

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

26 Delaware Code, §352(6) (26 **Del.C.**, §352(6))
7 **DE Admin. Code** 106

FINAL

Secretary's Order No.: 2006-W-0027

I. Background

A public hearing was held on May 1, 2006 at the Delaware Energy Office, 146 South Governors Avenue, in Dover, Delaware, to receive public comment on a new regulation, *Environmental Standards for Eligible Energy Resources*, as required by Senate Bill 74, "Renewable Energy Portfolio Standards" (hereinafter referred to as "RPS"). The purpose of this regulation is to prescribe procedures relating to the Renewable Energy Portfolio Standards Act, pursuant to 26 **Del.C.** Ch. 1, Subchapter IIIA. This regulation prescribes environmental standards for hydroelectric facilities and for the combustion of biomass. These standards determine if a resource is an Eligible Energy Resource under the Act. These regulations are promulgated under authority of 26 **Del.C.** Ch. 1, §352(6) and 26 **Del.C.** Ch. 1, Section 1. Also affected by this proposed regulation is the Delaware Public Service Commission Regulation Docket 56.

Present at this public hearing on May 1, 2006, was Brian Gallagher, contractor from the Delaware Public Service Commission, who assisted the Delaware Energy Office with drafting this proposed regulation. Also present at the hearing were Bill and Roberta Glenn, private citizens from Seaford, Delaware, and Alan Muller, Executive Director of Green Delaware. Questions and comments which could not be answered by the Department at the time of the hearing concerning these proposed regulations were later formally responded to directly by the Energy Office. These responses to the public's questions were summarized in a formal Memorandum submitted to the Hearing Officer on June 1, 2006. Proper notice of the hearing was provided as required by law.

II. Findings and Conclusions

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the July 12, 2006 Hearing Officer's Report, which is attached and incorporated into this Order. The reasoning and conclusions with respect to each issue are hereby incorporated into this Order as formal findings.

III. Order

In view of the above findings, it is hereby ordered that Delaware's *Environmental Standards for Eligible Energy Resources* Regulation, as required by Senate Bill 74, "Renewable Energy Portfolio Standards", be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons

The development of these new regulations, together with the assistance of the Public Service Commission in the area of enforcement of the same, will provide a significant energy benefit for the current citizens of the State of Delaware, as well as for future generations to come. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency, again, in concert with the PSC, to address the energy issues affecting Delaware at this time. In developing these regulations, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and wide array of public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

Date of Issuance: July 17, 2006

Effective Date of the Amendment: August 11, 2006

106 Environmental Standards for Eligible Energy Resources

1.0 Purpose

The purpose of this regulation is to prescribe procedures relating to the Renewable Energy Portfolio Standards Act pursuant to 26 Del.C. Ch. 1, Subchapter IIIA. This regulation prescribes environmental standards for hydroelectric facilities and for the combustion of biomass. These standards determine if a resource is an Eligible Energy Resource under the Act.

2.0 Statutory Authority

These regulations are promulgated under authority of 26 Del.C. Ch. 1, §352 (6) and 26 Del.C. Ch. 1, Section 1

3.0 Definitions

For purposes of this regulation, the following words and phrases shall have the meanings set forth below.

"Agricultural Food and Feed Crop Residues" means the organic matter by-products from the harvesting, cultivation, and/or processing of agricultural food and feed crops.

"Biomass" means organic matter that is available on a renewable or recurring basis, including timber, aquatic plants, dedicated energy crops, agricultural food and feed crop residues, forestry and timber residues, and lumber/pulp residues.

"Dedicated Energy Crops" means any organic matter, including traditional agricultural crops but excluding trees, that is cultivated to be used as a fuel in electricity production.

"Forestry and Timber Residues" means the organic matter by-products from the harvesting and/or cultivation of timber.

"Hydroelectric Facility" means any technology that produces electric power by harnessing the energy potential of moving water.

"Low Impact Hydropower Institute" means the non-profit 501(c) (3) organization dedicated to reducing the impacts of hydroelectric generation through the certification of environmentally responsible, "low impact" hydropower.

"Lumber/Pulp Residues" means the sawdust and other wood by-products from the production of lumber, pulp, or other wood-derived products.

"Timber" means the trees harvested for the use as an energy source, lumber, or pulp.

"United States Department of Agriculture's National Organic Program" means the rules and regulations that establish the national standards for the production and handling of organically produced products.

4.0 Electricity Generated by a Hydroelectric Facility

To be an Eligible Energy Resource under the Act, a hydroelectric facility shall:

4.1 Have a maximum design capacity of 30 megawatts or less from all generating units combined.

4.2 Not diminish water quality and/or adversely impact watersheds.

4.3 Provide an adequate water flow for protection of aquatic life and for safe and effective fish passage.

4.4 Protect state federally-designated threatened and endangered species and their habitat.

4.5 Protect cultural and historic resources.

4.6 Preserve or improve public access and recreation opportunities.

4.7 Meet the certification standards established by the Low Impact Hydropower Institute or their successors.

5.0 Electricity Generated from the Combustion of Biomass

To be an Eligible Energy Resource under the Act, electricity generated from the combustion of biomass

shall:

5.1 Meet all federal, state, and local government laws and regulations for land use, air emissions, use of cooling water, and ash management.

5.2 For dedicated energy crops and agricultural food and feed crop residues they shall meet the standards of the United States Department of Agriculture's National Organic Program, or take all of the following actions:

5.2.1 Follow all best management practices of local conservation districts and state and local cooperative extension services.

5.2.2 Develop and implement all voluntary and mandatory state and local government nutrient management plans.

5.2.3 Develop and follow comprehensive plans to utilize land and water resources in accordance with state and local non-point source pollution management programs to prevent erosion, control flood water, and conserve soil.

5.2.4 Follow state and local Integrated Pest Management guidelines and plans.

5.2.5 Minimize herbicide usage in conventional and no-till plantings in accordance with state and local cooperative extension services guidelines and plans.

5.3 For timber, forestry and timber residues, and non-cultivated wild plants, develop and implement a conservation and management plan that includes all the following elements:

5.3.1 A non-point source pollution management program to prevent erosion, control flood water, and conserve soil for harvesting, road construction, and all other mechanical disturbances.

5.3.2 Best Management Practices as identified by the state and local forestry services.

5.3.3 Minimization of waste associated with harvesting and on-site processing operations.

5.3.4 Rates of harvest that do not exceed levels which can be permanently sustained.

5.3.5 Safeguards that identify and protect rare and state and federally-designated threatened and endangered species and their habitats (e.g., nesting and feeding areas).

5.3.6 Forest regeneration that enhances ecosystem diversity.

5.3.7 Use of environmentally friendly non-chemical methods of pest management and limited use of pesticides.

5.3.8 Use of environmentally friendly non-chemical methods of weed management and limited use of herbicides.

5.3.9 Use of exotic species that is carefully controlled and actively monitored to avoid adverse ecological impacts.

5.3.10 Avoidance of forest conversion to plantations or non-forest land uses, except circumstances where: a very limited portion of the forest management unit will be impacted; forest lands are of low ecological value; and conversion will improve ecological value.

5.3.11 Protection of cultural and historic resources.

5.3.12 Preservation or improvement of public access and recreation opportunities.

5.3.13 Exclusion of old-growth timber (from a tree that is 150 years old or older).

6.0 Severability

If any section, subsection, paragraph, sentence, phrase or word of these regulations is declared unconstitutional by a court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings there under shall not be affected.

10 DE Reg. 350 (08/01/06) (Final)