

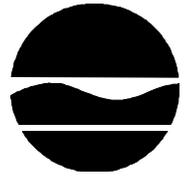
New York State Department of Environmental Conservation

Division of Legal Affairs, 14th Floor

625 Broadway, Albany, New York 12233-1500

Phone: (518) 402-9184 \$ FAX: (518) 402-9018

Website: www.dec.state.ny.us



Erin Crotty
Commissioner

July 8, 2004

BY HAND DELIVERY

Honorable Jaclyn A. Brillig
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail
Renewable Portfolio Standard

Dear Secretary Brillig:

Enclosed for filing is Department of Environmental Conservation Staff's (DEC) reply to the Briefs on Exceptions filed in this proceeding. Any questions regarding DEC's filing can be directed to my attention. Also, please note that in Appendix A of the Recommended Decision, the record of appearance for DEC should have been entered for myself instead of Meghan Purvee. Ms. Purvee is no longer with the Department. Thank you for your attention to these matters.

Yours truly,

Jennifer L. Hairie
Senior Attorney

Enclosure

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**CASE 03-E-0188 - Proceeding on Motion of the Commission Regarding
A Retail Renewable Portfolio Standard**

Department of Environmental Conservation Staff (DEC Staff) submit this limited response to exceptions taken from the June 3, 2004 Recommended Decision (RD) on the subject of biomass eligibility. Various parties took exception to how biomass was defined in the RD. Among other issues, RETEC indicated that biomass was too broadly defined since the biomass sub-working group's recommended emission standards were not adopted in the RD. In addition, Taylor Recycling indicated that the biomass definition should not have excluded renewable energy sources such as food, grass, and leaves. Following a review of these and other comments, DEC Staff agree that the Commission should clarify the definition of biomass in the next stage of this proceeding.

The RD, citing concerns about the exclusion of small concentrated animal feeding operations and the inclusion of alternative fuels, declined to adopt the *Final Agreement on the Eligibility of Biomass for the NYS Renewable Portfolio Standard* created by the sub-working group on biomass. While parties who participated in the sub-working group noted their concerns about the consensus items outlined in the final agreement, those concerns appear to have prompted a complete dismissal of the group's efforts in the RD. Although DEC Staff can appreciate how difficult it is to address every issue before the Commission in great detail, the decision to set aside the biomass agreement in its entirety requires further justification in light of the fact that there may have been a misunderstanding concerning the terms of the biomass agreement and the reference to a DEC Division of Air Resources' policy document for alternative fuels (DAR-3). DAR-3

establishes a process for DEC to review and approve requests from existing stationary sources to burn non-hazardous waste.

The RD inaccurately indicated that, “up to 30% of a biomass facility’s fuel to derive from non-hazardous waste alternative fuels, without restriction, which could include treated woods and coal tar soils. . .” RD at 64. To be clear, the sub-working group did not, to DEC’s knowledge, agree or imply that biomass facilities should be permitted to burn alternative fuels. The reference to alternative fuels was germane only to the discussion of what mechanism could be used to qualify certain processed or treated biomass resources for the RPS, provided that a net environmental benefit is demonstrated and that explicit criteria be developed to ensure that highly processed material and/or municipal solid waste were not combusted as biomass. DAR-3 was simply offered as a starting point for development of that approval process. As RETEC explained, the 30% requirement came from DAR-3, and was not carried over into the biomass agreement. Thus, the reference to coal tar soils, and other remediation waste that could be reviewed by DEC under the alternative fuels guidance document, DAR-3, for fossil fuel fired stationary combustion sources should not have been included in the RD since those processes are not relevant to a discussion on renewable energy.

Additionally, it is not entirely clear what “without restriction” refers to in the sentence quoted from page 64 of the RD since the group devised emission standards for all biomass facilities, including unadulterated wood waste. Since the Commission will draw conclusions based on the available record and the recommendations made in the RD, it is important that the record accurately represent the terms the final agreement on biomass. Therefore, DEC Staff request that the Commission revisit the terms of the biomass

agreement to ensure the record reflects what consensus items really exist, or do not exist, in that document.

DEC Staff also agree that the biomass definition taken from the Generic Environmental Impact System should be explained further. The RD carved out an opportunity for waste-to-energy facilities to claim a portion of their heterogeneous waste stream as biomass. Presumably, the “biomass” portion of municipal solid waste that the RD is referring to would include paper, leaves and other yard waste. There is therefore no reason to exclude the same resources from the definition of traditional biomass. DEC Staff request that the Commission refine the definition of biomass to reconcile any inadvertent discrepancies between the two definitions.

Finally, DEC Staff join in the concern expressed by other parties that in order for any facility to claim a portion of their mixed waste stream as biomass, that there be strict requirements for separating and characterizing any potential biomass resource. Facilities should not be permitted to combust mixed waste and qualify for the RPS under the premise that some indiscernible portion of their waste qualifies as biomass.

DEC Staff appreciate the opportunity to elaborate on issues identified in the briefs on exceptions filed in this proceeding and commend the members of the Commission’s Staff for their work on this initiative.

Dated: July 8, 2004

Submitted by:

Jennifer L. Hairie
NYSDEC