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STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
PUBLIC SERVICE COMMISSION

STANLEY "SKIP" PRUSS  
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April 12, 2010

Mr. John Vial  
Thermal Process Unit Permit Section  
Air Quality Division  
Department of Environmental Quality

by email: vialj@michigan.gov

Dear Mr. Vial:

Attached is a summary of Michigan Public Service Commission (MPSC or Commission) Staff's analysis of relevant sections of 2008 PA 295, with respect to consideration of possible sources of energy that originate wholly or partially as woody biomass, including construction and demolition waste materials and post-industrial wood waste.

All readers should understand this analysis does not constitute legal advice. It reflects MPSC Staff analysis of the recent legislation, and guidance MPSC Staff has already provided or expects to provide to the Commission, if questions arise about these issues. To date, the Commission has addressed related issues in only a single Commission Order.<sup>1</sup> There are no Michigan court decisions MPSC Staff is aware of, which provide more guidance relevant to this analysis.

If Michigan Department of Environmental Quality (MDEQ) Staff is aware of any court decisions or administrative determinations on the part of any other governmental agency that are pertinent to MPSC Staff understanding of the issues discussed in this attachment, please let me know so we can continue to update the attachment and make it as thorough and definitive as possible. Also, please let us know if you recommend any editing of the attachment.

Thank you, in advance, for your cooperation in this matter. We appreciate the continuing effort to maintain regular communications between our agency and MDEQ staff about all issues related to the determinations discussed in the attachment.

Sincerely yours,

Tom Stanton, Manager  
Renewable Energy Section, Electric Reliability Division

Cc Randall Telesz, MDNRE Air Quality Division  
Duane Roskoskey, MDNRE Waste Management Division  
Paul Proudfoot, MPSC Electric Reliability Division Director  
Christine Battiste, Renewable Energy Section Policy Analyst  
Jesse Harlow, Renewable Energy Section Engineer

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<sup>1</sup> See <http://efile.mp.sc.state.mi.us/efile/viewcase.php?casenum=15806>. The related issue is discussed in Document [0150](#); the Commission's June 2, 2009 Order in Case No. U-15806, p. 38.

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## **MPSC Staff April 2010 Guidance and Answers to Frequently Asked Questions**

### **Renewable Energy and Advanced Cleaner Energy Classification and Certification for Electricity Generation from Woody Biomass Under 2008 Public Act 295, Michigan's Clean, Renewable, and Efficient Energy Act of 2008<sup>1</sup>**

Michigan Public Service Commission (MPSC) Staff have received inquiries asking whether and how various forms of woody biomass, refuse derived fuels, or waste-to-energy conversion might be classified as either renewable energy or advanced cleaner energy, under the provisions of 2008 PA 295 (the Act). The purpose of this memorandum is to explain MPSC Staff's analysis and understanding of the provisions of the Act.

All readers should be aware that this analysis does not constitute legal advice. It reflects MPSC Staff's understanding of the meaning of the recent legislation, and the guidance MPSC Staff has already provided or expects to provide to the Commission, if questions arise about these issues.

All readers are requested to contact MPSC Staff with any additional questions that are not adequately explained in this document. Questions may be addressed to Staff in the Renewable Energy Section, Electric Reliability Division, by telephone to (517) 241-5753 or by email; <mailto:mrep@michigan.gov>.

#### **Determining Whether Energy Generated using a Particular Feedstock will be Eligible for Classification as Either Renewable or Advanced Cleaner Energy**

From its analysis of the Act,<sup>1</sup> MPSC Staff draws the following conclusions:

1. Michigan Renewable Energy Credits (MIRECS) are created only through the production of electricity. Renewable feedstocks used for purposes other than the generation of electricity are not eligible for classification as either renewable or advanced cleaner energy.
2. Energy produced from feedstocks used for purposes other than the generation of electricity could possibly qualify for the production of Energy Optimization Credits (as defined in Sec. 5), and Energy Optimization Credits can be substituted for Renewable Energy Credits if such substitution is approved by the Commission (under the provisions of Section 27(6) and (7)). To qualify for the production of Energy Optimization Credits, a determination will be required, that energy conservation or energy efficiency (as defined in Sec. 5) is achieved.

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<sup>1</sup> MCL 460.1001 et seq. See <http://legislature.mi.gov/doc.aspx?mcl-Act-295-of-2008>.

3. Electricity generated from the incineration of municipal solid waste qualifies for consideration as renewable energy only under the provisions of Sec. 11(k)(iii). This provision of the Act qualifies electricity generated from pre-existing municipal solid waste incinerators only. For purposes of this portion of the Act, municipal solid waste means comingled household or commercial waste, such as garbage trucks deliver to landfills or qualifying municipal solid waste incinerators. For purposes of this portion of the Act, municipal solid waste does not mean any material that has been separated out of the municipal solid waste stream for recycling or any other commercial purpose including energy recovery. Nor is municipal solid waste any material that could be eligible to enter the municipal solid waste stream, but is separated prior to becoming comingled in the municipal solid waste stream.
4. Any household, commercial, or industrial waste material that has never entered the municipal solid waste stream or has been separated out of the municipal solid waste stream for any commercial purpose might produce either renewable energy or advanced cleaner energy under the provisions of Act 295. For such material to generate renewable energy, the material must meet the definition of “biomass” in Section 11(i), as further defined in Section 3(f). For such material to generate advanced cleaner energy, the material must be converted into electricity using an advanced cleaner energy system as defined by Section 3(c).
5. Energy conversion systems that utilize both renewable and non-renewable fuels may be granted renewable energy credits based on the percentage of electricity generated from the renewable energy resource. Section 39(1) provides guidance on this issue.
6. An energy system may be capable of producing either renewable energy credits, advanced cleaner energy credits or both. However, Sections 41(4)(g) and 43(1) and (4)(g) provide, that only one type of credit or the other, not both, shall be awarded for each megawatt hour of energy produced.
7. Energy derived from biomass must meet one or more of the definitions of biomass as set forth in 2008 PA 295, Sec. 3(f). For further clarification on acceptable materials, energy producers should seek a declaratory ruling from the Commission. What follows is a review of each category of biomass listed in Sec. 3, along with some examples of each.<sup>2</sup>

*“Biomass” means any organic material that is not derived from fossil fuels, that can be converted to usable fuel for the production of energy, and that replenishes over a human, not a geological, time frame, including, but is not limited to, all of the following:*

- (i) *Agricultural crops and crop wastes.*  
This category includes items such as corn stover and other agricultural plant mass that may be suitable for use as biomass fuel.
- (ii) *Short-rotation energy crops.*  
This category includes switch grass, miscanthus and other perennial grasses, hybrid willow and hybrid poplar, and similar crops that may be suitable for use as biomass fuel.
- (iii) *Herbaceous plants.*  
This category includes any annual, biennial or perennial non-woody plant not included in the items (i) and (ii) above.

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<sup>2</sup> Quotes from 2008 PA 295 are in *Italics*. All other language in this memo (non-italics) is a presentation of MPSC Staff analysis.

- (iv) *Trees and wood, but only if derived from sustainably managed forests or procurement systems, as defined in section 261c of the management and budget act, 1984 PA 431, MCL 18.1261c.*<sup>3</sup>

This category includes unprocessed trees and wood, primarily clean chips and round-wood, that might otherwise be suitable for use in commercial products (e.g., ready to be converted to sawed boards or another manufactured wood product). The category “trees and wood” means those products from forest harvesting operations that are not normally considered to be forestry wastes.

In order to receive or maintain certification, the renewable energy system must register with MIRECS ([www.mirecs.org](http://www.mirecs.org)). All system using trees and wood for fuel must follow and not violate any laws and permitting requirements with regard to the harvesting, processing, and use of trees and wood. In accordance with the standards of MCL 18.1261c, renewable energy systems purchasing or procuring such raw materials from a third party may reasonably rely upon the representations of landowners, vendors, or brokers as to whether the raw materials are derived from sustainably managed forests or procurement systems.

By January 1, 2012,<sup>4</sup> all facilities using woody biomass fuel derived from trees and wood will be required to submit to MIRECS affidavits annually attesting to compliance with Section 3(f)(iv). Documentation necessary to demonstrate compliance shall be maintained by the facility operators for a minimum of 5 years following the award of an associated MIRECS certificate,<sup>5</sup> The affidavits and documentation shall be subject to audit upon request by MPSC Staff or delegates.

- (v) *Paper and pulp products.*

This category includes paper, cardboard, boxboard, wood fiber packing and similar products produced in a pulp based process.

- (vi) *Precommercial wood thinning waste, brush, or yard waste.*

Precommercial wood thinning is designed to improve the quality of the residual stand of trees, by removing, for example: diseased trees; trees of lower quality; or trees of undesirable species. It pre-dates commercial forest harvesting. This sub-category provides for capturing and processing waste woody biomass materials resulting from such thinning operations. Complete removal of a non-commercial stock, such as an overgrown Christmas tree plantation or decadent orchard crop, as an intermediate step in replanting or conversion of the land, is also consistent with the intent of this provision.

The brush and yard waste sub-categories encompass a wide variety of woody biomass wastes from tree trimming and land clearing operations, such as: utility line clearing wastes; roadway and park tree maintenance; residential and urban landscape tree trimming, clearing, storm damage and diseased tree removal; as well as woody materials resulting from land clearing for construction and development purposes.

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<sup>3</sup> See <http://legislature.mi.gov/doc.aspx?mcl-Act-431-of-1984>.

<sup>4</sup> Utilities will not be required to submit affidavits until January 1, 2012, but are encouraged to seek documentation prior to the requirement date.

<sup>5</sup> MIRECS operating procedures require utilities to retain all documentation 5 years after the month the Certificate was issued.

- (vii) *Wood wastes and residues from the processing of wood products or paper.*  
Wood wastes include any type of raw or processed wood that is waste, from forest harvesting operations, or from the primary or secondary forest products industries. Such wastes include, but are not limited to, several classes of raw wood materials that are waste, such as: chips that include top wood with branches and leaves or needles; wood wastes and residues removed for control of forest disease, pests or invasive species, removed as a result of storm damage clearing, or salvaged following a wildfire. These are generally wood wastes or residues that are considered to have no commercial value or sawed boards, chip boards or pulp, derived from salvage activities.

Wood wastes can also be derived from commercial and industrial uses of wood, such as all forms of manufacturing and construction wood waste, discarded boxes, pallets and crates, dunnage, wood cable reels, wood molds, and demolition wood waste materials. Materials commonly referred to as construction wood waste, demolition wood waste, and post-industrial wood waste are included within this category.

Residues from the processing of wood products or paper include: trimmings, chips, hogged wood or bark; shavings and sawdust, either before or after use as animal bedding material; sanding dust; pulping residue and other residues that are by-products of primary or secondary forest products manufacturing.

- (viii) *Animal wastes.*  
Animal wastes include animal manure and related animal wastes (such as bedding and feed residues), dead animals, and waste from slaughter and meat processing.
- (ix) *Wastewater sludge or sewage.*  
Sewage sludge or its recovered component, cellulosic (primarily toilet paper) material.
- (x) *Aquatic plants.*  
This category includes mechanically harvested and non-mechanically harvested invasive and non-invasive aquatic plants.
- (xi) *Food production and processing waste.*  
This category includes such food processing related wastes as grain waste, sorghum, sugar beet mash and bagasse, fruit seeds and pits, corn cobs and husks, pea pods, and a variety of similar products.
- (xii) *Organic by-products from the production of biofuels.*  
This category includes lignin, cellulosic, and other organic components that are residual elements from the production of biofuels.