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June 20, 2014

Karen Knuuti, Environmental Specialist
Bureau of Remediation and Waste Management
Department of Environmental Protection
Eastern Maine Regional Office
106 Hogan Road
Bangor, Maine 04401

***Re: Municipal Review Committee, Inc.'s Application for Public Benefit
Determination – Prohibition on Approval of New Commercial Solid Waste
Disposal Facilities***

Dear Karen:

This letter is intended to supplement our earlier letter to the Department, dated June 10, 2014, regarding the applicability of the State's prohibition on the approval of new commercial solid waste disposal facilities (i.e., 38 M.R.S.A. § 1310-X) to MRC's pending proposal.

In our prior letter, we noted that Maine law prohibits the Department from approving applications for new commercial solid waste disposal facilities after September 30, 1989. The law contains only a few, very narrow, exceptions. As we detailed, the Department is prohibited from approving MRC's Application for Public Benefit Determination because MRC does not fit within any of those narrow exceptions. We would like to supplement our prior letter with the following additional support for our position.

Under general rules of statutory construction, statutory exemptions must be narrowly and strictly construed and any uncertainty as to the scope of the exemptions is construed against the exemption. For example, with regard to tax exemptions, the Maine Law Court has held that "all doubt and uncertainty as to the meaning of the statute must be weighed against exemption." Hurricane Island Outward Bound v. Town of Vinalhaven, 372 A.2d 1043, 1046); Humboldt Field Research Institute v. Town of Stueben, 2011 ME 130, ¶ 5, 36 A.3d 873, 875. Similarly, in the context of openness in government, the Law Court has held that it is a well-settled principle that Freedom of Access Act exemptions are to be narrowly construed. Citizens Communications Co. v. Attorney General, 2007 ME 114, ¶ 9, 931 A.2d 505, 505.

The well-settled rule that exemptions be strictly and narrowly construed applies in this case. The ban on solid waste disposal facilities is intended to be very broad. That intention is evidenced by the fact that the Legislature chose to define the term "commercial solid waste disposal facility" to include *all* solid waste disposal facilities without regard for whether they are actually "commercial," as that term is commonly used. While the Legislature included a few narrow exemptions, the exceptions are very specific. The exemptions do not encompass broad classes or groups. The Legislature did not simply draw a distinction between "commercial" and "non-commercial." Rather, it declared *all* solid waste disposal facilities banned, except for a very few. Just as exemptions are construed narrowly in order to foster the collection of tax revenue and to promote openness in government, so too must the exemptions from the solid waste disposal ban be construed narrowly so as to support implementation of, among other things, the State's solid waste hierarchy.

MRC argues that it fits under the exemption set forth in 38 M.R.S.A. § 1303-C(6)(B-2) as "a solid waste facility that is owned by a municipality under section 1305." In our June 10, 2014 letter to the Department, we explained, in detail, why MRC does not fit under that particular exemption. We would supplement that argument by further noting that the exemption must be construed narrowly and that any uncertainty as to its applicability must be weighed *against* finding MRC's proposal exempt.

It is also a "well established principle of statutory construction that a statute must be interpreted in light of the real purpose of the legislation." Eagle Rental, Inc. v. City of Waterville, 632 A.2d 130, 131 (Me. 1993). The Declaration of Policy accompanying the Maine Hazardous Waste, Septage and Solid Waste Management Act proclaims that "it is in the public interest to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management. 38 M.R.S.A. § 1302. Land disposal is at the absolute bottom of the list of solid waste management priorities. Construing the ban on solid waste facilities broadly and any exceptions from that ban narrowly advances the stated policy. To do otherwise would be contrary to public policy

Importantly, the Maine Legislature also declared that the provisions of the Maine Hazardous Waste, Septage and Solid Waste Management Act "shall be construed liberally to address the findings and accomplish the policies in [that Act]." 39 M.R.S.A. § 1302. One cannot simultaneously liberally construe both the ban on commercial solid waste disposal facilities and the exemptions from that ban. In keeping with the Legislature's Declaration of Policy and the real purpose of the legislation, the ban must be favored for liberal interpretation, while the exemptions must be strictly construed. Indeed, to do the opposite, as MRC seems to suggest, would impermissibly narrow the ban and violate the Legislature's stated policy.

Finally, we have spent considerable time pouring over MRC's corporate documents and authorizations. It seems obvious that MRC was formed for reasons related to reviewing its members' on-going relationship with PERC, hence the name "Municipal *Review* Committee." While it is true, as MRC argues, that Regional Associations may form for the purposes of

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“owning, constructing or operating a solid waste disposal facility, MRC was *not* so formed. MRC is now trying to contort its pre-existing organizational and operating structure to match one of the limited exceptions in order to avoid the strictures of the ban on commercial solid waste disposal facilities. For the reasons set forth above and in our June 10, 2014 letter, MRC cannot succeed.

Please let me know if you have any questions or would like me to further elaborate on the Town's position in this matter.

Very truly yours,

FARRELL, ROSENBLATT & RUSSELL

A handwritten signature in black ink, appearing to read "R. Huber", with a stylized flourish at the end.

Roger L. Huber

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