Angus Jennings <townmanager@hampdenmaine.gov>

Fwd: Letter from ENR Committee

1 message

Rosemary Bezanson <adminasst@hampdenmaine.gov> Thu, Jul 14, 2016 at 10:49 AM
To: Angus Jennings <townmanager@hampdenmaine.gov>, Myles Block <codeenforcement@hampdenmaine.gov>

This came to Rosemary this morning so I'm forwarding it along to both of you....
Denise

-------- Forwarded message --------
From: **Patricia Mayo** <acorky4u@roadrunner.com>
Date: Thu, Jul 14, 2016 at 10:43 AM
Subject: Letter from ENR Committee
To: adminasst@hampdenmaine.gov

To: Planning Board Members

The following is a link to the letter from the ENR Committee to Julie Churchill at the MDEP. My husband and I want to make sure that this is included with the Planning Board's information that is needed as they continue the review of the proposed Fibright facility.

http://www.maine.gov/dep/ftp/MRC/draft_license_comments/CommentsofConcernDRAFTlicenseENRLegislativeCommittee7-5-16.pdf

Thank you,

Patricia Mayo
Ernest Mayo

82 Sidney Blvd.
Hampden, Maine 04444

--
Rosemary Bezanson
Administrative Assistant
Town of Hampden
207-862-4500 ext. 146

MAINE STATE LEGISLATURE
AUGUSTA, MAINE 04333-0002

July 5, 2016

Ms. Julie M. Churchill, Assistant Director
Office of Innovation and Assistance
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Comments on MRC/Fiberight Draft Permits

Dear Ms. Churchill:

Please accept these comments on the Fiberight/MRC draft permits for a solid waste facility in Hampden, Maine. We are writing because we are very concerned that the draft permits do not reflect an accurate or consistent interpretation of two policy issues of the utmost importance addressed in statute and rule. Specifically, we are troubled by the manner in which the draft permits address the solid waste hierarchy and the financial capacity requirements under Maine law.

1. The Fiberight project does not follow the waste management hierarchy.

   The Fiberight process requires that organics continue to be mixed into MSW, whereas the Legislature has directed otherwise. Fiberight, rather than the Department, is requiring unilateral decision-making authority over the extent to which towns can improve and increase their organics separation programs. It also proposes to reduce the volume of waste by 70-80%. This is in stark contrast to the PERC facility, which reduces the volume of waste by approximately 90%, leaving two-three times as much material being landfilled than is currently the case.

   In addition, between the expiration of PERC contracts in 2018 and Fiberight's commercial operation date, the Master Waste Supply Agreement allows all waste to be landfilled at the Crossroads Landfill, in Norridgewock, under a 10-year agreement with Waste Management. The permit, as currently drafted, approves this as compliant with the solid waste hierarchy in 38 MRSA, § 2101. It is our position, consistent with the intent of the statute and during our tenure with the Energy and Natural Resources Committee, that allowing this open ended landfilling of Fiberight's waste would completely undermine the solid waste hierarchy, which is no longer a guideline, but statutory law. Landfilling is, by statute, the last of the solid waste management options that should be allowed. Other entities that control waste within the State of Maine are required to satisfy the hierarchy; Fiberight and MRC must be held to the same standard. If Fiberight and MRC are not held to this standard, this could effectively re-open the requirement as it has been applied to all other facilities governed by this statute.

   I respectfully request that the Department require a solution to Fiberight's inability to accept waste by the time the agreements with PERC expire, a solution that satisfies the hierarchy, and not issue a permit until that solution is in place and can reflect compliance with this requirement. We expect the Department to hold the MRC and Fiberight to compliance with the hierarchy as set forth in statute, just as it has held every other solid waste facilities in Maine.

2. The financial submissions are insufficient to demonstrate that Fiberight and MRC have reasonable access to the funds necessary to design, construct, operate, and maintain the proposed facility.

   It is my understanding of the financial ability requirements that, even where final financing cannot be put in place until the permits are issued, a *firm commitment* by a *financial institution* to a *specific dollar amount* is

typically required before an application can even be accepted as complete for processing, much less before a permit is issued. Yet here, the financial information submitted by both Fiberight and MRC does not provide any assurance whatsoever that they have access to sufficient funds to build and operate in compliance with the law. This problem is compounded by the fact that the design proposal has been a moving target with no firm design on which to base cost estimates.

Department Rule Chapter 400 requires an applicant for a solid waste facility to provide financial assurance that "affirmatively demonstrates that the applicant has the financial ability to undertake the proposed project." This is required to include evidence that the funds "are or will be available to design, construct, operate, maintain, close [...] the solid waste facility[.]"

The only funding sources specifically contemplated in the rules are financial institutions and self-financing. In both circumstances, an actual commitment to fund the project with a specified amount of dedicated funds and authorization from the financial institution, or in the case of MRC, the equity owners of the Tip Fee Stabilization Fund, to use those funds for the specific purposes contemplated by the applicant are required. Here, in addition to not using a regulated financial institution, Fiberight also fails to submit the type of reasonable commitment of a specific dollar amount that all other solid waste facilities have been held to under the law.

Even though a draft permit has been issued, it remains entirely unclear whether MRC and Fiberight have legitimate access to funds for this project, and while an actual financial closing need not occur until after permits have issued and closer to construction, we are not aware of any other project in the State that has been able to obtain a permit with such significant uncertainty outstanding.

We request that the Department require that Fiberight and MRC both affirmatively demonstrate that they each have full access, including proper authorization, to a commitment of the specific amount of funds necessary to construct and operate the facility. Such demonstration would typically involve instruments, such as signed contracts with terms, letters of credit, and the like that have been vetted by the Department. This is a key solid waste facility proposed in the State of Maine and warrants careful and consistent application of these (and all) requirements.

In summary, we request that the Department require that the Fiberight facility be required to comply with Maine's solid waste hierarchy, including during the "bridge" period, and that the applicants be required to provide specific financial assurance <u>before</u> a final permit is issued, as has been required of all solid waste facilities in Maine and as is the letter and plain intent of the statute, Department rules, and the Legislature.

Sincerely,

Richard H. Campbell
State Representative (District 130)
Environment & Natural Resources Committee Lead

Thomas B. Saviello
State Senator (District 17)
Environment & Natural Resources Committee Chair

Joan W. Welsh
State Representative (District 94)
Environment & Natural Resources Committee Chair

Robert S. Duchesne
State Representative (District 121)
Environment & Natural Resources Committee Member

Denise Patricia Harlow
State Representative (District 36)
Environment & Natural Resources Committee Member

Benjamin M. Chipman
State Representative (District 40)
Environment & Natural Resources Committee Member

Dustin Michael White
State Representative (District 146)
Environment & Natural Resources Committee Member

Andrew Russell Buckland
State Representative (District 113)
Environment & Natural Resources Committee Member