



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

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Governor

Karyn E. Polito  
Lieutenant Governor

Kathleen A. Theoharides  
Secretary

Martin Suuberg  
Commissioner

April 2, 2021

Dr. Victor Gatto  
Palmer Renewable Energy, LLC  
40 Shawmut Road  
Suite 200  
Canton, MA 02021

Re: Revocation of Plan Approval  
dated September 11, 2012 for Palmer Renewable  
Energy, LLC 35 MW Biomass-Fired Power Plant  
Application #1-P-08-036 Transmission #  
X224282

Dear Dr. Gatto:

I am writing in regard to the above-referenced Conditional Approval of the Comprehensive Plan Approval issued by Massachusetts Department of Environmental Protection (MassDEP) for the proposed Palmer Renewable Energy, LLC facility (“PRE” or “facility”) at 1000 Page Boulevard in Springfield, MA on September 11, 2012 (PRE Final Plan Approval).

As you are aware, MassDEP had undertaken a review of the construction status of the proposed PRE facility to determine if PRE has commenced a continuous program of physical on-site construction of the facility or emission unit that is permanent in nature. Pursuant to 310 CMR 7.02(3)(k) Plan Approval Revocation: “The Department may revoke any plan approval if construction has not commenced within two years of the date of a plan approval or, if during construction, construction is suspended for a period of one year or more. For purposes of 310 CMR 7.02(3)(k), construction has commenced if the owner or operator of the facility has begun a continuous program of physical on-site construction of the facility or emission unit that is permanent in nature.”

In reviewing this matter, we have considered the information provided by you both in terms of documents submitted as well as information provided in a call you requested with the Commissioner and MassDEP staff to further explain activities at the site. For the reasons discussed herein, MassDEP hereby revokes the PRE Final Plan Approval.

### **Project Background**

On November 21, 2008, MassDEP’s Western Regional Office received a Major Comprehensive Plan Application from PRE for the proposed construction and operation of a 35 megawatt (MW) (nominal

net output) biomass-fired power plant to be located at 1000 Page Boulevard, aka 440 Cadwell Drive, in Springfield. During the application review process, the facility altered the proposal to include only forest-derived wood fuel. This project change and the related proposed air pollution controls reduced the required application to a Non-Major Comprehensive Plan Application. After extensive review of the application by MassDEP and a public participation process, a decision on PRE's application was issued by the MassDEP Western Regional Office on June 30, 2011. That decision was appealed within the applicable deadline to the Commissioner of MassDEP, who issued a final agency decision on September 11, 2012, the PRE Final Plan Approval. Not counting the appeals that followed, this means that PRE needed to have commenced construction by September 11, 2014. The facility, however, had strong opposition from residents and other groups within Springfield, and that opposition continued during appeals of the PRE Final Plan Approval in the Massachusetts courts. The PRE Final Plan Approval was upheld with no further appeals on March 6, 2017. Even granting PRE the most generous interpretation of delays in proceeding with the implementation of the PRE Final Plan Approval resulting from the court appeals, PRE needed to commence construction no later than March 6, 2019.

### **Project Status**

In response to MassDEP contacting you to inquire about the status of construction in March 2019, you stated that you had commenced construction and had executed a purchase agreement for the facility boiler. MassDEP requested a copy of the purchase agreement but was never provided one.

On January 13, 2021, MassDEP received a letter from counsel for PRE, which supplemented a letter dated December 30, 2020, from consultants to PRE, Epsilon Associates, Inc. The January 13, 2021 letter represented to MassDEP that "PRE had engaged in significant activities essential and specific to the construction of the plant." The letter also stated, "To the extent that the MassDEP may disagree with the foregoing timeline, PRE hereby requests that the Department extend the subject two-year period." The January 13, 2021 letter appeared to have been prompted by a letter to Commissioner Suuberg from Senators Edward J. Markey and Elizabeth Warren, received on December 24, 2020, regarding the proposed facility, in which the Senators requested, on behalf of the Springfield community and residents, suspension of the PRE Final Plan Approval issued for the facility. In January 2021, MassDEP again requested documentation to demonstrate construction, as defined in 310 CMR 7.02(3)(k). On February 2, 2021, MassDEP inspected the site to verify the construction status, as represented by PRE. MassDEP reviewed the submitted information and site observations.

MassDEP has determined that PRE purchased property near and adjacent to the facility, created an earthen berm, demolished an existing building, and allegedly negotiated with Eversource to include a switchyard near the facility instead of at a different location. In addition, there is currently a large pile of recycled asphalt on the site within the proposed footprint of the PRE biomass-fired facility, which precludes construction of the actual PRE biomass-fired power plant, the air emission source, until that pile is moved and underlying property is prepared for construction. MassDEP has determined that PRE has performed certain site modifications for the facility but has not commenced construction within two years of the date of a plan approval within the meaning of 310 CMR 7.02(3)(k).

As noted, in accordance with 310 CMR 7.02(3)(k) Plan Approval Revocation, the Department may revoke any plan approval if construction has not commenced within two years of the date of a plan approval or, if during construction, construction is suspended for a period of one year or more.

## Revocation of PRE Final Plan Approval

It is clear that 310 CMR 7.02(3)(k) provides MassDEP with the discretionary authority to revoke the PRE Final Plan Approval for PRE's failure to commence construction within two years of the date of the Final Plan Approval. MassDEP has determined to exercise this authority due to the amount of time that has elapsed since issuance of the PRE Final Plan Approval, more recent health-related information, and the heightened focus on environmental and health impacts on environmental justice populations from sources of pollution during the intervening years, all as discussed below.

In 2017, the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) issued an Environmental Justice Policy pursuant to Executive Order No. 552 and M.G.L. c. 21A § 2. This Policy directed all EEA agencies to make environmental justice “an integral consideration to the extent applicable and allowable by law in the implementation of all EEA programs, including but not limited to...the implementation and enforcement of laws, regulations, and policies...” EEA further directed all EEA agencies to take direct action “to address environmental and health risks associated with existing and potential new sources of pollutions by...“ensuring that existing facilities in these [environmental justice] neighborhoods comply with state environmental, energy, and climate change rules and regulations.” As stated in the EEA 2017 Environmental Justice Policy, environmental justice communities face “existing large and small sources of pollution ..., which can pose risks to public health and the environment.” Finally, the Policy stated the need for increased agency attention “on communities that are built in and around the state’s oldest areas with a legacy of environmental pollution, particularly in areas with residents who have elevated rates of disease and health burdens.”<sup>1</sup>

The proposed PRE facility is located in Springfield, which is an environmental justice community<sup>2</sup> with many contaminated sites and sources of air and water pollution, and high rates of respiratory illness and other diseases that can be caused by air and other types of pollutants.<sup>3</sup> In addition, with COVID-19 rates particularly high in Springfield, there is increased concern, given multiple studies establishing a relationship between low-income and minority communities with elevated air

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<sup>1</sup> Note that the Legislature and Governor have reinforced these directives in recent amendments to the Global Warming Solutions Act and the Massachusetts Environmental Policy Act through Chapter 8 of the Acts of 2021. Those amendments direct EEA to “establish programs and promulgate regulations regarding sources of greenhouse gases “in a manner that protects low- and moderate-income persons and environmental justice populations.” Amendments to Section 6 of M.G.L. c. 21N, and also direct EEA that “[a]n environmental impact report shall be required for any project that is likely to cause damage to the environment and is located within a distance of 1 mile of an environmental justice population; provided, that for a project that impacts air quality, such environmental impact report shall be required if the project is likely to cause damage to the environment and is located within a distance of 5 miles of an environmental justice population.” Section 102C of Chapter 8 also directs MassDEP to “evaluate and seek public comment on the incorporation of cumulative impact analyses in the assessment and identification of certain categories of permits and approvals” and to implement amendments to the air quality regulations to incorporate cumulative impact analysis into air quality permit approvals. These statutory directives underscore the importance of requiring updated and expanded assessment of the air pollution impacts of the proposed PRE facility.

<sup>2</sup> <https://www.mass.gov/doc/ej-2010-pdf-map-western/download>

<sup>3</sup> See multiple studies and data documenting high asthma and other air pollution related disease and mortality rates in Springfield, including: Massachusetts Department of Public Health Study, “Prevalence of Asthma Among Adults and Children in Massachusetts (2017), <https://www.mass.gov/files/documents/2018/05/09/burden-in-mass.pdf> (Highest current asthma prevalence estimates in Massachusetts were seen in densely populated areas, including Springfield); Asthma and Allergy Foundation of America, “Asthma Capitals 2019,” <https://www.aafa.org/media/2426/aafa-2019-asthma-capitals-report.pdf> (Springfield is the first on the list of most affected communities with asthma).

pollution levels and increased severity of disease and/or mortality for COVID-19 patients in these communities.<sup>4</sup>

The PRE Final Plan Approval was issued for this facility on September 11, 2012, almost nine years ago. Taking into consideration the heightened focus on environmental and health impacts on environmental justice populations since 2012 and more recent health-related information, an updated review of technologies involved in the burning of biomass, Best Available Control Technology for air pollution mitigation, modeling that considers changes in the surrounding ambient air quality, and the impact on the community that would result from the facility's emissions is warranted. As a result, and in accordance with 310 CMR 7.02(3)(k), MassDEP hereby revokes the Air Plan Approval for the Palmer Renewable, LLC biomass facility.

### **Permit Extension Act and COVID-19 Executive Order No. 42**

MassDEP also received a letter from counsel for PRE dated March 18, 2021 which argues that both the Permit Extension Acts of 2010 and 2012 and COVID-19 Executive Order No. 42 prevent MassDEP from revoking the Plan Approval at this time. Neither the statutes cited nor the COVID-19 order apply to the PRE Final Plan Approval.

The Permit Extension Acts of 2010 and 2012 (PEA), intended to help people through the financial challenges of the Great Recession, is inapplicable now. The PEA automatically extended for four years the expiration date of any approval that was "in effect or existence" between August 15, 2008 and August 15, 2012. Since the PRE Final Plan Approval was issued after this period, on September 11, 2012, the approval does not qualify for extension of its deadlines under the PEA. Even if it did apply to the PRE Plan Approval – by, for example, qualifying through the date of the Western Regional Office's original decision in June of 2011 – its four-year extension period ended years ago. Moreover, the PEA, by its very terms, preserved the right of agencies to revoke permits ("Nothing in this section shall affect the ability of . . . an agency . . . to revoke or modify a specific permit or approval . . . under this section, when that specific permit or approval or the law or regulation under which the permit or approval was issued contains language authorizing the modification or revocation of the permit or approval.").

COVID-19 Executive Order No. 42 is also inapplicable. As noted above, taking into account the court appeals of the PRE Final Plan Approval, the latest possible running of the two-year deadline for commencement of construction was March 7, 2019. This deadline expired well before the issuance of the Governor's declaration of a State of Emergency on March 10, 2020, which is the start of the effective date for applicability of the permit tolling provision of COVID-19 Executive Order No. 42. Even if the construction deadline had not expired prior to March 10, 2020, COVID-19 Executive Order No. 42 does not apply. It was intended to extend the time period for a permit that otherwise would lapse or expire by its stated or regulatorily mandated term; it was not intended to prevent an agency from using its authority to revoke a permit for other reasons. Moreover, the Order provides:

To the extent that any such approval contains or is subject to other deadlines or conditions, the state permitting agency may extend such deadlines or waive such conditions if an approval holder is not able to abide by the deadlines or conditions due to the state of emergency. This section shall not apply to a holder of an approval

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<sup>4</sup> See multiple studies cited at <https://www.hsph.harvard.edu/c-change/subtopics/coronavirus-and-pollution/>

who was in violation of the terms and conditions of the approval as of March 10, 2020.

Thus, even if this Order were applicable, the regulation providing that the PRE Final Plan Approval was revocable if construction were not commenced by a specific date is an “other deadline or condition,” that MassDEP could extend or waive under this Order only if PRE was unable to abide by the deadline or condition “due to the state of emergency.” There is no evidence that this is the case and, even if it were the case, MassDEP would not exercise its discretion to do so. Finally, since construction had not commenced as of March 10, 2020, PRE was “in violation of the terms and conditions” of its approval as of that date, and the tolling provisions of this order are inapplicable by their own terms.

### **Notice of Right to an Adjudicatory Hearing**

This letter shall constitute an Order revoking the Final Plan Approval. You may request an adjudicatory hearing on this revocation of the PRE Final Plan Approval within ten days of the date of issuance of this decision by filing a notice of claim in accordance with 310 CMR 7.51 and 310 CMR 1.01.

Sincerely,



Michael Gorski  
Regional Director  
Department of Environmental Protection  
Western Regional Office