



North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue, Governor

Dee Freeman, Secretary

Received

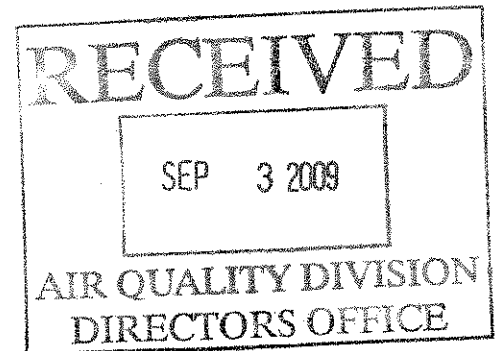
August 31, 2009

SEP 9 2009

Air Permits Section

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Director, Environmental & Legislative Affairs
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Re: Biomass Combustion in Utility Boilers

Caroline and George:

At Secretary Freeman's request, I am responding to your letter of August 18, 2009 asking for interpretive guidance on the applicability of federal Clean Air Act rules regulating commercial and industrial solid waste incinerators (CISWI) to combustion units using untreated wood and vegetative materials as fuel.

In June of 2007, the federal Court of Appeals for the District of Columbia Circuit struck down EPA rules that exempted a unit that combusted solid waste for purposes of thermal recovery from the CISWI rules. As a result of that ruling, any new unit that combusts solid waste must comply with the CISWI rules. The Clean Air Act references the definition of solid waste in the Solid Waste Disposal Act:

"...any garbage, refuse, sludge from a waste treatment plan, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations..."

Our staff and counsel representing the air quality and solid waste programs agree that woody debris and small timber that is harvested after completion of logging or land-clearing activity and transported or stored for use as a fuel is not a solid waste because the material has not been "discarded". The combustion of those fuels would not require compliance with the CISWI rules.

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(The same type of material would still constitute "solid waste" in circumstances where it has been discarded.)

We also recognize that there may be other types of clean, chemically unaltered wood and vegetative waste that could fall outside the definition of "solid waste". Making that determination, however, requires careful consideration of the nature of the material, its processing and handling. DENR has proposed to make determinations about application of the CISWI rules to other types of wood and vegetative waste, such as byproducts of manufacturing (including sawdust and wood chips), on a case by case basis. The Division of Air Quality will have the lead role in making those determinations, but will do so in consultation with the Division of Waste Management.

Staff in the Division of Air Quality and Division of Waste Management are still gathering information on torrefied wood to get a better understanding of the product. We will provide additional guidance on use of torrefied wood as soon as possible. I did not want to hold this response until we could fully address the question concerning torrefied wood because of Duke Energy's immediate need for guidance on use of wood waste from land-clearing activities.

I hope this is helpful as a start. As you know, EPA has issued a notice of proposed rulemaking to clarify the application of CISWI at the federal level. Until a federal rule becomes final, DENR proposes to use this case-by-case approach unless a particular type of material clearly falls outside the definition of solid waste.

Sincerely,



Robin W. Smith
Assistant Secretary for Environment

Cc: Secretary Freeman
Keith Overcash
Dexter Matthews

One
North Carolina
Naturally