill under its ownership and control to provide a safety net for its integrated waste management system, rather than a factual analysis of the disposal capacity available within and near the MRC service area both in the short- and long-term periods.

As described elsewhere in this order, MRC plans to implement an integrated waste management system including components that would enhance recycling, composting, and processing of solid waste, and minimize land disposal of waste. The Commissioner supports MRC’s efforts to implement such a system as described in general terms in the application. However, at this point, MRC has neither selected nor committed to a specific system, so MRC is not able to refine its true disposal capacity need. MRC’s application states that it would design its integrated waste management system to accept 180,000 tons per year of MSW generated by the MRC members and other Maine municipalities that currently deliver their MSW to PERC. MRC states that the amount of residue it would need to landfill is likely to range from 16,000 to 89,000 tons per year. MRC also proposes to allow for disposal of 15,000 tons per year of CDD, OBW, and special waste. The Department’s analysis of available short-term and long-term disposal capacity shows there is available disposal capacity for the residue and bypass, and for the CDD, OBW, and special waste. The Commissioner finds that the landfill capacity proposed by MRC is not needed to meet short-term or long-term disposal capacity needs for the amount of residue and bypass MRC expects from its processing facility, or for the amount of CDD, OBW, and special waste MRC proposes to provide for.

MRC’s proposed size range for its planned landfill includes, at the upper end, capacity for the amount of unprocessed MSW (after local diversion of recyclable and compostable material) expected to be generated by facility users (180,000 tons per year). MRC proposes to have the landfill available for the disposal of post-local diversion MSW “. . . either before or even if a processing facility is developed successfully.” The Commissioner finds that the Department supports MRC’s vision of an integrated waste management system and is open to future discussions regarding such a system and any necessary permitting once MRC decides on the components of the system. The Department encourages MRC to

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continue its evaluation of vendors, and encourages the planning efforts of the MRC municipalities.

As shown by the Department’s analysis of disposal capacity available during the short- and long-term, sufficient disposal capacity exists for bypass events that are of reasonable duration from a mixed waste processing facility. The Department’s analysis of disposal capacity available in the short- and long-term also indicates that sufficient disposal capacity exists for disposal of the full amount of unprocessed MSW MRC expects to manage through its integrated waste management system, although the Department does not encourage land disposal of unprocessed MSW. The Commissioner finds that additional capacity is not needed for short-term disposal of MSW generated by the MRC municipalities if a mixed waste processing facility takes longer than MRC expects to become operational, and that additional capacity is not needed for bypass events of a reasonable duration from an operating waste processing facility as described in the application..

7. **CONSISTENCY WITH STATE PLAN, PROMOTING SOLID WASTE MANAGEMENT HIERARCHY**

The state plan for the management, reduction, and recycling of solid waste is based on the waste hierarchy established in 38 M.R.S.A. § 2101 and the state’s goals for recycling, composting, and waste reduction established in 38 M.R.S.A. § 2132. The waste hierarchy creates an order of priority for the state to use as a guiding principle in making solid waste management decisions. From highest to lowest priority, these are: reduction of waste at the source (in amount and toxicity); reuse of waste; recycling of waste; composting of biodegradable waste; waste processing to reduce the volume of waste needing land disposal, including incineration; and land disposal of waste.

- A. Application: MRC states that its vision is consistent with that described in Section II of the state plan, namely a comprehensive sustainable materials management approach, adherence to the waste hierarchy in developing and implementing programs, and expansion of waste reduction and diversion efforts. MRC proposes to develop an integrated waste management system that will increase waste diversion, either by use of a waste processing facility, use of emerging technology, and/or by encouraging MRC member municipalities to divert more wastes at the local and/or regional level. MRC further states its approach is consistent with the state plan because it incorporated figures and data from the state plan into its application and that its plan includes approaches and

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opportunities for diversion of organics from the waste stream. MRC states that its approach is consistent with priorities outlined in the state plan.

Regarding the waste hierarchy, MRC states that its proposal will support reduction, reuse, and recycling of waste by ensuring that minimum tonnage guarantees are not too high and by including sufficient flexibility to allow municipalities to reduce their waste generation, MRC asserts that it will provide support for municipalities to implement waste reduction, reuse, and recycling programs. The size of the proposed but not identified integrated waste management system will be such that it can be supported by delivery commitments municipalities will be able to make. In addition, MRC might encourage municipalities to commit to deliver locally generated or collected recyclable materials to a regional facility.

MRC sees construction and operation of a landfill as a necessary part of its integrated waste management system, stating that it needs land disposal capacity for the types and quantities of waste it might need to landfill in order to obtain financing for the proposed system, and to provide support for the proposed system. MRC states that it also needs to control the landfill capacity. MRC further states that if it does not receive a determination of public benefit, it could not proceed with the integrated waste management system to maximize diversion.

- B. Department Review: The Department asserts that MRC has not effectively explained why it could not proceed with an integrated waste management system without ownership of its own landfill, and that MRC has not yet committed to a specific integrated waste management system. As fully described in Finding of Fact #6, above, the Department's analysis of available capacity for the types of wastes (residuals from a processing facility, unprocessed MSW, and smaller quantities of CDD and special wastes generated by MRC members) indicates sufficient capacity already exists on the local, regional and state-wide level for these wastes without construction of the new landfill proposed by MRC.

MRC states in its application that municipalities are already undertaking substantial efforts to reduce, reuse, recycle, and compost waste, and does not expect the rate of diversion would increase without a regional facility or coordinated regional program. While MRC clearly states its intent to develop an integrated waste management system that includes a secure landfill for residuals from the processing component of the system, it also clearly states the possibility that unprocessed MSW, up to 180,000 tons per year, could be disposed in MRC's

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new landfill, were a public benefit determination to be granted. The Department concludes that this would not be consistent with the waste hierarchy or the state plan. MRC member municipalities' MSW is currently incinerated to produce energy; under the waste hierarchy, incineration of waste is a higher priority method of management than land disposal. The Department strongly encourages MRC to continue to pursue a regional system/facility/approach to increase waste diversion and the processing of MSW to reduce its volume, rather than relying on its own landfill.

- C. Commissioner Findings: The Commissioner finds that sufficient disposal capacity options exist for the disposal of the range of waste types and quantities estimated by MRC, and thus that approval of additional capacity at this time would not be consistent with the state plan or the waste hierarchy. The Commissioner also finds that MRC's proposal for a new landfill that with the potential to accept up to 180,000 tons per year of unprocessed MSW if the other components of its integrated waste management system are not as effective as projected is not consistent with the state plan, is not consistent with the waste hierarchy, and is not consistent with the state's goals for recycling, composting, or waste reduction. It is expected that MRC would work to increase the effectiveness of the components higher on the waste hierarchy, rather than increase disposal of unprocessed MSW. The Commissioner further finds that MRC has not demonstrated that ownership and control of its own landfill is necessary to implement a regional approach to waste management to maximize diversion.
8. NOT INCONSISTENT WITH LOCAL, REGIONAL, OR STATE WASTE MANAGEMENT
- A. Application: As described earlier in this order, MRC proposes to construct a landfill in either Argyle or Greenbush. MRC asserts that it might develop a processing facility to accept mixed waste, located at the landfill site or elsewhere. Alternatively, MRC might rely on local diversion efforts without developing a waste processing facility, and the non-diverted, unprocessed MSW would be landfilled in either Argyle or Greenbush. MRC states that it developed landfill siting criteria with the intent of avoiding the need to develop new collection and transfer infrastructure and to avoid locations that would render existing infrastructure obsolete. MRC states that it intends to maintain consistency with the existing system of local, regional, or state waste collection, storage, transportation, and disposal, but also sees an opportunity to make economic and

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environmental improvements to the existing system, and specifically mentions collection and transportation fuel costs.

MRC states that use of a waste processing facility at the new landfill location would change some collection, storage, transportation and disposal, since some municipalities may decide to discontinue local collection of recyclables, and since transportation of residue from PERC to a disposal site would cease. Under the scenario involving development of a waste processing facility at a site other than the landfill location, MRC states that some collection, storage, transportation and disposal may change, since some municipalities may cease providing local collection/processing of recyclables, which would reduce transportation costs to the municipality. It might also reduce use of some transfer stations, or result in less MSW transport but continued residue transport. Finally, for the scenario involving no waste processing facility, MRC states that the change in MSW delivery location (from Orrington to Argyle or Greenbush) would not be significant enough to change the existing collection, storage, transportation or disposal systems.

- B. Department review: The Department acknowledges that any significant modification of the current arrangement for waste handling and disposal among the MRC communities would result in changes to some aspect(s) of the existing local, regional or state waste management systems. The impacts of those changes and whether they would result in inconsistencies with local, regional or state waste management would depend upon the choices ultimately made by the MRC concerning the components and implementation of a new integrated waste management system. The Department notes that for purposes of the public benefit determination, the relevant standard at hand is that the proposed landfill must be found not to be “inconsistent with local, regional, or state waste collection, storage, transportation, processing or disposal”. The Department’s review therefore, focuses on the proposed landfill, while acknowledging that establishment of some type of recycling/processing facility is also possible. As discussed in further detail in Finding of Fact #6 above, the Department has determined that currently existing landfill capacity is adequate to serve MRC’s disposal needs as envisioned over a broad range of possible scenarios. The Department notes that a variety of potential disposal options exist, including facilities that currently serve local, regional and/or statewide needs. The development of a new landfill, in view of the fact that there are existing waste disposal capacity options within reasonable transportation distances of MRC’s projected operations, is inconsistent with existing local, regional or state waste

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DENIAL)	

collection, storage, transportation, processing or disposal options. The Department further notes that the construction of a new landfill in either Argyle or Greenbush would result in a substantial increase in waste hauling traffic in areas that currently experience little or none.

- C. Commissioner findings: The Commissioner finds that MRC’s proposal for a new landfill is inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal.

BASED on the above Findings of Fact, and subject to the Conditions listed below, the Department makes the following Conclusions:

1. MRC has provided adequate evidence of title, right, or interest in both parcels of property under consideration.
2. MRC, as a regional association comprised of municipal entities, has sufficient legal authority to apply for this determination of public benefit, and the proposed landfill is not subject to the moratorium on future commercial solid waste disposal facilities.
3. Landfill capacity proposed by MRC is not needed to meet short- or long-term capacity needs for: the amount of residue MRC expects from its processing facility; the quantity of CDD, OBW, and special waste MRC proposes to provide for; the disposal of MSW generated by the MRC municipalities if a mixed waste processing facility takes longer than MRC expects to become operational; for waste generated as a result of waste processing facility bypass events of a reasonable duration; or for the full amount of unprocessed MSW MRC expects to manage through its integrated waste management system..
4. Approval of additional disposal capacity at this time would not be consistent with the state plan or the waste hierarchy.
5. MRC’s proposal for a landfill that might accept up to 180,000 tons per year of unprocessed MSW is not consistent with the state plan, is not based on the waste hierarchy, and is not consistent with the state’s goals for recycling, composting, or waste reduction, and MRC has not demonstrated that ownership and control of its own landfill is necessary to implement a regional approach to waste management to maximize diversion.

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DENIAL)

6. MRC's proposal for a new landfill is inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal.

THEREFORE the Department DENIES the above noted application of the MUNICIPAL REVIEW COMMITTEE SUBJECT TO THE ATTACHED CONDITION, and all applicable standards and regulations.

The invalidity or unenforceability of any provision, or part thereof, of this license shall not affect the remainder of the provision or any other provisions. This license shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

DONE AND DATED AT AUGUSTA, MAINE, THIS _____ DAY
OF _____, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
PATRICIA W. AHO, COMMISSIONER

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: April 2, 2014

Date of acceptance: April 24, 2014

Date filed with Board of Environmental Protection:

XKK77580.

DRAFT