



To: MRC Members
From: Michael Carroll, MRC Executive Director
Date: May 3, 2021
Re: **Notice of Fundamental Matters or Changes per MRC Bylaws;
Overview of Sale Transaction and Key Provisions**

At its meeting on April 21, 2021, the MRC Board voted unanimously to approve the assignment of certain contracts necessary to facilitate the potential receivership sale of the Coastal Resources of Maine, LLC facility and related assets in Hampden to Delta Thermo Energy Hampden Maine, LLC (DTE-HM, LLC).

This transaction involves the following Fundamental Matters or Changes as defined in Section 4.5 of MRC's Bylaws:

1. An option for DTE-HM to purchase the land on which the facility sits after it is returned to stable operation.
2. A replacement rebate structure
3. A two-year extension of the Site Lease
4. A two-year extension of the Master Waste Supply Agreement

Pursuant to MRC Bylaws Section 4.5 "Special Voting Rights", MRC Members have the right to request, within thirty (30) days from the date of this Notice, a special meeting for the purpose of submitting one or more of the proposed Fundamental Changes to a vote of the membership. Members are not required to take any action. MRC Bylaws Section 4.2 "Special Meeting" requires that requests be received in writing from members representing at least 60,000 tons of waste delivered in order for a special meeting to be called.

If a special meeting is not called or if the Fundamental Changes at issue are approved at such a special meeting of the Members, the MRC can proceed to implement the Changes approved by the Board to move the plant sale forward.

Copies of MRC's Bylaws, Site Lease, and Master Waste Supply Agreement are available in the Documents section of MRC's website under Policies and Contracts.

To provide additional context, this memorandum provides information on the Transaction in table format regarding: (I) an Overview of the Transaction Structure; (II) a Summary of Transaction Material Terms, and (III) Anticipated Transaction Process going forward. Additional information focused on descriptions of the four Fundamental Matters or Changes that trigger the special process in the MRC By-laws is provided in an accompanying memorandum.

I. OVERVIEW OF THE TRANSACTION STRUCTURE

Transaction	Asset Purchase Agreement (APA) for sale out of receivership of the Facility and related assets of the current owner. Exhibit agreements to the APA would include (a) agreements for assignment and assumption of existing agreements between the MRC and the current owner; and (b) additional agreements with and consents of the MRC to the Transaction
Current Owner of Facility	Coastal Resources of Maine, LLC (Coastal or CRM)
Seller	<p>The court-appointed Receiver installed by request of US Bank National Association, as Trustee and Collateral Agent for Bondholders</p> <p><u>Authority:</u> Bondholders, through Trustee, have lender rights to sell and assign CRM's pledged assets. This authority stems from their lender rights under their loan documents and State law, because CRM has defaulted on their loan as the Borrower.</p> <p>It is anticipated the Trustee, on behalf of the bondholders, will request the Court to appoint a substitute Receiver for the purpose of 1) signing the APA, 2) filing a Motion for approval of the sale contemplated in the APA (i.e. the Approval Order), and 3) prosecuting the sale to closing.</p> <p>Once the Court approves the sale, the parties can proceed to a Closing, which is when all exhibit agreements would be executed.</p>
Buyer	DTE-HM, LLC (a special purpose Delaware limited liability company formed to receive the assets and assignments), which is an affiliate formed by Delta Thermo Energy, Inc.
MRC's Role	<p>Consent to assignment to DTE-HM of contracts in which MRC is a party, including:</p> <ul style="list-style-type: none"> • Site Lease • Master Waste Supply Agreement (MWSA) • Waste Disposal Agreement (Crossroads) • Waste Acceptance Interruption Agreement • Agreement Regarding the Cash Collateral Account and documents for the First National Investment Account

	A Consent Agreement is part of MRC’s consideration of assigning contracts, described in more detail below.
Other Assignment Items; Parties and Contracts	Other entities will need to provide consent for assignment of the contracts in the Transaction to which MRC is not a party. These contracts include other disposal agreements and other agreements that DTE-HM desires to be assigned for its operations.
Other Key Agreements of the Transaction	Option Agreement for DTE-HM to purchase the Site for the Facility in Hampden, subject to conditions, including successful completion of 9 months of stable operations, which period must include the peak months of July and August

II. SUMMARY OF TRANSACTION MATERIAL TERMS

<u>Term</u>	<u>Description</u>
MRC Consideration	<p>\$3,200,000 Payment to MRC at Closing, which covers:</p> <ul style="list-style-type: none"> • Repayment of principal and interest on MRC \$1.5M interim loan to Coastal • Reimbursement for MRC costs due to CRM defaults (e.g., real estate taxes, WM payment, additional bypass disposal costs up to March 31, 2021, MRC external and 3rd party professional costs) <p>MRC Transaction Costs up to \$80,000 (attorney and consultant fees)</p> <p>Additional bypass transportation costs incurred through March 31, 2021 (\$166,061.65)</p> <p>Additional bypass disposal and transportation costs post-March 31 incurred through the Closing Date (estimated at \$360,000 for a closing on June 30, 2021)</p> <p>Total Funds to MRC at Closing: approximately \$3,806,061.65</p>

DTE-HM Financing Commitment for the Transaction	DTE-HM’s financing source is currently reviewing the Transaction; MRC will notify its Members after the review is completed and conclusive documents of the financing commitment are received.
Required or Critical Creditors	<p>Satisfaction by negotiation or under the Approval Order of Required or Critical Creditor claims by DTE-HM.</p> <p>Identified Required or Critical Creditors involve past due amounts regarding debt to bondholders, utilities, taxes and other governmental assessments, and disposal costs.</p>
Lien Holders	<p>Satisfaction by negotiation or under the Approval Order of Lien Holder claims by DTE-HM.</p> <p>Listed Lien Holders have asserted liens (e.g., mechanic liens) that potentially impact MRC’s property. It is important these are satisfied and discharged to remove as potential encumbrances on MRC’s title to its property.</p>
Conditions and Obligations for MRC’s Consent to Assignment of Contracts	<p>The following conditions/obligations are part of the Transaction relating to MRC’s agreement to consent to contract assignments:</p> <ul style="list-style-type: none"> • Up to April 1, 2023, MRC will forbear on exercising rights and remedies for the ongoing default of the Facility not accepting all MRC Acceptable Waste, provided the following conditions are met listed below <p><i>Conditions:</i></p> <ul style="list-style-type: none"> • <u>Startup</u> – DTE-HM to start MRF operations not later than September 30, 2021 (with provision for reasonable adjustment) • <u>Ramp-up</u> – DTE-HM to accept and process Acceptable Waste from all MRC members for MRF processing not later than December 31, 2021 (with provision for reasonable adjustment) • <u>Back End Improvements/Operations</u> – DTE-HM to submit a back-end improvement/operations plan to the MRC not later than December 31, 2021; DTE-HM to implement back-end improvements/operations plan not later than June 30, 2022 (with provision for reasonable extension) • <u>Stable Operations</u> – DTE-HM to achieve 9 consecutive months (which shall include the peak months of July and August) of stable operations with downtime within agreed-upon allowance

	<ul style="list-style-type: none"> • <u>Bypass</u> – DTE-HM satisfies its obligation to pay for additional bypass costs per the MWSA • <u>Monthly Meetings</u> – DTE-HM meets with MRC Staff on a monthly basis and meets requirements for communications and providing data • <u>Facility Permits</u> – DTE-HM secures, maintains, and complies with all permits to operate or improve Facility, and does not take any action to adversely affect continued validity of those permits • <u>Minimum Balance of Cash Collateral Account</u> – Would not return to full \$3.0 million until period of stable operations is completed. • <u>Financial Assurance</u> – DTE-HM provides a performance bond of \$1.5M and a payment bond of \$0.5 million; financial assurance required unless and until DTE-HM exercises option agreement <p>DTE-HM’s obligations under the Site Lease and MWSA remain (e.g., pay rent, comply with environmental requirements, reporting, etc.)</p>
<p>Option Agreement</p>	<p>The transaction includes an option agreement as consideration for DTE-HM’s acquisition of CRM assets under the following terms:</p> <ul style="list-style-type: none"> • If DTE-HM achieves stable operations as described above, then DTE-HM has right to exercise option to purchase MRC’s Hampden real estate • Option term is 2 years from date on which nine months of stable operations have been completed. • The DTE-HM option price for the Site is \$7,000,000, offset by prior lease payments. • Conditions of DTE-HM to exercise the option are: (1) compliance with 9-month stable operations requirement; (2) no defaults of any agreements in which MRC is a party; (3) amendments to MWSA to carry over certain provisions from the Site Lease, since the Site Lease would be terminated; (4) no permit violations; and (5) MRC is removed from permits and (6) DTE-HM provides a release and indemnification on environmental matters <p>Regarding amendments to the MWSA noted above as a condition, those are:</p>

	<ul style="list-style-type: none"> • DTE-HM retains ownership of tax incentives and environmental attributes • DTE-HM complies with permits • DTE-HM required to avoid and mitigate environmental and nuisance impacts • DTE-HM provides for emergency access • DTE-HM uses reasonable efforts to avoid landfill disposal • Record-keeping • Reports and oversight • Maintain good community relations • MRC review of permit applications • Compliance with scope of facility processes, uses, and improvements • Insurance requirements
<p>Proposed Amendments to MWSA and Site Lease</p>	<p>There are four proposed amendments to the MWSA and Site Lease that are Fundamental Matters or Changes.</p> <p>These are:</p> <ul style="list-style-type: none"> • Option to purchase the Site • Replacement of the rebate structure • Extension of MWSA term by two years • Extension of Site Lease term by two years <p>Additional information is provided in the accompanying memorandum that focuses on these matters</p> <p>There are also a number of other proposed amendments to the MWSA and Site Lease that are not Fundamental Matters or Changes. These include, for example, changing the party names to those agreements and to remove outdated provisions related to development and construction of the facility (since it is already constructed).</p>
<p>DTE-HM Assumption of Obligations under Site Lease, MWSA, Waste Disposal Agreement (Crossroads), and Cash Collateral Account</p>	<p>Except as otherwise noted (e.g., MRC forbearance while DTE-HM works to reopen the facility; any amendments to the MWSA and Site Lease agreed upon), DTE-HM is immediately assuming the obligations of the Site Lease, MWSA, Waste Disposal Agreement, and Cash Collateral Account.</p>

III. ANTICIPATED TRANSACTION PROCESS GOING FORWARD

<u>Task</u>	<u>Time Frame</u>
Appointment of new Receiver	Motion to appoint substitute Receiver (the "Substitution Motion") to be filed after DTE-HM receives approvals from its financing sources that are also acceptable to the MRC and the Trustee
Execution of APA	Upon appointment of new Receiver (necessary to have a fully executed APA)
Court process to advance towards Approval Order	Motion to sell the assets likely filed with the Substitution Motion
MRC Fundamental Matter Process	May 3 – June 17
Court issues Approval Order	Week of June 21 (or earlier contingent on MRC process)
Closing	End of June

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We hope this summary memorandum is helpful to Members.

If any Member has questions, please call Michael Carroll, MRC Executive Director, at 664-1700.

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