

Nov. 16, 2009

To: Daniel Hall, DEP

From: Alexandra Dawson

Re: BUD for Palmer Renewable Energy LLC (hereinafter PRE), Springfield

The following are my comments, both individually and as president of MEEA, a nonprofit group, on the proposed BUD for the incineration of an average of 700 tons per day of construction and demolition debris (hereinafter C&D) at a waste incinerator in Springfield MA. The intent is to supplement the comments of Mary S. Booth and Benjamin Rajotte Esq. Materials used in preparation of these comments include 310 CMR 19 and 16, ENF Certificate on the PRE project (EOEEA #14243) dated 6/6/08, and the Provisional BUD permit 09-281-050 issued for public comment 10/28/09, proposed to become effective as of 12/18/09.

1. The BUD and its processing are found solely in 310 CMR 19.060. The authority for this regulation is given as the general authority of the Department of Environmental Protection (DEP) under GL Ch. 21A, the Solid Waste regulations under 310 CMR ss 16 and 19 and the solid waste statutes Ch 111, s. 150A. This statutory authority is thin at best, since the 21A mandate is general, the solid waste statutes have limited application (according to DEP), and a set of regulations such as 310 CMR 19.00 obviously cannot act as its own legal authority. None of the above authorities allow the DEP to declare a solid waste something other than a solid waste. The BUD at issue here tries to declare an incinerator a non-incinerator (presumably because the state has a moratorium on new incinerators) and a solid waste a "beneficial" non-solid waste. What is actually the goal is a form of recycling of discarded C&D debris, but DEP cannot use this reasoning because the relevant section on recycling (310 CMR 16.053)(d) excepts recycling operations only if they are not over 100 tons per day.
2. Section (5) of 310 CMR 19.060 makes offsite processing subject to the site-assignment provisions of 310 CMR 16.00 which DEP has repeatedly stated are not applicable and for which DEP has therefore not applied. The establishment of a new solid waste facility at an unassigned site is governed by 310 CMR 16.05(3)(a). All the processing of C&D for fuel are to be accomplished offsite. The one processor currently approved by DEP is New England Recycling in Taunton MA, which has never sought or received a site assignment. Further, the provisional BUD states on p.5 that PRE will "pursue contracts with a number of potential C&D...contractors." DEP indicates it will approve qualified processors in or out of state and presumably in foreign countries. DEP has neither the intent nor the power to apply s.16.00 to most of these suppliers.
3. The processing and use of "special wastes" is not included in 19.060. The Special Wastes category specifically includes asbestos wastes in a list set out in 310 CMR 19.061(3)(a). Procedures include application, a written permit and a Board of Health review separate from the BOH review of the BUD. None of these are included or referenced in the provisional BUD. It is this writer's understanding that C&D debris may include significant amounts of asbestos products.
4. The provisional BUD assigns C&D debris to Category 2 under the Air Pollution permit. This is relevant to the provisional BUD because the Category 2 assignment depends upon the existence of a previous

permit. Various explanations for this reasoning abound. One is that the only previous permit for the proposed use appears to be this provisional BUD. The provisional BUD will not become final until Dec. 18 after the public comment period. Unless the DEP program intends to give out the message that public comment is utterly irrelevant and will not be considered, the provisional permit must be open to change until that date. In fact, the BUD states that DEP will not set final limits of CCA wood, arsenic, chromium, chlorine, lead and mercury until the facility has been tested for 18 months. Clearly such a provisional permit cannot be the basis for a non-provisional air permit. Another reason deduced is that DEP gave PRE a recycling permit to use treated wood. As stated above, recycling permits are limited in scope and size. DEP needs to provide a copy of any such permit and what it was for. A third explanation is that the Air permit was previously given to PRE; but that is clearly not the case. Clarification is called for.

5. The provisional BUD is not entirely congruent with the ENF Certificate issued last year by the Secretary of EOEAA . P. 5 of that certificate requires the use of a “positive pick or similar C&D processing facility” providing a “pre-sorted recycled all wood fuel with insignificant quantities of ...inorganic materials “. The provisional BUD restricts itself to testing for CAA material (a major source of arsenic) and limits that picking process to “kick picking”, a primitive form of picking on the processor’s floor by which materials that could damage the chipper are kicked out of the processing train. This is not what was described by the ENF upon which the Secretary relied. Painted wood containing lead and mercury will be accepted as fuel, apparently because the facility cannot operate without their volume.

## CONCLUSION

The BUD goes well beyond whatever authority it can claim. It is being used to bootstrap the very elements which it is supposed to review for approval. The proponent must subject its processors to s. 16.00 of the regulations, must file for special wastes permit if asbestos is or may be present, and mustfile a Notice of Project Change with the Secretary’s MEPA office