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| DOCKET NO. 110A - A resolution to amend the Council's Decision and Order and Certificate of Environmental Compatibility and Public Need issued to Riley Energy Systems of Lisbon Corporation, Regional Disposal Systems of Lisbon, Inc., and Philip C. Armetta for the Lisbon Resource Recovery Facility in the Town of Lisbon, Connecticut, for changes in the sources of waste as identified in the Council's Findings of Fact and Decision and Order. | : | Connecticut Siting Council : October 4, 1993 |

## Opinion

On July 14, 1993, the Connecticut Siting Council (Council) adopted a resolution to consider amending the Decision and Order (D&O) and Certificate of Environmental Compatibility and Public Need (Certificate) issued to Riley Energy Systems of Lisbon Corporation (RESOL), Regional Disposal Systems, Inc. (RDSI), and Philip C. Armetta, for the construction and operation of a resource recovery facility in Lisbon, Connecticut (Facility). The Council's resolution was limited to the changes in the sources of municipal solid waste (MSW) as identified in the Council's February 5, 1990, Findings of Fact (FOF) and D&O.

In 1990, when the Council issued its D&O, it sought reasonable assurances that the Facility would have sufficient amounts of Connecticut MSW prior to the commencement of construction and that it would be available to serve municipalities that had expressed interest to participate in the Facility, with members of the Northeastern Regional Resource Recovery Authority (NECRRRA) to have priority to establish contracts. Such was the purpose of section 1g of the D&O. This condition was not intended to be a rigid limitation on the Facility's sources of MSW. Moreover, there was no requirement that the Council impose the specific condition that it did. Indeed, the requirement in section 1g that the Certificate holder submit confirmation of executed contracts with those municipalities identified as having submitted letters of intent or interest was not a prerequisite to the Council's issuance of the Certificate. Rather, it was a means of obtaining a reasonable assurance that the Facility would have an adequate supply of MSW and that the Facility would be available to serve the region in which it would be located. It is against this backdrop that the proposed amendment must be judged and the scope of this proceeding be set.

The areas to be served were originally identified by the Council through letters of intent or interest from several municipalities in Eastern Connecticut and NECRRRA, but also included substantial tonnage from towns outside of the region and Eastern Connecticut from as far away as 66 miles from the Facility. The Council recognized that the contracts would be mutually agreed upon by the participating parties and that some municipalities identified with letters of intent or interest might find other alternatives for waste management. In fact, some municipalities identified in the

D&O and FOF have found disposal options other than the Facility.

Although the Yaworski, Inc., contract is short-term and consequently somewhat speculative, it is still reasonable and likely that approximately 43 percent of daily MSW tonnage will be from municipalities identified in the Council's D&O of 1990. Approximately 57 percent is from areas not identified or specified by the Council and is the subject of this proceeding. Based on the present anticipated fuel mix, new sources of waste incrementally increase the average distance for waste to be transported to the Facility by approximately 14 miles per ton more than would have been the best case scenario if the original sources were supplying the daily MSW tonnage. Furthermore, only approximately 16 percent of this waste tonnage would be transported farther than the maximum distance originally considered by the Council. These are not substantial changes and will not have significant consequences.

Additionally, there is a reasonable likelihood that the waste from the Housatonic Resource Recovery Authority (HRRA) and the City of New Haven (New Haven) may be eventually displaced by waste from municipalities closer to the Facility in eastern Connecticut where approximately 215 tpd of MSW is either currently available or will be available in the immediate future for long-term contracts. If we do not amend the D&O and Certificate, these municipalities might not have this disposal option for efficient and environmentally-sound management of waste, consistent with the Department of Environmental Protection's (DEP) statewide determination of need. While other alternatives exist, each municipality has been or will be free to consider factors such as transport distance, cost, and other pertinent issues of that town, and select the overall best option tailored to that town. We do, however, find the Facility to be a prudent and feasible alternative.

The most significant effect this change in the sources of waste to the Facility would have on the environment is from increased air emissions from trucks used to transport MSW. Even so, we do not find this or any other environmental consequence from the change of participating towns to be significant or unreasonable, and such action would not impede or destroy the public trust in the air, water, or other natural resources of the State. In fact, if long-haul transport trucks were used to deliver waste from New Haven and the HRRA, the number of truck trips might decrease by more than half than if smaller vehicles served the region. Furthermore, we find it feasible and prudent to allow additional municipalities to use this Facility.

The Council ruled over three years ago on the public need and environmental effects associated with this Facility. Subsequently, the DEP has issued its determination of need and other environmental permits needed for Facility construction and operation. Notwithstanding certain motions, objections, and other information that was or was not provided to the Council during this proceeding, we are not here to rehear or reconsider these issues. The scope of this proceeding is limited to determining whether the proposed amendment should be granted. If the Certificate holder had completely satisfied the original section 1g, the Council would not

have had a basis to revisit the issues the opponents of the amendment would have the Council consider. The Council's having concluded that an amendment to section 1g might be necessary does not open the door to these issues. We are, however, required to decide the precise issue of our resolution - whether changes in the sources of waste should be allowed by this Council.

Indeed, while several parties opposed to the operation of this facility have vigorously argued that the Council should increase the scope of this proceeding and consider all environmental issues under the Connecticut Environmental Protection Act, this would be redundant and unnecessary given the type of change proposed. In fact, one could argue that the change proposed is so insignificant that an amendment is not necessary at all. This, of course, was the course of action preferred by the Certificate holder when it filed their notice to commence construction on June 23, 1993, and argued that the intent of the Council's D&O was being carried out. It was the Council that adopted a resolution to consider this change in the context of a public hearing, to accept public comment and argument, and to determine the significance of the change in the participating communities. This process is consistent with the statutory authority of the Council and the legislative intent that established the Council.

With this process nearly complete and with a large array of evidence and legal argument before us, we can now fully appreciate the nature of the change in participating communities, but do not find any reason to deny this amendment. The facility will operate substantially as proposed and approved by the Council in 1990, no significant environmental consequences will occur as the result of this amendment to include additional participating communities, and arguments to increase the scope of the preceding are without merit.

Based on the information contained in the record for this proceeding we find no evidence that the changes in the sources of MSW to the Facility, different than those identified in our FOF and D&O, are inconsistent with State policy or would result in any significant change in construction or operation as approved by the Council in 1990 - when the Council considered effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife and whether such effects were disproportionate either alone or cumulatively with other effects when compared to need; were not in conflict with the policies of the State concerning such effects; and were not sufficient reason to deny granting the Certificate. Therefore, we will issue an amended Certificate for the construction and operation of this Facility. We will order section 1g to give preference for future contracts in the following order: 1) communities that were identified in the Council's 1990 FOF as submitting letters of intent and interest, 2) members of NECRRRA, 3) eastern Connecticut communities, and 4) other Connecticut communities to allow efficient MSW disposal for all Connecticut.

SMH/ss

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