



Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: 9VAC5-520
Regulation title	Biomass Energy Generator General Permit for a Pilot Test Facility
Action title	Biomass Energy Generator General Permit (Rev.Cg)
Date this document prepared	Enter date this form is uploaded on the Town Hall

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The regulation will create a mechanism for sources to construct and test to determine the type and quantity of emissions from a qualified energy generator that meets the requirements of the regulation. It applies to qualified energy generators that generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product per year from biomass. Biomass includes organic material available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;
2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;
3. Animal waste, including manure and slaughterhouse and other processing waste;
4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;
5. Crops and trees planted for the purpose of being used to produce energy;
6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts

generated during the wastewater treatment process; and

- 7. Municipal solid waste, excluding tires and medical and hazardous waste.

The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the source meets the requirements of the regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 18, 2011, the State Air Pollution Control Board adopted a final regulation entitled " Biomass Energy Generator General Permit for a Pilot Test Facility" (9 VAC 5 Chapter 520). The regulation is to be effective on a date consistent with the Administrative Process Act.

General permits are exempt from certain provisions of the state administrative procedures for the adoption of regulations as provided in 2.2-4006 A 9 of the Code of Virginia.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
520-10	Paragraph B stipulated “the terms shall have the meaning given them...”	Changed “meaning” to “meanings”	Technical correction
520-20	Definition of “Biomass pilot test facility” means a facility that (i) is being operated to obtain.....	Definition of “Biomass pilot test facility” means a facility that (i) is being operated <u>using biomass as a fuel</u> to obtain.....	Added clarifying language
520-50	Paragraph C states: “I certify, based on my knowledge of the biomass pilot test facility and the attached mathematical or engineering demonstration or both, that the facility is not a major source, or is not located at a major source defined in this chapter, nor is it subject to § 129 of the federal Clean Air Act.	Paragraph C now states: “I certify, based on my knowledge of the biomass pilot test facility and the attached mathematical or engineering demonstration or both, that the facility is not a major source, or is not located at a major source defined in this chapter, nor is it or it is not subject to § 129 of the federal Clean Air Act.	Added clarifying language
*520-180	Paragraph A: All testing must be completed within 12 months from the actual startup date as determined under subsection E of this	Paragraph A: A. All testing must be completed within [42 15] months from the actual startup date as determined under	Result of public comment

	section.	subsection E of this section.	
*520-180	Paragraph E: The applicant shall operate and perform all testing needed to comply with this permit no later than 12 months from the actual startup date.	Paragraph E: The applicant shall operate and perform all testing needed to comply with this permit no later than [12 15] months from the actual startup date.	Result of public comment
520-180	Paragraph H: The stack testing and visible emissions evaluation tests shall be performed within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after startup of the permitted facility according to 9VAC5-520-190 B and C as appropriate.	Paragraph H: The stack testing and visible emissions evaluation tests shall be performed within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after startup of the permitted facility according to [9VAC5-520-190 B and C 9VAC5-520-190 B, C and D] as appropriate.	Technical correction
520-190	Paragraph E: E. The test report format for non-visible emissions evaluations shall include the following:	Paragraph E: E. The test report format for [non-visible emissions evaluations certified stack tests] shall include the following:	Technical correction
520-210	Paragraph A: A. The permittee shall comply with the reporting requirements in this section. Any document (including reports) required by a permit term or condition to be submitted to the department shall contain a document certification signed by a responsible official that meets the requirements of 9VAC5-520-230.	Paragraph A: A. The permittee shall comply with the reporting requirements in this section. Any document (including reports) required by a permit term or condition to be submitted to the department shall contain a document certification signed by a responsible official that meets the requirements of [9VAC5-520-230 9VAC5-20-230].	Technical correction

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
1. Wayne F. Pryor, President, Virginia Farm Bureau	First, Virginia Farm Bureau appreciates the department's recognition of agriculture's future role in biomass energy and invitations to individual farmers and Farm Bureau to participate on the Technical Advisory Committee Concerning Qualified	The department appreciates the comment.

	<p>Energy Generators Using Biomass (TAC). The charge to develop a general permit program for multiple feed stocks and novel technologies was certainly a challenge for the Department. We applaud the department for focusing the new general permit on pilot test facilities as recommended by the TAC. There should be ample opportunity to expand the general permit program to include other facility types once the application of a corresponding technology and feedstock become more commonplace, and industry and the agency gain experience and air quality data.</p>	
<p>2. Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council</p>	<p>The Council's members support the production of alternative energy generation as a means to diversify energy portfolios and the agribusiness economy as well as efforts to minimize regulatory requirements or other barriers which may inhibit the successful growth of alternative energy generation. While this General Permit for a Biomass Pilot Test does not fully address all regulatory barriers for all alternative energy production facilities, it does set a reasonable process and General Permit for the use of pilot project testing, a critical step in the right direction for encouraging alternative energy production.</p>	<p>The department appreciates the comment.</p>
<p>3. Wayne F. Pryor, President, Virginia Farm Bureau</p>	<p>We wish to recognize another positive outcome of the TAC and applaud the Department's posting of the "Air Permitting Requirements for Biomass" fact sheet on its website. The fact sheet provides information in layman terms to the public and assists those interested in pursuing a biomass energy project.</p>	<p>The department appreciates the comment.</p>
<p>4. Wayne F. Pryor, President, Virginia Farm Bureau</p>	<p>The Virginia Farm Bureau Federation supports the proposed regulation, 9VAC5-520, Biomass Energy Generator General Permit for a Pilot Test Facility, for numerous reasons. The proposed regulation appears to address air quality concerns while allowing the testing and commercial application of biomass energy technologies and feed stocks. The proposed regulation is both technology and feed stock neutral which is important for this new potential industry. The proposed regulation allows interested persons to obtain a permit for testing novel technologies and new biomass feed stocks and continuing operations when appropriate. The proposal allows a permittee to reapply for permit coverage using a different feed stock or to apply for appropriate permit coverage under a different air permit program as necessary to continue facility operations. The proposal does not preclude a person from seeking coverage under an individual air quality permit. And last, the proposed regulation is consistent with the consensus recommendation</p>	<p>The department appreciates the comment.</p>

	reached by Department staff and TAC members.	
5. Wayne F. Pryor, President, Virginia Farm Bureau	We ask the Department to please review the references to 9VAC5-520-230 in both the proposed 9VAC5-520-100 C and 9VAC5-520-210 A. It is our understanding that in each instance the proposed reference is an error and that a revised reference to 9VAC5-20-230, Certification of documents, may be appropriate.	Corrections have been made to the regulation.
6. Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council	The Virginia Agribusiness Council represents the agriculture and forest producers, suppliers, marketers, processors, and commodity associations who make up the number one industry in Virginia. As the "unified voice of Virginia agriculture and forestry" the Council has a combined membership of over 40,000 persons. As you are aware, our members are interested in the issuance of this regulation and believe that the streamlined general permit process that will come as a result of this action will help to further encourage the generation of alternative energy from agricultural and forest products.	The department appreciates the comment.
7. Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council	The Council's representative on the TAC reports that the TAC agreed that the regulations should limit the rated capacity of the generator, believing it too cumbersome and confusing to pursue the alternative, which is to limit the total amount of electricity in a 12 month period.	The definition of "qualified energy generator" was clarified as a result of discussions in the TAC. The department appreciates the comment.
8. Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council	Additionally, we encourage the department to provide an option for nonelectricity generating entities to participate in the Pilot General Permit, such as a conversion factor that equals the established limit of 5 MW electricity.	This suggestion is not incorporated into the regulation as the enabling legislation only addresses qualified energy generators and provides the definition as to what a qualified electric generator is. No changes have been made to the proposal as a result of this comment.
9. Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council	The Council requests that the department extend general permits for facilities continuing testing beyond the 12 month permit issuance by granting a variance to allow for a limited amount of additional time for testing. This will allow projects that may run into complications during their 12-month window of piloting an opportunity to continue their efforts and provide the department the necessary information to apply for a general permit, if applicable.	A balance must be achieved between permitting a facility to operate to conduct testing and ensuring that a facility doesn't operate for a significant time period if it is determined that it is a major source or it has significant toxic emissions. The general permit is structured only to allow a facility sufficient time to conduct emissions testing to determine if the facility is above or below the permitting thresholds limits. As proposed, section 9VAC5-520-

		<p>180 A stipulated a 12-month timeframe to have all testing and reporting completed, including fuel testing; however, the 12-month clock does not start until the actual startup date. As proposed, section 9VAC5-520-180 H stipulated that the facility shall perform stack testing and visible emissions testing within 60 days "after achieving the maximum production rate at which the facility will be operating but in no event later than 180 days after startup...". The time allowed for the actual stack testing, (180 days) is consistent with current permitting procedures; therefore, this section has not been changed. However, fuel testing must occur prior to testing which is not normally required for permits; therefore, an additional 3 months has been provided in section 9VAC5-520-180 A to increase the time from 12 to 15 months to complete the entire testing process.</p>
10. Jon R. Patrick	Why is the size of the generator limited to 5 megawatts?	The limit on the size of the generator is specified in the enabling legislation.
11. Peter Thomas	When speaking with the department staff about the Biomass Energy Generator General Permit for a Pilot Test Facility, I was told that the TAC recommended that the generator label should be 5 MW, yet when reading the regulation, the energy limit is 5 MW per year, indicating a generator label of 570.78 kW (Proof: 5,000,000 kWh per year / 8,760 hours per year). Which figure is actually being proposed? After all, there is a huge difference.	The TAC decided to clarify the definition of "qualified energy generator" by stating the following in the regulation: "For the purposes of this chapter the phrase "capacity annually to generate no more than 5 MW of electricity" shall mean a nameplate capacity equal to or less than five MW that is operated in conjunction with a biomass pilot test facility." Therefore, 5 MW means a nameplate rating, not a yearly rating
12. Peter Thomas	I see no problem with interpreting 5 MW as the nameplate capacity of the generator, but there is conflicting wording within the definition of "qualified energy generator". Subsection I states "with the	The first sentence in the definition of qualified energy generator is taken directly from legislative language. It is for

	<p>capacity annually to generate no more than five megawatts (MW) of electricity...” yet the last sentence states: “for the purposes of this chapter, the phrase “capacity annually to generate no more than 5 MW of electricity” shall mean a nameplate capacity equal to or less than 5 MW that is operated in conjunction with a biomass pilot test facility.” I would recommend that the wording be reworked to include the phrase “5 MW nameplate capacity.” I would recommend that the last sentence within the definition be allowed to remain.</p>	<p>that reason the clarifying language was added to the end of the definition. No changes have been made to the proposal as a result of this comment.</p>
<p>13. Jon R. Patrick</p>	<p>I love the idea of testing the biomass prior to usage as fuel to estimate expected emissions and then test stack emissions to verify. That’s the smart way to learn.</p>	<p>The department appreciates the comment.</p>
<p>14. Stephen Versen, VA Department of Agriculture and Consumer Services (VDACS)</p>	<p>We believe the permitting regulation should take into account the potential that an applicant might use different feedstocks in the conversion facility at different times during the year and that it should make the switching between allowable feedstock as easy as is reasonable. One could imagine a scenario where a farmer would use wheat straw in the spring, corn in the fall and woodchips in the winter. Provided that each feedstock to be used has been approved for use in the conversion facility, switching between them should not require additional, significant submissions by the applicant</p>	<p>In this scenario, the department would suggest that the facility apply for the biomass general permit and test all 3 different feedstocks. If the conclusions of the test data results in an exemption for the facility, then the facility does not need a permit. If the conclusions of the test data result in an Article 6 permit for the facility, then switching between the feedstocks is not a problem because all feedstock options will be included in the permit. No changes have been made to the proposal as a result of this comment.</p>
<p>15. Peter Thomas</p>	<p>I fully agree with Steve Versen’s comments that a farmer or the operator of a biomass energy generation facility should be able to switch between approved fuels with minimal requirements imposed.</p>	<p>Please see response to comment number 14.</p>
<p>16. Jeffery T. Miller, President and Executive Director, Treated Wood Council</p>	<p>Based upon the information provided in these comments, Treated Wood Council recommends that the department amend subparagraph #4 of the proposed definition of “biomass” and add subparagraphs #8 & 9, as follows:</p> <p>“ ‘Biomass’ means organic material that is available on a renewable or recurring basis, including: ...</p> <p style="padding-left: 40px;">4. solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding</p>	<p>The term “biomass” is defined in statute. The statutory definition specifically prohibits the use of pressure treated, chemically treated or painted wood wastes or wood contaminated with plastic. No changes have been made to the proposal.</p>

	<p>pressure-treated, chemically treated or painted wood wastes, and wood contaminated with plastic;</p> <p>8. pressure-treated dimensional lumber that does not contain arsenic or chromium; and</p> <p>9. other pressure-treated wood biomass, but only at facilities that (a) possess the technology to satisfy all pertinent environmental requirements and (b) obtain the necessary permits for such use.”</p>	
17. Jeffery T. Miller, President and Executive Director, Treated Wood Council	<p>In comparison to the standard landfill disposal pathway, the use of treated wood biomass for renewable energy (or for the production of other products) offers societal, economic, and other benefits, including greater overall energy efficiency, less reliance on imported energy, lower GHG emissions, less use of landfill capacity, more U.S. manufacturing jobs, and enhanced use of sustainable American forest products. This is an outcome that the department should fully support. However, the proposed rule will have the opposite effect.</p>	Please see response to comment number 16.
18. Jeffery T. Miller, President and Executive Director, Treated Wood Council	<p>It is important to note that the use of the treated wood biomass as a fuel source provides all the legitimate energy value benefits of those realized by burning “clean sawn lumber.” In fact, the benefits in many cases are greater, due to higher BTU value. Thus, the treated wood product should be considered as a valuable commodity with the same or greater potential as a fuel when compared to “clean sawn lumber.”</p> <p>Legitimate use of treated wood as fuel requires application of appropriate combustion/process equipment, controls, and permit requirements. As with conventional fuels, combustion, process and control equipment and operating permits are tailored to the intended fuel. For example, a wood-fired unit cannot switch to coal or tire-derived fuel without plant and permit modifications.</p> <p>It is an axiom of practice that “clean” fuel can burn dirty and “dirty” fuel can burn clean. The important point is that the whole system of fuel, combustion, process and control equipment, operational procedures, and permit requirements needs to be optimized for efficient energy recovery with minimal emissions. The presence of a preservative alone is not a justification for rejecting a treated wood product as a fuel.</p>	Please see response to comment number 16.
19. Jeffery T. Miller, President	<p>Energy producers recognize the benefit of using treated wood biomass as a renewable energy</p>	Please see response to comment number 16.

<p>and Executive Director, Treated Wood Council</p>	<p>resource. Treated lumber removed from decks, fences, or buildings is often managed as construction and demolition (C&D) material, and more and more of this is reclaimed at recycling facilities that separate materials based on market value and potential uses. Such facilities typically separate out treated and untreated wood together, grind it, and sell the product as fuel or utilize it on-site to generate power. Separating treated lumber from untreated lumber is sometimes done but is difficult and expensive.</p>	
<p>20. Jeffery T. Miller, President and Executive Director, Treated Wood Council</p>	<p>Untreated wood biomass typically contains 50 percent moisture content (dry wood basis). Treated wood, when removed from service, has a moisture content of approximately 20 percent (dependent on the environment in which it was used). The reduced moisture content of treated wood increases BTU value per pound of biomass product. Furthermore, wood preservatives do not reduce, and some add to, the heat value of wood.</p>	<p>Please see response to comment number 16.</p>
<p>21. Jeffery T. Miller, President and Executive Director, Treated Wood Council</p>	<p>Creosote has been used as a wood preservative for over 100 years. Creosote is derived from coal tar, which is produced by condensing organic vapors from baking coal in ovens at high temperature and in the absence of oxygen to make coke. Creosote is produced from coal tar by fractional distillation, similar to production of diesel oil from crude oil. Creosote is a hydrocarbon composed mainly of carbon (about 80 percent) and hydrogen, similar to petroleum products. However, creosote differs by being composed mostly of polycyclic aromatic hydrocarbon (PAH) compounds, meaning the molecules are groups of carbon-hydrogen benzene rings rather than linear chains of carbon-hydrogen. Like petroleum oil, creosote has high fuel value at approximately 15,000 BTU/pound.</p> <p>Concern about burning creosote treated wood for energy relates to the thought that PAH compounds of creosote would be emitted. While that is a real concern for open burning with poor combustion control, test data document that PAH releases from creosote treated wood burned in industrial or commercial boilers are insignificant. In fact, because used creosote treated wood is typically drier than green biomass fuel and because it contains approximately 5 to 10 percent creosote, creosote treated wood burns hotter and with less emissions of PAH and other products than “clean” biomass.</p>	<p>Please see response to comment number 16.</p>
<p>22. Jeffery T. Miller, President and Executive Director, Treated Wood Council</p>	<p>Stack tests completed in Mississippi documented that greater than 99.99 percent of pentachlorophenol is effectively destroyed by combustion in a conventional wood fired boiler. Up to approximately 50 percent of the chlorine in the fuel was emitted as hydrochloric acid (HCl). Typical</p>	<p>Please see response to comment number 16.</p>

	<p>emission would be lower since flue gas acid treatment technologies, such as scrubbers, are effective in removing HCl and are commonly used at industrial combustion facilities.</p> <p>Pentachlorophenol treated wood combustion need not cause emissions of polychlorinated dibenzodioxins and dibenzofurans (PCDD/DFs). A study for the EPA tested emissions from a boiler co-firing wood biomass with penta and creosote residuals. No CDF or CDD were detected in the air emissions. The California Air Resources Board determined, based on the above and other studies, that "...the results indicate quite strongly that when combusted with sufficient oxygen and at a low enough concentration of PCP in the fuel, PCDDs and PCDFs are not emitted from small-scale combustion of treated wood wastes in industrial boilers using modern pollution control equipment such as baghouses and precipitators."</p> <p>PCDD/DFs result as products of incomplete combustion with chlorine in fuel. EPA's National Dioxin Study notes that PCDD emissions from coal combustion increased with the addition of chlorine. The study further states, "In order to destroy PCDDs or prevent their formation, the combustion efficiency must be high. This requires a combination of high temperatures, available oxygen, high heating value fuel, and long residence times." These same conditions are required for efficient combustion of most conventional solid fuels. Therefore, penta-treated wood should be considered as an acceptable renewable energy resource.</p>	
<p>23. Jeffery T. Miller, President and Executive Director, Treated Wood Council</p>	<p>Data from a report that reviewed fuel and emissions data for clean (untreated) wood, creosote and penta treated wood, and C&D wood waste has been used to calculate emissions of metals relative to fuel-metal concentrations. The facilities studied were relatively modern and included electrostatic precipitator or fabric filter controls. Approximately 99.99 percent of metals from treated wood will remain with the ash waste stream. Resulting emissions are generally similar to those for conventional fuels. Constituents in fuels are not contaminants if they are not emitted when the treated wood is burned as fuel. Such treated wood, when combusted in an appropriate and permitted facility, should be considered as an acceptable renewable energy resource</p>	<p>Please see response to comment number 16.</p>
<p>24. Jeffery T. Miller, President and Executive Director, Treated</p>	<p>Newer waterborne preservative formulations, such as alkaline copper quaternary (ACQ) and copper azole, utilize copper as the primary active ingredient mixed with low concentration carbon based co-</p>	<p>Please see response to comment number 16.</p>

<p>Wood Council</p>	<p>biocides. As noted above, during combustion, very little if any copper is emitted and carbon-based components are destroyed. Further, neither copper nor the carbon based biocides are hazardous air pollutants, so such treated wood does not contain “contaminants.” Therefore, copper-treated wood should be considered as an acceptable renewable energy resource.</p>	
<p>25. Jeffery T. Miller, President and Executive Director, Treated Wood Council</p>	<p>Copper naphthenate preservative consists of copper dissolved in naphthenic acid. The preservative is diluted in diesel oil to treat industrial products such as rail ties, utility poles and bridge timbers. It may also be diluted in mineral spirits or be prepared in a water-borne formulation for pressure application or for use as a field-applied treatment.</p> <p>Naphthenic acid is a natural constituent in crude oil that boils in the kerosene/diesel fraction during crude oil distillation. As such, it is a hydrocarbon with fuel value well in excess of wood alone. When copper naphthenate treated wood is burned, the copper, which is not a hazardous air pollutant, remains with the ash while the remaining carbon-based constituents will contribute to and be destroyed by combustion.</p> <p>Therefore, copper naphthenate-treated wood should be considered as an acceptable renewable energy resource.</p>	<p>Please see response to comment number 16.</p>
<p>26. Jeffery T. Miller, President and Executive Director, Treated Wood Council</p>	<p>Wood treated with water-borne preservative or fire-retardant solutions including boron or borates are commonly used in building construction. Some are stained to identify the wood product as treated, but the preservative itself does not impart color. Thus, identifying wood that is treated with boron may be difficult. A recent trend for railroad ties is to pre-treat the wood ties with water-borne borate solution and then to over-treat with creosote. This has been shown to provide significant performance improvement for ties installed in high decay hazard locations.</p> <p>Boron is not listed as a federal Clean Air Act hazardous air pollutant. Boron in wood does not interfere with wood combustion or significantly impact emissions. A study of emissions resulting from combustion of various treated wood fuels, including boron treatments, concluded that “Very good combustion properties were also found for ...[boron treated wood]”. The test data emissions of carbon monoxide and NO_x were of similar or lower levels for boron containing wood fuel than for untreated wood fuel. Therefore,</p>	<p>Please see response to comment number 16.</p>

	boron-treated wood should be considered as an acceptable renewable energy resource.	
27. Jeffery T. Miller, President and Executive Director, Treated Wood Council	<p>While the most common current reuse of treated wood is combustion as fuel, other technologies are evolving that do or will utilize treated wood as an ingredient to make other products. The following are some examples.</p> <p>Enerkem is now completing a commercial scale biofuels plant in Westbury, Ontario that is producing syngas from treated wood utility poles and will this year begin production of ethanol. Enerkem is planning to begin construction on a larger ethanol plant in Edmonton, Alberta, using the same technology. Also, Enerkem is now completing design of a biofuel plant to be built in Pontotoc, Mississippi, that will accept 190,000 tons of unsorted municipal solid waste per year. Approximately 10 million gallons of ethanol and other green chemicals will be produced annually. The Mississippi project has been selected to receive \$50 million from the U.S. Department of Energy. In these cases, legitimate alternative fuels will be produced from the processing of secondary materials. At least a portion of the secondary material will likely be treated wood. If treated wood were required to be separated from other wood in the municipal waste stream, higher costs, less fuel, more landfill space, and more methane GHG emission will result.</p> <p>American Cogeneration, LLC has licensed technology from the Energy and Environmental Research Center at the University of North Dakota to gasify wood biomass, including creosote treated crossties, to produce syngas for heat and power production. A plant utilizing out of service ties from the Canadian Pacific Railway is under construction.</p>	Please see response to comment number 16.
28. Jeffery T. Miller, President and Executive Director, Treated Wood Council	When sold, treated wood often is labeled with a plastic end-tag, which lists the type of preservative used. The presence of the end-tag is useful for determining the preservative used, and should not be the reason to disallow the wood as an eligible "biomass."	Please see response to comment number 16.
29. Jeffery T. Miller, President and Executive Director, Treated Wood Council	There is a substantial current and larger potential market, with associated societal and environmental benefits, for the use of treated wood biomass for energy recovery in Virginia that will be prohibited by the proposed regulations.	Please see response to comment number 16.
30. Monte C. Simpson, Public Affairs Manager, Weyerhaeuser	Weyerhaeuser recommends amending the definition to include the term "all trees" under Forest related materials and to delete the phrase "low commercial value materials" because it is ambiguous.	The term "biomass" is defined in statute. No changes have been made to the proposal.

Company		
31. Monte C. Simpson, Public Affairs Manager, Weyerhaeuser Company	<p>During the 2009 legislative session the General Assembly amended the "Renewable Energy" definition in Chapter 744, Section 56-585.2 of the Virginia Code to limit forest-related material that is eligible for consideration in the state's RPS program. The statute states:</p> <p>"Utilities participating in such program shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program."</p>	The comment addresses legislation not germane to the general permit. No changes have been made to the proposal.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulation applies to any qualified energy generator using biomass as a fuel that meet the requirements as stipulated, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations. The responsibility of ensuring health air quality for all citizens of the Commonwealth must be balanced with unnecessary regulatory burdens for small businesses. The formation of a general permit for qualified energy generators achieves this balance.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems. Some family farms may use the general permit to utilize biomass generated by the farming operations it to generate electricity thus encouraging self-sufficiency and increase family income.

TEMPLATES\GEN-PERMIT\TH09-GP
REG\GP-DEV\Cg-10TF