

July 8, 2021

Mr. Thomas Kirk, President  
Materials Innovation Recycling Authority (MIRA)  
200 Corporate Place, Suite 202  
Rocky Hill, CT 06067

**RE: Response to MIRA letter dated May 27, 2021**

Dear Mr. Kirk,

This is in response to your letter dated May 27, 2021 to Commissioner Dykes in which you requested the Department of Energy and Environmental Protection (DEEP or Department) provide its review of Materials Innovation Recycling Authority's (MIRA) proposed plan to transition its waste-to-energy facility on Maxim Road in Hartford to a transfer station post June 30, 2022.

DEEP on several occasions has conferred and exchanged correspondence with MIRA as well as engaged with the MIRA Board regarding its proposed plan to cease operations of its waste-to-energy facility and to transition to a transfer station mode of operation for the duration of the current Municipal Service Agreements (MSAs) which are set to expire in 2027. For example, Commissioner Dykes' letter of July 14, 2020, responding to MIRA's Annual Plan of Operations for Fiscal Year 2021, clearly states that a new permit would be required for a transfer operation. As requested, we have detailed DEEP's analysis that the current solid waste facility operating permit (No. 06401260-PO, the "Permit"), does not authorize MIRA to switch its operations to function solely as a transfer station.

DEEP's Waste Engineering and Enforcement Division of the Bureau of Material Management and Compliance Assurance personnel engaged with the MIRA staff, and also with the MIRA Board on several occasions regarding various options, including MIRA's stated desire to conduct transfer of municipal solid waste (MSW) under the existing permit without modification thereto. Most recently, Robert Isner attended a MIRA Board Meeting on May 12, 2021 to discuss the need to comply with the legal requirements found in Conn. Gen. Stat. § 22a-208a regarding modification of a permit, a new facility permit and DEEP's experience with similar transitions.

The attachment to this letter details the errors and deviations from Conn. Gen. Stat. §§ 22a-208a, 22a-262 and 22a-264 in MIRA's interpretation of the Permit, governing statutes and MIRA's proposed plan to operate the waste-to-energy facility site as a transfer station. MIRA cannot unilaterally modify activities under the Permit or the Operations and Management Plan (O&M Plan) without submitting revised application documents to DEEP for review and approval. In order for MIRA to be in compliance with the state statutes, the Permit and the O&M Plan, based on MIRA's proposal to modify the regulated activities to

MSW transfer only, MIRA has two options: 1) apply to DEEP for a modification of the Permit,<sup>1</sup> or 2) apply to DEEP for a new solid waste facility permit.

Should MIRA intend to continue MSW transfer activities beyond the expiration date of the modified permit (if issued), a new solid waste facility Transfer Station application should be submitted well in advance of the expiration date to ensure continuity of services. Note that changes to any documents on which the existing Permit is based, including the O&M Plan, requires submission of updated documentation per Condition No. A.1.c. of the Permit which requires that the permittee notify the Department of any changes to the documents submitted as part of their application or in support thereof.

Upon MIRA's submission of a focused application for a modification of its solid waste facility permit, DEEP will conduct a formal review of the application and supporting documents that would include a public hearing process. Any decision to authorize a change in the design and operation of the Facility would need to consider factors such as: description of traffic flow and impact, maximum MSW to be sorted, stored and transferred, odor mitigation and management, and what diversion and additional recycling activities would be promoted and implemented consistent with the CMMS and Conn. Gen. Stat. §§ 22a-229 and 22a-264. MIRA should indicate any new source separation, collection of organics or other new and innovative diversion programs it intends to initiate so that its plan comports with the CMMS and Conn. Gen. Stat. §§ 22a-229 and 22a-264.

DEEP's solid waste permitting staff can provide guidance on the necessary documentation for the application so that MIRA attaches to the modification application those components of the supporting documents in which changes are required. DEEP can expedite the comprehensive review of an application to modify the existing permit with the understanding that a new solid waste facility permit application for a Transfer Station would follow for its continued operation. The described process would satisfy the requirements of RCSA 22a-209-4 and 22a-209-9. While the environmental justice provisions under Conn. Gen. Stat. § 22a-20, technically do not apply to a modification as proposed by MIRA that is not an expansion, MIRA's proposed transition is of significant public interest, and MIRA should, nonetheless, perform meaningful public participation such as conducting informational meetings, notice, etc. and allow for open communications with the community and environmental groups requesting to participate.

MIRA's planned substantive change to the design and operation as well as the intended closure of the Resources Recovery Facility should be presented and reviewed by DEEP in context with MIRA's updated annual plan of operations as required by Conn. Gen. Stat. § 22a-264. The annual plan of operations could provide additional approaches to waste reduction or measures that would be informative in understanding MIRA's roadmap. MIRA did not submit a revised 2021 operations plan, and has failed to submit an annual operation plan for 2022 as required pursuant to the Connecticut General Statutes (Conn. Gen. Stat.) § 22a-264. The RRF is MIRA's largest operating asset and is, therefore, intrinsically tied to the other services provided by MIRA and its obligations under the State Solid Waste Management Services Act. Given the significance of the RRF to MIRA's short-term and long-term operations, MIRA's member municipalities and all stakeholders would benefit from a transparent and comprehensive strategic plan.

The approach detailed herein complies with applicable laws and is mindful of the competing demands for stability and continuity of services required to support MIRA's existing obligations through June 30, 2027. DEEP strongly believes that a successful implementation of MIRA's transition depends on the clear,

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<sup>1</sup> Option 1 tracks the approach that the Wallingford (former Covanta) facility took. Covanta submitted an application for a permit modification to allow for the initial transition followed by a new solid waste facility permit for the new transfer station facility.

consistent, and proactive communication and cooperation among MIRA, MIRA municipalities and Hartford, the host community. For example, the community will certainly be interested in learning what impact the transition to a transfer station will have on odors – given the role of the operating RRF in limiting odors by drawing air from the WPF and RDF areas for use in the combustion process. Information shared with DEEP, the public and MIRA municipalities will be a top priority during this process.

I would be remiss if I do not directly address another MIRA inquiry which MIRA continues to pursue despite having been given a very clear answer by DEEP. Burning the coal that has been sitting on the site for years is the wrong thing to do for a multitude of reasons. If MIRA insists on pursuing burning coal at the site in the manner which you have proposed, MIRA must submit a permit application for a major modification to their New Source Review and their Title V permit under the Clean Air Act.

If you have additional questions concerning the information contained herein, please direct your concerns to Robert Isner, Director, Waste Engineering and Enforcement Division at (860) 424-3264. Mr. Isner and his team are available to meet with you upon your request.

Sincerely,

Betsey Wingfield  
Deputy Commissioner

cc: MIRA Board

ATTACHMENT  
7/2/2021 LETTER to Thomas Kirk

**A. Off-site Transfer of Received MSW**

1. Permit Condition No. C.3.c

MIRA states its intention to suspend the shredding and combustion of MSW at its Resources Recovery Facility (RRF) for energy recovery on or about June 30, 2022. To meet its contractual obligation to serve the forty-eight (48) municipalities that have signed Tier I Long-term contracts through June 30, 2027, MIRA plans to use existing authority under the Permit to manage the MSW received at the Waste Processing Facility (WPF) area of the RRF for off-site transfer to other permitted solid waste management facilities. MIRA cites Condition Nos. C.3.a. and C.3.b. of the Permit, governing its Power Block Facility and Waste Processing Facility as independent authorities. Regarding Condition No. C.3.c. providing MIRA the ability to transfer up to 680 tons of MSW per day, seven days a week, MIRA claims there are no stipulations or conditions upon which this ability to conduct transfer activities rests. In MIRA's opinion, the authorization to transfer MSW provided in Condition No. C.3.c. stands alone.

DEEP Response

Condition No. C.3.c. does not stand alone.

MIRA was created by the legislature under the provisions of Conn. Gen. Stat. 22a-257 et seq., of the State Solid Waste Management Services Act (SSWMSA). The State has charged MIRA with the responsibility for implementing solid waste management services and resources recovery systems, facilities and services in accordance with the state-wide solid waste management plan. MIRA conforms to the definitions of a Solid waste management system in accordance with Conn. Gen. Stat. 22a-260(23) which states in pertinent part:

... that portion of the overall state-wide solid waste management plan specifically designed to deal with the provision of waste management services and ***to effect resources recovery and recycling by means of a network of waste management projects and resources recovery facilities*** developed, established and operated by the authority by contract or otherwise, but not embracing or including any regulatory or enforcement activities of the Department of Energy and Environmental Protection in accordance with applicable provisions of the general statutes and as may be referred to in the state-wide solid waste management plan as developed and promulgated by the Commissioner of Energy and Environmental Protection; (emphasis added)

Conn. Gen. Stat. 22a-260(6) further defines waste management services as:

... actions taken to effectuate the receipt, storage, transportation ***and processing for resources recovery***, recycling, reuse of recovered materials, or disposal of solid wastes, including the sale of products, materials or energy on behalf of the state, a region, a municipality or a person by the authority or by any person or persons acting under contract with the authority, pursuant to the provisions of this chapter; (emphasis added)

MIRA is authorized to conduct its waste processing facilities pursuant to state laws and regulations which include the Permit, the DEEP approved MIRA Operations and Management Plan (O&M Plan) and the application documents submitted by MIRA. DEEP views the functions authorized under MIRA's enabling

statute, its Permit, and its O&M Plan in its entirety as a complete network of facilities, not as standalone pieces of MIRA's operations to effectuate resources recovery and recycling.

The Permit and O&M Plan address MIRA's facilities comprehensively from the receipt of MSW at their Facility to the final operations of the Power Block Facility (PBF) for combustion, and recycling and transfer activities. The transfer capability built into these documents is established as a contingency to mitigate any unanticipated equipment failures in the operations. Any substantive changes to a solid waste permit are under the purview of DEEP's regulatory authority. If MIRA intends to cease the MSW sorting, shredding, conversion to RDF and combustion for energy operations, such action would constitute a substantive change to the design and method of operation of the MIRA Facility as it was permitted and would require approval of the commissioner.

Past practice also weighs against any contrary interpretation. Historically, Condition No. C.3.c. has been triggered solely in emergency situations, outages and unplanned failure of WPF and/or PBF, on a temporary basis. It was never envisioned to be used as a basis for full operations of the RRF long-term. To interpret this provision more broadly would undermine and violate the terms and conditions specified in the Permit, O&M Plan, and MIRA's statutory authority to provide essential waste management services as delineated throughout Conn. Gen. Stat. § 22a-260 et. seq. Condition No. 5.3.8. of the O&M Plan clearly states that transfer can occur "from time to time," during shutdowns, not as the primary mode of operations. Over reliance on the transfer allowance for non-emergencies and planned maintenance outages/shutdowns is also inconsistent with the state solid waste regulatory framework, the 2016 Comprehensive Materials Management Strategy (CMMS)<sup>2</sup>, and DEEP's past regulatory approach regarding conversion from waste-to-energy operations to those of a transfer station as described in more detail in section D below.

## 2. Definition of Processing

In support of its position to switch operations solely to transfer services, MIRA notes that the definition of "processing" contained in Condition No. A.2. of the Permit is: "...the reduction in volume of MSW through its conversion to Refuse Derived Fuel and subsequent conversion thereof into energy through combustion." MIRA subsequently goes on to explain that this definition supports the conclusion that the activities conducted by the Waste Processing Facility and Power Block are separate.

### DEEP Response

MIRA's interpretation is incorrect.

The term "processing" is defined in Condition No. A.2. of the Permit as volume reduction through conversion of MSW to RDF and combustion for producing energy. RDF is also defined in Condition No. A.2. of the Permit as "... a type of MSW produced by sorting received MWS by size and type and/or reducing the volume of MSW through mechanical means." MIRA's essential function as a solid waste processing facility is to process MSW into energy and residue after it has reduced the volume of MSW through the WPF to generate RDF. The definitions in Condition No. A.2. of the Permit state such, as does section B. of the Permit in its description of the Facility, which includes the various functions and operations of the Waste Processing Facility, Power Block Facility and residue management. MIRA's claim that these

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<sup>2</sup> Per Con. Gen. Stat. 22a-241a, the 2016 Comprehensive Materials Management Strategy (CMMS) replaced and revised the Connecticut Statewide Solid Waste Management Plan found in Con. Gen. Stat. 22a-228. The CMMS incorporated into law a sixty (60) percent diversion factor for municipal solid waste.

elements are independent of one another for processing, is not compelling. Condition No. C.3. of the Permit works through the terms and conditions for all three aspects of the facility operations and which together constitute the RRF system. MIRA's O&M plan supports this conclusion. The O&M Plan addresses the WPF, PBF and residue management areas of the facility.

## **B. MIRA Transfer Station Activities**

MIRA contends that its proposed activities are not an alteration under its Permit. According to MIRA, the proposed transfer activities meet the provision of Condition No. C.3.c.i.(I) of the Permit, and the proposed changes in the regulated activities do not conflict with Conn. Gen. Stat. § 22a-208a(d)(1) or the Regulations of Connecticut State Agencies (RCSA) § 22a-209-1. As MIRA states in its letter, “[It] is not changing the transfer function to any degree – it will occur as it exists today under the Permit.” MIRA also contends that no provision of the Permit requires it to seek a modification for processing less MSW.

### DEEP Response

The proposed activities are an alteration of the Permit's authorized activities.

Conn. Gen. Stat. § 22a-208a(d)(1) is prescriptive and expressly states that, “no person that holds a permit under this section shall alter the design or method of operation of the permitted facility without first obtaining a modified permit.” The Permit, as issued on May 16, 2018 is for a Resources Recovery Facility, not a Transfer Station. Cessation of MSW shredding and combustion, and off-site transfer only of MSW is considered by DEEP to be a fundamental change in the operations of the facility, its Permit and contrary to the legislature's grant of authority in creating MIRA. The Permit is based on and incorporates MIRA's O&M Plan. As such, numerous, significant, and material components of the O&M Plan would either not be followed for transfer or would be substantively altered requiring DEEP approval prior to commencing the proposed activity.

On its face, the law is clear that MIRA's proposal to conduct only transfer of MSW is not authorized by the existing operating permit. A new or modified permit is required to materially change the method of operation of a permitted facility. “For the purpose of Conn. Gen. Stat. § 22a-208a(d)(1) "alter" as defined in the statute “means to change to any substantive degree the design...process or operation of a solid waste facility...” At a minimum, MIRA's proposal is a substantive alteration of both its process and operations requiring a different permit and, as has been previously indicated, would ultimately require a new permit and conditions to operate to function as an MSW transfer station.

Conn. Gen. Stat. § 22a-208a(d)(1) mentions a few examples of what may be considered as major changes such as with a facility's approved capacity limits or type of solid waste it manages and also lists what is not considered as a substantive alteration in terms of capacity intake if it is minor and a small category of recyclables. Conn. Gen. Stat. § 22a-208a(d)(2) notably carves out for MIRA that a change of any equipment MIRA newly employs for air pollution control or for changes to its odor control equipment, is not considered an “alteration”. Those are the limited exceptions to seeking DEEP's approval for changes in design, process, and operation. Those changes are not what is anticipated here. MIRA's proposal is a substantive modification of its functions and operations.

DEEP has interpreted Conn. Gen. Stat. § 22a-208a(d)(1) alteration provision previously and allowed a modified permit to address a phased approach to the cessation of waste to energy operations and

commencement of transfer station operations with the Covanta Wallingford Application in 2017<sup>3</sup>, and required the submission of an application for a new facility permit authorizing transfer of MSW operations. DEEP staff previously shared the associated Wallingford documents with MIRA staff. Similarly, what MIRA intends to do is a substantive change triggering the requirement for a new solid waste facility permit in accordance with applicable law and consistent with precedent.

The existing Permit allows for “up to 680 tons per day” of received MSW to be transloaded. MIRA need look no further for clarity regarding transfer capability than its O&M Plan sec. 5.3.8 which explicitly states that transfer is to be undertaken only “from time to time” and not the normal operating procedures. Sec. 5.3.8 specifically states, “MIRA anticipates that the need to transfer MSW will occur due to circumstances such as an unscheduled boiler outage, equipment malfunction, or other unanticipated situation that unexpectedly reduces the amount of MSW that can be processed and combusted.” DEEP notes that the 680 tons-per-day allowance for transfer was based on MIRA’s calculation for the maximum amount of MSW that could be transferred during the hours when MIRA was not receiving MSW, which also supports the contingent nature of the transfer allowance.

### **C. MIRA’s need for transition was unanticipated**

MIRA asserts that “the premature cessation of operations of the waste to energy processing facility at this time is and remains unanticipated.”

#### DEEP Response

The situation that MIRA finds itself in has been foreseeable for quite some time.

The need for major repairs, including an influx of major investment or anticipated closure of the Resources Recovery Facility has been publicly discussed by MIRA for quite some time now. MIRA admitted in their March 16, 2021 presentation to towns that they stopped investing in the facility in 2008. In 2013 the legislature convened the Resources Recovery Task Force to address concerns raised by MIRA and others about the economic challenges facing the Resources Recovery Facilities. The concerns expressed included future tipping fees for towns being cost prohibitive in light of the diminishing energy revenues unless new funding sources were identified and the aging equipment and the looming end of life of the facilities. These factors were certainly made real and highlighted during both the 2015 and 2018-2019 extended shutdowns of the Resources Recovery Facility, as well as ongoing cold-iron outages that continue to occur.

To say this was unanticipated due to lack of state support and lack of success with the process set forth pursuant to P.A. 14-94 is not accurate. The state has been consistent in its reaction to MIRA’s repeated request for financial assistance. The Facility has been on a downward spiral for several years now. Public Act 14-94 provides evidence of the legislature’s intent that neither the state, nor taxpayers, nor for that matter rate payers, would be providing financial support to MIRA once the facility reached its end of life. DEEP’s Request for Proposals also made it clear that the redevelopment of the Facility would need to be financed through a public-private partnership without any state funding.

The MIRA facility has not been operating at full capacity for years. Public Act 13-285 (sec. 9) required the MIRA to prepare a Transition Plan to discuss financial and business model options. The public has been

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<sup>3</sup> See, [Final Decision](#) in the Matter of Covanta Projects Wallingford LLC, Application APP. No.: 201604262, issued August 20, 2018.

apprised of MIRA's declining capacity as a result of the many outages experienced since 2015. Given that Section 9.5 of the O&M Plan requires the continued maintenance and operation of the Waste Processing and Power Block Facilities, and the necessary actions for predictive and preventive inspections, maintenance and corrective actions, DEEP fails to understand how MIRA now finds itself unprepared for the impending demise of the facility.

#### **D. MIRA Closure Plan**

MIRA indicated that it would comply with RCSA § 22a-209-13 requirement to provide a Closure Plan for the Facility.

##### DEEP Response

DEEP agrees that a comprehensive closure plan is a critical component of next steps.

DEEP understands that MIRA is in the process of soliciting a consulting firm to evaluate, outline and plan for closure of the RRF. DEEP anticipates receiving and reviewing a closure plan that meets the requirements found in state law and regulations. The plan must include details concerning a financial assurance for closure, the scope and schedule for site-wide investigation and remediation including the coal pond, the decommissioning plan for the permitted Facility and equipment, including the jets and any treatment systems, reporting on milestones reached as well as access to MIRA's financial records.