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**REGULATIONS IMPLEMENTING THE
GREEN COMMUNITIES ACT
(Chapter 169 of the Acts of 2008)**

CLASS II RECYCLING PROGRAMS

**RESPONSE TO COMMENTS RECEIVED DURING
THE PUBLIC COMMENT PERIOD**

MAY 28, 2009

List of Commenters

1. Bob Fiore, Worcester Department of Public Works and Chairman of the Central Mass Resource Recovery Committee
2. Frank Ferraro, Vice President of Public Affairs, Wheelabrator Technologies, Inc.
3. Derek Grasso, Regional Environmental Manager for Covanta Energy
4. Robert Holt, Chair, Truro Recycling Committee
5. Covanta, written
6. Wheelabrator, written
7. Conservation Law Foundation, written
8. ReEnergy, written
9. MassRecycle, written
10. Jan Ameen, Executive Director, Franklin County Solid Waste Management District, written

Comments and The Department's Responses

1. Applicability

1.1 Comment: ReEnergy asserts that the Department's proposed regulations effectively exclude out-of-state WTE facilities from participation in the Class II RPS program. Out-of-state WTE facilities are not precluded from eligibility in the Class II RPS program under the Act, nor are they precluded under the proposed regulations that have been issued by the Department of Energy Resources (DOER), although DOER's regulations require that a WTE facility comply "with the applicable requirements" of the Department's regulations governing WTE facilities, namely 310 CMR 7.08(2) and 19.000. Since these regulations are not applicable to WTE facilities located outside of Massachusetts, these sections do not exclude out-of-state WTE facilities from being able to satisfy the requirements under the DOER's regulations, provided they can fulfill the requirements of the Department's proposed regulations. The proposed regulations, however, preclude out-of-state WTE facilities from qualifying under the Class II RPS program in several respects. For example, the proposed regulations require that a WTE facility obtain a modification to the solid waste permit issued by the Department with respect to the facility. Since the Department does not issue permits to out-of-state facilities, an out-of-state facility can not meet this requirement, and therefore, they are precluded from participation in the Class II RPS program. ReEnergy argues that any prohibition on out-of-state facilities from participating in the Class II RPS program is a violation of the commerce clause of the U.S. constitution.

In its comments ReEnergy's suggests the following additional performance standards:

- Allow participation by out of state facility taking in at least 30,000 tons of Massachusetts waste per year. ReEnergy suggests this amount as an indication that the facility is providing material assistance in meeting the Commonwealth's solid waste management needs and recycling objectives.
- Require out-of-state facilities to demonstrate that the waste it received was delivered from Massachusetts transfer stations that are subject to the waste bans, which would ensure that the facility is contributing to achieving the legitimate state interest of maximizing recycling in the Commonwealth.

Response: The Department disagrees with ReEnergy's comment that DOER's regulations allow out of state facilities to participate in the Class II RPS program despite not being subject to Department air and solid waste regulations. Without limitation, for the following reasons, the Class II RPS program is not available to out-of-state waste-to-energy facilities. The Green Communities Act requires a WTE facility to "operate or contract for one or more recycling programs approved by the department of environmental protection" to be a Class II renewable generating source. Based on this language and the Department's permitting authority over WTE facilities, a WTE facility must have an approved permit to "operate or contract for" a recycling plan approved by the Department. The Department's authority to issue solid waste permits for recycling programs does not extend beyond the borders of the Commonwealth. In addition, the Commonwealth has a legitimate local public interest in encouraging recycling and the generation of clean energy through the voluntary Class II RPS

program. Also since the Department’s regulatory authority does not extend beyond the Commonwealth’s borders, it cannot ensure that out-of-state WTE facilities are complying with the same emissions limits, waste ban and recycling provisions that in-state facilities must meet to qualify as a Class II renewable generating source.

1.2 Comment:

Wheelabrator’s ability to generate and sell electricity impacts its cost model and therefore the tip fee offered to customers delivering waste to the facility. The Central Mass communities are concerned that this regulation will impact the facility’s ability to sell its electricity and further we do not believe that the facility should have to give up 50% of the revenue from the sale of the renewable energy credits. We believe that if the facility were allowed to keep all of the revenue municipalities would benefit from reduced tip fees.

Commenter: Bob Fiore, oral

Response: Participation in the Class II Recycling Program is voluntary and does not prohibit WTE facilities from selling the electricity generated at their plants. Participation only enables those facilities to qualify as a RPS Class II Waste Energy Generation Unit and be eligible to receive RPS Class II Waste Energy Generation Attributes which they can then sell to retail electricity providers. These providers are required to purchase RPS Class II Waste Energy Generation Attributes in order to meet the RPS Class II Waste Energy Minimum Standard as defined within the Renewable Energy Portfolio Standard. The Green Communities Act specifically requires that “at least 50%” of the revenues received from the sale of RPS Class II Waste Energy Generation Attributes must be used to implement a recycling program approved by the Department.

1.3 Comment:

The requirement to provide funding for recycling programs seems to be focused on the waste-to-energy (WTE) industry. WTE facilities should not have to apply to the Department to qualify as a renewable energy source. They deserve the designation unconditionally.

Commenter: Bob Fiore, oral

Response: The portion of the Green Communities Act which prompted the proposed regulations is specifically focused on waste-to-energy facilities. Pursuant to that authority, the proposed regulations define the requirements for an “approved recycling program.” A waste-to-energy facility must comply with these regulations in order to qualify as a RPS Class II Waste Energy Generation Unit and earn RPS Class II Waste Energy Generation Attributes.

2. Sustainable Materials Recovery Program

2.1 Comment:

As drafted, the grant programs funded by the sale of Waste Energy credits are open to communities, businesses, non-profits, etc., regardless of whether they are delivering waste to the waste-to-energy facility. The largest community in Massachusetts could get a grant from this program even though all of its waste goes out-of-state.

Commenter: Bob Fiore, oral

Response: RPS Class II Waste Energy Generation Attributes are purchased by retail electricity providers as part of the required renewable energy portfolio standard. These utility companies raise the funds to meet their renewable energy portfolio standard obligations through the utility rates paid by all their customers in Massachusetts. It is not the source of the waste that determines a facility’s eligibility but rather the electricity derived from its process that is delivered to all Massachusetts rate payers. The Department developed the regulations and included broad eligibility in the Sustainable Material Recovery Program in recognition that all Massachusetts ratepayers are contributing to the program.

2.2 Comment: Subsection (2)(b) states: “A Facility shall place 50 percent of the revenues 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 any such sale.”

Wheelabrator suggests amending the language to read, “...no later than 30 days after the receipt of funds from any such sale.”

Once a sale for [RPS Class II] Waste Energy Generation Attributes is completed with a retail electricity supplier, there is no guarantee that the waste-to-energy facility will receive the funds in a timely manner. This language would clarify that payment will be made once the actual funds are received.

Commenter: Wheelabrator, written

Response: The Department has adopted the recommended change to the regulations.

2.3 Comment: “CLF agrees that a competitive and open process is essential to ensure that the proceeds from the sale of Class II RPS Waste Energy Generation Attributes maximize the opportunities to reduce waste and increase recycling. Ideally, these regulations would contain an explicit listing of priorities; however, CLF does understand that this would be difficult given the current state of development of the SWMP [Solid Waste Master Plan]. Therefore, CLF supports the Department’s decision to develop this program through an open stakeholder process. This should be done as expeditiously as possible with special attention paid to prioritizing projects that move us in the direction of zero-waste. CLF supports the Department’s plan to solicit projects that are consistent with the goals of the SWMP as well as the commitment to revisit the listing of approved projects at least once a year”.

Commenter: Conservation Law Foundation (CLF), written

Response: The updated Solid Waste Master Plan will provide the vision for the next 10 years and the Department’s focus over that timeframe is expected to change in response to market development, waste generation and other factors. The Sustainable Materials Recovery Program (SMRP) is designed to be flexible enough to address the current and future recycling needs of the Commonwealth. The Department will regularly seek stakeholder input and comment on the program and list of priority projects to ensure that

it focuses on the most important elements of advancing waste reduction in the Commonwealth consistent with the Solid Waste Master Plan.

2.4 Comment: “The Department’s regulations for the management of Class II proceeds provide a reasonable framework for identifying, segregating, and tracking the use of funds. See 310 CMR 19.303(2)(b). CLF agrees that not only the proceeds, but also any investment income must be directed towards approved recycling programs. CLF also supports the Department’s deadline for remitting to the Department administered trust any funds that have not been committed to an approved project within twelve months. These measures ensure that the funds will be spent in a timely manner”.

Commenter: CLF, written

Response: The Department’s intent is to run an open competitive process that includes systems to ensure that the funding is used appropriately.

2.5 Comment: “The Department has met the mandate of the statute by requiring that 50 percent of the revenue from the sale of any RPS Class II Waste Energy Generation Attribute be placed into a Dedicated Account or the Department administered Trust; however, CLF requests that the Department consider requiring a higher percentage of revenue be set aside to support approved recycling programs. The statute sets 50 percent as a minimum amount—“[a]t least 50 per cent of any revenue . . . shall be allocated to such recycling programs.” See c. 25A; Section 11F(d). Given the historic need for funding recycling programs as well as the cost savings these programs provide for cities and towns and the attendant environmental benefits, the Department has ample basis for increasing the percentage.”

Commenter: CLF, written

Response: Rather than require more than 50 percent of the revenue be dedicated to recycling programs approved by the Department, the proposed regulations outline several requirements that must be part of a WTE facility’s Class II Recycling Program. A facility will be required to conduct a waste characterization study within 18 months and then every three years thereafter, implement an electronic tracking system for incoming loads, and implement an enhanced monitoring program for waste ban materials.

The Department chose the 50 percent level in recognition that some of the requirements in the regulation will result in waste-to-energy facilities needing to expend their own resources in order to maintain an approved recycling program.

3. Waste-to-Energy’s Importance to RPS

3.1 Comment: “Wheelabrator owns and operates three waste-to-energy facilities in Massachusetts annually converting 1.5 million tons of MSW into 124 MW of clean renewable energy. That’s enough energy to power 150,000 Massachusetts homes. In passing the RPS Class II provisions in the GCA the legislature recognized the importance of providing financial incentives to ensure the continued operation of the existing base of renewal energy sources in Massachusetts. Since existing renewable energy generators comprise more than 7% of the total electricity generation in the Commonwealth, losing this renewable energy base would cause a serious blow to the state’s efforts to move from fossil fuel to renewable generation. In addition,

since one half of the revenue from the sale of waste energy credits under the states Class II RPS program would be directed to the DEP for recycling programs, both the WTE industry and the Commonwealth have something to gain from instituting a workable program. Unfortunately, if a number of changes aren't made to the regulations as drafted, our ability to participate will be greatly jeopardized.”

“The Department’s stated purpose in developing these rules is to provide enhanced waste monitoring with the goal of increasing recycling in the Commonwealth. As currently written the requirements are so onerous as to put the waste-to-energy facilities at a competitive disadvantage to transfer stations and other disposal locations. In short, as a result of implementing these requirements, the waste-to-energy facilities may lose customers. If this comes to pass, and customers [go] to a facility that does not have the enhanced waste monitoring then the Department will lose the opportunity for this enhanced waste monitoring as well as funds for recycling if the loss of customers causes the waste-to-energy facility to withdraw from this program. This would be a lose-lose scenario.”

Commenter: Frank Ferraro, Wheelabrator, oral

Response: Waste-to-energy facilities have the option to participate in Class II Recycling Programs and non-participation does not inhibit the sale of electricity from these facilities. The requirements for waste-to-energy facilities in these regulations are instrumental to the intent of the Green Communities Act to advance recycling and are consistent with existing facility obligations.

4. Qualification for the Class II Recycling Program

4.1 Comment: A permit modification is not necessary to implement the requirements of these regulations. Instead, required programs could be included as a change or addendum to a facility’s Waste Ban Compliance Plan.

Commenter: Covanta, written; Wheelabrator, written

Response: Permits are the mechanism used by the Department to govern activities at solid waste facilities and since the regulations contain facility specific requirements, these need to be incorporated into a facility’s operating permit. The suggestion to amend a facility’s waste ban plan would require a permit modification.

The Department’s review of the permit modification will be focused only on those activities needed to demonstrate compliance with these new regulatory requirements.

4.2 Comment: “If the Department believes that a permit modification is necessary, the regulations should clearly designate that this is a minor permit modification, not subject to a formal hearing process and would not subject any other currently existing permit to be opened for review.”

Commenter: Wheelabrator written

Response: See response to 4.5

4.3 Comment: “The detailed customer data proposed by 19.303(4)(b) would put WTE facilities at a competitive disadvantage should such information be public and requested by a competitor. An alternative was proposed by Wheelabrator where by they would submit on a monthly basis, along with failed load information, a summary of the percent of failed loads by truck owner on a running average basis for the calendar year. “

Commenter: Covanta, written; Wheelabrator, written

Response: The Department understands the sensitive nature of some of the data requested and facilities may use the procedures established in 310 CMR 3.00 to file a confidentiality request.

4.4 Comment: “CLF agrees with the Department’s determination that the qualification process presents an opportunity to ramp up compliance with existing waste bans that prohibit the disposal of recyclable, compostable and hazardous products. As the Department noted, “aggressive monitoring and enforcement of the waste bans will result in greater recycling and composting.” See Background, Draft Regulations, M.G.L. 25A, Section 11F(d), Class II Recycling Program 2. Increased compliance with these waste bans will also reduce the stream of toxic materials that make their way into landfills and municipal waste incinerators. Therefore, CLF supports the requirement that Class II recycling program applications include provisions for (1) a waste characterization study, (2) an electronic tracking system, and (3) ongoing inspection by a waste ban compliance professional.”

Commenter: CLF, written

Response: See response 6.1 for changes to the requirement for the Waste Ban Compliance Professional.

4.5 Comment: “CLF urges the Department to clarify the public process that will accompany a facility’s application for a solid waste permit modification. Under the existing regulations at 310 CMR 19.000 et. seq., applications for permit modifications do not necessarily require a period of public comment. However, due to the effect and import of the qualification of a facility as a Class II Waste Energy Generation Unit, CLF believes that the applications for solid waste permit modifications should be governed by 310 CMR 19.032-19.036 in order to allow the public an opportunity to comment on these applications.”

Commenter: CLF, written

Response: The most appropriate review process for permit modifications is 310 CMR 19.037. The types of facility changes that are subject to the review process at 19.032-19.036 are associated with new facilities or expansions of existing facilities. The implementation of these regulations does not expand the capacity of the facility. Accordingly, the Department will review these permit modifications under provisions of 19.037 and will issue any approvals as provisional as provided for at 19.037(4)(a). All such provisional approvals will have a 21 day comment. Comments received during this period will be evaluated only in the context of their applicability and relevance to the qualifications of the facility as an RPS Class II Waste Energy Generation Unit.

4.6 Comment: “CLF supports the requirements included at 310 CMR 19.303(1) but is concerned that they are not sufficiently detailed in their current form to provide the type of aggressive

enforcement of the waste bans that the Department has envisioned. The Department should expand 19.303(1)(a) to include a description of the elements, scope, and acceptable methodologies for waste characterization studies. Further, the Department should include a list of qualifications deemed adequate to meet the requirement that the waste characterization study be conducted by an “experienced and competent” professional. With respect to 19.303(1)(c), the Department should define the term “waste ban compliance professional.” CLF recommends removing the alternative compliance route provided in 19.303(1)(d). A compliance professional provides value not only by the detection of non-compliance, but also by working with haulers and generators to achieve compliance in the future.”

Commenter: CLF, written

Response: The methodologies proposed by facilities conducting waste characterization studies (310 CMR 19.303(3)) are subject to approval by the Department. The Department added the following to better define the information to be derived from a waste characterization study.

“Such study shall include but not be limited to an identification of the volumes and weights of various components of the waste stream.”

The Department has added the requirement that the waste ban professional be trained by the Department. The alternative compliance option, 19.303(1)(d), has been replaced with an option for the facility to contribute an additional 3% of the revenue from the sale of the RPS Class II Waste Energy Generation Attributes to the Sustainable Materials Recovery Program Expendable Trust which the Department would use to hire an independent contractor to perform the activities defined for the Waste Ban Compliance Professional.

5. Withdrawing from the Class II Recycling Program

5.1 Comment: [The] “waste ban compliance plan addendum should also include the language of 19.301(6) [reference incorrect in written and oral comments. No such section. Commenter meant 19.303(6)] which allows for a facility to withdraw from the program. The addendum should also state that non-compliance with those provisions will result in Class II disqualification but does not represent a violation of the entire solid waste permit.”

Commenter: Derek Grasso, Covanta, oral; Covanta, written.

Response: If a facility is found to be in noncompliance with 19.300, the permit serves as a mechanism for the Department to enforce the provisions of 19.300 without necessarily having to disqualify a facility. Having the ability to resort to enforcement (and not solely a letter to the Department of Energy Resources disqualifying the entity from the Class II program) allows the Department to tailor enforcement to the specific violation and gives the Department the ability to address noncompliance where a facility has perhaps already sold the RPS Class II Waste Energy Generation Attribute but has not continued with its obligations (in which case disqualification would have no impact).

5.2 Comment: The proposal would require a solid waste permit modification to be obtained in order to qualify as a Class II Waste Energy Generation Unit. Covanta remains very cautious about reopening existing permits for revision. This process would add time to what we believe

should be a separate mechanism for qualifying as a Class II source. It also adds additional potential for noncompliance with the entire solid waste permit, when only qualification as a Class II source should be at risk for failure to follow these requirements. Proposed section 19.303 (7) specifically states that a facility could be subject to enforcement.

Commenter: Covanta, written and oral

Response: See Response to 4.5

6. Waste Ban Compliance Professional

6.1 Comment: Covanta believes that it would be unlikely to find reliable third-party contractors, especially if one is required for each facility. In order to be effective, individuals would have to be conscientious and enthusiastic. They would need to be trained with respect to company safety procedures and waste ban requirements, and have the skills to compile and present data suitable for Department review. Such individuals may indeed be found from contracting firms, but it is reasonable to expect that they would not wish to stay in this position indefinitely when other opportunities may arise. Turnover would likely be high, requiring repeated training and reduced effectiveness. Covanta believes that this provision of the proposal should allow for either a third-party contractor or a full-time company employee. Company employees will have the incentives of company benefits and the opportunity of advancement within a stable organization. When necessary, similarly-trained company employees could substitute during times of vacation or illness, and the experience of these individuals would remain available to Covanta to continually improve our waste ban practices. Ongoing compliance with the Class II eligibility requirements will be dependent almost entirely on this one individual's performance. Covanta strongly believes that company employment would be a major motivation to reliable, long-term success.

The Department may have this type of arrangement in mind with its proposed alternative in 19.303(d). However, the criteria of "an equivalent level of verification" are subjective. Covanta believes that random inspection of different facilities provides such equivalence, but the Department may not. Covanta believes that this provision should remain, but along with the other changes proposed above.

Commenter: Covanta, written and oral

Response: The Department has changed the requirements of the Waste Ban Compliance Professional (WBCP) from observing all loads on a daily basis to monitoring incoming loads on at least ten randomly selected days each quarter. On these days, the WBCP will visually monitor all loads, and will call for further inspection of those loads suspected of exceeding the allowable limits for waste ban materials, as specified in the facility's waste ban compliance plan. One WBCP may serve more than one facility. The Department believes that an independent third party is critical to the success of enhanced waste ban enforcement and helps to validate the work of facility personnel responsible for waste ban monitoring.

The WBCP is also required to conduct a comparative analysis of the percentage of failed loads identified by the WBCP 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.

To ensure consistency among the WBCPs hired by facilities, each WBCP will be required to attend training from the Department on inspection protocols.

The draft provision allowing for an alternative waste ban compliance plan has been amended to allow a facility to turn over to the Sustainable Materials Recovery Program Expendable Trust an additional three percent of the revenue from the sale of RPS Class II Waste Energy Generation Attributes, which the Department will use to hire an independent third party WBCP to meet the regulatory requirements.

6.2 Comment: As an enhancement to current waste ban practices, Covanta does not believe that a separate full-time WBCP is needed at each facility. One individual who is responsible for randomly inspecting different company facilities on different days would be sufficient for providing a statistically valid data set of waste loads. We propose that one WBCP be sufficient for each WTE company. That person could be required to spend an entire workday at one facility, chosen at random, but with a minimum number of days per month at each plant. Random sampling is a proven method for gathering accurate data, and the schedules could be reviewed by the Department over time to ensure that this is achieved. With this program, Massachusetts would thereby have two full-time WBCPs on duty each weekday to monitor six WTE facilities, in addition to the ongoing waste ban inspections that are done in accordance with the facility waste ban plans. This would be a significant increase in waste ban monitoring than currently exists, at no cost to the State.

Commenter: Covanta, written and oral

Response: See response to 6.1

6.3 Comment: Section 19.303, subsection (1)(c) states:

“(c) Waste Ban Compliance Professional(s). Evidence of a contract(s) with an independent third party (the “Waste Ban Compliance Professional”) to provide ongoing inspection and monitoring for compliance with the Waste Bans at 310 CMR 19.017 by haulers and generators delivering waste to the Facility.”

Wheelabrator views this provision as a supplement to the current waste ban inspection and compliance programs already in place at waste-to-energy facilities. This view is in keeping with the Department’s stated wishes to have [310 CMR] 19.303 be an enhancement to the current program. As such, we strongly believe that an additional full-time Waste Ban Compliance Professional at each facility is unnecessary. We also believe that this section should be amended to allow a company the option to hire an employee to serve as the Waste Ban Compliance Professional. Given the nature of the job (long hours, location, working conditions, etc.), it may be difficult to keep the position filled with no gaps in coverage using a third party. Since a facility’s permit compliance will be contingent on the position being filled, the company should have the option of hiring a person or persons as a company employee for the position.

Additionally, allowing the use of company employees facilitates providing coverage when the designated Waste Ban Professional is not available due to vacations, sick days, etc. To place a facility’s ability to comply solely in the hands of a third party is unnecessary and unreasonable.

Commenter: Wheelabrator, written

Response: See response to 6.1

Comment 6.4: Subsection (1)(c)(2) states:

Such monitoring and inspections may satisfy the requirements of a Facility’s Waste Ban compliance plan approved under 19.017(5).

Wheelabrator respectfully requests that this section be removed from the regulations in its entirety. Our facilities currently monitor all incoming loads and fail those that are not in compliance with the Department’s waste bans. We envision this “Waste Ban Professional” as a complement to what our facilities are already doing, not a replacement. As a result, we feel it is unreasonable to mandate that a separate “Waste Ban Professional” be required at each facility during all hours of operation. Due to the requirements of the job, we feel it is reasonable to allow one person to perform the duties of the job at our three facilities as long as they spend a week at a time at the facility and are at each facility at least one week a month. This level of dedicated, increased monitoring of loads at our facilities, in addition to the use of a standardized, electronic report, will provide the Department with far more easily accessible information to assist them in enforcing its waste bans than the Department will obtain from any other transfer or disposal location.

While 19.303(1)(d) allows the submission of an alternative approach, it must “provide an equivalent level of verification”. This provision is too subjective and establishes the proposed 19.303(1)(c) as the minimum standard, rendering moot alternatives such as proposed above.

Commenter: Wheelabrator, written

Response: See Response 6.1. In addition, the Department has removed:

“Such monitoring and inspections may satisfy the requirements of a Facility’s Waste Ban compliance plan approved under 19.017(5).”

7. Monitoring and inspection of loads – 19.303(1)(c)(1)

Comment 7.1: This section requires the “...Waste Ban Compliance Professional to monitor and to inspect all incoming loads...” “Inspection” implies a manual sorting of every load, which would not be practical or safe on an active tipping floor. Covanta requests that this be changed to “...to monitor all incoming loads, and direct inspection of loads that appear to be in noncompliance with waste ban requirements...”. Any inspections could be done by the WBCP, or by the tipping floor personnel under the WBCP’s direction.

Commenter: Covanta, written and oral

Response: The Department has revised the regulations to clarify the protocols for monitoring and inspection at 310 CMR 19.303(1)(c)3.

Comment 7.2: Also, subsection (1)(c) states that the Waste Ban Professional will be required to, “*monitor and inspect all incoming loads...*”

“As explained above, it is our understanding that the intent of the new requirements is to provide enhanced monitoring of incoming loads to waste-to-energy facilities with an electronic spreadsheet report of those that fail. To require “inspection” of every load that enters the facility suggests an active, manual operation that would cause havoc to the daily operations at our facilities.

As stated at the onset of these comments, we explained that due to our strict safety requirements no person may be on the tipping floor while trucks are in motion and the front-end loader is in operation. If someone must go on the floor (e.g., for a comprehensive inspection) all operations on the tipping floor are halted. There are absolutely no exceptions to this rule. Increasing the disruptions to the operations of haulers who utilize our facilities will again put us at a competitive disadvantage to those facilities that do not have similar requirements.

We believe that, as a supplement to the current waste ban inspection program, the additional person (i.e., the Waste Ban Professional) can work in conjunction with the current waste load observations to provide enhanced monitoring of incoming waste loads. If the Waste Ban Professional observes a questionable load, that individual can communicate with the loader operator to have the loader operator look at the suspect load, in the same way that they would under the current procedure had the loader operator observed the suspect load. In this way, there is another set of eyes focused solely on observing the incoming loads.

The comprehensive load inspections would continue to be conducted in accordance with the current waste ban plans. The facility should also have the option of having the Waste Ban Professional conduct the comprehensive inspection or continue as under the facility's current waste ban plan".

Commenter: Wheelabrator, written

Response: See response to 6.1 and 7.1

7.3 Comment: Covanta takes the health and safety of anyone who works in and around our facilities very seriously. With such large equipment operating on the tipping floor, we are very concerned about allowing a third party onto the tipping floor.

Commenter: Covanta, written

Response: See response to 6.1 and 6.4

8. Landfill gas and landfill-to-gas energy

8.1 Comment: "In addition to these specific comments, Covanta offers one broader comment that we strongly believe is relevant to this new regulation. As the Department is aware, landfill gas-to-energy projects qualify as Class I renewable energy sources in Massachusetts. This qualification is essentially automatic for any installation, regardless of location (in or out-of-state), and without any requirement whatsoever that the landfill implement any type of incoming waste inspection program. Furthermore, revenue from the sale of renewable energy credits from LFG projects is not shared with the Commonwealth, but is instead kept by the project owner. The contrast and inconsistency with the Green Communities Act and the Solid Waste Management Plan when compared to Waste-to-Energy's qualification is obvious. A primary goal of Massachusetts is to enhance waste source reduction and recycling, and the waste-to-energy facilities have accepted their role in this goal by providing half of any renewable energy revenue to the state and agreeing to enhance waste ban inspections. A similar requirement for landfills is necessary. Current statutes apparently do not provide the Department with the authority needed to correct this hindrance to meeting State goals. Covanta suggests that the Department propose and support legislation that would provide such authority."

Commenter: Covanta, written

Response: Since landfill gas projects are not mentioned in the relevant portion of the statute that pertains to these regulations, the Department did not make any substantive changes to the regulations based on this comment.

8.2 Comment: For future consideration of the Department: Landfill gas-to-energy projects, currently and always have qualified as Class I renewable energy. However, landfills have none of these requirements. They are not required to have waste ban compliance professionals. They are not required to do this enhanced monitoring. Covanta is willing to help the Department enhance its current program. However, if the Department wants to fully capture all of the waste and to enhance the program on a state-wide basis, we believe that landfill gas-to-energy projects should also have a requirement that they have a similar program at landfills that have these types of projects before they qualify as Class I. Otherwise a substantial portion of the waste is going to facilities that do not have to do this.

Commenter: Derek Grasso, Covanta, oral

Response: See response to 8.1

8.3 Comment: The Green Communities Act (GCA) legislation should specify in Chapter 25A, Section 11F(d) that, in order to be considered a Class II renewable energy generating source, facilities that generate electricity using landfill gas must meet the same criteria as eligible waste-to-energy facilities, that is, that they must operate or contract for one or more recycling programs approved by the Department of Environmental Protection and that at least 50 per cent of any revenue received by the facility through the sale of Massachusetts RPS-eligible renewable energy certificates shall be allocated to such recycling program.

As currently written the GCA provides greater financial benefit to landfill gas generating facilities than to WTE facilities, potentially setting up a situation where waste haulers will favor disposal at landfills over WTE facilities. It also unfairly places the entire burden for funding Class II Recycling Programs on WTE facilities which process only 30% of the waste generated in the Commonwealth. Considering that the technology to capture landfill gas from landfills recovers only 25% of generated greenhouse gasses, releasing into the atmosphere 75% of methane and other greenhouse gasses generated through the decomposition of organic materials, regulations should not give preference to disposal of waste in landfills.

Commenter: MassRecycle, written

Response: See response to 8.1

9. General Clarifications

9.1 Comment: “It is not clear how or why Generation Attributes would be sold or why anyone would buy "the unit's fuel type, emissions....”. What is sold, however, appears to be RPS, another undefined term. From the context, it appears to be a credit for generating renewable energy, which would have commercial value only in the framework of a cap-and-trade or similar system. I find it astonishing that there is no reference to such a context, let alone any justification for subsidizing the burning of MSW to generate electricity as a basis for permitting another business to emit more greenhouse gases than it would otherwise not be allowed to. Requiring that half of the proceeds from such sales be dedicated to the support of recycling

supplies such justification to only a slight degree. Since the loss of the environmental fund once dedicated to such support, community recycling programs have been starved, but I am not bought off by the promise of such money.”

Commenter: Robert Holt, Truro, written

Response: The Department is promulgating these regulations to implement certain requirements of the Green Communities Act passed by the legislature.

10. Managing revenue generated for recycling programs

10.1 Comment: “Finally, it seems to me a poor idea to allow the waste-to-energy plant to have the option of itself making the decisions about what recycling program should receive the funding generated by selling RPS. There is no good reason to expect that such a company would have on its staff persons expert in evaluating grant proposals and disposed to support those that are in the public rather than the corporate interest. All of the funds generated should be turned over to DEP for an expertly run grant program.”

Commenter: Robert Holt, Truro, written

Response: The Department will evaluate, prioritize and approve all programs. If facilities choose to manage the recycling funds themselves, the Department will direct them to projects in order of priority.

11. Other Comments

1.1 Comment: I am writing in support of the proposed regulations entitled, “Waste-To-Energy Facilities: Class II Recycling Programs (310 CMR 19. 300).” I have read through the draft regulations and believe that this program will benefit municipal recycling programs. I believe the regulation is clearly written. I do not have any adverse comments on the proposed regulatory language.

Commenter: Jan Ameen, Franklin County Solid Waste Management District

Response: None required