

August 4, 2011

Rick Sullivan, Secretary
Executive Office of Energy & Environmental Affairs
100 Cambridge Street
Boston, MA 02108

Mark Sylvia, Commissioner
Department of Energy Resources
100 Cambridge Street
Boston, MA 02108

Re: Revised Regulations Governing Eligibility of Biomass under the MA RPS
225 CMR 14.00 et seq. (May 3, 2011 version); June 2011 TUE Report

Dear Secretary Sullivan and Commissioner Sylvia:

The undersigned stakeholders appreciate your work to bring the Massachusetts Renewable Energy Portfolio Standard (“RPS”) regulations governing the eligibility of biomass into line with the requirements of the Massachusetts Global Warming Solutions Act (“GWSA”). Such reforms are more than justified by the growing body of science regarding carbon accounting for bio-energy resources as reflected not only by the groundbreaking 2010 report commissioned by DOER and led by the Manomet Center for Conservation Sciences (the “Manomet Report”), but also by other studies worldwide. We were greatly encouraged by the demonstrable advancements reflected in the Fall 2010 proposed draft biomass regulations that were consistent with and grounded in the best available science concerning biogenic emissions: (1) robust carbon accounting coupled with greenhouse gas (“GHG”) emission reduction requirements consistent with the GWSA’s mandates; (2) minimum thresholds for efficiency with respect to the use of finite bioenergy resources; and (3) forest harvest sustainability standards that help protect against over-harvesting. As you know, we expressed serious concerns about significant modifications to those rules and associated guidance that were released on May 3 and, notwithstanding our requests, have yet to be informed of any scientifically sound rationale for the diluted standards as proposed. Consistent with the June 10, 2011 recommendations of the co-Chairmen of the Joint Committee on Telecommunications, Utilities & Energy (“June 10 Committee Report”), and as discussed below, we strongly encourage you to ensure that the following flaws are corrected before the rules take effect:

1. The Regulations Should be Revised to Avoid Providing Incentives for Ecologically Destructive Harvesting Practices.

The proposal to jettison the draft regulations’ 15% limit on harvested forest wood eligible as biomass fuel is scientifically flawed and deeply troubling. 225 CMR 14.05(8)(c). The draft guidance suggesting a biomass residue eligibility range of 0 to 40% (depending on soil type) will, if adopted, allow for removal of all residue material (tops and limbs) in most instances, particularly since the classes of soils where residue removal is restricted occur in only a very small proportion of total harvests. This is directly contrary to the guidance set forth in the Manomet Report, which underscores the importance of leaving a significant fraction of residues in the forests to support a host of ecological services, including soil nutrient replenishment and habitat for wildlife. It is unsupported by reference to any other biomass harvesting policy such as those promulgated in other states and by the Forest Guild, and is inconsistent with the Manomet approach to carbon accounting, as discussed below. As noted in the June 10, 2011 Committee Report (p. 3), the newly proposed approach to forest sustainability and forest-derived biomass removal:

does not address the full range of ecological values necessary for a sound approach to biomass harvesting, such as recognizing the importance of standing dead and dying material essential to wildlife habitat. Additionally, the forestry sustainability requirements and harvesting restrictions,

as written, may be difficult to implement, enforce and monitor, as they substantially rely on the field foresters for compliance.

Recommended Solution: To date, the simplest and most effective proposed solution to avoid providing incentives for destructive forestry practices is the solution that was included in the Fall 2010 draft regulations – i.e., a 15% limit on total harvested material that could be treated as RPS-eligible biomass fuel. This limit appropriately was based on reasonable estimates regarding 30% of harvested tree mass, on average, being comprised of tops and limbs normally left on the forest floor, and the need to retain approximately 50% of that material in the forest. While this limit admittedly is an imperfect one-size-fits-all rule, it remains the best solution proffered thus far. The 15% limit would not have mandated that any residues be retained in the forests, but would have made such responsible forestry practices far more likely by refraining from providing incentives for 100% removal of residues in connection with most harvests, as the current version of the regulations and guidance would do.

Alternatively, DOER could establish forest harvest residue retention guidelines that would require sufficient material to be retained in the forests, along the lines of the June 10 Committee Report’s suggestion that DOER consider “incorporating best forest management practices from other states as well as retention and harvesting guidelines developed by professional foresters into the regulation.” At a minimum, we ask that the regulations be revised to provide a quantitative requirement for retention of residues in the forests, to be supplemented with far more detailed guidance. The requirement might say something like this: “The Department shall promulgate guidelines regarding the amount of forest harvest residues that must be retained in the forest for any forest-derived residues to be eligible as biomass fuel; except as specified in those guidelines and as consistent with promoting the ecological integrity of harvested forests, at least 50% of forest harvest residues must be retained in each forest from which eligible forest-derived residues are obtained.”

2. The GHG Lifecycle Assessment (“LCA”) Guidance Must be Revised to Reflect True Carbon Accounting Principles.

It is disconcerting that the draft GHG LCA Guidance assumes a singular GHG profile for all eligible fuels, regardless of type or provenance of the fuel. **Specifically, the guidance assumes a 5-year carbon half-life for all eligible fuel, essentially treating all biomass fuels as residues even if actually comprised of living trees. This is flatly inconsistent with the science, and ignores the central instruction of the Manomet Report.** The guidance must be corrected to reflect the varying GHG profiles of different fuel types.

The June 2011 Committee Report (p. 4) notes that a different, far more tailored approach is needed, highlights that this is the first time the guidance has been presented for public review (albeit without any formal public process as of yet), and specifically calls for public review:

Ultimately, determining lifecycle emissions associated with the use of whole trees from thinning operations requires a separate, specific analysis, which is not included in the guideline. We urge DOER to provide a forum for public comment and technical review of the proposed carbon accounting tool *before* finalizing this approach.

(Emphasis added.) It is highly problematic (from both a legal and ecological standpoint) that DOER’s carbon accounting guidelines are entirely un-tethered from the basic science reflected in the Manomet Report that DOER itself commissioned. Exacerbating this concern is the fact that DOER still has not established any public review or comment process for the carbon accounting guidelines, either proactively or in response to the June 2011 Committee Report. Particularly given the high level of public attention paid to the Manomet Report, the resulting damage that would be caused by DOER’s adoption of the proposed carbon accounting guidelines could be expected to extend far beyond Massachusetts. Rather than a bold, necessary and important step to move Massachusetts beyond the disproven rhetoric of supposed biomass carbon neutrality, as the prior version of the regulations promised to do, the revised regulations and guidance would more firmly entrench discredited science

with the false patina of truth, and perpetuate demonstrably flawed policy. As such, fixing this obvious carbon accounting flaw is a matter of significant urgency.

Recommended Solution: (1) Initiate an open and transparent public comment process to review the carbon accounting guidance, much as DOER has done in connection with previous regulatory guidance. (2) Prior to formally soliciting public comments, either (a) propose separate, specific greenhouse gas analyses tailored for different types/origins of biomass fuels based on the principles of the Manomet Report; or (b) significantly modify the definitions of eligible biomass fuel to limit eligibility solely to true residues – i.e., clean woody debris that is a true byproduct of actual forest harvesting (or other clean wood processing) that would have been produced even in the absence of biomass incentives.

3. Maintain the 2015 Deadline for Existing Qualified Biomass Units to Achieve Compliance with the New Standards.

We agree with DOER’s proposed approach of gradually phasing in the requirements of the revised biomass/RPS regulations with respect to existing qualified biomass units, such that facilities would have until 2015 to demonstrate compliance with the requirement that would require the greatest adjustments – i.e., the efficiency threshold. While a more rapid, indeed immediate, phase-in of the new requirements would be justified by the mandates of the GWSA in order to reduce GHG emissions over the near term, we believe the regulations strike a reasonable balance in providing existing, qualified biomass facilities with a reasonable opportunity to come into compliance. Notwithstanding the June 2011 Committee Report’s suggestion to the contrary (p. 3), we do *not* believe there is reasonable justification for delaying application of the efficiency threshold to 2020 such that existing qualified facilities would be allowed to continue to receive MA ratepayer-funded incentives for inefficient use of limited biomass feedstocks for the next *nine* years. Delaying implementation for existing facilities for a decade, as suggested, would be contrary to the mandates of the GWSA, would reduce market opportunities for truly clean renewable energy, and would prevent a significant proportion of the region’s finite biomass wood feedstock from being used for far more efficient applications rather than wasted in low-efficiency baseload electric generating facilities. Moreover, there is no justification or basis for Massachusetts ratepayers to bear the cost of subsidizing the adverse environmental profiles of biomass facilities throughout the region that do not comport with requirements otherwise mandated by law and dictated by science.

Recommended Solution: Maintain a 2015 phase-in of the energy efficiency requirements for existing, qualified biomass units.

Finally, it bears repeating that we remain greatly concerned that the biomass/RPS regulations do not embrace a 60% minimum efficiency threshold for RPS eligibility. Incentives appropriately should be reserved for the most efficient (and least wasteful) technologies. A 60% threshold would be consistent with the goals of the Green Communities Act for promoting efficient combined heat-and-power (“CHP) technology, and would be in keeping with former Secretary Bowles’ July 7, 2010 direction to DOER. It is also noteworthy that 60% does not even match the assumption of 70%+ efficiency behind the Manomet Study, upon which the study’s “carbon debt” payback period for small CHP units was based. In addition, we continue to believe that energy efficiency should be calculated based on (i) the energy value that is produced and utilized, divided by (ii) the energy value of the fuel that is used – without the questionable inclusion of “merchantable bioproducts” as part of the calculus. There is no precedent for the draft regulations’ novel method of calculating efficiency in any recognized existing energy policy guidance. We hope that these issues, too, can be resolved and thus place the Massachusetts regulations on sound footing that reflects scientific integrity.

In closing, we ask you to move swiftly to correct demonstrable flaws with the biomass/RPS regulations and guidance, as discussed above. Unless corrected, the revised regulations and guidance threaten to turn Massachusetts' hoped-for groundbreaking, nation-leading science-based reforms into an illusory initiative that may appear to advance the Commonwealth's policy but in truth would represent a dangerous return to discredited practices in the basic science of biomass carbon accounting.

Sincerely,

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