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To The Romulus Town Board and Planning Board:

I am an environmental and energy attorney admitted to the bars of New York, Pennsylvania, and New Jersey. The Romulus Town Board should not authorize the Planning Board to hire an attorney or engineer in connection with Circular EnerG's ("Circular" or "the Company") Special Use Permit application (the "Application"), and the Planning Board should immediately deny the Application, because:

1. The Company's Application and its proposed waste to energy facility does not – and cannot – fall within the definition of "Renewable Energy Production (Solar, Wind, Biomass, Geothermal, etc.) – Utility Scale" in the Romulus Zoning Law at Article IV, Section 1¹;
2. The Company's Application and its proposed waste to energy facility is prohibited by Article IV, Section 4(A) of the Romulus Zoning Law ("All uses that may be noxious or injurious by reason of the production or emission of dust, smoke, odor, noise, gas fumes, glare, vibration, or because of danger to the general public due to hazards of fire or explosion are prohibited.");
3. The August 18 and March 16, 2017 letters from Adam Schrader, Town of Romulus Zoning Officer, to Earl Martin and Michael Palumbo (collectively, the "Schrader letters") purport to interpret the sections of the Romulus Zoning law mentioned in paragraphs 1 and 2 above. However, the Schrader letters do not change the Romulus Zoning Law because the Zoning Officer's responsibilities include only enforcement of – not interpretation of – the Zoning law. *See* Article XII, Section 7 ("Zoning Officer"). Only "the Zoning Board of Appeals under their powers of interpretation shall clarify doubt as to the precise meaning of any word used in this law". *See* Article II, Definitions at p. 6. In addition, the Schrader letters are flawed because they violate the Romulus Zoning Law's requirement that "[e]xcept where specifically defined herein, all words used in this law shall carry their customary meanings". *See* Article II at p. 6.

¹ *See* Local Law 1 of the year 2015 dated May 20, 2015 ("Amended Zoning Ordinance for the Town of Romulus, Seneca County, New York") (hereinafter "Romulus Zoning Law") at Article IV, Section 1.

4. Numerous other sections of the Romulus Zoning Law, which were not mentioned in the Schrader letters, also prohibit the granting of a Special Use Permit to the Company, including the following sections:
 - Article VIII, Section 15 ("The storage, processing or transloading of any waste materials, except for food processing or agricultural waste and marketable recyclable materials, is prohibited");
 - Article XIV, Section 4(B)6 ("Open burning of rubbish, garbage, treated lumber or other materials causing noxious odors, residue or fumes is prohibited (exception: dry vegetation or leaves)");
 - Article XIV, Section 4(D)1 ("All exterior property and premises of every structure shall be free from any accumulation of rubbish or garbage"); and
 - Article VI, Section 8, General Standards for All Zones ("The storage of any waste materials, except for food processing or agricultural waste and marketable recyclable materials, is prohibited").

In addition, Mr. Schrader's conclusion that a waste to energy facility could fall within the definition of "Renewable Energy Production" is not supported by NY law. In NY, waste to energy facilities in NY are *not* considered "renewable". See NY's Clean Energy Standard, August 1, 2016 PSC Order, Case Numbers 15-E-0302 and 16-E-0270 at 31, 105 and Appendix A (although parties argued that waste to energy facilities should be considered "renewable" under the Clean Energy Standard, the NY Public Service Commission said "no").

In fact, NY has a long history of rejecting claims that waste to energy facilities should qualify as "renewable generation". Prior to the Clean Energy Standard, New York operated under the Renewable Portfolio Standard. When Covanta Energy applied to have waste energy incinerators included as an eligible renewable technology under NY State's Renewable Portfolio Standard, the NY Department of Environmental Conservation ("NY DEC") filed scathing comments against such a designation. See NYDEC August 19, 2011 comments in Case No. 03-E-0188. The NY DEC's comments provide a detailed analysis of air emissions from ten existing trash incinerators, and showed that they produced worse emissions than eight coal facilities in New York (except for SO₂). *Id.* at 6-7. Looking specifically at mercury, the waste to energy trash incinerators generated "up to 14 times more mercury than the coal plants when these two sources produce the same amount of electricity." *Id.*

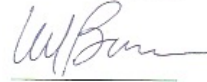
In 2004, the NY Public Service Commission agreed with the NY DEC - waste to energy (trash incinerators that produce electricity) employing mass burn technology did not meet the criteria to be an eligible renewable resource under the NY Renewable Portfolio Standard program. See September 24, 2004 Order, Regarding Retail Renewable Portfolio Standard, Case No. 03-E-0188 at 8, 37, and 39. The basis for this determination was primarily the NY Public Service Commission's

concern over the air emissions from waste to energy facilities, noting that there is "no dispute" that their "emissions of mercury and NOx exceed those of the dirtiest coal-type fossil fuel generation facilities." *Id.* at 39.

Mr. Schrader's conclusion that waste to energy trash burning facilities are not "noxious" is also unsupported by the plain meaning of the word "noxious"². The Merriam Webster dictionary's main definition of "noxious" is "physically harmful or destructive to living beings", and gives two examples: "noxious waste" and "noxious fumes". See <https://www.merriam-webster.com/dictionary/noxious> (accessed December 17, 2017).

For the above reasons, the Romulus Town Board should not authorize the Planning Board to hire an attorney or engineer in connection with Circular EnerG's Special Use Permit application - and the Planning Board should immediately deny the Application.

Sincerely,



Willard R. Burns, Esq.

12-18-17

² This violates the Romulus Zoning Law's requirement that "[e]xcept where specifically defined herein, all words used in this law shall carry their customary meanings". See Article II at p. 6.