

July 14, 2020

Thomas D. Kirk, President
Materials Innovation & Recycling Authority
200 Corporate Place, Suite 202
Rocky Hill, CT 06067

The Honorable Donald Stein, Chairman
Board of Directors
Materials Innovation & Recycling Authority
200 Corporate Place, Suite 202
Rocky Hill, CT 06067

Dear Messrs. Kirk and Stein:

The Department of Energy and Environmental Protection (DEEP) is in receipt of the Materials Innovation & Recycling Authority's (MIRA) letter dated June 17, 2020, and attachments, which MIRA describes as its Annual Plan of Operations for Fiscal Year 2021. It represents a false choice, and a bad deal for taxpayers across the state, Hartford residents, and the environment.

Connecticut General Statutes (CGS) Section 22a-264 requires MIRA to send an annual plan of operations to DEEP for review and approval. The statute requires that the plan explain MIRA's activities in providing or contracting for the provision of solid waste management services consistent with the statewide solid waste management plan (SWMP, contemporarily known as the Comprehensive Materials Management Strategy, or CMMS).

Section 22a-264 further requires that the Commissioner review the plan for consistency with the statewide solid waste management plan, and, with her approval, may be adopted by a vote of MIRA's board of directors. Many years have passed since MIRA (or its predecessor organization) submitted an annual plan of operations to DEEP for review and approval, despite the clear requirement to do so. Thus, MIRA operational decisions over the past several years have occurred without an approved plan as required by statute. According to DEEP records, and a state audit for the fiscal years ended June 30, 2015 and 2016, MIRA has failed to produce the required plans for many years, in violation of legal requirements.

The documents submitted by MIRA contain no narrative or description of MIRA's operational plans for its various facilities, nor how such plan is consistent with the applicable statutes and regulations and the CMMS. For these reasons, and as discussed further below, DEEP concludes that these documents do not comprise an operational plan, and are not sufficient to meet the requirements of the statute.

MIRA is quasi-public entity created and defined by statute with a unique purpose, authorities and responsibilities, including: the implementation of solid waste management systems and infrastructure necessary to "carry out the provisions of the state-wide solid waste management plan"; the "provision of solid waste management services to municipalities, regions and persons within the state";¹ and the development of new industries, technologies and commercial enterprises in support of resources recovery,

¹ See Conn. Gen. Stat. Section 22a-262(a); *id* at

recycling, reuse and treatment or processing of solid waste.² MIRA has at its disposal, through CGS Sec. 22a-262(a)(3), the authority to enter into contracts with private industry to achieve the goals identified in the CMMS.

The DEEP Commissioner adopted the CMMS in July 2016.³ The CMMS identifies policies and practices necessary to achieve the statutory goal of diverting 60% of the state's municipal solid waste (MSW) from disposal by the year 2024⁴ by reducing waste, increasing reuse, recycling, and composting, and focusing on the development of waste conversion technologies. The CMMS specifically identifies the challenge of reliance on aging waste-to-energy (WTE) infrastructure, such as the MIRA Resource Recovery Facility (RRF), and calls for MIRA's partnership with the state in identifying opportunities to modernize the system.

As required by Public Act 14-94, DEEP, in consultation with MIRA, conducted an RFP to identify a facility developer to join with MIRA in modernizing its system. The RFP called for private financing in a public-private partnership model.

After lengthy negotiations between MIRA and the selected bidder, MIRA informed DEEP that the resulting proposed project will require approximately \$330 million in capital investment, and possibly hundreds of millions more in state subsidy to construct and operate the facility at a tip fee that is market-competitive and acceptable to member towns. No state subsidy—whether from bond funds or ratepayer funds—was contemplated under P.A. 14-94. The final proposed project also fails to meet the environmental criteria of the RFP, including modern diversion enhancements to MIRA's facility.

Catastrophic outages of the MIRA RRF in 2015 and 2018-19 have highlighted the deteriorated condition of the WTE facility, and the urgent need to develop alternative options for reliable MSW disposal for MIRA member towns. In addition, MIRA's tipping fees have increased approximately 35% in the last two years and are projected by MIRA to continue to do so, placing pressure on already strained municipal budgets.

While recognizing that the current MIRA financial condition are unsustainable, the proposed level of subsidy for a project that is no longer consistent with the goals of the Public Act or the resulting RFP is not something that DEEP can support. In addition, DEEP is cognizant of the objections of the City of Hartford and its residents to the long-term continuation of MIRA's waste incineration operation, particularly without the modern diversion technologies that were anticipated to mitigate the environmental and health impacts.

MIRA's alternative appears to be to build a transfer operation that will rely on out-of-state landfilling for final disposal. This alternative is inconsistent with MIRA's statutory requirements. It is unclear whether DEEP will be able to issue the necessary permits without statutory changes authorizing MIRA to conduct activities that are contrary to the CMMS.

As part of the application for a new transfer station operation, MIRA must demonstrate that such action is consistent with the CMMS and the solid waste management hierarchy, in accordance with the CGS sections 22a-229 and 22a-264 along with other applicable statutes. Additionally, the regulations require the development of an appropriately comprehensive closure plan for the existing facility in advance of the transition from WTE to transfer activities. Before filing a new facility permit application, MIRA must fulfill the requirements under the Environmental Justice statutory process (CGS Sec. 22a-20a). Those requirements include developing and filing a meaningful public participation plan, for DEEP's review and

² Conn. Gen. Stat. Sec. 22a-262(a)(5).

³ See Comprehensive Materials Management Strategy, available at <https://portal.ct.gov/DEEP/Waste-Management-and-Disposal/Solid-Waste-Management-Plan/Comprehensive-Materials-Management-Strategy>.

written approval, and engaging with the host community's chief elected official to develop a host community benefit agreement.

Based on the submitted documents, the MIRA management team has not considered obvious alternatives that could be consistent with the CMMS and approvable by DEEP pursuant to Section 22a-264. A MIRA Annual Plan of Operations could arguably conform with the CMMS by providing for transfer of MSW on a time- or quantity-limited basis, if coupled with the adoption of other innovative and environmentally-positive measures that promote self-sufficiency and predictable costs for municipal and business customers. A few such measures identified in the CMMS include: unit-based pricing for MSW disposal; promotion of recycling; and separation of food waste at the point of generation for recycling. MIRA could also consider partnering with private sector contractors for transfer and disposal of waste currently under MIRA long-term contracts, and include in such arrangements waste reduction incentives, organics diversion pilots, and other approaches to mitigate the environmental impact of that waste generated by MIRA's customers.

Please revise the plan to address the concerns detailed above. Given the urgent need to ensure continued, reliable service for participating towns, DEEP requests that you submit a revised plan by September 15, 2020. My staff and I would be glad to meet with you and discuss the concerns raised herein as you embark on revising your submittal.

Sincerely,



Katie S. Dykes
Commissioner