

**DRAFT REGULATIONS  
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**

MassDEP seeks input and comment on the proposed new solid waste regulations which support the implementation of requirements set forth in the Green Communities Act Chapter 169 of the Acts of 2008.

**Background**

The Green Communities Act (Chapter 169 of the Acts of 2008) identifies a Waste-To-Energy (WTE) facility in commercial operation prior to December 31, 1997 that uses conventional municipal solid waste technology to generate electricity as a Class II renewable energy generating source if it “operates or contracts for one or more recycling programs approved by the department of environmental protection.” The statute also specifies 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 programs.” (See attached portion of M.G.L – Attachment 1)

There are currently six WTE facilities in Massachusetts that may qualify based on the WTE facility’s sale of electrical power. Those six facilities include Wheelabrator – Saugus, Wheelabrator – Millbury, Wheelabrator – North Andover, Covanta – Haverhill, Covanta – Springfield, and Covanta – SEMASS (Rochester). These facilities are currently permitted to receive approximately 9,200 tons of municipal solid waste (MSW) per day. See Table 1 for each facility’s daily permitted capacity and its calendar year 2007 actual MSW received. These facilities convert MSW, through a process of combustion, into an estimated 1.7 Mw/H of electricity annually.

Table 1

<b>Facility Name</b>	<b>Permitted MSW Capacity (Tons Per Day)</b>	<b>2007 Actual MSW Received (Tons)</b>
Covanta Haverhill	1650	574,013
Covanta Springfield	360	129,403
Covanta of SEMASS	2700	1,096,662
Wheelabrator of Millbury	1500	450,660
Wheelabrator North Andover	1500	422,671
Wheelabrator Saugus	1500	374,671

MassDEP proposes to establish within its Solid Waste Regulations (310 CMR 19.000) the requirement for a solid waste facility permit modification that specifies how a WTE facility may obtain an approved recycling program from MassDEP. WTE facilities will need to demonstrate compliance with these regulations in order to qualify as an RPS Class II Waste Energy Generation Unit under the Department of Energy Resources Renewable Energy Portfolio Standards (225 CMR 15.00).

**Considerations**

In developing the requirements for an approved recycling program (Class II Recycling Program), MassDEP considered several factors:

1. The success of recycling and waste diversion in the Commonwealth depends on compliance on the part of haulers, generators and solid waste facilities with the MassDEP's Waste Bans. MassDEP has prohibited through regulation (310 CMR 19.017) disposing or contracting for the disposal of several waste materials. (See Attachment 2) Monitoring and enforcement of the waste bans needs to be conducted with diligence, and feedback on compliance needs to be provided to all parties managing the waste.
2. The environmental and economic benefits of recycling are felt throughout the Commonwealth through cleaner air, protection of water resources, fewer disposal facilities, avoided disposal costs and economic activity related to recycling and reuse of materials. These benefits are realized statewide and across multiple sectors and therefore a Class II Recycling Program should benefit all Massachusetts residents. The proposed regulations would require MassDEP to issue an open solicitation to enable various groups across the state to receive funding and assistance through the approved Class II Recycling Program.
3. The distribution of resources generated through the Class II Recycling Program should be done in a fair, competitive manner with projects evaluated based on merit and the likelihood of success.
4. In order to qualify, WTE facilities should be operating under strict emission requirements and aggressively working to prevent the combustion of recyclable and toxic waste materials. MassDEP's emission requirements on WTE facilities (310 CMR 7.08(2)) and restrictions on the disposal of applicable recyclable and/or toxic materials (310 CMR 19.017) are some of the strictest in the nation, and must be adhered to. A facility must demonstrate compliance with existing facility requirements under MassDEP's Municipal Waste Combustors Regulation (310 CMR 7.08(2)) and Solid Waste Regulation (310 CMR 19.000). This would include all requirements within these regulations including implementation of a waste ban plan and material separation plan for mercury. Both of these plans require investment on behalf of the facility to ensure that recyclable and toxic materials are handled accordingly.

### **Structure of Regulations**

**310 CMR 19.300: Preamble**

**310 CMR 19.301: Applicability**

**310 CMR 19.302: Definitions**

**310 CMR 19.303(1): Class II Recycling Program Application**

This section outlines the commitments that must be made by a Facility in order to receive a Class II Recycling Program approval from MassDEP. The regulations would require a facility to submit a solid waste facility permit modification application to MassDEP, describing how the Facility will meet the Class II Recycling Program requirements (described in 310 CMR 19.303).

A Facility will need to agree to implement a number of initiatives at the Facility focusing on the need to ensure that haulers and generators that deliver waste to the Facility are complying with MassDEP's waste ban regulations (310 CMR 19.017). The Waste Bans prohibit the disposal of certain recyclable, compostable and hazardous products at Massachusetts landfills, incinerators and other solid waste handling facilities. MassDEP believes aggressive monitoring and enforcement of the waste bans will result in greater recycling and composting in turn helping the Commonwealth meet its solid waste management goals. The first step to better compliance is identifying those parties that are frequently disposing of waste ban material.

Facility initiatives include:

- *Identify a competent professional to conduct a waste characterization study every three years on the waste received by the Facility*  
A waste characterization study provides specific information about the contents of the waste received at the Facility. This will allow MassDEP to identify the level of compliance with waste bans, identify opportunities for new diversion, and assist in measuring the success of recycling efforts both within the Facilities waste shed and statewide.
- *Installation and operation of an electronic tracking system to document all waste loads received at the facility and the level of compliance with the waste bans.*  
This will enable the Facility and MassDEP to more easily monitor, track, and communicate with haulers and generators. It will allow for easy identification of repeat offenders and help MassDEP target enforcement and technical assistance programs to improve compliance.
- *Contract with a 3<sup>rd</sup> party to conduct ongoing waste ban inspections and monitoring (or an alternate approach with equivalent results).*  
MassDEP believes it is important to have a dedicated person responsible for monitoring waste loads at a Facility. This person will identify haulers and generators that are in non-compliance with the waste bans and report this information to MassDEP. This person will provide feedback to haulers and generators found to be delivering waste ban materials to the Facility and offer some base level of assistance to help the parties correct the action. A facility may propose an alternative approach but this approach must be able to achieve the same level of oversight, documentation and enforcement. Any alternative plan would be required to receive approval from MassDEP. Some examples of alternative approaches might include video surveillance cameras, a system for financial penalties to haulers and generators, and/or advanced pre-processing of waste to remove waste ban materials.

In addition, an approvable Class II Recycling Program will also need to commit to allocating 50 percent of the revenue from the sale of any RPS Class II Waste Energy Generation Attributes (Attributes) toward the implementation of the Sustainable Materials Recovery Program (310 CMR 19.303(2)) within 30 days of the sale of the Attributes.

Once a Facility has received MassDEP approval for its Class II Recycling Program, it will be eligible to be considered an RPS Class II Waste Energy Generation Unit. The Department of Energy Resources regulations, 225 CMR 15.00, establish the requirements and rules for earning and selling RPS Class II Waste Energy Generation Attributes.

### **310 CMR 19.303 (2): Sustainable Materials Recovery Program**

This section describes how MassDEP will ensure effective distribution of the 50% of RPS Class II Waste Energy Generation Attribute revenue that is dedicated to a Class II Recycling Program. The goal is to have a competitive and fair process for eligible state agencies, municipalities, businesses and non-profit organizations to seek assistance in enhancing waste reduction and recycling programs in support of the Commonwealth's Solid Waste Master Plan.

To achieve this goal, MassDEP will solicit projects statewide from eligible parties through a solicitation to be titled the Sustainable Materials Recovery Program. Applications received through the solicitation will be reviewed and ranked by MassDEP, according to an established set of criteria. MassDEP plans to solicit stakeholder input in the development of the Sustainable Materials Recovery Program this spring with the goal of issuing the first solicitation by early July 2009.

Facilities may either elect to deposit the 50 percent of the revenue dedicated to the Class II Recycling Program in an Expendable Trust that will be established and administered by MassDEP, or in a dedicated account that the Facility has established to hold the funds until projects are awarded.

Should a Facility elect to maintain some or all of the Class II Recycling Program revenue in its own dedicated account, the Facility will be required to operate or contract directly with project proponents within 75 days of depositing revenue in the dedicated account and be responsible for submitting a final report on projects funded to MassDEP. All projects to be funded through the Class II Recycling Program must be approved by MassDEP.

The Department will establish an Expendable Trust account to receive and hold monies directly from Facilities that elect not to use their own dedicated account. The Department will direct and administer the distribution of Trust funds to recycling projects that have been reviewed and approved through the Sustainable Materials Recovery Program application process.

All projects will be required to report to MassDEP, either independently or through the Facility, at the conclusion of the project to ensure that funds are properly spent. MassDEP will make the project reports available and promote the replication of the most successful projects.

### **310 CMR 19.303 (3): Waste Characterization Study**

This section outlines the timeframe in which a Facility must complete its waste characterization studies. A Facility has 18 months from the time its Class II Recycling Program is approved to complete its first waste characterization study. This will act as a baseline study for the Facility. Facilities must then conduct follow-up studies every three years unless findings from the studies show a combined Facility approach would be acceptable. The waste characterization methodology must be approved by the Department.

### **310 CMR 19.303 (4): Reporting**

Facilities will be required to report all sales of RPS Class II Waste Energy Generation Attributes to MassDEP and distribute those funds into either the Facility's dedicated account or the established Trust within 30 days. Facilities will regularly meet with MassDEP and submit information collected through the implementation of tracking, inspection, and monitoring requirements established in its Class II Recycling Program. Facilities will also be required to report annually on the implementation of its Class II Recycling Program.

All project proponents that receive funding from the Class II Recycling Program will be required to report on the success of their project. Failure to report on a project may result in a project proponent being denied future funding.

### **310 CMR 19.303 (5): Termination**

This section outlines how a Facility may end its qualification as an RPS Class II Waste Energy Generation Unit. A facility may elect to discontinue its Class II Recycling Program at any time, by submitting written notification to the Department. MassDEP would notify the Department of Energy Resources that the facility no longer has an approved Class II Recycling Program thus making the Facility ineligible to earn Attributes in accordance with Department of Energy Resources regulations (225 CMR 15.00).

### **310 CMR 19.303 (6): Enforcement**

This section outlines how MassDEP will enforce the requirements of the Class II Recycling Program on participating facilities.

ATTACHMENT 1

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

**CHAPTER 25A. DIVISION OF ENERGY RESOURCES**

**Chapter 25A: Section 11F. Renewable energy portfolio standard for retail electricity suppliers**

(d) Every retail electric supplier providing service under contracts executed or extended on or after January 1, 2009, shall provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from Class II renewable energy generating sources. For the purposes of this section, a Class II renewable energy generating source is one that began commercial operation before December 31, 1997 and generates electricity using any of the following: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) energy generated by existing hydroelectric facilities, provided that such existing facility shall meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities; and provided further, that only energy from existing facilities up to 5 megawatts shall be considered renewable energy and no such facility shall involve pumped storage of water nor construction of any new dam or water diversion structure constructed later than January 1, 1998; (7) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (8) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; (9) marine or hydrokinetic energy as defined in section 3; or (10) geothermal energy. A facility in clause (7) shall not be a Class II renewable generating source unless it operates or contracts for one or more recycling programs approved by the department of environmental protection. 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 programs. A Class II renewable generating source may be located behind the customer meter within the ISO - NE control area provided that the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the department.

## ATTACHMENT 2

### 310 CMR 19.017

#### **What are waste bans?**

“Waste bans” are restrictions on the disposal, transfer for disposal and contracting for disposal of certain hazardous and recyclable items at solid waste facilities in Massachusetts.

The waste bans are designed to:

- Conserve capacity at existing disposal facilities.
- Minimize the need for new facility construction.
- Provide recycling markets with large volumes of material on a consistent basis.
- Keep certain toxic substances or materials from adversely affecting our environment when landfilled or incinerated.
- Promote business and residential recycling efforts.

#### **What materials are restricted?**

**Recyclable Paper:** All paper, cardboard, and paperboard products (EXCEPT tissue paper, toweling, paper plates and cups, wax-coated cardboard and other low-grade paper products).

**Glass Containers:** Glass bottles and jars. The ban does not cover light bulbs, Pyrex cookware, plate glass, drinking glasses, windows, windshields and ceramics.

**Metal Containers:** Aluminum, steel or bi-metal beverage and food containers.

**Single Resin Narrow-Necked Plastics:** A soda bottle is narrow-necked but a yogurt container is not.

**Leaves & Yard Waste:** Leaves, grass clippings, weeds, garden materials, shrub trimmings, and brush one-inch or less in diameter (excluding diseased plants).

**Batteries:** Lead-acid batteries used in motor vehicles or stationary applications.

**White Goods:** Appliances employing electricity, oil, natural gas or liquefied petroleum gas. These include refrigerators, freezers, dishwashers, clothes washers, clothes dryers, gas or electric ovens and ranges, and hot water heaters.

**Whole Tires:** Motor vehicle tires of all types (Shredded tires are not restricted). \*\*

**Cathode Ray Tubes:** Any intact, broken or processed glass tube used to provide the visual display in televisions, computer monitors and certain scientific instruments.

**Asphalt Pavement, Brick, and Concrete:** asphalt pavement, brick and concrete from construction and demolition of buildings, roads, bridges, and similar sources.

**Metal:** Ferrous and non-ferrous metals derived from used appliances, building materials, industrial equipment, vehicles, and manufacturing processes.

**Wood:** Treated and untreated wood, wood waste, ex., trees, stumps, and brush, including but not limited to sawdust, chips, shavings and bark. \*\*

**\*\* PLEASE NOTE:** Whole tires and wood are only restricted from disposal or transfer for disposal at landfills.