



CONSERVATION LAW FOUNDATION

November 18, 2009

Sent Via Electronic Mail to:
daniel.hall@state.ma.us

Daniel Hall
Solid Waste Section Chief
Bureau of Waste Prevention
Western Region
Massachusetts Department of Environmental Protection
436 Dwight Street
Springfield, MA 01103

Re: Springfield Power Plant: Beneficial Use Determination
BWP SW 40; Transmittal No. X226904; TF-22

Dear Mr. Hall,

The Conservation Law Foundation (CLF) submits the following comments regarding the above-referenced Provisional Permit Approval for a Beneficial Use Determination (BUD) that the Massachusetts Department of Environmental Protection (Department) proposes to issue to Palmer Renewable Energy, LLC (“Palmer”). The Provisional BUD pertains to the use of construction and demolition (C&D) debris-derived wood (and at least some fraction of other C&D debris materials) intended for use as fuel at a 38 Megawatt (MW) electric power plant proposed for development in Springfield, Massachusetts.

CLF strenuously objects to the provisional BUD on the basis that it represents a patently objectionable attempt to circumvent the full environmental review that is required under the Massachusetts Environmental Policy Act (MEPA). Where, as here, a project not only meets a MEPA threshold for a mandatory environmental impact report (EIR) but also poses significant risks to public health and the environment, an EIR *must* be prepared to evaluate these impacts and, at a minimum, explore ways to minimize or mitigate them. It is inexplicable – and unlawful – for the Department to propose to allow a project to combust hundreds of tons per day of C&D-derived fuel at a 38-MW power plant adjacent to an environmental justice community without at least requiring full environmental review, especially given serious questions that have been raised about the purported effectiveness of the C&D debris sorting technology that would be relied upon

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to magically convert a regulated solid waste, C&D debris, into what the Department asserts is non-regulated “C&D-derived wood.”

A proposal like this for stoker combustion of C&D-derived materials to generate electricity raises numerous serious questions about environmental and public health impacts, measures required to avoid or minimize those impacts, the effectiveness (or not) of technologies to extract “clean” materials from this solid waste stream, the efficacy of emissions control technology for protecting the public health from toxic air emissions often associated with the combustion of C&D debris, the cumulative impacts that are likely to affect the adjacent environmental justice community and others, and the extent of conflict with important efforts to prioritize reduction, reuse and recycling of C&D debris rather than “energy recovery.” But the lack of meaningful environmental review and the paucity of information contained in the Provisional BUD (and associated application materials) leave the public with far more questions than answers.

While these comments do not address every issue raised by the Provisional BUD, they are focused on the following key issues and concerns: (1) the requirement for full MEPA review; (2) the lack of an assessment of climate change impacts and effects, as required by the Massachusetts Global Warming Solutions Act;¹ (3) the Department’s lack of authority to issue a BUD; and (4) even assuming the existence of any such authority, the material deficiencies in the BUD that represent a failure to minimize harm to the environment and public health.

Given the Department’s positions on intervention and standing as expressed recently in connection with the proceedings regarding NRG’s Somerset Station, CLF concurrently submits a motion to intervene in this proceeding regarding the Provisional BUD. CLF is taking this step in an abundance of caution, even though the relevant law and regulations do not require, or even provide for, formal intervention by a third party and instead expressly allow an aggrieved *person* (not limited to *parties*) to file an appeal for judicial review. 310 CMR 19.037(5); M.G.L. c. 30A.

Brief Background Regarding the Conservation Law Foundation

CLF is a public interest advocacy organization that works to solve the environmental problems that threaten the people, natural resources and communities of New England. Founded in 1966, CLF is a nonprofit, member-supported organization. CLF promotes clean, renewable and efficient energy production in New England, and advocates in support of responsible renewable energy development as a critical means of addressing the global climate change crisis and its potentially devastating impacts on New England. CLF also has a long history of advocacy to reduce the environmental

¹ Because the Provisional BUD only addresses the project’s proposed fuel stream that would be derived from C&D debris, these comments do not address the portion of the project’s fuel that would be comprised of “green wood.” CLF intends to address issues pertaining to the “green wood” component of the fuel stream in connection with comments that will be filed regarding the project’s Draft Emissions Control Plan (ECP).

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impacts of the power generation fleet on which the New England region relies and to ensure that new electric generating sources are clean and sustainable. In addition, by and through its members – including those who live and work in the vicinity of the Palmer project site – CLF is substantially and specifically affected by the Provisional BUD and the proposed project.

Background Regarding C&D Debris

Studies have shown C&D debris typically is composed of nearly 50% wood, but drywall, concrete, metals and roofing are also significant components.² Effective sorting and separation of these components has been challenging, and CLF is not aware of any technology that has yet been demonstrated to be capable of reliably separating out only “clean wood” from C&D waste streams. Beyond the difficulties of generally sorting wood (of any kind) out of the C&D waste stream is the challenge of separating clean wood from painted, treated, or otherwise contaminated wood. A 2004 Maine DEP study found that the “wood” fuel mass at the Boralex Athens Energy facility³ was comprised of up to 26% C&D fines, which had high concentrations of metals and dioxins.⁴ Painted and pressure-treated wood made up less than 10% of the total mass, but was the source of most of the arsenic found in the fuel.⁵ As recently noted by Suzanne Condon, Director of the Bureau of Environmental Health at the Massachusetts Department of Public Health, a 2007 Massachusetts Construction & Demolition Debris Industry Study concluded that “over 20% of the wood [in C&D debris] is considered adulterated with paint or other chemicals (e.g., chromated copper arsenate (CCA) treated wood),” and “the composition of construction and demolition debris varies significantly depending on the type of construction/demolition project.”⁶

A 2006 NESCAUM study noted that processors differ in how they sort creosote-treated, penta-treated, and CCA-treated wood, which results in significant disparities in the quality of the fuel.⁷ Concerns about sorting also have been voiced by the Union of Concerned Scientists, which believes that further investigation into the possible threats posed by C&D wood-fueled energy facilities is warranted.⁸

Combustion of C&D-derived materials similarly poses serious questions and entails significant risks of releasing quantities of toxic and criteria air pollutants. As noted by Director Condon, incineration of C&D-derived “waste wood” results in the

² Emissions from Burning Wood Fuels Derived from Construction and Demolition Debris, NESCAUM (May 2006) at 2-1.

³ Boralex Livermore Falls’ Renewable Portfolio Standard Application for Statement of Qualification was administratively complete as of July 27, 2005, available at <http://www.mass.gov/doer>.

⁴ *Id.* at 2-2 – 2-3.

⁵ *Id.* at 2-2.

⁶ October 2, 2009 letter from Director Condon to Michaelann Bewsee.

⁷ *See* n. 3, *supra*, at 2-2.

⁸ Oral Testimony from Deborah Donovan, Union of Concerned Scientists to Members of the Joint Committee on Telecommunications, Utilities, and Energy (June 28, 2005).

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generation of air pollutants including carbon monoxide (CO), oxides of nitrogen (NO_x), sulfur dioxide (SO₂), volatile organic compounds (VOCs), hazardous air pollutants (HAPs) such as acid gases and dioxins/furans, polycyclic aromatic hydrocarbons (PAHs), coarse particulate matter (PM₁₀), fine particles (PM_{2.5}), heavy metals (chromium, copper, arsenic, lead), pesticides, and wood preservatives (such as pentachlorophenol).⁹ Serious concerns regarding the environmental impacts of C&D wood combustion notably have resulted in C&D debris combustion bans in some states.¹⁰

The Palmer Project Requires, Yet Seeks to Avoid, Full MEPA Review

As reflected in the Provisional BUD, the Palmer Project proposes “to burn an average of 700 tons per day (and a maximum of 900 tons per day) of C&D-derived wood fuel, which will be procured from offsite C&D processing facilities.” Provisional BUD at 2. This is a project that proposes combustion of more than 60% of the total C&D-derived wood produced each year in Massachusetts. *See* Emissions from Burning Wood Fuels Derived from Construction and Demolition Debris, NESCAUM (May 2006) at vii (noting that Massachusetts generates 400,000 tons per year of C&D wood).¹¹ The C&D-derived wood that would be used in Palmer’s power plant is material that ordinarily is disposed of as solid waste. It is also material that is the subject of combustion bans or restrictions in several states, and raises significant issues with respect to combustion-related air emissions, given typical C&D debris contaminants such as lead paint, arsenic (e.g., from CCA-treated wood), laminates, etc. Indeed, the Provisional BUD explicitly would allow the Palmer Project to combust “painted wood,” “treated wood (such as chromated copper arsenate, also known as CCA []),” and “manufactured wood products (such as plywood),” including up to nine tons per day of *non-wood* materials intermingled with C&D-derived wood. Provisional BUD at 2 (“The material received at [Palmer] will include only C&D-derived wood fuel, except that [Palmer] proposes a limit of 1% non-wood materials by weight.”)

Even if the Department had explicit authority to grant a BUD for C&D-derived wood combustion, the process of using C&D-derived materials for energy recovery requires full MEPA review. The purpose of MEPA is to assist state agencies and project proponents “in using all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable.”¹² MEPA’s review thresholds identify categories or aspects of projects that are likely to cause damage to the environment. The review threshold include one that is directly applicable here:

- (a) ENF and Mandatory EIR. New Capacity or Expansion in Capacity of 150 or more tpd for storage, treatment, processing,

⁹ *See* n. 6, *supra*, at p. 2.

¹⁰ In 2007, New Hampshire permanently banned combustion of C&D debris. N.H. Rev. Stat. Ann. § 125 (C)(10)(c) (2007).

¹¹ Available at <http://www.nescaum.org/topics/biomass>.

¹² 301 Mass. Code Regs. 11.01 (2008).

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combustion or disposal of solid waste, unless the Project is a transfer station, is an Expansion of an existing facility within a validly site assigned area for the proposed use, or is exempt from site assignment requirements.

301 CMR 11.03(9)(a) (emphasis added).

The Palmer project, which proposes to combust 700 tpd of C&D-derived wood and related materials, exceeds by a wide margin the 150 tpd solid or hazardous waste combustion threshold (as well as the storage, treatment and processing thresholds) for a mandatory EIR.¹³ C&D-derived wood falls squarely within the definition of waste set forth in G.L. c. 111, § 150A.¹⁴ Exempting C&D-derived wood from this category, and the concomitant solid waste regulation requirements, simply because it has been “processed” – a procedure that in this instance involves non-standardized sorting and grinding that often fails to remove the harmful chemicals commonly present in the debris – ignores the fundamental purpose of MEPA. Simply reclassifying C&D-derived wood as “recycled” or “clean” material (that no longer is subject to regulation under relevant solid waste management laws and regulations), without a detailed public review of the relevant C&D debris sorting, power conversion and emissions control technologies, will not prevent or minimize the damage to the environment.

Additionally, in determining whether a project exceeds one or more MEPA review thresholds, the proponent and any participating agencies must look at the project as a whole, not as separate phases or segments.¹⁵ Treating the BUD as somehow discrete and separate from the rest of the Palmer project constitutes unauthorized segmentation. The combustion of 700 tpd of C&D-derived material is central to the Palmer facility’s operation. Separating the BUD application process from the rest of the permitting and review requirements for the facility is no different than completing a development project in phases in an attempt to avoid MEPA review. The cumulative impacts are similar in both cases. The BUD should be viewed as part of the larger project, and the process should not be manipulated to allow Palmer to contravene the MEPA thresholds. Such an approach is critical because the combustion of C&D-derived material poses many of the same pollution risks when it is so-called “C&D-derived wood” (containing myriad C&D-related materials other than clean wood) as it does when it is unprocessed C&D debris.¹⁶

¹³ 301 Mass Code Regs 11.03(9)(a).

¹⁴ Refuse is defined as “All solid or liquid waste materials, including garbage and rubbish, and sludge, but not including sewage, and those materials defined as hazardous wastes in section two of chapter twenty-one C and those materials defined as source, special nuclear or by-product material . . .”

¹⁵ 301 Mass. Code Regs. 11.01(2)(c).

¹⁶ See October 2, 2009 Letter from Director Suzanne Condon to Michaelann Bewsee at p. 3, noting elevated local rates of blood lead levels and pediatric respiratory disease among populations in the vicinity of the project, and calling for “additional information on the potential increase in emissions from the operation of the facility” in order to consider appropriate mitigation measures and ensure the facility does not impact or worsen existing health conditions of nearby residents.

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It is telling that the June 6, 2008 Secretary's Certificate on the ENF for this project asserts that no site assignment is required because the combustion facility "will not be managing solid waste;" ENF Certificate at 5; according to the Certificate, the combustion facility would merely receive and combust reclassified "C&D-derived wood" that is no longer categorized as solid waste because it has been pre-processed. Pursuant to the same logic, then, *the sorting and processing activities* that would supply the Palmer project require an EIR because they will be processing over 150 tpd solid waste in a wholly new context – separating solid waste materials for the specific purpose of combusting them for electric generation. Neither the project proponent nor the Department has demonstrated that the activities of the C&D debris processing facilities would somehow be exempt from this MEPA review threshold; such an exemption would require a showing that the activity of processing and reclassifying C&D-derived materials is occurring within a validly site assigned area "for the proposed use" – i.e., not just for general C&D debris sorting but rather for creation of a C&D-derived fuel stream to generate electricity via stoker combustion.

Ultimately, full MEPA review with an EIR is necessary to avoid or minimize environmental damage with respect to the Palmer project. The goal of MEPA is to thoroughly understand the "positive and negative, short-term and long-term potential environmental impacts for all phases of a Project, and the cumulative impacts of the Project and any other Project or other work or activity in the immediate surroundings and regions."¹⁷ It is imperative that all practicable alternatives and all public input be evaluated. Further, the requirement for review of cumulative impacts is particularly meaningful here where the project would introduce significant new air emissions in addition to those already produced at the Palmer Paving "hot mix asphalt" facility that "is expected to remain in operation" and would share the same site with the proposed 38-MW plant fueled by C&D-derived material. Provisional BUD at 2. In addition, the project's impacts on adjacent environmental justice communities must be fully evaluated following a truly meaningful opportunity for public outreach and input pursuant to the Commonwealth's Environmental Justice Policy. At this stage, an EIR is the only way to ensure such analyses.

While the entire project ought to be subject to an EIR, at a minimum an EIR is required for the conversion of more than 150 tpd solid waste into a fuel for the Palmer Project. Issuance of a BUD absent such full MEPA review would contravene the MEPA statute.

The Provisional BUD Does Not Comply with the Massachusetts Global Warming Solutions Act.

¹⁷ 301 Mass. Code Regs. 11.01(b) (2008).

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The Massachusetts Global Warming Solutions Act, which was adopted in 2008, requires essential reductions in greenhouse gas emissions across all sectors – specifically, a 10 to 25 percent reduction below 1990 levels by 2020 and an 80 percent reduction below 1990 levels by 2050.¹⁸ The GWSA also notably requires the Department to take climate impacts and effects into account in connection with its consideration of the Provisional BUD:

In considering and issuing permits, licenses and other administrative approvals and decisions, the respective agency, department, board, commission or authority *shall also consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise.*

Mass. G.L. c. 30, § 61 (emphasis added). Yet the Provisional BUD utterly fails to comply with this clear mandate.

At a minimum, the Department should have considered – yet failed to consider – the following:

- The greenhouse gas emissions impacts of sorting, transporting and combusting the C&D-derived fuel;¹⁹
- The extent to which the project risks undermining efforts to reduce the production of C&D debris (and associated greenhouse gas emissions) in the first place;
- Whether alternative dispositions of the C&D debris, such as reuse and recycling that do not entail the release of stored carbon into the atmosphere, would be preferable in terms of avoiding or reducing climate impacts.

Of course, full MEPA review is essential for answering these questions. Without the benefit of an EIR, the Department does not have the information it needs to make informed decisions and cannot reasonably comply with the GWSA's mandate.

The Department Lacks Authority to Issue the BUD:

¹⁸ Chapter 298 of the Acts of 2008.

¹⁹ This analysis should include, but certainly not be limited to, analysis of the greenhouse gas emissions that would be avoided by diverting any such material from landfilling and consequent decomposition and associated release of methane emissions, keeping in mind that significant quantities of C&D debris generated in Massachusetts reportedly have been shipped for disposal in mine shafts, under conditions where the material is unlikely to decompose and release methane to the atmosphere.

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As Palmer admits,²⁰ C&D waste is a solid waste and must be managed by a solid waste facility. While Palmer argues – and the Department has agreed – that 310 CMR 19.000 allows for materials from C&D waste streams to be *reclassified* as non-solid waste material pursuant to a beneficial use determination, this regulation does not grant such authority to the Department.

The lack of authority for the Department to reclassify C&D-derived materials to as something other than solid waste through a beneficial use determination is evidenced at least in part by the lack of any explicit statutory authority, contrary to the authority that *is* provided vis-à-vis other wastes and uses. For example, pursuant to General Laws Chapter 111, § 150A, fly ash and bottom ash produced from coal combustion are not considered waste if used or stored for use as a raw material for commercial or industrial purposes.²¹ Commercial or industrial uses of these materials, according to statute, may include utilizing ash in concrete block manufacture or as a base for road construction; when used for these purposes, ash from coal combustion is no longer considered a solid waste, and the Department is statutorily authorized to “waive the requirements” of Chapter 111 § 150A and related regulations with respect to “the disposal by burial of ash produced by the burning of coal.” Furthermore, hazardous wastes regulated under 310 CMR 30.00, ash produced from coal combustion when reused as prescribed above, and compostable or recyclable materials when composted or recycled in an operation not required to be assigned under 310 CMR 16.05 are not considered solid wastes under 310 CMR 19.000.²² No such statutory or regulatory authority is provided for C&D debris; this material therefore remains subject to the solid waste management protocols delineated in § 150A, including the requirements for site assignments that must be based, in part, on comprehensive review of environmental and public health impacts.

Likewise, the Department’s own solid waste regulations note that “recycle” does not include energy recovery from the combustion of any materials.²³ The Secretary’s Certificate on Palmer’s ENF also recognized that “wood separated from C&D for use as a fuel does not qualify as recycling.”²⁴ The C&D-derived materials that Palmer proposes to use *as fuel* thus do not fall within the compostable or recyclable materials waste exemption.

It is curious that the Provisional BUD states that the Department has reviewed the proposed BUD application in accordance with the Massachusetts Solid Waste Regulations at 310 CMR 16.00 (among other regulations). These regulations govern solid waste management, and establish the appropriate framework for disposition of C&D debris. The definition of solid waste under these regulations clearly applies to, and

²⁰ See, e.g., June 30, 2009 revised application, Report #1 Appendix A.

²¹ Mass. Gen. Laws ch. 111, § 150A.

²² 310 Mass. Code Regs. 19.006 (2008).

²³ Id.

²⁴ Palmer Renewable Energy: Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form, EEA# 14243 (June 6, 2008) at 5.

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provides no exemption for, C&D-derived wood.²⁵ The regulations notably require a site assignment for projects that propose to handle or combust solid waste, including C&D debris, and only exempt “small combustion facilities” that combust less than one ton of fuel per hour, 310 CMR 16.05, an order of magnitude less than is proposed by the Palmer Project. As such, the Palmer project is not exempt and must be subject to a site assignment consistent with General Laws Chapter 111, § 150A as well as 310 CMR 16.000 *et seq.* and 19.000 *et seq.*, including but not limited to the requirements for review and permitting of solid waste combustion facilities and handling facilities.

Even If The Department Were Authorized To Issue A BUD, It Cannot Do So Here Because The Provisional BUD Is Materially Deficient.

The regulations governing BUDs place a significant burden of proof on any applicant: the applicant must demonstrate (and the Department must be satisfied) not only that the proposed “secondary” materials and uses are beneficial but also that they pose “an insignificant potential hazard to public health, safety or the environment.” 310 CMR 19.060(2)(a), (b). Yet the Provisional BUD for the Palmer project poses far more questions than it answers – particularly with respect to the sorting facilities, processing technologies, and the extent of contamination (whether assessed or not) that can be expected in the C&D-derived fuel that would be combusted at the Palmer facility.

Only one sorting facility (New England Recycling, or NER) is identified and proposed for approval via the Provisional BUD, and that facility admittedly cannot provide more than a fraction of the fuel needed by the Palmer Project. According to the Provisional BUD, NER is only permitted to *accept* up to 550 tons of C&D waste per day. Given that “facilities like NER . . . accept a broad range of C&D waste” (Provisional BUD at 5), presumably the C&D derived wood that is extracted from this waste stream is significantly less than 550 tons per day and falls far short of Palmer’s anticipated daily fuel demand.

As acknowledged in the Provisional BUD, other sorting facilities do not currently produce fuel meeting Palmer’s specification and would need to make design or operational changes in order to do so. *Id.* at 2-3. Significant questions remain regarding the quality of fuel that could be supplied by other sorting facilities. The Provisional BUD speculates that “there are facilities in Maine and *possibly* other nearby states that *might* be able to supply the [Palmer] facility.” *Id.* at 3. But no definite information is supplied, contrary to the requirements of the BUD regulations. 310 CMR 19.060(4)(d) (“Any interim handling facilities or collection centers not located at the site of processing and not otherwise approved to store or handle the proposed secondary material pursuant to 310 CMR 16.00 and 19.000 shall be identified and described pursuant to this section.”).

Even though Palmer admits that Maine sets a *limit* of 1.5% CCA-treated wood for C&D debris fuel streams, the Provisional BUD inexplicably sets a far weaker limit, with an approved specification stating a maximum of 3.0% CCA-treated wood (by weight),

²⁵ “Wood waste,” by contrast, is defined exclusively as clean (i.e., unprocessed) wood.

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subject to an optimization program with a *goal* of 1.5%. Provisional BUD at 3. Moreover, the Provisional BUD indicates that the one sorting facility proposed for approval, NER, failed to meet the 3-day averages for percent CCA treated wood. *Id.* at 4. The Provisional BUD suggests that this will be addressed during actual operation by having NER provide further instruction to its workers – but acknowledges that this will not provide any guarantee in terms of reducing CCA-treated wood given that “some weathered treated wood may not be readily identifiable because the green color fades to a gray color similar to untreated weathered wood.” *Id.*

Indeed, by the standards of the Provisional BUD itself, *no* supplier, not even NER, is eligible to be considered for approval here. Pursuant to the Sampling and Analysis Requirements included in Appendix B, the Department “*will not approve [an entity] as a fuel supplier until testing documents that [the] supplier can consistently meet specification.*” *Id.* at 16 (Appendix B) (emphasis added). As NER admittedly was unable to consistently meet the standard for removal of CCA-treated wood, it cannot be approved even pursuant to the Provisional BUD’s weak standards.

The Provisional BUD also unacceptably leaves the question of significant additional suppliers unanswered. The Provisional BUD lists some examples of other facilities, including several in Maine, and acknowledges that information about these facilities and the sorted material that they produce is significantly lacking. *Id.* at 5 (“These facilities *reportedly* do not accept treated wood or non-wood materials... [Palmer] *believes* that these and similar facilities are able to produce C&D-derived wood fuel at an equivalent quality level to NER’s wood fuel.”). Even though the one supplier proposed for approval in the Provisional BUD clearly will not be able to meet the Palmer Project’s fuel supply needs, the Provisional BUD indicates only that Palmer “has indicated it will pursue contracts with a number of [as-yet unspecified] C&D-derived wood fuel suppliers.” *Id.* Given that the specified supplier, NER, had a poor track record with respect to CCA-treated wood, how can we have confidence in the quality of sorting by the other suppliers that have not yet been specifically identified or evaluated? While the Provisional BUD indicates that Palmer would be required to collect and submit information and data from each supplier later in time, and obtain written approval from the Department to modify the BUD before accepting C&D-derived wood fuel from a particular supplier (*id.* at 5) – without even assuring that the Department would observe sampling of material from the supplier²⁶ – it makes no sense for a BUD to be issued in the first place without assurances regarding adequate fuel supply meeting even the BUD’s lenient standards. Further, it is unacceptable to *again* segment this project (by deferring supplier approvals to later administrative proceedings) in a manner that will further avoid public review and comment.

In addition, the acknowledgement in the Provisional BUD that “at present there is not enough data to physically or chemically characterize” the anticipated fly ash/air pollution control byproduct (*id.* at 6) again reflects the extensive uncertainty regarding

²⁶ *Id.* at 8 (Material Conditions and Characterization, Part D) (noting that the Department “may” observe the sampling).

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the nature and extent of contaminants that will be present in the Palmer Project's fuel stream.

These substantial deficiencies have not been, and cannot be, corrected by the "General Permit Conditions" set forth in the Provisional BUD. Even if Palmer complied with the requirement to "instruct or give on-the-job training to all personnel involved in any activity authorized by the permit," this requirement is virtually impossible to successfully enforce or monitor, particularly with respect to out-of-state sorting facilities. Similarly, how is Palmer to know of "any changes in production processes at any facility supplying C&D-derived wood fuel... that could modify the physical or chemical nature of the material," and guarantee that such changes would be reported to the Department, as the BUD proposes to require? *Id.* at 7. Further, especially given the heterogeneous nature of C&D-derived materials and the unknown identities of Palmer's fuel suppliers (other than NER), it is woefully insufficient to require an audit of Palmer's fuel sampling procedures only at startup of operations and *after approximately one year of operation*. *Id.* at 8 (Material Conditions and Characterization, part G). Likewise, the proposed sampling protocol calling for visual inspection of only 5% of the 20-ton trucks supplying fuel to the facility, *id.* at 15, is patently inadequate to ensure the fuel stream is free from even visibly evident contamination.

In short, because the provisions of the BUD are demonstrably indefinite, as described above, there is no reasonable basis on which to conclude that the project "shall not cause an adverse impact or significant risk to public health, safety and the environment," as required. 310 CMR 19.060(12)(c); *see also* 19.060(13). The Department thus has not met its obligation to adequately protect the environment and public health, and must rescind the Provisional BUD.

Conclusion

CLF appreciates this opportunity to provide comments regarding the Provisional BUD for the Palmer Project. The Provisional BUD is procedurally and substantively flawed in several material respects, and it would be clearly erroneous and an abuse of discretion for the Department to allow it to go into effect. Neither the project proponent nor the Department has demonstrated that public health and the environment will be sufficiently protected in connection with the proposed combustion of C&D debris-derived fuel. Indeed, the Provisional BUD raises numerous questions and concerns about the environmental and public health risks that are posed by the project. Yet the information needed to make a thoughtful assessment has not even been elicited, as required. We



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therefore strongly urge the Department to rescind the Provisional BUD immediately and, at a minimum, require the project proponent to prepare a full EIR.

Sincerely,

Susan M. Reid, Senior Attorney
Director, MA Clean Energy & Climate Change Initiative

cc: Laurie Burt, DEP Commissioner
Ian Bowles, Secretary of Energy & Environmental Affairs

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