Attachment A
NRCM Testimony

ARC DEP mtg. 2-18-16

DEP Concerns - nature of soils
- current license - petro cont. soils
concern about types coming in.

ARC - What coming in.?
appears - urban fills - Harvard jobs
Eric - ash, soils urban fills
ARC - Central Artery tunnel project
similar fill
large projects.
Case-by-case standalone projects.
Staff concerns on evolution of process from petro to urban
Nature of soils coming in.
Scott - Adams school - any additional testing
Eric - ESA II existed so no need for additional sampling.
CBR soils ↑ lead not petro soils.
Eric - less clear for metals contamination
Expansion in range of contaminants.

ARC - ↑↓Δ in material from years earlier is there additional sampling needed for urban soils?

Eric - post sampling frequency for 1 sample / 10,000 tons

Tom - Why isn't this covered (material taken in) by 2008 permit?
Cyndi - PC&EH trying to say we didn't do it right with 2008 permit"

Waste Profile Sheet - used from
not haz Waste — Nonridgewood landfill
PCB's <2
Sandblast grit
Coal
Spill letter Virgin from DEP
500-250 tons menu of testing
8 RCRA metals if UST
Unknown or Waste 0.1 - 250 tons RCRA metals
Totals or TCLP — PCB, pH, (TPH optional)

2008 PBR: requirements kill the waiting period & notification process to state
Yee - prior to PBR there was more
Ga market - Is this something that we could change?

Attachment B
NRCM Testimony

Hamlin, Eric P

From:	Hamlin, Eric P
Sent:	Tuesday, March 21, 2017 1:01 PM
To:	Darling, Cyndi W; Clark, Paula M
Subject:	FW: Soil treating in NY
Attachments:	610-5-58_ESMI_contaminated_soil_BUD_Modification.2012-01-20.Letter.pdf; ESMI Permit 2012 rev..pdf; 1015-0-00_SuiteKote_Petroleum-Soil_BUD-Approval.2012-09-06.letter.pdf
Follow Up Flag:	Follow up
Flag Status:	Flagged
Categories:	ARC/CPRC related

I spoke with Kathleen Prather from NYDEC yesterday. Compared to some of the other NE states, they operate a bit more like we do in that they license the processing and the end use of treated soils, although they have separate staff that deal with processing and beneficial use. They also appear to allow the use of treated soils for purposes other than landfill daily cover.

It seems that they permit asphalt emulsion only as a treatment for petroleum contamination. If you look at the ESMI permit you'll also see that the allowable metal contaminant limits are set pretty low; my discussion with Kathleen confirms that they are not counting on the asphalt to bind them long-term.

It looks like our approach is still the regional outlier.

Eric P. Hamlin, Environmental Specialist
Solid Materials Management Unit
Bureau of Remediation and Waste Management
Maine Department of Environmental Protection
312 Canco Road
Portland, Maine 04103
207-822-6344
eric.p.hamlin@maine.gov

Attachment C
NRCM Testimony

Eric Hamlin

Zabierek, Christina S

From: Graham, Tom
Sent: Thursday, March 16, 2017 8:56 AM
To: Zabierek, Christina S
Subject: Asphalt Encapsulation

Tina,
Seeing that your meeting regarding Chapter 418 is this morning I am sending you what I have discovered to date regarding how other states address asphalt encapsulation of contaminated soils.

Let me know after your meeting if you would like me continue; you may also want to get the name of the individual in Portland who has done this type of research before.

New Jersey:
I have not yet found the controlling regulations, but Pure Soil (http://puresoil.com/treatment-processes/asphalt-encapsulation/) undertakes asphalt encapsulation. → petroleum or other?

Texas:
The Texas Commission on Environmental Quality's Chapter 334 Subchapter K, "Storage, Treatment, and Reuse for Petroleum-Substance Contaminated Soil" (https://www.tceq.texas.gov/assets/public/legal/rules/rules/pdflib/334k.pdf) regulates these matters; while the general provisions of the subchapter, such as shipping procedures and recordkeeping and reporting, of particular interest is §334.503 "Reuse of Petroleum-Substance Waste." This Section requires identification of the generating and receiving facility/location, documentation that asphalt mix meets the end user specifications. For cold-mix and hot-mix-emulsion set a limit of petroleum contamination of the waste, require meeting final specifications, the facility must have all applicable authorization, and there must be authorization from the landowner where the asphalt will be used.

Massachusetts: •Process petroleum contaminated soil for use in landfills
As the report I forwarded you earlier indicated "it's complicated." I have not managed to untangle how they handle the material at this time, but I am told by staff that most of this waste may be sent to Maine for processing.

Oregon:
Oregon has a standing beneficial use determination for soil from petroleum cleanup sites (heating oil or motor fuel only) to be used as an aggregate is asphalt mixtures (http://www.deq.state.or.us/lq/pubs/docs/sw/BUD/StandingBeneficialUseDeterminations.pdf).

New Hampshire:
From the report I forwarded you earlier in the week:

> Marginally contaminated soil that falls outside the jurisdiction of the contaminated site regulations are addressed to some extent by the solid waste rules. Those rules control reuse of the soil at off-site locations by requiring the soil to be certified for distribution and use. Certification is usually conditional depending on the characteristics of the soil. In situations where neither the contaminated site regulations nor the solid waste rules explicitly apply, we have on a case by case basis provided guidance or recommendations.

Missouri:
Clean fill is allowed for unlimited use, soil contaminated below the Missouri Risk-Based Corrective Action default target levels for petroleum constituents may be used as fill without approval from the state agency with limitations on how it can be used, and above the default target levels requires written site-specific approval from the state agency. (https://dnr.mo.gov/pubs/pub2177.htm)

New York:
New York's Department of Environmental Conservation, Division of Materials Management, Bureau of Waste Reduction & Recycling has a list of Granted Beneficial Use Determinations (http://www.dec.ny.gov/docs/materials_minerals_pdf/buduse.pdf); which includes, among others, determination 203-0-00 "Generic BUD – PCS cold mix asphalt" for petroleum contaminated soil. A searchable database of their determinations can be found at https://data.ny.gov/Energy-Environment/Case-Specific-Beneficial-Use-Determinations-Beginn/id6x-swrj/data. Their regulations play this out 6 CRR-NY 360-1.15 contains both the requirements for case-specific beneficial use determinations (Section d) and from Section b materials that are not considered solid waste; which include "(9) nonhazardous petroleum contaminated soil which has been decontaminated to the satisfaction of the department and is being used in a manner acceptable to the department" and "(12) nonhazardous petroleum contaminated soil when incorporated into asphalt pavement products by a producer authorized by the department."

I hope this helps,

Tom D. Graham
Environmental Specialist IV
The Policy Development and Implementation Unit
Office of the Commissioner
Maine Department of Environmental Protection
Office: (207) 287-7598
Tom.Graham@maine.gov

Attachment D
NRCM Testimony

March 3, 2017

Maine DEP

c/o Paula M. Clark

17 State House Station

Augusta, ME 04333-0017

AGGREGATE RECYCLING CORPORATION

ARC

RE: Beneficial Use of Solid Wastes; Proposed Revisions to Chapter 418

Dear Paula,

We appreciate the opportunity to provide written comments to the draft revisions dated February 10, 2017 and to have spoken at the stakeholders' meeting held on March 1st in Augusta. As previously, I will focus on the beneficial use of emulsified asphalt encapsulated contaminated soil.

First let's address the issue of marketability of this product. Marketability did not become an issue until revisions to the applicable Beneficial Use rules (years ago) eliminated the use of an information sheet, requiring signature, which detailed authorized uses and restrictions. Numerous projects completed along Route 236 and elsewhere attest to this. The revisions, in place to date, require an interested party to submit an application (Permit-By-Rule or full solid waste permit application) and processing fee and await Department review and approval. This process largely eliminates marketability.

For this reason, we are pleased to see included in the current revision an exempted amount requiring simply the Authorization Form (Appendix B). We are certain this will provide marketability for smaller, local projects with such volumes.

What that lack of marketability resulted in was a change in our focus from marketing to local contractors to utilizing this material ourselves. As a result, this has been a tremendous benefit to the growth of this company and the various capabilities it has today. In 1999, ARC existed as a soil recycling facility located on a small, leased parcel a mile down the road. Now our facilities are home to a multi-material CDD processing facility; an MSW and single-sort recycling transfer station; a bark mulch transfer yard; and a solid-waste hauling and transfer company (Shipyard Waste Solutions, LLC) with various trucks, containers and compactor units. This growth is slowed without utilizing this product in construction and development and is a testament to its usefulness.

PO Box 363 • Eliot, ME 03903
Phone 207-439-5584 • N.E. 800-639-7303 • FAX 207-439-5586

The beneficial use of this product being protective of the environment is confirmed by ongoing groundwater monitoring results (zero detectable impacts since its implementation in 2002), ongoing soil sampling analytical results required by Beneficial Use License #S-020744-WM-T-N, last year's in-situ soil sampling report and by past submittals to the Department which resulted in the issuance of the license referenced above in 2008.

We question the necessity and burden imposed (on staff and applicants) for project-specific licensing applications when Department "approval to license the ongoing beneficial use" of "processed asphalt encapsulated soils" was approved by this Beneficial Use license. All of the risk management requirements, restrictions in use, and ongoing analytical testing requirements and frequencies detailed in that license are in force and adhered to today, in addition to Annual Report requirements. For these reasons, and in conjuncture with the proposed Authorization Form, we believe that a "notification process" rather than an "approval process" can meet the Department's goals of encouraging beneficial use, protecting the environment, and minimizing scarce landfill disposal, while providing timeliness and greater certainty to contractors.

It seems reasonable to allow use where: 1.) the same activity utilizing ordinary natural aggregate or fill is allowed; and 2.) where the risk management requirements and restrictions specific to emulsified asphalt encapsulated soils will be strictly adhered to.

Category 1 would include adherence to all state and local guidelines and requirements such as wetlands, natural resources, erosion & sedimentation control standards, zoning, setbacks, etc.

Category 2 would specifically include current beneficial use restrictions, namely: "placement in standing water, channeled drainage flow, in a protected natural resource, below the water table, where it may wash into any water of the state; not to be used in residential settings, playgrounds or school yards; and must be covered by concrete or asphalt paved surface, or by 6 inches of compacted natural soil material."

Any proposed project not meeting the standards detailed above would require specific Department review and approval.

We appreciate the opportunity to provide these comments and suggestions to accompany those previously submitted by letter dated July 15, 2016.

Sincerely,

John Doherty

CEO

Attachment E
NRCM Testimony

CPRC Group
The leader in conversion technology.

70 Pleasant Hill Road, Scarborough, Maine 04074
(207) 883-3325 (207) 883-1121 fax www.cprcgroup.com

March 2, 2017

Paula Clark
Maine DEP Materials Management Division
17 State House Station
Augusta, ME 04333

RE: Comments regarding the Preliminary Draft of Proposed Revisions to 06-096 C.M.R. chapter 418 (Beneficial Use of Solid Wastes) March 2017

Dear Paula,

Thank you for having the stake holder meeting yesterday in Augusta. It was productive to have industry and the Department together to have an open discussion about the proposed changes to the 418 substantive rule making. As a business that at its core is rooted in and survives on practical solutions to our various constituents needs by accepting, producing and delivering waste materials that are beneficially reused, it is our interest to have a rule that allows industry to process these materials and find appropriate projects for its use while keeping the environment safe. We therefore strongly suggest your consideration of the following changes to the draft rule as it relates to the beneficial re use of Emulsified Asphalt Encapsulated Contaminated Soil.

- Eliminate any need for a permit to beneficially use this material as there is an abundance of historical and practical data that prove the process/science works and the material is not harmful to the environment if used properly
- Remove the quantity and depth requirements of where this material can be used, as again if it is used properly within pre-agreed upon conditions, this material is not harmful to the environment.
- Allow for more than "natural soil" to be used to cover the material – inert material for example.
- Create a Use Guideline (Check List) for the manufacturer, the contractor/developer and or the end user requiring all party's signatures so everyone is aware and responsible for properly using the material.
- Stop referring to the post processed material as a waste and call it "Stable Fill"

If the Department wants to continue to have businesses handle this material in a responsible manner, then it should embrace the development of a clear and simplified process for doing so and assist those businesses in finding appropriate projects for its re use.

When properly utilized, every project that CPRC Group has done with this material has led to improved infrastructure, long term private / public investment, job creation and many other economic benefits.

If this new rule adds even more constraints and less flexibility that currently allows the beneficial re use of this material, then it will ultimately lead to this material not being processed and re used. The ultimate end result will be unnecessary consumption of Maine's natural resources in both development projects and landfill space.

We very much would like to continue to meet with the Department to discuss what a Use Guideline would entail so both industry and the DEP could be aligned on how this "Stable Fill" would continue to be used in the market.

Thank you for the opportunity to comment on this very important rule making process, we very much appreciate it.

Sincerely,

John Adelman

cc: J. Hiltner
P. Mercer
D. Burns

Attachment 1
NRCLM Testimony

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

February 15, 2017

Re: Stakeholder Meeting: Proposed Revisions to 06-096 C.M.R. ch. 418

Dear Interested Party,

The Department would like to invite you, or your representative, to participate in a stakeholder meeting regarding proposed revisions to the *Beneficial Use of Solid Wastes Rule,* 06-096 C.M.R. ch. 418. You have been identified as someone with a direct and significant interest in these revisions, who would provide helpful input to the process.

This meeting is being scheduled prior to, and in anticipation of, the initiation of formal rulemaking in April. The meeting will offer an opportunity for participants to ask questions, offer comments, and engage in discussion with the Department about the proposed changes to the rule. The Department will use information and comments gathered during this meeting to further refine the proposed rule prior to rulemaking. The stakeholder meeting will be held:

Wednesday, March 1, 2017
1:30 – 3:30 PM
Room 118, Marquardt Building
AMHI Campus
Augusta

You should have received the draft rule electronically last week. If, for any reason, you would like to have it resent or would like a hard copy mailed, please contact me. An agenda for the meeting and directions to the meeting location will be provided separately in advance of March 1. Please RSVP by February 22; attached is the complete list of invitees to the stakeholder meeting.

We hope that you are able to join us for this event. If you are not able to attend or choose not to participate, you are still welcome to provide any written comment you may have by 5 PM on Friday, March 3, 2017. If you have questions or need further information, please contact me by phone (207-287-7718) or email (paula.m.clark@maine.gov).

Sincerely,

Paula M. Clark

Paula M. Clark, Director
Division of Materials Management
Bureau of Remediation and Waste Management

AUGUSTA
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AUGUSTA, MAINE 04333-0017
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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
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website: www.maine.gov/dep

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

Invited Participants
March 1, 2017 Stakeholder Meeting
Proposed Revisions to 06-096 C.M.R. ch. 418 (*Beneficial Use of Solid Wastes)*

John Doherty	Aggregate Recycling Co.
Steve Lewis	Boothbay Refuse Disposal District
Jeff McBurnie	Casella Organics
Roland Arsenault	Catalyst Paper
Denis St. Peter	CES, Inc.
Jim Hiltner	CPRC Group
Bud Brown	Eco-Analysts, Inc.
Mike Martunas	GCPV (Dragon)
Geoff Herman	Maine Municipal Association
Dwight Doughty	Maine Department of Transportation
Richard Geisser	ReEnergy
Michael Standel	Sappi North America
Mark St. Germain	St. Germain Collins

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website: www.maine.gov/dep

Attachment G
NRCM Testimony

From: Darling, Cyndi W
To: Clark, Paula M
Subject: New England states & CDD wood fuel
Date: Wednesday, December 06, 2017 1:21:00 PM

It wasn't an exhaustive search, but it was very interesting. Here are the highlights/bottom lines:

- Vermont is totally silent, just as it is on the broader beneficial use subject
- Massachusetts
  - doesn't allow ". . . construction and demolition debris including, but not limited to, chemically-treated wood. . . " to be part of the alternative energy generating source that all retail electric suppliers are required to have as part of their alternative energy portfolio (resulting in the facilities not taking it)
  - doesn't appear to have any way to license/allow combustion of CDD wood in a boiler, other than in a licensed MSW incinerator
  - suggests sending CDD wood fuel to Maine or Canada, including listing several options
- New Hampshire works through its air pollution laws, and 40 CFR Part 241.4(a)(5)
  - it does have a "combustion ban" on the combustion of "the wood component of construction and demolition debris", or "or any mixture or derivation from said component", but
  - there are provisions for the incidental combustion of some CDD wood in small municipal waste incinerators, and the combustion of not more than 10,000 tpy of "wood residue" at municipal waste combustors from 11/15 to 4/15 (the winter) from "facilities that process construction and demolition debris in a manner no less stringent than. . . section 241.4(a)(5), and only after the NHDES adopts rules regarding fuel quality standards & test methods, and ". . . has taken final action on a permit revision for the facility using such fuel. . . "; this doesn't seem to have happened yet
- Rhode Island has provisions for the combustion of CDD wood as substitute fuel – no ban
- Connecticut is the most interesting of all
  - there's a statutory provision (Sec. 22a-208k) that says, in its entirety: "Demolition debris disposed of at wood-burning facilities. Any demolition debris disposed of at a wood-burning facility shall be limited to demolition debris generated in the state." How did CT manage that?
  - unprocessed CDD waste goes into a landfill
  - processed CDD waste may go into a landfill or ". . . may be disposed of at a biomass gasification plant that qualifies as a Class I renewable energy source" or a "resources recovery facility" (incinerator)
  - the standards for a Class I renewable energy source are formidable, and permitting is handled through the equivalent of our PUC
  - so, there's no ban, but plenty of hurdles

Other observation – the states seem to focus on the air emissions issue. So, it seems appropriate for Air to also weigh in on why Maine is ok with burning CDD wood

Cyndi Darling, ES IV
Maine Dept. of Environmental Protection

BRWM/Division of Materials Management
Solid Materials Management Unit
Eastern Maine Regional Office
207-941-4580 desk / 207-446-8219 cell
cyndi.w.darling@maine.gov

Attachment H, RRCM Testimony

ReEnergy Meet.

4/28/16

C. Jackson
R. Geiser
V. Eleftheriou
L. Anderson
P. Clark (PMC)

R6:
Consistently meet fines standard (10%) but overshoot so they lose a lot of wood
Reason to request ↑ to 15%
CCA standard (1½%)
Reducing standard would allow them to "produce more fuel and keep more out of the landfill."

Grant $$ – test burns @ ecomaine
If had mkts. → eval. program re: "milk run" to collect CDD

Exemption for CDD ash (in addition to wood ash) was part of pkg. ReEnergy put together.

All pieces of prop. legis were pulled out.

- Fuel qual. standards
- Livermore data @ diff. CDD rates
- Rules "ambiguous" w/ regard to whether CDD fines → landfill
Want to submit a "BUD" for fines → landfill
"BUD" already issued in 98 for ADC & shaping/grading
- 125K tons of fines from ReEnergy → landfill

Attachment 1
NRCM Testimony

sappi

Sappi North America

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Environmental & Wastewater Manager
tel +1 207 856 4073
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gordon.lane@sappi.com

Via email: tom.graham@maine.gov

Tom Graham
17 State House Station
Augusta, ME 04333

26 June 2017

RE: Proposed Chapter 418 Rule Revisions

Dear Mr. Graham,

S.D. Warren Company, d/b/a Sappi North America (Sappi), has been a beneficial use licensee for CDD wood fuel since 2007 at its Westbrook facility. Sappi supports many of the changes in the proposed rule modifications to Chapter 418: Beneficial Use of Solid Wastes, particularly as they pertain to the Fuel Substitution provisions.

Sappi understands it is necessary to ensure quality control of the CDD wood fuel and provide for adequate corrective action for substandard fuels – this is beneficial both for environmental controls, as well as operational controls where the CDD wood fuel is being used.

However, several of the modifications in the proposed rule have potentially unintended effects, are impossible to comply with, or disregard the reality of the CDD wood fuel market and process controls already in place. As such, Sappi offers the following five major comments on the Department's proposed changes to the Chapter provisions.

Comment 1

The proposed changes at section 8(F)(2)(a)(i) ("Physical characterization results shall be provided to both the source and the licensee by the independent third party") create a new requirement for the third party contractor to share the physical characterization results of CDD with both the source and the licensee. Sappi is opposed to this new requirement.

The proposed rule allows either the source or the licensee to contract with the third party to conduct the testing. If the licensee hires the third party contractor and then provides the results to the source, the source would be able to provide those results to other licensees or prospective buyers, potentially at no cost to those other licensees or buyers. This interferes with the competitiveness of the CDD wood fuel market, and may put certain licensees or buyers at an economic advantage. Annual costs for physical characterization of CDD wood are not trivial, and it would be imprudent to modify the rules such that competitors have access to the results of a private expenditure.

While Sappi was not involved in the development of this new requirement, we suspect the Department's goal was to ensure both the source and the licensee are aware of the compliance status of the CDD wood fuel being purchased. This in itself is a reasonable goal. However, as the licensee, Sappi already shares data with sources as appropriate. Whenever Sappi receives results that show the fuel does not meet Sappi's standards, Sappi immediately requires the source to take corrective action and suspends CDD wood fuel deliveries from the source if necessary. Sappi shares information from the physical characterization results as necessary to enable appropriate corrective actions take place.

In an alternate scenario, where the source takes responsibility for the testing, Sappi believes again that it is inappropriate to regulate the sharing of purchased information. In any case where Sappi is purchasing CDD wood fuel, we would require the source provide us the characterization results as they are available since, as the licensee, we are the regulated entity with responsibility for compliance with as-fired fuel standards. That said, the requirement for a licensee to receive that information from the source should not be regulated, but determined as part of purchase or contract negotiations.

The proposed rule modification also requires that the results be shared "within 3 days of being reported." It is not at all clear when the results are "reported," and thus when the 3-day deadline begins. This requirement is particularly troublesome for sources that are contracting the characterization themselves. Does the Department intend for the results to be shared with all licensees that ever purchased from the source? What if the licensee does not intend to purchase fuel from the source again? What if a licensee decides to purchase from a qualified source more than 3 days after the last physical characterization results were available? Would that require the source to conduct a new sampling event, even if the material being sold is the same material as the last sampling event? Would it be a violation if the licensee received the results more than 3 days after the results were reported, but prior to acceptance of any fuel at their licensed facility? The purpose of the 3-day deadline is unclear and provides no apparent benefit to ensuring the CDD wood fuel being used is compliant with the standards.

For the foregoing reasons, Sappi recommends that the final sentence in section 8(F)(2)(a)(i) be struck in its entirety.

Comment 2

The proposed modifications at section 8(F)(2)(a)(iii) are confusing, as are the currently-existing rules on the same matter, and do not reflect the reality of the CDD wood fuel market. Sappi is requesting several modifications to the proposal.

First, proposed section 8(F)(2)(a)(iii) requires that initial source certification must include four composite samples taken "over a period of no fewer than 15 and no more than 30 consecutive days." Sappi believes the intent of this requirement is to ensure the four samples are not all taken on the same day, though this is not clear – can three samples be taken on day 1, and a fourth sample taken on day 30? It seems the language would allow this.

If the Department's intent is to ensure the samples are taken on different days over the course of a month, we suggest the language be changed to "A minimum of 4 composite samples shall be taken on a minimum of four different days, with each sample day a minimum of four days after the previous sample day, to certify each new source." This would ensure the minimum of four samples would be taken over the course of at least 15 days.

Sappi advises against a 30 day time limit since this could be problematic for scheduling and could exclude valid sampling events from the certification process and require additional, unnecessary sampling events. Sources process materials coming from a variety of construction and demolition activities, and as such the one-month limit seems arbitrary. A boxed time-frame would be well suited if materials received were on a 30-day cycle, but since the materials are variable without regard for timing, the 30-day limit does not help assess the consistency of material.

Although Sappi offers up the above language change to ensure clarity in the rule, Sappi is nevertheless opposed to this requirement for several reasons, especially as it pertains to publicly owned sources. As acknowledged by the provisions of the paragraph, some publicly owned sources process CDD on rare occasions – often only once per year. For sources processing once per year, it is unreasonable to require initial certification to include four samples taken over multiple days, since all samples taken are from the same pile of material.

An alternate, reduced sampling program is provided at section 8(F)(2)(a)(iii)(a) and (b) for publicly owned sources for annual recertification. It is unclear, however, whether the Department also intended this alternate sampling program to be available for initial certification of publicly owned sources. If that was not the Department's intent, the preceding comments on the nature and schedule of processing at publicly owned sources makes it clear that taking four samples over 15-30 days is not effective unless there are multiple processing events during that period.

Even for some commercial sources, processing CDD is not a day-in-day-out activity. Again, setting a 30 day time limit to collect four samples on any number of different days may be excessive and the same material may be sampled on each visit. Additionally, requiring the third party contractor to visit the source site multiple times is not cost effective if the data being collected is not better assessing the quality of the CDD wood fuel.

Moreover, if the Department's intent is to ensure new sources are processing materials effectively, the requirement to sample over the course of a month may in fact produce "watered down" results. Although fewer trips to a source may increase the likelihood of "missing" an episode of poorly conducted processing, a poorly conducted processing event is also likely to be "missed" if the composite sample is diluted with well-conducted processing. The "new certification" sampling protocol should be designed to test the source's ability to produce CDD wood fuel that meets the standard, whereas the longer-term re-certification sampling that is conducted over the course of the year should be used to test the source's consistency in meeting the standards.

Sappi believes a single trip – not four separate trips – to the source to collect four composite samples for new certifications is adequate to assess the source's ability to generate CDD wood fuel that meets the standards.

Sappi has a related concern with the language of this paragraph that has also been problematic under the existing rules. Particularly for publicly owned sources, some CDD that is tested for physical characterization in one calendar year may not be delivered to a licensee until the following calendar year, with no further deliveries from that source for the remainder of that calendar year. In other cases, material from a single processing event may be delivered on multiple dates crossing two calendar years. It is not clear in the rule whether the source needs to be recertified in the new calendar year for material that was already physically characterized in the preceding calendar year.

To address the above concerns, Sappi suggests that section 8(F)(2)(a)(iii) be split into two paragraphs – one each for publicly owned sources and commercial sources – with subparagraphs addressing the differing procedures for initial certification and annual recertification for the source type. This would allow publicly owned sources to use the alternative sampling program for both initial certification and annual recertification based on the number of processing events.

The proposed requirement to sample new sources over a period of 15 to 30 days should be struck. This will ensure that poorly conducted material processing is identified and not diluted over the course of a month, and will avoid requirements to sample the same pile of material on multiple trips.

Lastly, language should be added that allows new certification and re-certification sample results to be utilized across calendar years if the CDD wood fuel being delivered from a source to the licensee has already been tested and new material has not been added since the last test.

Comment 3

Under proposed section 8(F)(2)(b)(ii), licensees are required to collect and store composited blended fuel on a monthly basis, and, along with other monthly composites (the proposed language says "three subsequent" but we expect "two subsequent" was intended) combine them into a quarterly composite to be sent for analysis. For operational purposes, Sappi prefers to send each monthly composite sample for analysis as it is received, rather than quarterly compositing. Therefore, we request that the requirement state that samples "may be composited for quarterly testing," and that the analysis shall be conducted on a quarterly basis "at a minimum." The language should also state that if analyses are conducted more frequently than quarterly, the results of all analyses conducted in a quarter may be averaged for comparison against the standard. This modification does not relax the rule, but allows licensees to test on a more frequent basis if desired.

sappi

Comment 4

The fuel quality standards for CDD wood have been modified in proposed section 8(F)(3), in particular by increasing the allowable amount of CCA treated wood for all sources, and #4 minus fines for commercial sources. Sappi is opposed to both these changes – these two standards should remain at <1.5% and <10%, respectively.

For CCA treated wood, Sappi believes this is the main source of chromium in fly ash. Sappi's fly ash does not contain sufficient chromium to be considered hazardous waste, but an increase in CCA wood may contribute to an increase in chromium levels. An increase in CCA wood may also contribute to higher arsenic levels in the blended fuel analysis.

Regarding #4 minus fines, Sappi is concerned that an increase in fines could contribute to increased lead concentrations in the blended wood analysis. Regardless of pollutant concentrations, we expect an increase in fines to contribute to higher dust levels in our chip dumping and fuel storage facilities, with associated higher dust exposures for our employees. Sappi respectfully requests that both these standards remain at the same level as in the current rules.

Comment 5

The modifications proposed under section 8(F)(5) (Failure to Meet Fuel Quality Standards) have significantly expanded the requirements over the current rule, making them excessively onerous. Under the current rules, corrective action is only triggered for exceedance of the arsenic, lead, and PCB analytical standards for blended fuel. Under the proposed rule, the corrective action procedure will be triggered for exceedance of the physical characterization standards for the source material as well. The corrective action procedure itself has also become more onerous, and some requirements are impossible to comply with given the CDD wood fuel blending process.

Sappi's experience as a licensee for nearly 10 years has shown no direct correlation between the physical characterization of the CDD wood fuel, the chemical analysis of the blended fuel, and the chemical analysis of the ash for disposal. As explained above in Comment 4, Sappi does have concerns about proposed changes to the physical characterization limits due to potential changes in blended fuel and ash analyses. However, this concern is based on the wholesale change for all fuel sources – not incidental spikes that may occur from time to time due to process variability. Incidental spikes are entirely manageable, and no physical characterization results have ever been identified as the root cause of changes in blended fuel analytical results, or for waste characterization of ash for disposal.

Sappi's current procedure for ensuring that fuel sources supply CDD wood fuel that consistently meets the physical characterization standards includes testing the replicate sample to validate any test results that fail to meet the standards, working with the source to determine the root cause of the failed tests, and limiting or suspending the supplier's deliveries if they do not take

corrective action to Sappi's satisfaction. When failed tests are validated, Sappi immediately arranges for a new set of samples to be taken in conjunction with the source's implementation of corrective action.

This procedure works well for maintaining control and consistency of the CDD wood fuel, as demonstrated by the fact that Sappi has not had exceedances of the blended fuel analytical standards. Requiring immediate reporting with numerous deadlines for re-testing various streams is over-zealous and will increase the paperwork burden for the source, the licensee, and the Department, but it will not increase the quality of the source CDD wood fuel.

Additionally, some of the proposed requirements are simply impossible to comply with. For example, section 8(F)(5)(d) assumes that any CDD wood fuel that failed the physical characterization (or blended fuel that failed the analytical standards) is separated by source once it reaches the licensee. This is not the case. As soon as any CDD wood fuel is delivered, the fuel is blended with all other CDD wood fuel and green biomass chips. Thus, it would be impossible to comply with section 8(F)(5)(d).

In sections 8(F)(5)(f) and (g), the Department proposes requirements for the licensee or source to submit a report and wait for Department approval of the report before receiving any more CDD wood fuel from the source. Sappi finds this highly problematic for two reasons.

First, the time-frame of root cause identification, corrective action, and re-testing to show compliance could occur in as little as a day. The requirement to prepare and submit additional reports, and then wait for the Department's concurrence on the report, would cause excessive delays and negative financial impact for both licensees and sources, especially considering that the proposal does not set a deadline for the Department to report back to the licensee or source. This makes it conceivable that a source may be cut off from delivering to a licensee for a month or more. This would likely have the impact of sending more material to landfill.

Second, the proposed rule language, in section 8(F)(5)(f), states that "combustion of CDD wood fuel from that source shall cease" if the fuel quality standards are not met. As stated above, this assumes that the CDD wood fuel from a particular source can be extricated from the blended fuel. Licensees can halt new deliveries from a particular source, but cannot immediately cease combustion since the fuel is already mixed with fuel from other sources.

To ensure that the quality of CDD wood fuel is met, and that the appropriate correction actions are implemented in a timely manner, Sappi recommends the following changes to section 8(F)(5):

- Strike section 8(F)(5)(a)
- Strike section 8(F)(5)(c) – ash is already sampled daily and composited for monthly testing
- Strike section 8(F)(5)(d)

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- Modify section 8(F)(5)(e) to state that notification of the Department is required if testing under section 8(F)(5)(b) confirms the fuel is substandard
- Modify section 8(F)(5)(f) to eliminate the word "Combustion" and replace with "Receipt"
- Strike section 8(F)(5)(g), since section 8(F)(5)(f) already covers the requirement to halt receipt of CDD wood fuel from a particular source until the source shows the fuel can meet the standards.

Sappi is confident that these recommendations are consistent with the Department's objective to tighten the existing rules by shortening timeframes and applying the corrective action procedure to both CDD wood fuel standards and blended fuel standards, while also ensuring compliance with the rule is possible with reduced potential for immense financial disruption.

Sappi appreciates the opportunity to submit these comments to the Department for their consideration. If you have any questions, please contact me at 207-856-4073 or by e-mail at gordon.lane@sappi.com.

Regards,

Gordon Lane
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cc: Ms. Paula Clark

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Attachment J: Detailed comments in opposition to LD 1797 (proposed changes to Chapter 418) by section

Section 3

R. NRCM does not support treating oil-contaminated soil from DEP-supervised cleanup sites differently from any other oil-contaminated soil. The key issue is the level of contamination in the soil, not who digs the soil up.

S. NRCM does not support exempting 800 tons of asphalt-encapsulated soil from the provisions of this rule. Eight hundred tons appears to be an arbitrary number. Moreover, we do not support use of any asphalt- encapsulated soil contaminated with constituents other than oil under the provisions of this rule. NRCM is unaware of sufficient evidence to support the use of asphalt encapsulation to treat soil contaminated with metals, PCBs, pesticides, or other common toxic materials sufficiently to allow its safe use as construction fill.

T. NRCM does not support exempting spent septic system material for use on residential, school, or public recreational property just because the material is generated on that property. The use of the material should depend on its toxicity, not on its place of origin.

V. The visible presence of oil or litter is not a reasonable measure of whether catch basin grit is hazardous. Petroleum and other contaminants can be dangerous even if they are not visible.

Section 5

As stated above, NRCM does not believe there are sufficient data to justify using asphalt encapsulation to treat contaminated soils and reuse them under these rules for contaminants other than oil. Therefore, the rules should certainly ***not*** exempt the unlimited use of asphalt-encapsulated contaminated soils from toxicity testing and proper disposal based simply on the signoff of a professional engineer (PE). PE signoff says nothing about the nature, concentration, and toxicity of contamination in these types of soils. Only proper sampling and analysis, which DEP should require, can do this.

Section 6

B. Again, NRCM opposes the use of asphalt-encapsulated contaminated soil for contaminants other than oil under these rules. We also do not understand the significance of a 6400-ton threshold for permit by rule. This number appears to be arbitrary.

Section 7

A(2)(c). NRCM opposes blanket authority for DEP to waive sampling for PCBs and dioxin. Most dredge spoils are likely to come from harbors or rivers with a history of industrial use and contamination with these compounds.

Section 8

A. In general, NRCM opposes burning construction and demolition debris (CDD) wood, particularly burning it in biomass plants that have pollution control systems for only clean wood fuel. NRCM does not believe that screening procedures are sufficiently rigorous to ensure that end users burn only clean CDD wood as fuel and not large amounts of treated wood, plastic, metals, and other contaminants.

C(2)(a). The requirements for the trial burn procedures are unclear. DEP should spell these out more clearly. How often is a trial burn required? It is difficult to understand how any sampling results can be representative of CDD fuel "on an ongoing basis" because the nature of the material is so variable. Sampling is also not just to test fuel from different sources for contaminants, but also to test whether screening procedures remain effective over time.

C(2)(b). DEP should provide details on trial burn standards for ash sampling and the consequences for not meeting these standards in this section.

F(1)(a). In terms of fire risk, which is a significant concern in fuel piles, the number of weeks' worth of fuel is not as relevant as the dimensions of the pile. Different facilities may burn the fuel at very different rates depending on their size and fuel mix. DEP should specify limits based on pile size, not weeks' worth of fuel.

F(1)(b). DEP should provide the basis for the use of 185 degrees as a threshold temperature for the inside of a fuel pile. Under no circumstances should DEP allow storage of CDD fuel without a fire safety plan. The proposed rule should not allow DEP to waive the development of a fire safety plan.

F(3)(c) and (d). NRCM opposes the proposed increase in the allowable amount of fines by 50 percent and the allowable amount of chromated copper arsenate (CCA) treated wood by 33 percent for CDD fuel. In 2006, the Northeast States for Coordinated Air Use Management issued a report entitled, "Emissions from Burning Wood Fuels Derived from Construction and Demolition Debris." One of its key conclusions was:

The critical element in minimizing air emissions, especially air toxics, is the elimination of CCA- and penta-treated wood from the fuel and minimizing C&D fines.[1]

[1] Northeast States for Coordinated Air Use Management. 2006. Emissions from Burning Wood

DEP staff were key authors of this report. DEP should be proposing to eliminate CCA-treated wood and CDD fines in this rule, not allowing them to increase.

F(4). DEP should not remove the PCB limits for CDD-derived fuels.

Conclusion

NRCM opposes these proposed changes to Chapter 418 because we believe they threaten public health and Maine's environment. Thank you for the opportunity to testify on this important issue.

Fuels Derived from Construction and Demolition Debris. P. 5-1. Accessed at http://www.nescaum.org/documents/2006-0710-emiss_from_burning_wood_fuels_derived_from_c-d_report.pdf/view.