

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

PROPOSED

NOTICE OF PUBLIC HEARING

SAN # 2006-06

1. Title of the Regulations:

"106 Environmental Standards for Eligible Energy Resources" as required by Senate Bill 74, Renewable Energy Portfolio Standards.

2. Brief Synopsis of the Subject, Substance and Issues:

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.

3. Possible Terms of the Agency Action:

There is no sunset date for this regulation.

4. Statutory Basis or Legal Authority to Act:

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

5. Other Regulations that may be Affected by the Proposal:

Delaware Public Service Commission Regulation Docket 56

6. Notice of Public Comment:

Notice Title: "Environmental Standards for Eligible Energy Resources"

Division, Program: Office of the Secretary, Delaware Energy Office

Notice Start Date: 4/1/2006

Notice End Date: 4/30/2006

Notice: DNREC – Delaware Energy Office

LEGAL NOTICE:

NOTIFICATION OF PROGRAM REGULATIONS FOR "Environmental Standards for Eligible Energy Resources" as required by Senate Bill 74, Renewable Energy Portfolio Standards.

Pursuant to Title 26 **Delaware Code**, Chapter 1, Subchapter III-A, the Secretary is required to promulgate rules and regulations necessary to establish Environmental Standards for Eligible Energy Resources" as required by Senate Bill 74, Renewable Energy Portfolio Standards.

In addition to the *State Register*, the proposed Regulation will also be available on the DNREC Website at www.dnrec.delaware.gov and under the "Delaware Energy Office Website" at www.delaware-energy.com.

Comments will be accepted by the Delaware Energy Office, 146 South Governors Avenue, Dover, DE 19901 via standard mail or e-mail to charlie.smisson@state.de.us, or fax to 302-739-1527 during the comment period of 4/1/2006 to 4/30/2006.

A Public Hearing has been scheduled at the Delaware Energy Office, 146 South Governors Avenue, Dover, DE 19904 for 6:00 p.m. on Monday, May 1, 2006.

7. Prepared By:

Charlie T. Smisson, Jr., State Energy Coordinator, Delaware Energy Office, 302-739-1530
3/10/2006

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.

9 DE Reg. 1509 (04/01/06) (Prop.)