Please enter these comments into the official docket for the proposed APS Regulations. I hereby reserve my right to appeal the promulgation of these proposed regulations based on the following fatal flaws with the language and substance of both the regulations and the proposed Guidelines, as provided below.

Acts of 2014, Chapter 251, Section 2.

(a)..."that facilities using biomass fuel shall be low emission, use efficient energy conversion technologies and fuel that is produced by means of sustainable forestry practices;"

The enabling legislation's plain language dictates that only biomass "fuel produced that is produced by means of sustainable forestry practices" may quality for APS credits. The proposed regulations unlawfully expand this intentionally limited fuel to include something defined as "Eligible Biomass Woody Fuel" with four broad categories and eleven sub categories. This expansion of the limited qualification contained in the enabling legislation is clearly a violation of spirit and intent of Chapter 251. The proposed regulations must be revised to only include biomass produced by means of sustainable forestry practices. The only biomass fuels listed in the proposed regulations must be removed until they are specifically allowed by legislative intent. Non-forest derived biomass, forest salvage biomass, and wood waste are clearly not included in the enabling legislation. The regulatory manipulation of "Net Carbon Dioxide Emissions Rate" by excluding biomass emissions by a magical transfer to a mythical forest that will possibly sequester the CO2 emissions at some point in the future based on potential regrowth of theoretical trees that may either grow or be planted, is all entirely "make-believe". No regulations can predict the regrowth of trees subject to climate change, invasive species, forest decline, and numerous other unforeseeable potential impacts. The currently proposed regulations must be rewritten so that the carbon emissions are accounted for in the present, not in some future century. As the recent report from the State Legislature implied, there is No Time To Waste. The proposed regulations are nothing more than a magical loophole created for the biomass industry to allow unaccounted greenhouse gas emissions masquerading as clean energy.

See:
http://archives.lib.state.ma.us/bitstream/handle/2452/264298/ocn907383322.pdf?sequence=1&isAllowed=y

225 CMR 16.02- In the definition of "Eligible Biomass Woody Fuel" the following sections must be removed from the proposed regulations:

Remove (a) Forest-Derived Residues
Remove (b) Forest-Derived Thinnings
Remove (c) Forest Salvage
Remove (d) (3) Land use change - non-agricultural
Remove (d) (4) Land use change - agricultural
Remove (d) (5) Wood Waste

Acts of 2014, Chapter 251, Section 2.

(b) DOER, in consultation with DEP shall set emission standards that are protective of public health, including standards for eligible biomass emission controls, with regard to reducing emissions of particulate matter sized 2.5 microns or less and carbon monoxide and other pollutants.

This comment relates to the plain language of the enabling legislation, Chapter 251 of the Acts of 2014. The stated and clear intent of Section 2(b)(i) of the act, as it relates to biomass is "with regard to reducing (of) emissions of particulate matter sized 2.5 microns or less and carbon monoxide and other air pollutants". It is a matter of settled law that "other pollutants" includes Carbon Dioxide emissions, one of the major regulated air pollutants. Thus, the purpose of the Act was to create a set of regulations, especially considering biomass, that when enacted would result in the overall reduction in the discharge of pollutants, both particulate and gaseous. The proposed regulations, fail to provide a mechanism that will assure actual reductions in emissions of particulate matter and other pollutants, including Carbon Dioxide. The proposed regulations are not compliant with the plain language of the enabling legislation.

Acts of 2014, Chapter 251, Section 2.

(b)(I) DOER, in consultation with DEP shall set emission standards that are protective of public health, including standards for eligible biomass emission controls, with regard to reducing emissions of particulate matter sized 2.5 microns or less and carbon monoxide and other pollutants.

...a requirement of 50% reduction in life-cycle greenhouse gas emissions compared to a high-efficiency unit using the fuel being displaced or, for a new load, a high-efficiency natural gas unit...

The proposed regulations and associated information do not provide the rationale which confirms that the emission standards proposed for burning biomass are protective of public health. In addition, the mechanisms in the regulations do not provide a mechanism that ensures a reduction in the emissions of particulate matter and other pollutants, as required by the enabling legislation. The Department must provide convincing analysis and a regulatory mechanism that ensure protection of public health. The Department must also provide the results of the analysis that shows how the regulations will result in an overall reduction in the emissions of particulate matter and other pollutants.

The requirement of Chapter 251, that any biomass burning facility which qualifies for APS credits must result in a 50% reduction in life-cycle greenhouse gas emissions, needs to be well documented and provided for review by the public in order for biomass to be considered a renewable/alternative energy source worthy of clean energy incentives. The proposed regulations

Acts of 2014, Chapter 251, Section 2.

(b)(v) in consultation with DCR, forest derived biomass, requirements that fuel shall be provided by means of sustainable forestry practices; provided, however, that the department shall adopt any existing or new biomass fuel sustainability standards if deemed appropriate by the

department after a public comment period.

Considering the above, DOER has failed to provide the rigorous analysis necessary to include woody biomass and forest-derived biomass in the definition of "Eligible Biomass Fuel". "(a) Eligible Biomass Woody Fuel" and "(c) Manufactured Biomass Fuel" must be removed from the definition of "Eligible Biomass Fuel" until such a time as DOER (in consultation with DCR) has fully defined and codified the standards for "sustainable forestry practices" and has held the proper public involvement process, including holding hearings allowing public comment.

The definition of "Useful Thermal Energy" is unacceptably broad and overly vague. This is not a definition, it is a loophole for abuse of discretion.

In addition, 255 CMR 16.05(1)(a)(6) is complete gibberish and a befuddled mess. It is so convoluted and poorly written as to be essential meaningless, or at least so obscure and unintelligible as to render it impossible to follow and interpret. This entire section must be rewritten in plain language, so that it is comprehensible and can be followed and understood. As was previously pointed out, Section 16.05(1)(a)(6)(v) Woody Biomass, must be removed until further actions are taken by the Department that comply with the enabling legislation.

16.05(1)(e) appears to provide a loophole for carbon dioxide emissions for woody biomass that relies on carbon off-sets. There was no anticipation of off-sets in the enabling legislation. The use of use off-sets does not comply with the requirements of the GWSA to provide annual aggregate CO2 emissions reductions by regulatory mechanism. Off-sets must be removed from these regulations. Therefore, this section must remove any reference to Woody Biomass.

Similarly, Section 16.05(4)(d) must be removed for the previously stated reasons. This section relies entirely on a set of Guidelines that are extraneous to the regulations. Such regulatory slight-of-hand is not a legal mechanism that complies with the statutory requirements of the GWSA, as is stated in the Guidelines "The Department may permit an exception from any provision of this Guideline for good cause." The use of Guidelines to get around the regulatory process must be eliminated from the Alternative Energy Portfolio Standard. The APS Guidelines also magically decree that Non-forest derived wood biomass is automatically considered to meet the sustainability requirements (page 3, Item 3). This magical qualification is in direct opposition to the enabling legislation that restricts qualifying fuels to only that which "is produced by sustainable forestry practices". Re-defining sustainable forestry practices to include non-forest derived biomass is a clear and intentional violation of the intent of the enabling legislation. The entire Biomass Sustainability section in the APS Guideline is yet another giant loophole large enough to drive a logging truck through. These guidelines must be abandoned, as the are really a corrupt attempt to de-regulate biomass so that is burning can be accomplished without accountability. The proposed sustainable forest management certification scheme provided in the guideline is extremely controversial and must first be codified by the legislature, before it can be allowed for distribution of clean energy fund subsidies. These guidelines , and their place in the regulatory scheme must be completely re-evaluated and re-written. Otherwise, this matter is sure to be litigated.

The issue of carbon off-sets will need to be litigated before the inclusion can be allowed in the APS. As the recent Supreme Judicial Court decision concerning the requirement of the GWSA

that DEP enact regulations that ensure the annual aggregate reduction of CO2 for sources and groups of sources, these regulations, in consultation with DEP, must assure an annual aggregate reduction in CO2 emissions. The use of fake monitoring and projections using make-believe off-site carbon capture that the Department has absolutely no control over is a clear violation of the spirit and intent of both the APS enabling legislation and the GWSA. Projected off-sets attributed to pie-in-the-sky forest regrowth that may or may not occur sometime in the distant future can not be allowed. Such a make-believe, anticipatory mechanism without any controls or verification of actual carbon capture, fails the sniff test. The entire reliance on projected future growth to off-set immediate releases of Carbon Dioxide in no way assures the annual aggregate reduction of emissions required by the GWSA. Thus, the regulations, as proposed, violate both the plain language of Chapter 251 and the intent, as clarified by the SJC, of the GWSA.

For the above reasons, the proposed regulations, especially regarding the burning of biomass, can not be legally promulgated as conceived and written. The regulations, as proposed, are in direct conflict with the plain language of the enabling legislation and are also not in accordance with the direction of the GWSA. The proposed regulations violate the spirit and intent of the GWSA, because they do not assure the annual aggregate reduction of greenhouse gasses emissions from thermal biomass-burning sources within the Commonwealth.

Please incorporate these comments into any revision to the APS regulations. Because the proposed regulations are extremely flawed concerning biomass, it is hereby requested that a more inclusive public participation process be used, including holding additional public hearings prior to adopting any APS that includes the burning of biomass.

Sincerely,

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