

November 5, 2015

Julie Churchill, Asst Dir, Office of Innovation and Assistance  
Maine Department of Environmental Protection, Ray Building  
28 Tyson Drive  
Augusta, Maine 04333

**RE: MRC and Fiberight pending application DEP# S-022458-WK-A-N**

Dear Ms. Churchill:

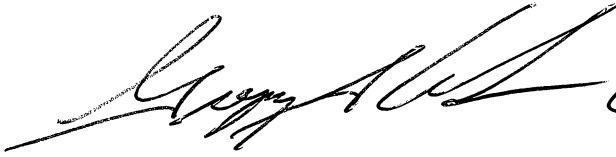
We write for the purpose of answering the Department's request for clarification with respect to the intentions of the co-applicants with respect to the acceptance of MSW at the Hampden facility that was generated outside the state of Maine.

Our pending solid waste processing facility application (Attachment 4) includes a copy of the Development Agreement entered into between Fiberight and MRC dated February 4, 2015. Article 3.1 in the Development Agreement provides a structure for the principle terms of the Master Waste Supply Agreement. Section 3.1.l of the Development Agreement provides that the Master Waste Supply Agreement will prohibit acceptance of out of state MSW. A draft Master Waste Supply Agreement has been agreed to in principle by Fiberight and MRC and the document has been provided to the MRC member communities for feedback. Attached to this letter is an excerpt from the draft Master Waste Supply Agreement regarding the prohibition of acceptance of out of state MSW. The execution copy of this agreement will modify the definition of MSW as follows: "MSW" shall mean ~~municipal~~ solid waste as defined in M.R.S. §1303-C (29) and Municipal Solid Waste as defined in Maine Solid Waste Management Rules Ch. 400.1. (NNNN).

Article 3.2 in the Development Agreement provides a structure for the principle terms of the Site Lease. Section 3.2 g of the Development Agreement provides that the Site Lease will prohibit acceptance of out of state MSW. A draft Site Lease has been agreed to in principle by Fiberight and MRC and the document has been provided to the MRC member communities for feedback. Attached to this letter is an excerpt from the draft Site Lease Agreement regarding the prohibition of acceptance of out of state MSW. The execution copy of this agreement will modify the definition of MSW as follows: "MSW" ~~means municipal solid waste~~ shall mean ~~municipal~~ solid waste as defined in M.R.S. §1303-C (29) and Municipal Solid Waste as defined in Maine Solid Waste Management Rules Ch. 400.1. (NNNN).

The clear intent of the co-applicants is to contractually agree that MSW accepted for processing at the facility must have been generated from domestic and commercial sources within the State of Maine. The facility will not accept MSW generated outside of the State of Maine, nor will it accept residuals from the processing of MSW that was generated outside of Maine. The co-applicants are open to further discussion on additional means to document their intent.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Greg Louder". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Greg Louder, MRC

A handwritten signature in black ink, appearing to read "Craig Stuart-Paul". The signature is more compact and stylized than the one to its left, with a prominent circular loop at the end.

Craig Stuart-Paul, Fiberight, LLC

Master Waste Supply Agreement - Except

REVIEW DRAFT  
October 9, 2015

PRELIMINARY DRAFT  
FOR DISCUSSION PURPOSES ONLY

"Law" means a federal state or local statute, ordinance, regulation, rule or order issued by a governmental authority with jurisdiction over its subject matter.

"Lease Option" means the option dated \_\_\_\_\_ granting to the Company the option to enter into the Site Lease.

"MRC" shall mean the Municipal Review Committee, a Maine nonprofit corporation.

"MRC/Company Agreements" shall have the meaning ascribed to it in Article 13.

~~MSW~~ "MSW" shall mean municipal solid waste as defined in 38 M.R.S. §133-C(29).

"Observed Holidays" shall mean New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.

"Party" shall mean a party to this Agreement and "Parties" shall mean the both parties to this Agreement.

"PERC Partnership" means the Penobscot Energy Recovery Company Limited Partnership, a Maine limited partnership which owns and operates the PERC Plant.

"PERC Plant" means the waste-to-energy plant in Orrington, Maine owned by the PERC Partnership with which the Charter Municipalities have contracted to dispose of their MSW through March 31, 2018 pursuant to the Existing PERC Agreements.

"Performance Standards" shall mean the standards referenced in Section 7.4 of the Site Lease.

"Performance Test" shall mean the test described in Section 7.4 of the Site Lease.

"Project Site" means the site upon which the Facility is to be constructed and operated as more particularly described in the Site Lease.

"Residuals" shall mean [solid] materials that are byproducts of the processing of Acceptable Waste such as rock, certain plastics, textiles, rubber, and other materials that cannot be incorporated into products recovered at the Facility for sale. "Single Stream Recycling" shall mean residential or business segregated recyclable materials that are mixed together by a household or business and that are collected and delivered to the Facility for recycling purposes.

"Site Lease" shall mean a lease of the Project Site from the MRC to the Company, which is anticipated to be executed after the Effective Date and to be on substantially the terms set forth in Exhibit D.

"Site Option" means the option to enter into the Site Lease from the MRC to the Company dated \_\_\_\_\_, 2015.

"Term" shall have the meaning given to such term in Article 1 of this Agreement.

"Tipping Fee" shall mean the fee as set forth in Article V paid to the Company for accepting MSW delivered to the Facility.

"Unacceptable Waste" shall have the meaning set forth in Exhibit A.

**PRELIMINARY DRAFT  
FOR DISCUSSION PURPOSES ONLY**

remove such Unacceptable Waste promptly from the Facility and make alternative arrangements for handling and disposal in accordance with Law and directives of any regulatory agency having jurisdiction. If the Company does not identify the presence of Unacceptable Waste before the Hauler leaves the Site, then the Company agrees that it will properly dispose of such Unacceptable Waste, at the Company's sole cost and expense; provided, however, that the Company reserves the right to pass the handling and disposal expenses through to any Hauler reasonably identified by video evidence or otherwise as having delivered such Unacceptable Waste. In all such cases, the MRC shall receive copies of any notices or invoices sent to such hauler. The Company agrees to cooperate in good faith with the MRC to make arrangements for management and disposal of categories of MSW not processible by the Facility that would have been accepted if delivered to the PERC Plant under the Existing PERC Agreements.

*X*  
**4.4 Right to Accept Other MSW.** The Company may accept MSW or other solid waste allowed under the conditions of its permits from any source other than the Joining Members so long as (i) such MSW was generated within the State of Maine, (ii) its acceptance by the Company will not interfere with the ability of Joining Members to deliver MSW under this Agreement, and (iii) receipt of such MSW otherwise complies with the terms of this Agreement. Title to all MSW transfers to the Company upon delivery to the Facility. Notwithstanding the foregoing, deliveries of MSW to the Facility by or on behalf of Joining Members shall have priority over deliveries from other customers.

**4.5 Bypass of MSW after Commercial Operation Date.** The Company shall use reasonable commercial efforts to accept and process all Acceptable Waste delivered by or for the account of Joining Members on or after the Commercial Operation Date at the Facility and shall avoid or minimize bypassing such waste to the Back-up Facility,. The Company may bypass deliveries of Acceptable Waste by Joining Members after the Commercial Operation Date only to the extent that (i) the Facility is unable to accept MSW due to an Event of Force Majeure, limits on capacity resulting from an outage, a full tip floor, the need to avoid nuisance impacts, permit limits or other factors beyond its reasonable control; and (ii) MSW is not being accepted from customers other than Joining Members, it being understood and agreed that Joining Members shall have first priority for acceptance of delivered waste.

In the event that it intends to bypass waste deliveries by or for the account of Joining Members, the Company shall provide notice to the MRC and inform affected Joining Members as soon as possible, and shall cooperate with the MRC to coordinate the use of the Back-up Facility by the Joining Members. Joining Members shall pay the Tipping Fee with respect to Bypass Waste as if it were Acceptable Waste delivered to the Facility. The Company shall pay all extra transportation costs, disposal fees or other costs, if any, in connection with delivery of Bypass Waste to the Back-up Facility.

Site Lease - Except

REVIEW DRAFT  
October 9, 2015  
PRELIMINARY DRAFT  
FOR DISCUSSION PURPOSES ONLY

**"Initial Term"** has the meaning set forth in Section 3.

**"Joining Member"** means a municipality or other entity that has entered into a Joinder Agreement with the MRC pursuant to which it is obligated to deliver waste to the Facility for processing under the Master Waste Supply Agreement.

**"Landlord"** has the meaning set forth in the Preamble hereof.

**"Lease"** or **"Site Lease"** means this site lease.

**"Leased Premises"** has the meaning set forth in Section 2 and **Exhibit A**.

**"Master Waste Supply Agreement"** means the Master Waste Supply Agreement entered into by the Landlord and the Tenant dated [December 31, 2015] pursuant to which Joining Members will deliver waste to the Facility for processing or any successor agreement.

**"MSW"** means municipal solid waste.

**"Out-of-State Waste"** means MSW generated outside of the State of Maine.

**"Performance Standards"** means the standards referenced in Section 7.4.

**"Performance Test"** means the test described in Section 7.4.

**"Permitted Uses"** has the meaning set forth in Section 2 hereof.

**"Pre-Construction Condition"** means the physical and environmental condition of the Leased Premises on the Effective Date.

**"Project Site"** has the meaning set forth in Section 2 and **Exhibit A**.

**"Property"** has the meaning set forth in the Preamble.

**"Property Permits"** has the meaning set forth in Section 5.

**"Related Entity"** has the meaning set forth in Section 10.3.

**"Rent"** has the meaning set forth in Section 4 and **Exhibit D** hereof.

Site Lease - Excerpt

"*Substantial Damage*" has the meaning set forth in Section 23.

"*Tax Incentives*" means credits, deductions, rebates or other measures granted by a taxing authority which have the effect of reducing the taxes or assessments which otherwise would be imposed on the Tenant or its Affiliates, business partners or other entities that would realize the benefits of such incentives; the Leased Premises; or the Project; by such taxing authority.

"*Tenant*" has the meaning set forth in the Preamble hereof.

"*Tenant Permits*" has the meaning set forth in Section 6.

"*Tenant's Work*" has the meaning set forth in Section 7 and **Exhibit B**.

"*Term*" has the meaning set forth in Section 3.

## SECTION 2.0 DEMISE; DESCRIPTION OF THE LEASED PREMISES; PERMITTED USES

The Landlord leases to Tenant, and Tenant leases from the Landlord, that portion of the Property more particularly described in **Exhibit A** attached hereto (the "*Project Site*"), together with appurtenant rights thereto, to be used in common with others including the Landlord, (i) to use the private road leading from Coldbrook Road to the Project Site shown on said plan and described in **Exhibit A** to access the Project Site and for all other purposes for which public ways may now or hereafter be used, (ii) to drain stormwater from the Project Site and the private road identified in subsection (i) above and to tie into stormwater facilities, poles, wires, utilities, utility extensions and interconnections, metering facilities, management facilities, and other similar equipment, lines, facilities and items on the Property, all as further shown on the aforesaid plan, and (iii) to install, construct, use, repair, maintain, replace and relocate from time to time additional cables, conduits, pipes, pumps, poles, wires, utilities, utility extensions and interconnections, metering facilities, management facilities, and other similar equipment, lines, facilities and items on the Property, in each case on the portions of the Property more particular shown on the plan referenced in and described in **Exhibit A** (such locations identified in subsections (i), (ii) and (iii) above, together with Project Site, the "*Leased Premises*"). The Leased Premises are demised for the purposes of permitting, constructing, operating, and maintaining the Facility described on and generally in accordance with **Exhibit B** (the "*Permitted Uses*"). The Tenant shall own the Facility, which shall be and remain the personal property of the Tenant, and it shall not become a fixture on the Leased Premises. Only the

{EP - 01835164 - v17 }

Site Lease - except

**EXHIBIT B**

**DESCRIPTION OF FACILITY  
AND  
DESCRIPTION OF TENANT'S WORK**

**Description of Tenant's Work**

Tenant will design, acquire permits and approvals for, acquire financing for, construct, start-up, test, commission and operate the Facility on the Leased Premises.

**Description of Facility**

[To be provided]

**Process and Facility Description**

[To be provided]

**Permitted Uses**

The Leased premises shall be used solely for the purpose of constructing, operating and maintaining a mixed MSW conversion and processing facility and other uses reasonably incident thereto, provided that

- (i) all uses must comply with applicable permit conditions and applicable laws, rules and regulations;
- (ii) no use may create a nuisance on or about the Property;
- (iii) no use shall result in excessive odor or fugitive litter;
- (iv) no MSW or other products shall be stored outside of designated enclosed areas.

The acceptance for storage or processing of Out-of-State Waste shall not be a Permitted Use.

---