



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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October 3, 2018

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Re: Application for a Determination of Public Benefit for a New or Expanded Solid Waste Disposal Facility (Application), #S-010735-W5-XY-N – Follow-up Comments

Dear Mr. McGown and Ms. Browne:

The Department has reviewed the September 14, 2018 response to comments associated with Department license application #S-010735-W5-XY-N (“Application”) and has the below noted follow-up comments. The Department’s initial comments on the Application were dated August 9, 2018. Where follow-up comments are listed, the Department has reiterated the initial August comment, followed by the applicant’s September response, and the Department’s remaining comments at this time.

1. *Section 1.4, Materials Managed at the Crossroads Facility.*
 - c. As a condition of the modified Phases 9, 11 and 12 and Phase 8 Public Benefit Determination License #S-010735-W5-UP-N, dated March 29, 2001, WMDSM is required to notify the Department, in part, when the amount of non-remediation special waste accepted from out-of-state generators is more than 25 percent of the annual total of waste disposed at the Facility or when all wastes accepted from out-of-state generators is more than 35 percent of the annual total of waste disposed at the Facility to ensure that disposal capacity is available for Maine generated wastes. Is it WMDSM’s intent to propose a similar reporting threshold for the proposed expansion if it is approved?

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Response: *WMDSM did not intend to propose a similar reporting threshold for Phase 14, however, the same reporting threshold would be an acceptable condition for the life of the proposed Project.*

Follow-up Comment: Based on the Semi-Annual Capacity Report submitted to the Department on September 21, 2018, WMDSM has accepted more than 35 percent (%) of the annual total of waste disposed from out-of-state generators during 2016 and 2017. In 2016, WMDSM accepted 41.1% from out-of-state generators and in 2017, WMDSM accepted 56.7% from out-of-state generators. In a March 20, 2018 letter to the Department, WMDSM notes that this data “is not representative of historical operations and is not expected to continue for a significant period of time.” In addition, WMDSM notes that there are disposal constraints at other landfills in New England and is seeking authorization to increase disposal capacity at its facility in New Hampshire. Further, WMDSM specifies that there is a current effort to develop rail transfer capacity to transport waste to more distant disposal sites with excess capacity. WMDSM should provide an explanation of why the above noted situation with out-of-state waste acceptance is not representative and not expected to continue for a significant period of time as well as provide an update on the above noted initiatives.

- d. WMDSM notes that it “has not sought to expand its MSW customer base beyond the region it has traditionally served” based on the fact that landfilling is the lowest priority for solid waste management in Maine. How can WMDSM expand its recycling services throughout its service area and beyond, if its customer base is limited to the communities served by MSW collection?

Response (partial): *WMDSM has worked to facilitate recycling in the communities served by MSW collection through its Single-Sort Recycling Program and other initiatives described in Section 3.0 of its Application. Many of these initiatives utilize existing infrastructure that is in place as part of WMDSM’s MSW collection services, including the transfer station located at the Crossroads Landfill, as well as other regional collection locations. WMDSM believes it is appropriate to focus these initiatives on the communities currently served by WMDSM to maximize their effectiveness. After assessment of the effectiveness of the initiatives described in its Application, WMDSM will evaluate whether there are opportunities to expand the geographic reach of the programs. WMDSM does not think it would be appropriate to expand its recycling services into areas where its efforts would be duplicative, would undermine the effectiveness of existing local or regional recycling programs or where local communities have not requested our services and therefore has not sought to do so.*

Follow-up Comment: In the above September 14, 2018 response, WMDSM asserts that where local communities have not requested recycling services, WMDSM does not find it appropriate to expand its services. Further, WMDSM asserts in its response to comment 12c., page 14, that it “does not intend to landfill potential

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recyclables” and proposes to rely on its current proposals to avoid it. Given this, WMDSM should outline how it will determine that the MSW accepted at the facility is recycled to the maximum extent practicable.

2. *Section 2.1, Landfills Play an Essential Role in Management of the State’s Solid Waste.* WMDSM should provide a copy of their contractual agreements with MMWAC and Fiberight as part of the record.

Response: *WMDSM objects to providing copies of contractual agreements. The terms of such agreements (including pricing) are proprietary and their disclosure would place WMDSM at a competitive disadvantage. It is also not clear what relevance the contract terms have to the applicable review criteria.*

Follow-up Comment: The contractual agreements should be provided and will assist the Department in understanding how WMDSM serves to promote the solid waste management hierarchy regarding the processing and incineration of MSW (page 1 of Application). WMDSM notes on page 16 of the Application that it “accepts MSW during times of limited capacity at MMWAC (i.e., summer months) and provides additional MSW to MMWAC during downturns in volume (i.e., winter months).” In addition, WMDSM accepts residuals and bypass from the operating MMWAC facility and will accept residuals and bypass from the Fiberight facility once operational. WMDSM also notes that these arrangements are critical to the long-term success of both MMWAC and Fiberight (page 21 of Application). Pricing and other proprietary information can be redacted from the agreements as necessary. Additionally, WMDSM should provide an update on their discussions with Fiberight regarding the establishment of an arrangement to supply MSW to Fiberight during off-peak months.

3. *Projected Capacity and Fill Rate of the Proposed Phase 14 Expansion.*
 - a. WMDSM notes in their Preliminary Information Report, dated December 20, 2017, that the estimated net capacity of the proposed Phase 14 expansion is 6 million cubic yards assuming an average waste placement rate of 400,000 tons per year. However, the Application specifies a proposed capacity of 7 million cubic yards based on an average waste placement rate of 450,000 tons per year. A clarification should be made.
 - b. In a September 18, 2018 letter to the Department in response to comments filed by NEWSME Landfill Operations, LLC, Verrill Dana LLP notes that the proposed Phase 14 Expansion is being designed at a similar fill rate as Phase 8 (455,000 tons per year). Department records indicate that WMDSM’s disposal rate has ranged from a low of 239,273 tons in 2012 to a high of 447,097 tons in 2017 with a 5-year average annual disposal rate from 2013 to 2017 of 326,946 tons and 10 year-average annual disposal rate from 2008 of 2017 of 297,606 tons. For clarity, we have illustrated the basis for our calculation below in Table 1. Given this varying range and WMDSM’s comment that the current out-of-state disposal rates are not expected to continue,

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please further substantiate how 450,000 tons was selected as the projected fill rate. It is our understanding that this design rate takes into consideration annual variability in disposal rates and new capacity needed to account for residuals and bypass from the Fiberright facility. A clarification should be made.

Table 1 – Summary of Waste Disposal Rates

| Year | Semi-Annual In-State Waste Received (tons) | Total In-State (tons) | Semi-Annual Out-of-State Waste Received (tons) | Total Out-of-State (tons) | Total Waste Received (tons) |
|--------------------------------|--|-----------------------|--|---------------------------|-----------------------------|
| 2008 | 113,188 | 244,208 | 29,191 | 63,057 | 307,265 |
| | 131,020 | | 33,866 | | |
| 2009 | 83,287 | 182,746 | 33,779 | 83,200 | 265,946 |
| | 99,459 | | 49,421 | | |
| 2010 | 91,108 | 195,436 | 34,782 | 62,940 | 258,376 |
| | 104,328 | | 28,158 | | |
| 2011 | 85,506 | 207,138 | 33,496 | 63,333 | 270,471 |
| | 121,632 | | 29,837 | | |
| 2012 | 97,200 | 206,284 | 23,294 | 32,989 | 239,273 |
| | 109,084 | | 9,695 | | |
| 2013 | 92,044 | 194,256 | 35,787 | 95,778 | 290,034 |
| | 102,212 | | 59,991 | | |
| 2014 | 94,890 | 221,575 | 50,408 | 78,877 | 300,452 |
| | 126,685 | | 28,469 | | |
| 2015 | 92,467 | 197,874 | 23,339 | 47,929 | 245,803 |
| | 105,407 | | 24,590 | | |
| 2016 | 84,575 | 206,910 | 36,428 | 144,432 | 351,342 |
| | 122,335 | | 108,004 | | |
| 2017 | 90,408 | 193,704 | 116,590 | 253,393 | 447,097 |
| | 103,296 | | 136,803 | | |
| 5-Year Sum (2013-2017) (tons) | | | | | 1,634,728 |
| 5-Year Average (tons) | | | | | 326,946 |
| 10-Year Sum (2008-2017) (tons) | | | | | 2,976,059 |
| 10-Year Average (tons) | | | | | 297,606 |

To allow a reasonable time for your response and our thoughtful consideration of those responses, the Department wishes to extend its timeframe for a final decision to November 16, 2018. We would appreciate your agreement with this date. Please confirm in writing whether

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this date is agreeable to you. Please contact me at (207) 287-7885 or Linda.J.Butler@maine.gov if you have any questions.

Sincerely,



Linda J. Butler
Licensing and Compliance Specialist
Division of Technical Services
Bureau of Remediation and Waste Management

cc: David Burns, DEP, Director, Bureau of Remediation and Waste Management
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