

**REGULATIONS IMPLEMENTING THE
GREEN COMMUNITIES ACT
(Chapter 169 of the Acts of 2008)
M.G.L. 25A Section 11F(d)**

**Class II Recycling Program –
Solid Waste Regulations - 310 CMR 19.300**

**Prepared by:
MassDEP Bureau of Waste Prevention**

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310 CMR 19.000: SOLID WASTE MANAGEMENT

CLASS II RECYCLING PROGRAM

19.300: Preamble

310 CMR 19.300 through 19.303 establishes the process and requirements for Waste to Energy Facilities that were in operation before December 31, 1997 to qualify as a Waste Energy Generation Unit under 225 CMR 15.00.

19.301: Applicability

310 CMR 19.300 only applies to a Waste to Energy Facility that was in operation before December 31, 1997 and is operating in compliance with 310 CMR 7.08(2), 310 CMR 19.000, and the Facility's Solid Waste permit.

19.302: Definitions

All terms used in 310 CMR 19.300 through 19.303 shall have the meanings set forth in 310 CMR 19.006 unless the context expressly states otherwise. The following additional terms shall have the following meanings unless the context clearly indicates otherwise.

Dedicated Account means the account established by a Waste to Energy Facility that has qualified as a Waste Energy Generation Unit for receipt of revenue from the sale of any RPS Class II Waste Energy Generation Attribute.

Facility or Waste to Energy Facility means a Combustion Facility that generates Waste Energy.

[Note to reader: The following five definitions will follow the corresponding definitions found at 225 CMR 15.00.]

Generation Attribute means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, emissions, vintage and RPS eligibility.

Generation Unit means a facility that converts a fuel or an energy resource into electrical energy.

RPS Class II Waste Energy Generation Attribute means the Generation Attribute of the electrical energy output of a specific Waste Energy Generation Unit that derives from the Unit's production of Waste Energy.

Waste Energy means electrical energy generated from the combustion of municipal solid waste.

Waste Energy Generation Unit means a Generation Unit that utilizes conventional municipal solid waste plant technology in commercial use to generate Waste Energy and has a Department approved Class II Recycling Program.

19.303: Class II Recycling Program(1) Class II Recycling Program Application

To qualify as a Waste Energy Generation Unit, a Facility shall submit to the Department for approval a solid waste permit modification application that complies with the Class II Recycling Program requirements at 310 CMR 19.303(1) through (4). The permit modification decision issued by the Department pursuant to 310 CMR 19.303 shall be limited to the Class II Recycling Program as described in 310 CMR 19.303. The permit modification application shall be limited to matters related to the Class II Recycling Program as described in 310 CMR 19.303 and shall include, but not be limited to, the following:

- (a) Waste Characterization Study. Identification of an experienced and competent professional to conduct the waste characterization study of the solid waste received at the Facility as required pursuant to 310 CMR 19.303(3), including the qualifications of such person;
- (b) Electronic Tracking System. Documentation demonstrating that the Facility has installed an electronic tracking system that records for every incoming solid waste load the following information: truck owner; container owner; truck/container type and size; date and time of delivery; and generator(s) (to the extent known); and
- (c) Waste Ban Compliance Professional. Evidence of a contract with an independent third party (the Waste Ban Compliance Professional) to assess compliance with the Waste Bans at 310 CMR 19.017 by haulers and generators delivering waste to the Facility.

1. Such contract shall require the Waste Ban Compliance Professional to:
 - i. Visually monitor all incoming loads on a minimum of 10 random days every three months (“reporting period”). The Waste Ban Compliance Professional shall not notify the facility of the days chosen.
 - ii. Spread on the tip floor any load not failed based on visual monitoring but which is suspected to exceed the allowable limits for waste ban materials as specified in the facility’s Waste Ban Compliance Plan.
 - iii. Be available to meet with the Department quarterly.
 - iv. Receive training from the Department on waste ban inspection protocols.
2. Loads found to be noncompliant with the Waste Bans in accordance with 310 CMR 19.303(1)(c)1. shall be recorded using photographs, weigh slips, and standardized waste tracking forms developed by the Department. Such forms may include, but not be limited to, hauler and generator information (to the extent known) and the percentage of the load that is comprised of waste ban material(s);
3. Within 15 days after the end of each reporting period, the Waste Ban Compliance Professional shall conduct a comparative analysis of the percentage of failed loads identified by the Waste Ban Compliance Professional in accordance with 310 CMR 19.303(1)(c)1.-2. with the percentage of failed loads documented pursuant to the Facility’s ongoing Waste Ban monitoring protocols in accordance with 310 CMR 19.017;
4. The Facility and its Waste Ban Compliance Professional shall be available to meet with the Department quarterly; and

5. The Waste Ban Compliance Professional shall receive training from the Department on waste ban inspection protocols.

(d) Alternative to a Waste Ban Compliance Professional. The facility may, in lieu of the provisions of 310 CMR 19.303(1)(c), place 3 percent of the revenue from the sale of any RPS Class II Waste Energy Generation Attribute into the Sustainable Materials Recovery Program Expendable Trust (“Trust”) no later than 30 days after the receipt of funds from any such sale. These funds, which are in addition to the funds described in 310 CMR 19.303(2)(b), shall be used by the Department to hire an independent third party to perform the activities defined at 310 CMR 19.303(1)(c). If the revenue placed in the Trust pursuant to this provision is not spent by the Department in a specific state fiscal year, the excess shall be credited to the facility’s obligation under 310 CMR 19.303(1)(d) for the next year.

(2) Sustainable Materials Recovery Program

A Facility shall comply with the requirements of the Sustainable Materials Recovery Program contained in 310 CMR 19.303(2) after obtaining an approval from the Department for the Facility’s solid waste permit modification application to qualify as a Waste Energy Generation Unit.

(a) The Department shall develop a Sustainable Materials Recovery Program. The Department shall solicit projects on a schedule determined by the Department from eligible state agencies, municipalities, businesses and non-profit organizations (project proponents). The projects shall be consistent with objectives contained in the Commonwealth’s Solid Waste Master Plan and as further specified in the Department’s solicitation. At least annually, the Department shall evaluate, assign a priority ranking, and publish a list of approved projects.

(b) A Facility shall place 50% of the revenue from the sale of any RPS Class II Waste Energy Generation Attribute into a Dedicated Account and/or the Sustainable Materials Recovery Program Expendable Trust (“Trust”) no later than 30 days after the receipt of funds from any such sale. A Facility shall manage the funds in its Dedicated Account, including the revenue from the sale of any RPS Class II Waste Energy Generation Attribute and any investment income derived from such revenue, in accordance with generally accepted accounting practices and the following:

1. Segregate funds in the Dedicated Account from all other revenues and accounts of the Facility;
2. Disburse all funds in the Dedicated Account provided there are sufficient approved projects for funding;
3. Remit to the Trust any funds in the Dedicated Account not encumbered by a binding commitment with a project proponent for an approved project(s) within 12 months; and
4. Remit to the Trust any funds in the Dedicated Account that have not been expended within 24 months unless otherwise approved by the Department.

(c) Conduct Project or Contract with Project Proponent

A Facility shall use the funds in its Dedicated Account solely to:

1. Conduct or operate in conjunction with a project proponent a project from the list in 310 CMR 19.303(2)(a), as approved and directed by the Department; and/or,
2. Contract directly with any project proponent(s) to fund and manage projects from the list in 310 CMR 19.303(2)(a), as approved and directed by the Department.

(d) The Department shall establish and manage the Trust in accordance with the terms of such Trust. The Department shall utilize the funds of the Trust to administer and oversee Class II Recycling Programs, including allocation of funds for the list of approved projects as part of the Sustainable Materials Recovery Program.

(e) Each project proponent that receives funding through the Sustainable Materials Recovery Program shall spend such funds in accordance with the description of its project, the Department's solicitation, and any ensuing contract between the project proponent and the Department (for projects funded from the Trust) or between the project proponent and the Facility (for projects funded from a Facility's Dedicated Account). Each such project proponent shall report to the Department within 30 days of the completion of the project on the implementation of the approved project on a form developed by the Department. Failure to report shall prohibit the project proponent from receiving or applying for funds in future years until such reporting requirement is met.

(3) Waste Characterization Study

A Facility shall:

- (a) Complete a waste characterization study of the solid waste received at the Facility in accordance with 310 CMR 19.303(1)(a) within 18 months of the approval of its Class II Recycling Program and conduct such study every three years thereafter. Such study shall include but not be limited to an identification of the volumes and weights of various components of the waste stream;
- (b) Six months prior to conducting the study, the Facility shall submit to the Department for approval the methodology for such study;
- (c) The Facility shall submit the study as part of the annual facility report for the year in which the study is conducted; and
- (d) After the first waste characterization study, if the Department finds the character of the waste is similar at Facilities owned by the same entity, the Department may approve a methodology that combines some or all Facilities owned by the same entity.

(4) Reporting

- (a) 30 days after the sale of any RPS Class II Waste Energy Generation Attribute ("Attribute"), a Facility shall report to the Department the following information: the number of Attributes sold; the price of the individual Attribute(s); the total funds from the sale; and the sum to be placed in its Dedicated Account and/or in the Trust. The Department may periodically audit the sale of any Attribute(s) and a Facility's Dedicated Account. The Facility shall cooperate with the Department concerning any such audit;

(b) A Facility shall submit, within 15 days of the end of the reporting period, in an electronic format to be specified by the Department, the data collected pursuant to 310 CMR 19.303(1)(c)2.-3. for that reporting period. Within 15 days of a written request from the Department, a Facility shall submit in an electronic format to be specified by the Department data collected from the electronic tracking system installed pursuant to 310 CMR 19.303(1)(b);

(c) A Facility shall include in its annual facility report to the Department, on a form developed by the Department, the following information:

1. the implementation of the Facility's approved Class II Recycling Program;
2. the Facility's obligations under 310 CMR 19.303(2), including but not limited to, information about the projects the Facility conducts or operates pursuant to 310 CMR 19.303(2)(c)1. and that it contracts for pursuant to 310 CMR 19.303(2)(c)2., including the dollars spent and the equipment or services purchased; and
3. the waste characterization study in accordance with 310 CMR 19.303(3) above.

(5) Recordkeeping

A Facility shall retain a copy of all records required pursuant to 310 CMR 19.300 through 19.303, whether written or electronic, for at least five years following the creation of any such record. This five year period shall be extended automatically for the duration of any enforcement action against the Facility under 310 CMR 19.303, including any appeal thereof, until the conclusion of such action or appeal.

(6) Termination, Suspension, and Revocation

- (a) A Facility may terminate its qualification as a Waste Energy Generation Unit by notifying the Department in writing that the Facility will no longer implement a Class II Recycling Program. After submitting such notification, a Facility must submit a new solid waste permit modification to re-qualify as a Waste Energy Generation Unit.
- (b) The Department may suspend or revoke the solid waste permit modification that qualifies a Facility as a Waste Energy Generation Unit for failure to comply with 310 CMR 7.08(2), 310 CMR 19.000, or the Facility's Solid Waste Permit.