

Janelle, Felice

From: Kathy Hubert <Kathyhubert@icloud.com>
Sent: Thursday, July 07, 2016 5:06 PM
To: Janelle, Felice
Subject: Make Toxic Trash Incineration As Safe As Possible: Rulemaking comment for RSA 125-C:10-c

NOTE: This message was also sent by John Lunn, Newport, NH; Sharon Peralta, Springvale, ME; Pamela Smith, Chichester, NH; Stephanie Scherr, Fitzwilliam, NH; Diane Varney-Parker, Mason, NH; Rep. Mel Myler, Contoocook, NH; Michelle Scott, Mason, NH

To the New Hampshire Department of Environmental Services,

I am deeply concerned about the lifting of New Hampshire's ban on incinerating construction and demolition waste. The ban was passed in 2007 for very good reasons: the waste wood stream is contaminated with lead-painted wood and with wood treated with other toxic chemicals. Exposures to incinerator pollution and to these hazardous substances threaten the health of New Hampshire residents. What's more, burning trash does not make it disappear. Incineration pollutes the air and creates toxic ash that must be buried.

Given these risks, it's imperative that DES writing strong rules that include the following protections:

1. In addition to inspections at the manufacturing site, implement secondary inspections at the incinerator itself. At both places, these inspections should pull uncontaminated debris for disposal.
2. Require certification of C&D wood sources by an independent 3rd party, again paid for by the combustion facility.
3. Implement unscheduled DES inspections to ensure incinerators are in compliance with all rules. These inspections should be paid for by the company.
4. Ban incinerators from accepting fuel that is not in compliance, and enforce that ban.
5. Continuously monitor dioxin emissions to ensure they are constantly in compliance with all standards.

Finally, we ask that there be no cost burden to taxpayers. I urge you to take these protective measures into consideration when writing these rules.

Kathy Hubert
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Janelle, Felice

From: Mike & Janet Ward <jwardnh@comcast.net>
Sent: Tuesday, July 05, 2016 9:11 AM
To: Janelle, Felice
Subject: re: Comments on DES Stakeholders Meeting on June 30 and recommended invitees for the next Stakeholders Meeting

Dear Ms. Janelle,

As I noted in my remarks at the June 30 Stakeholders Meeting, HB 1428 opens the door to increased importation of C&D and, once the so-called "clean" wood component is sorted out, leads to an increase in the landfilling of those elements of the imported C&D deemed not fit to be incinerated. I do not see how this benefits the citizens of NH who will be pressed to address the need to provide landfill space for an unnecessary stream of rejected C&D. I say "unnecessary" because Wheelabrator could simply continue to burn relatively inexpensive gas from November until April as it is currently doing. Only the desire to increase revenue on the part of ReEnergy and Wheelabrator at the expense of NH citizens seems to have inspired the creation of HB 1428. Also, I do not see what would prevent other incinerators from applying for permission to burn this C&D component.

As noted at the June 30 meeting, there were many Stakeholders who should have been present and should be invited to the next Stakeholders Meeting. They include:

Tom Irwin of the Conservation Law Foundation as well as other representatives of the NH Lead Poisoning Prevention Task Force

Representatives from the NH Department of Health and Human Services, Public Health Division

The Legislative Committee of Conference, in particular Representative Lynn Ober, its chair

Town Solid Waste and Recycling Programs

The NH Medical Society

Representatives from all NH environmental protection groups with which DES is well acquainted including the Sierra Club, the Society for the Protection of NH Forests, the Nature Conservancy, Conservation NH, NH Audubon, and NH Sustainable Energy.

Thank you.

Janet Ward

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RECEIVED
NEW HAMPSHIRE

JUL 18 2016

AIR RESOURCES DIVISION

Mr. Craig A. Wright, Director
NHDES Air Resources Division
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

July 12, 2016

Rulemaking, House Bill 1428/381, and limited use of processed wood from construction and demolition debris.

Dear Mr. Wright,

Per the stakeholders' meeting held on June 30, 2016, your division has asked for comments and recommendation for proposed rules, implementing limited use for burning processed wood from construction and demolition debris.

At the outset, it must be noted that to do so is contrary to state policy, which prohibits the use of such materials in this manner; therefore, any proposed rules to go before the House and Senate Legislative Committee on Rules must be drafted very carefully and with concern so that there will not be an increase in air emissions.

The language adopted in the committee of conference report (amended *HB 1428*) cites that such processed wood from construction and demolition debris ("c & d wood debris") used at a specific stationary air source ("the Concord Facility") shall not be less stringent than federal rule outlined in the Environmental Protection Agency's "Non-Hazardous Secondary Materials Rule", *40 CFR, Section 241.4(a)(5)*. It is important to note that this rule merely addresses mechanical standards and is "silent" and does not address or provide "guidance" as to maximum suitable levels for stack emissions emanating from the Concord Facility, should there be a material modification to that facility's permit.

Therefore, the department is not only responsible for safe and sensible mechanical standards governing fuel derived from c & d wood debris but is also responsible and its duty to insure that the state's air quality be protected; that the use of such fuel derived from of c & d wood debris even on the limited basis as prescribed by *HB 1428, amended*, and shall not cause an increase in air emissions at the Concord Facility.

Notwithstanding the criteria and procedure set forth in *ENV 1400*, limits should be reviewed and the Concord Facility shall not exceed current levels. Although the Concord Facility may not be in a "non attainment" area at present, it is recommended that for the purposes of guaranteeing the best possible emissions outcome using fuels derived from c & d wood debris that the standard of lowest achievable emission rates (LAER) as described by EPA¹ shall apply.

¹ See: EPA https://www3.epa.gov/ttn/catc1/rblc/htm/welcome_eg.html, specifically: "... LAER, or Lowest Achievable Emission Rate, is required on major new or modified sources in non-attainment areas..." and See also: <http://definitions.uslegal.com/1/lowest-achievable-emission-rate/>, specifically: "... (A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or (B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

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To that end, it would be in the best interests of the state and the health and welfare of its citizens (public benefit) that, when fuel derived from "c & d wood debris" is in use, emissions from the Concord Facility shall not at the very least exceed current recorded levels. In short, there should not be an increase in any emissions whatsoever, and, when a new, favorable level is attained, then that shall be the standard.

The department should not rely on any other state or entity but should establish its own standards and process for monitoring. A case in point, current Maine process does not address specific levels of pollution or acceptable emissions and is very loose in its applications.

It would be better were the department to use current stack levels from the Concord Facility as a base line from which to work when monitoring emissions levels while burning fuel derived from c & d wood debris. In order to achieve and continue to adhere this desired result:

- Unannounced preliminary, stack tests by the department should be made just prior to when "c & d wood debris" is to be used;
- unannounced bi-weekly tests or monthly at the very least shall be taken during when the "c & d wood debris" is in use;
- and an "end test" shall be taken, when such use shall be discontinued per the language in HB 1428, as amended.
- Such tests shall be at the expense of the owners of the Concord Facility and not the taxpayers of the state.

It also would not be unreasonable, particularly for the benefit of the surrounding municipalities to expect that the Concord Facility remain "emissions neutral" and not be subjected to an increase in such typical hazardous pollutants and heavy metals, including but not limited to dioxins/furans, mercury, arsenic, cadmium or any other heavy metals; therefore, should emissions levels exceed the levels designated above, then use shall be discontinued until the owners of the Concord Facility can guarantee that it can maintain such "emissions neutrality".

The question of the quality, cleanliness of and testing fuel quality of processed c & d wood debris deemed suitable for use is very important. Accordingly:

- the department should establish in rules the method used to sample and measure the quality of c & d wood debris being used as a 'fuel source'.
 - Suppliers (who may or may not process c & d wood debris fuel) whether resident in state or out of state, should be required to register with the department and pay a registration fee. By registering, the supplier shall acknowledge that they have read and shall abide by the rules and authority.
 - Inspections and monitoring of fuel derived from processed c & d wood debris shall be done monthly, randomly and unannounced. Such sampling may be made either at the facility supplying the "processed c & d wood debris fuel" or the Concord Facility.
 - All costs shall be born by either the Concord Facility or the processor, depending upon where the testing occurs.
 - The department shall establish criteria, procedure and qualifications for testing and shall require appropriate certification if a third party vendor is employed by the department.
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The department should apply to the General Court for funding in order to purchase the approved testing apparatus, and licensing and inspections should cover a reasonable estimate of the FTE's needed to implement inspections and screening and certification of third party inspectors.

A very important point that needs to be covered is that of enforcement and authority. While *HB 1428, as amended* is 'silent' on authority and fines, there should be notification within the rules that the department (the Commissioner) shall have the authority under "541" to effect an administrative order and outline the level and extent of suspension and fines that may be levied (for "each occurrence"). If I remember correctly, the maximum unless otherwise specified is \$1,000 per violation.

Should any processed c & d wood debris fuel be imported directly to the Concord Facility from outside the state, the owners of the Concord Facility shall be responsible for its quality.

- If the processed c & d wood debris fuel imported is found to be substandard, then it shall be returned to the processor, the processor shall be suspended and enjoined from selling such fuel for use in the state, and the Concord Facility shall be required by the department not to import from that processor or use that processed c & d wood debris fuel.
- The processor having been banned may apply to the department for reinstatement upon certification that processed c & d wood debris fuel supplied by them has meet the state's standards for quality.

The question as to where the rules shall apply or which division shall enforce the rules is simple. Both divisions should collaborate on the rules, which should be 'stand alone'. The Air Division should continue to oversee criteria and enforcement regarding stack tests and emissions; however, the Waste Division should be responsible for oversight, testing and management of the processed c & d wood debris fuel, including who may test, if the department employs a third party.

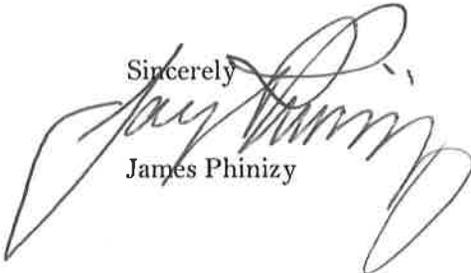
While the department has set forth a schedule, it is too ambitious and does not take into account a reasonable amount of time for both the Air and Waste divisions to research and draft performance standards and criteria as well as mechanical standards. It is never good policy to default to another state's rules or Federal regulation. The federal regulations referenced in *HB 1428, amended*, are incomplete, purely mechanical in nature, and do not establish adequate protections for the public.

Stakeholders and the public should have ample time to consider, reflect and respond. To simply take verbatim and repackage Maine's "criteria" and procedure is not in the best interests of the New Hampshire public.

At the very least, there should be not less than a two month's time frame with at least two stakeholder meetings in order to present an outline by the department to stakeholders and for the stakeholders to participate in a meaningful way formulating the rules.

Thank you for the opportunity to comment and suggest criteria for the proposed rule. I remain

Sincerely


James Phinizy

Cc: Hon. M. Hassan, Governor

JUL 15 2016

AIR RESOURCES DIVISION

Jacquelyn C. Elliott
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Mr. Craig A. Wright, Director
NHDES Air Resources Division
29 Hazen Drive
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Concord, NH 03302-0095

July, 13, 2016

RE: Rulemaking HB1428

The New Hampshire Department of Environmental Services is to help sustain a high quality of life for all citizens by protecting and restoring the environment and public health in New Hampshire.

Dear Craig:

Thank you for the opportunity to submit comments on the rulemaking for HB1428 as it refers to incineration of construction and demolition debris (C&D) at the Wheelabrator Concord trash incinerator. I will begin by directing your attention to DES's stated mission as referenced above.

It must be acknowledged that HB1428 has overturned the important policy of prohibiting the incineration of C&D debris put in place in 2007 and supported by the Department and Commissioner Burack.

"Des supports the permanent extension of the prohibition on the burning of C&D wood because it is sound public policy to protect human health and the environment from the uncertain quality of emissions that may result from combustion of such materials, and because there are better ways to manage these materials. Burning C&D is not the best management practice for disposing of it. Instead, a combination of aggressive source reduction, processing to separate components that can safely and economically be reused or recycled, development of new markets for reused and recycled wood components and disposal of unusable residuals in state-of-the-art landfills represents an environmentally superior strategy that DES believes is best for New Hampshire's citizens."

Letter from Thomas Burack to Senator Martha Fuller Clark. (April, 24, 2007) Regarding HB 428, An Act relative to Prohibiting the Combustion of Construction and Demolition Debris. Comments to the Senate Energy, Environment and Economic Development Committee

Jacquelyn. C. Elliott
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I would argue that overturning this policy provides no public benefit and in fact has potential to increase harmful pollution that would negatively impact public health and the environment. It appears to offer an advantage to only two corporations Wheelabrator and ReEnergy. That is the context which must be applied as rules are developed to regulate what has been instituted with passage of HB1428. Intrinsic to that context, is Senator Bradley's testimony in which he is on record as stating, "You have to start small."

I would like to enter into the record my concerns around the accelerated timeline being employed with the rulemaking process. Particularly in view of the serious nature and implications brought into the arena with this significant policy change around incineration of C&D debris. Also disturbing is the apparent lack of consideration of what statutes and rules have jurisdiction over this matter. Certainly, this is not simply a matter for Air Resources, but an instance when there should be coordination between that sector of NHDES and the Waste Management Division. With that in view, the rules changes inaugurated must also exhibit that there will be no deleterious effect moving forward with the state's statutory mandates and goals relative to solid waste management.

My personal research has shown there is a dearth of qualitative and quantifiable regulations being applied to incineration of C&D. Federal guidelines are open ended with no "teeth" to establish quality of C&D debris slated for incineration or outcomes from that process. California has seemingly left the definition, regulation and enforcement up to the counties based on guidelines from the state.

If NHDES is indeed going to move forward with this upending of sound policy around incineration of C&D debris, it is inherent in that decision, to do so in a way that seeks to fulfill the Department's mission. At a minimum, that would require development of standards that ensure the safety of the C&D debris being incinerated and continual monitoring and regulation of the outcomes of processing and burning that debris. Regulation, qualification and monitoring of standards must be applied from beginning to end of the process and must make evident there are no increased threats to public health, the environment and public benefit.

In committee testimony on SB381, the feed stock for HB1428, and in subsequent rulemaking proceedings, it appears there is some reliance on Maine regulations as they relate to incineration of C&D debris. Maine regulations attempt to construe burning C&D debris as a beneficial use. That is difficult to argue given that potentially valuable resources are being underutilized and converted into additional toxic stack emissions and ash releases from a facility. Increasing toxic emissions are not a benefit to public health and the environment. Additionally, Maine's reliance on the TCLP testing method to ascertain the toxicity of the C&D debris burned is insufficient for such a determination. In fact, this testing method actually has the ability to bind the toxic elements so as to prevent leaching into the medium being utilized to establish the tested material's toxicity.

The potential to increase lead, mercury and dioxin emissions must be weighed seriously. My personal contention based on science, is that there are no safe exposure levels for these toxins that do not adversely affect human health. Those impacts are known to be especially detrimental for our

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unborn and developing children. The Department has the answerability in this instance to develop the regulatory structure that confirms this policy change will not increase such emissions and threats to the public good.

NHDES has a fiduciary and moral responsibility to the citizens of New Hampshire to institute regulations in this matter that do not undermine the rights of the public to clean air and water and assure outcomes that do not pose threats to public health nor increase emissions beyond current levels. To that end, it is important to cap emissions from this incinerator at current levels and not exceed those levels by using processed C&D debris.

I look forward to your thoughtful approach to this crucial undertaking. Thank you for considering my comments.

Sincerely,

A handwritten signature in cursive script that reads "Jacquelyn Elliott".

Jacquelyn Elliott
Via e-mail and post

Susan B. Covert
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scovert@comcast.net

Craig Wright, Director
NHDES Air Resources Division
29 Hazen Drive, PO Box 95
Concord, New Hampshire 03301-0095
July 14, 2015

Dear Director Wright:

I am writing on behalf of REACH (Residents Environmental Action Committee for Health) in response to the Department of Environmental Services' request at the June 30th stakeholder meeting for comments prior to drafting proposed rules for implementation of House Bill 1428, to allow limited incineration of processed wood from construction and demolition debris (C&D).

With the passage of HB 1428 (as amended), New Hampshire is undoing long standing environmental policy that has protected our state's environment and public health from the effects of toxic air emissions associated with the incineration of C&D. While the original bill to reinstate incineration of C&D (SB 381) was sold to the legislature as the limited use of "clean" C&D wood, we are skeptical that C&D emissions will remain limited. As prime sponsor Senator Jeb Bradley noted in his testimony before the House Science, Technology, and Energy Committee, "You have to start small."

Granite State citizens are counting on the Department of Environmental Services to abide by its mission to sustain a high quality of life for all citizens by protecting New Hampshire's environment and our public health. We ask that *prior* to drafting rules, DES expand its efforts to obtain stakeholder input and thoroughly research the most effective regulatory and monitoring practices to ensure that New Hampshire does not experience increased levels of toxic emissions or water pollution as a result of C&D incineration. At its June stakeholder meeting, DES proposed a mid August meeting to review draft rules. Other than the last two weeks of December, the Department could not have chosen a time less likely for people to be available. We request that the current comment period be extended and that the stakeholder meeting to review draft rules be scheduled in the fall.

In regards to rulemaking for this new fuel source, REACH respectfully offers the following comments:

- It is important that DES take a holistic approach in developing rules for C&D wood incineration. The Department's Air Resources and Waste Management

Divisions need to coordinate efforts to develop sound policies and monitoring practices. Historically, these Divisions have operated in silos often unaware of what the other is doing. Regulation of this new fuel source should be a joint responsibility, with the Air Resources Division ensuring the safety of emissions from the incinerator and Waste Management ensuring that the processing facility supplies C&D wood that is free from hazardous chemicals.

- In its materials and presentation at the stakeholder meeting, DES referenced the state of Maine's environmental policies for C&D regulation. New Hampshire's Department of Environmental Services can and should aim higher. There are other states and countries with a much better environmental track record than Maine. DES should look to those who are doing exemplary work in protecting the environment and public health; for example, adopting lowest achievable emission standards for incinerators.
- DES should develop standards that ensure C&D processed wood is in fact clean, that incineration does not increase the level of toxic emissions, and that the amount incinerated does not exceed the tonnage specified in statute. The Department should impose significant financial consequences for a processing facility that ships tainted C&D wood and for a company whose incinerator increases toxic emissions or burns a greater amount of C&D wood than is permitted by statute.
- DES standards should ensure that C&D incineration does not increase emission levels of specified toxins - including dioxins, benzene, mercury, chromium, lead, beryllium, arsenic, and vinyl chloride.
- DES should require the use of best available technology, including the use of X-ray fluorescence (XRF) to determine the presence of harmful chemicals (such as lead, cadmium, magnesium, mercury) in the C&D fuel supply.
- DES rules should require that monitoring and testing be conducted by a neutral, independent entity. Inspections and spot testing at the incinerator and the C&D processing facility should be unannounced and frequent (every other week during the five month burn period).
- A baseline emissions test should be conducted prior to incineration of C&D processed wood; if there is an increase in toxic emission levels, rules should call for the immediate shut down of the incinerator.

Thank you for this opportunity to comment.

Sincerely yours,

Susan Covert
REACH, VP Community Organization

Janelle, Felice

From: jtuthill@sover.net
Sent: Friday, July 15, 2016 12:01 PM
To: Janelle, Felice
Cc: Wright, Craig; Burack, Thomas
Subject: Re: HB1428 Rulemaking: Comments

Felice Janelle
NH Department of Environmental Services
Hazen Drive, Concord, NH

July 14, 2016

Re: Rulemaking on fuel standards and testing protocols for processed wood derived from construction and demolition debris. (C&D)

Dear Ms. Janelle,

On June 30th, 2016 DES held a pre-meeting of stakeholders on a rule-making proceeding arising from passage of HB1428/SB381. The department solicited comment from interested parties, to be submitted by July 15. I suggest the comment period be left open for an additional 45 days in this initial phase, as issues at the intersection of policy and regulation are broader in scope than anticipated. The technical issues are likewise complex, involving in and out-of-state operations, industrial organization, combustion technology and air and ash chemistry.

New Hampshire is venturing into relatively uncharted territory with the EPA rule issued on February 8th, 2016. (See 40CFR271) Research indicates states are grappling with a new regulatory landscape and emerging industrial processes and technologies. A cursory review of developments in Maine, Connecticut and California reveals different approaches to regulating new classes of non-waste fuels derived from the waste stream.

Maine is permissive and appears to have accepted some increase in toxic air emissions, Connecticut has passed open ended legislation for waste derived fuel sources while California permits a degree of local regulation.

The prime sponsor of the enabling legislation stressed the intent to 'start small'; NHDES needs to start right on standards and create a regulatory system with clear parameters. The state may find itself moving into the position the US Environmental Protection Agency was in for many years, looking at fuel standards on a case by case basis, or wrestling with a myriad of issues with solid waste and air permits through RCRA and the CAA. Progress with rule-making needs to be measured in light of the State's Implementation Plan. In the case of HB1428 New Hampshire is looking at a relatively small amount of material, one combustion facility and one processor, currently manufacturing a fuel product for export. Therefore getting the scope right, at the outset, is critical.

New Hampshire should not be surprised to find other processors, manufacturers and products waiting at the door HB1428 has cracked open. NH regulators need to design a regulatory system that is as protective as the ban on C&D combustion was, holding emissions at a level no higher than the make-up fuel processed C&D waste would replace.

Given New Hampshire's policy prohibiting the combustion of C&D debris and the limited exemption provided in HB1428, DES must proceed cautiously.

SB381, the precursor to the legislation passed out of Committee of Conference, did not provide for rule-making on fuel standards and testing protocols for processed wood waste, relying instead on minimum standards found in federal regulation and best management practices for handling C&D debris. It is concerning that the agency did not take a

position on SB381 given the reliance on minimal standards and the lack of a robust state regulatory plan for a waste stream long recognized as variegated and problematic. SB381 would have permitted the primary beneficiaries of the legislation to self-regulate to a large extent.

The Department must weigh and protect the public interest while developing rules fully protective of environmental quality and public health.

Designing a regulatory framework for managing C&D materials from source to discharge into the environment should consider ways to maximize the reduction of the volume and toxicity of materials destined for disposal facilities, and promote the maximum reuse and recycling of resources.

Waste combustion is a less beneficial use of resources than material recovery, reuse and recycling, and is certainly not the highest use. Waste combustion should not be considered renewable as it relies on components of a waste stream we should be striving to eliminate.

The federal C&D fuel quality standard provides a foundation and a minimum set of standards upon which the state may construct its regulatory framework, the primary objective being to protect public health and environmental quality.

Rules must provide assurance that environmental degradation will not occur as a result of accommodating waste processors, themselves significant generators of waste, - some of which is injurious. The primary focus should be on reducing the introduction of mixed materials into the waste stream at the source, and managing the hazardous components of C&D debris as a discreet class of material. This needs to be addressed at construction sites and prior to demolition and is currently under-regulated.

Incineration undermines one of the incentives for maximizing responsible management by dispersing liability, while destroying the evidence of failure within a source reduction system. Landfills retain and hopefully contain that evidence and are subject to remediation while providing impetus for source reduction.

The presentation to the initial stakeholders by DES on June 30 was from the perspective of air regulation and by inference, ash. It would be useful to have a presentation by the Waste Management Division on how C&D debris is managed, permitted and regulated in New Hampshire. A presentation on the current protocols for air testing, ash testing and ash management would also be productive.

In closing, a few examples of areas the rule-making proceeding ought to address. Lead, products used in treated wood, asbestos and radioactive materials are regulated to some degree, and too often haphazardly at the state and federal level. Rules on non-waste fuels and testing protocols should recognize, integrate and strengthen those regulatory systems; streamlining and closing gaps. Fuel standards and testing protocols for C&D debris derived wood destined for combustion provide an opportunity to address risk reduction related to heavy metals, the generation of dioxin/furans and radioactive materials, Americium among others.

Adequate funding and enforcement mechanisms must be considered carefully. Without these no regulatory program can be effective.

Thank you for the opportunity to provide comments prior to the Department's rule-making on C&D debris derived fuel. I look forward to a full discussion of the issues and urge the agency to proceed with diligence, keeping in mind the mission of the Department of Environmental Services. Public benefit must be foremost in your consideration.

Sincerely,

John Tuthill
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603-863-6366



July 15, 2016

Ms Felice Janelle
SIP Planning Analyst
New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, NH 03302-0095

RE: HB 1428 Amendment to RSA 125-C Rulemaking

Sent Via Email: felice.janelle@des.nh.gov

Dear Ms. Janelle:

As follow up to the HB 1428 Amendment to RSA 125-C Rulemaking Stakeholder meeting held on June 30, 2016, I am writing to provide stakeholder input on behalf of the Wheelabrator Concord Energy from Waste (EfW) facility located on Whitney Road in Penacook, NH.

As noted during the stakeholder meeting, HB 1428 allows the combustion of processed C&D wood

- Between November 15 and April 15
- <10,000 tons of processed C&D wood can be combusted
- Limited to a select portion of C&D that must meet the Federal C&D fuel standard
- Excludes specific types of treated wood, PVC and other plastics, drywall, concrete, dirt and asbestos
- At a facility that currently uses renewable Municipal Solid Waste as a fuel to produce electricity, and is equipped with modern air pollution control devices and continuous monitoring systems.
- After the NHDES develops and implements regulations pertaining to screening and processing C&D wood.

The Wheelabrator Concord facility would use the processed C&D wood during limited periods where incoming Municipal Solid Waste (MSW) volumes are reduced due to seasonal influences. The processed C&D wood would be mixed with MSW to insure efficient operation, consistent combustion and generation of electricity. By utilizing a renewable fuel such as processed C&D wood the facility would be better able to avoid use of fossil fuel based propane to supplement heat input during the winter months. Lastly, the amount of processed C&D wood allowed to be accepted (10,000 tons) is minor compared to the MSW processed annually (~190,000 tons).

The facility is equipped with a Continuous Emissions Monitoring System that monitors emissions continuously for compliance with regulatory and permit limits. The facility also conducts intensive emissions testing annually through a 3rd party test company and with NHDES oversight of the test process. The facility also regularly tests the ash residue from the combustion process to verify it meets RCRA limits for metals. This ongoing testing during periods when wood is included with the MSW as fuel will show that there is no impact on ash residue quality as a result of combusting processed C&D wood. Using the existing monitoring systems and processes, the facility will demonstrate continued compliance from both an air and solid waste standpoint.

The potential air emissions impacts were reviewed by NHDES as part of the RSA 125-C revision process. The results of that analysis, based on addition of 10% clean wood to the fuel mix at the Wheelabrator Concord EfW facility, were found to be below the NHDES Ambient Air Limits, in some cases the levels were several orders of magnitude below the standards set by the NHDES. We are pleased to be part of the process to develop regulations that would benefit the environment through proper management of clean, processed C&D wood displacing electricity produced by the combustion of greenhouse gas producing fossil fuels.

The NHDES should base the new regulations on established programs in other states such as Maine and Connecticut. Balancing a rational approach to developing the regulations will result in a benefit to the construction industry, to C&D processors by opening up a new market close to where they operate, and will provide an additional source of renewable fuel which would be used to generate electricity during periods of higher demand in the winter months. We welcome the opportunity to work with the NHDES to that end.

Sincerely,

Matt Hughes

Digitally signed by Matt Hughes
DN: cn=Matt Hughes, o, ou,
email=mhughes@wtenergy.com,
c=US
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Matt Hughes
Senior Environmental Manager
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July 15, 2016

Ms. Felice Janelle
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Felice.janelle@des.nh.gov

RE: Stakeholder Comments on House Bill 1428 – Amendment to RSA 125-C:10-c Combustion Ban Fuel Standards for Processed Construction and Demolition (C&D) Wood

Dear Ms. Janelle,

Thank you for the opportunity to supply comments to the New Hampshire Department of Environmental Services (NHDES) as it conducts rulemaking regarding fuel standards and test methods for the limited use of processed C&D wood at the Wheelabrator Municipal Waste Combustor in Penacook, NH.

I am aware that the revised rule will allow, during the months November through April, the combustion of up to 10,000 pounds of wood that has been processed from C&D material and that the C&D material must be processed in accordance with standards set by the U.S. Department of Environmental Protection Agency (EPA).

ReEnergy operates two recycling facilities in New Hampshire and is a likely supplier of processed C&D wood to the Wheelabrator facility.

ReEnergy employs approximately 80 full-time workers in New Hampshire at two facilities that process C&D material: ReEnergy Epping, also known as ERRCO, and ReEnergy Salem, also known as LL&S. We employ temporary workers in addition to that, and our employee count increases in the warmer-weather months to more than 100 individuals. Our facilities in New Hampshire accept and recycle or beneficially re-use nearly all solid materials from construction and demolition activities, processing approximately 300,000 tons of material each year. A large percentage of the material recovered in the recycling process is converted to wood chips, which are re-used as a raw material in the manufacturing of particle board or as a fuel for biomass power plants in Maine and Quebec.

The viability of our New Hampshire-based business will be improved with the addition of a new consistent and reliable end market here in New Hampshire for our recovered wood products. This policy change also supports New Hampshire's solid waste hierarchy, since waste-to-energy is preferable to incineration without recovery or landfilling.

This policy also is consistent with EPA's final rule on Non-Hazardous Secondary Material (NHSM), which added recovered C&D fuel, processed according to best management practices, to the list of categorical

non-waste fuels.¹ We follow best management practices at our processing facilities. In this final NHSM rule, EPA allows the use of C&D for combustion in a biomass boiler, which is not being contemplated in New Hampshire. The material always had been allowed to be used as a waste fuel in an incinerator at a waste-to-energy facility with more rigorous emissions technology, which is what New Hampshire is contemplating at this time – in a limited amount at one location.

Based on ReEnergy's experience in multiple markets in the Northeast U.S. and Canada, I offer the following suggestions regarding the regulation of the limited C&D fuel that will be allowed in the Wheelabrator facility:

1. HB 1428 specifically states that fuel quality standards should be no less stringent than the Federal Standard: EPA 40 CFR 241, *Solid Waste Used as Fuels or Ingredients in Combustion Units*. This standard, which was developed over a several-year time period, is very specific with respect to the manufacture of wood fuel from C&D waste, including fuel quality, operator training and supplier certification. The federal standard did not identify a specific limit for constituents such as lead and arsenic. Rather than identify a specific limit, EPA recommended suppliers employ "best management practices" in the manufacturer of C&D wood fuel with the emphasis on maximizing the removal of treated and painted wood from the C&D wood fuel, recognizing that the presence of arsenic can be attributed to treated wood and the presence of lead can be attributed to painted wood.
2. In an effort to establish health protective limits for the C&D wood fuel used in New Hampshire as a result of HB 1428, the C&D wood fuel standards adopted by Maine and Connecticut were presented at the stakeholder meeting. ReEnergy currently supplies C&D wood fuel to combustion facilities in both states and currently has a program in place to meet these standards. The principal difference of these standards -- as opposed to what is being considered in response to HB 1428 -- is that the maximum amount of C&D wood fuel allowed for combustion at the one qualifying facility (Wheelabrator - Concord) is 10,000 tons per year or approximately 10% of the total fuel combusted. The fuel standard developed in Maine allows for the use of up to 50% C&D wood fuel of the total wood fuel combusted, whereas the fuel standard developed in Connecticut allows for the use of up to 100% C&D wood fuel. Given the limited use of C&D wood fuel allowed under HB 1428, ReEnergy recommends that the NHDES adopt fuel standards that are no more stringent than Maine standards. A copy of the Maine standard is provided in the attached document '*Maine Solid Waste Rules: Chapter 418, Beneficial Use of Solid Wastes*'.
3. In developing a comprehensive program to ensure compliance with these C&D wood fuel standards, in Maine and Connecticut the facility combusting the fuel is required to develop the program and submit such program to the regulatory agency for review and approval. ReEnergy has attached a copy of a Maine-based and Connecticut-based program for the use of C&D wood fuel that meets the requirements of the state regulatory fuel standards. As you can see, each aspect of the use of C&D wood fuel is addressed from the initial approval of the fuel supplier and the ongoing monitoring and testing of the fuel to ensure compliance with the fuel standards. (Copy attached: Boralex Alternate Fuels Program, Operations Manual, February

¹ <http://www.epa.gov/rcra/final-rule-additions-list-section-2414-categorical-non-waste-fuels>

Ms. Felice Janelle
July 15, 2016
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2010, and Plainfield Renewable Energy, Operating Requirements of Facilities Producing Regulated Wood Fuel for Delivery to PRE, June 2015).

Thank you for taking our suggestions into consideration. Please know that legislators and staff are welcome to visit our facilities; feel free to contact me at (603) 894-9800 or at rgeisser@reenergyholdings.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Geisser', with a long horizontal line extending to the right.

Richard Geisser
Regional Manager of Recycling Operations

July 15, 2016

To: Felice Janelle, SIP Planning Analyst
felice.janelle@des.nh.gov

Copy: Craig Wright, Director, Air Resources Division
craig.wright@des.nh.gov

Comments Regarding Rulemaking for Burning Construction and Demolition (C&D) Wood in the Wheelabrator Concord Incinerator

I attended the stakeholder meeting on June 30 and am submitting below concerns about the process to date.

1. The Department of Environmental Services (DES) has asked stakeholders to submit comments to Janelle Felice. Ms. Felice is the planning analyst for New Hampshire's State Implementation Plan.

According to the DES website, a state implementation plan "is a state's blueprint for carrying out requirements of the Clean Air Act..."¹ This would indicate the Air Resources Division is taking the lead role in rulemaking. Where is the Waste Management Division in this process?

2. House Bill 1428 does not take effect until August 23, 2016. Why did rulemaking begin almost two months prior to this date?
3. House Bill 1428 states Wheelabrator cannot burn C&D wood unless there are rules regarding the quality of the wood and unless DES modifies the company's permits. Wheelabrator's Title V permit has expired, and the incinerator is presently operating under an application shield. DES has not completed its review of Wheelabrator's renewal application. DES is looking to create rules for a company that does not have a current air permit.

DES staff should be working to enhance recycling and composting efforts in the state instead of working to help Wheelabrator through rulemaking. Recycling and composting take precedence over waste incineration in the state's resource management hierarchy.

4. Wheelabrator and DES have maintained the incinerator in Concord complies with emission standards. However, these are industry-driven and not health-based standards. Zero is the only safe emission level for persistent toxic substances such as lead, mercury, dioxin, and cadmium. These pollutants accumulate in the environment (toxic loading) and in the human body (body burden) and cause harm in low doses. The Wheelabrator

¹ <http://des.nh.gov/organization/divisions/air/do/sip/>

incinerator releases these poisons in a form that can be easily inhaled and ingested, thereby increasing the risk of exposure. This is unnecessary and unacceptable.

It is worth noting that elements such as lead, mercury, and cadmium never biodegrade once dispersed into the environment. The toxic elements the incinerator has emitted in its 27 years of operation are still cycling throughout our air, soil, and water, and each day Wheelabrator adds more. Again, this is an unnecessary and unacceptable risk to the public.

5. Why is dioxin not listed in the DES power point presentation on June 30, slides # 13 and #17?

As DES is aware, dioxin is also a persistent toxic substance that causes cancer and other serious health problems. Waste incineration creates dioxin. DES and Wheelabrator have stated there is no concern because dioxin emissions from the Concord incinerator do not exceed the air emission standard. However, there is only snapshot testing of airborne dioxin at the Concord incinerator. Wheelabrator and regulators maintain the test results are representative of long term emission trends. However, in discussing dioxin emissions from Wheelabrator's (now closed) incinerator in Claremont, DES stated "measured pollutant levels are not always indicative of longer term emission trends" and "there is an insufficient amount of data from which to extrapolate possible emission trends."² The bottom line is no one really knows how much dioxin is coming out of the smokestack at any given time, except maybe on the day of air testing.

6. In the DES power point presentation on June 30, there is mention of positive sorting and negative sorting. DES needs to push for deconstruction at demolition sites in order to segregate what can be reused. If wood can be reused, it must not be sent to an incinerator because this would violate the state's reuse and recycling hierarchy.

The wood not suitable for reuse should not be burned for the reasons listed in #4 and #5.

The Governor's Commission that looked at construction and demolition debris stated in its report:

Deconstruction is an important tool to advance C&D recycling and minimize disposal. Deconstruction is the systematic dismantling of a building or its parts to salvage and harvest the components within, with the purpose of reusing and recycling these valuable reclaimed materials and commodities. There is a significant body of knowledge now available regarding deconstruction's positive impacts. Deconstruction creates jobs, generates revenue from recycling, and

² *The Wheelabrator Incinerator in Claremont, NH: A Working on Waste Report* (2011, addendum 2015), page 9, citing a DES report on ambient air quality in Claremont.
www.americanhealthstudies.org/wheelabrator-claremont.pdf

saves money in avoided disposal costs. Salvaged wood can be used to construct new buildings.³

7. In 2007, DES Commissioner Thomas Burack supported a ban on incineration of C&D wood. In a statement to the Senate Energy, Environment and Economic Development Committee (April 24, 2007), Commissioner Burack stated:

DES supports the permanent extension of the prohibition on the burning of C&D wood because it is sound public policy to protect human health and the environment from the uncertain quality of emissions that may result from combustion of such materials, and because there are better ways to manage these materials. Burning C&D wood is not the best management practice for disposing of it. Instead, a combination of aggressive source reduction, processing to separate components that can safely and economically be reused or recycled, development of new markets for reused and recycled wood components, and disposal of unusable residuals in state-of-the-art lined landfills represents an environmentally superior strategy that DES believes is best for New Hampshire citizens.

Something happened between 2007 and the present, and DES lost the leadership position that Commissioner Burack demonstrated in his statement to the senate committee. DES must regain that leadership role by helping the state transition away from waste incineration. For my part, I will continue to work to reverse the unfortunate legislation that reintroduced C&D incineration in New Hampshire. I will also continue to promote safe alternatives to waste incineration in order to help protect the health and welfare of New Hampshire residents.

I thank you for the opportunity to provide these comments.

Sincerely,

Katie Lajoie, RN
429 Wheeler Rand Road
Charlestown, NH 03603
603-826-4803
jlje23@hotmail.com

³ *HB 672 Preliminary and Final Commission Report on Construction and Demolition Debris* (2011, November 1), page 18. The definition of deconstruction is from a presentation that Matt McKinney gave to the Deconstruction Subcommittee, New Hampshire C&D Task Force, on June 20, 2007. At the time, Mr. McKinney was with the Institution Recycling Network.
<http://www.gencourt.state.nh.us/statstudcomm/reports/1878.pdf>



July 19, 2016

New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, NH 03301

Re: C&D rulemaking

Dear Ms. Janelle,

The New Hampshire Sierra Club (NHSC) is non-profit membership based organization that supports protecting the environment, the public health, and the democratic right to discuss how to protect these high valued elements of our lives. NHSC was formed as a chapter is 1992 – 100 years after the national organization was founded. The local chapter has over 10,000 members and supporters who prioritize issues from preserving open space, protecting our state parks, clean air, drinking water and wild rivers. The chapter encourages our members and supporters to “Enjoy, explore, and protect the planet” in our country and the Granite State.

We support the reduction of waste and air contaminants caused by the combustion and disposal of construction and demolition debris. Our members and supporters have deep concerns about the recent statutory repeal of the burning ban of this debris.

Overall, the speed of the proceedings, as proposed, is too fast. NHSC asks that the department forgo from scheduling a stakeholder meeting in August. Please schedule that meeting later so that there can be thoughtful and meaningful participation. Your department did not explain the reason for the expedited nature of the schedule. The 2016-2017 winter calendars will not include burning of the waste at the Wheelabrator facility in Penacook. There is no need to expedite.

NHSC does not agree that burning this waste debris is recycling. It is not. While NHSC supports reductions in waste stream, lifting the ban will actually increase importation of demolition debris. The importation is currently producing new municipal solid waste (MSW). The brimming landfills in New Hampshire are a New Hampshire responsibility that will become unmanageable with the additional imported debris and MSW. Additionally, the legislature did not provide guidance for the waste management side notwithstanding the consequences. It is critical that the agency include waste process in the rule making.

The Sierra Club's members are over 2.1 million of your friends and neighbors with over 10,000 in New Hampshire. Inspired by nature, we work together to protect our communities and the planet. The Sierra Club is America's oldest, largest and most influential grassroots environmental organization.

New Hampshire Sierra Club 40 North Main Street, Second Floor Concord, NH 03301
603/224-8222 FAX: 603/224-4719

www.sierraclub.org

www.sierraclub.org/new-hampshire

The RSA 125-C and 149-M rule making must include an objective process for monitoring and enforcing the air emissions and the waste stream procedures. The rulemaking must include an equally objective process for monitoring combustion waste, including enforcement procedures and sanctions. Both processes are critical. Procedures must be transparent and carefully followed and enforced. The public, businesses, municipalities, and the facility operators must be confident that the law works as intended.

The term *clean processed wood residue* added to RSA 125-C: 6, XIV-a, is strange. The statute does not provide a definition. The omission makes the provision unenforceable. It provides a loophole that invites operator abuse. The agency must seek direction from the legislature next session.

There are a number of important precautions NHSC supports:

NHSC insists that a rigorous study of the real and potential chemicals, toxins, and metals in the waste debris be investigated and indexed. The independent study – one that is sampled and revised annually – will reveal the list of dangers in the waste debris. Further, the study will provide clear direction for the facilities to remove the dangerous materials.

NHDES must include unscheduled monitoring and testing visits to the waste collection sites throughout the year. Stockpiling must be prohibited. Participating facilities must pay to add the waste to the state landfills, not taxpayers or consumers. The history of this waste must be documented from demolition site to transportation path to sorting facility to burning site to ash disposal. Enforcement of these health-based standards must be diligent.

NHSC cannot emphasize enough the critical importance of the integration of the statutes through the many steps that both Waste and Air Divisions must take to provide for the public health and safety of our communities, children and at-risk populations. Lead, mercury, dioxin are serious threats that must be eliminated.

NHSC expects to contribute to the rulemaking. We appreciate the efforts of the Department and the stakeholders who value public health, the environment and the future of New Hampshire.

Sincerely,



Catherine M. Corkery

NHSC Chapter Director
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