



**PEER**  
**PUBLIC EMPLOYEES**  
**FOR ENVIRONMENTAL**  
**RESPONSIBILITY**



October 9, 2019

Attorney General Frosh  
200 St Paul Place  
Baltimore, MD 21202

Chairman Stanek  
6 St. Paul Street, 16<sup>th</sup> Floor  
Baltimore, MD 21201

Dear Attorney General Frosh and Public Service Commission Chairman Stanek:

We are writing to ask you to enforce § 7-704(f) of the Maryland Public Utility Code that requires facilities that sell renewable energy credits (RECs) in Maryland to substantially comply with the environmental and administrative laws.

Under Maryland's Renewable Energy Portfolio Standard (RPS), electricity providers in Maryland can buy RECs from facilities that burn black liquor (paper mill waste), trees and wood waste, and municipal solid waste (household and commercial trash) in order to meet their renewable energy requirements.

Attachment A contains information that indicates many of these facilities are not and have not been in compliance with basic environmental laws. This data comes from an U.S. EPA database and other sources of information and could greatly underestimate the compliance records of these facilities.

#### BIOMASS AND BLACK LIQUOR

§7-704(f)(1) requires that a renewable source "must substantially comply with all applicable environmental and administrative requirements, including air quality, water quality, solid waste, and right-to-know provisions, permit conditions, and administrative orders." Yet many of the companies selling biomass and black liquor RECs to Maryland providers have abysmal environmental compliance records.

Facilities that burn woody biomass for power provide some of the biomass RECs. Most significant among these is a facility in South Boston, Virginia, owned by the Northern Virginia Electric Cooperative. It has a

record of noncompliance with the Clean Air Act, having been the subject of formal and informal enforcement actions over a period of three years from 2014 through 2016.

However, the major suppliers of both biomass and black liquor RECs are paper companies. Mills owned by International Paper and private equity group Lindsay Goldberg generate black liquor RECs from facilities in Ohio, Pennsylvania, Tennessee and Virginia. Paper mills owned by WestRock and Domtar in North Carolina and Virginia supply both black liquor and biomass RECs to Maryland. It appears that every single one of these facilities has a history of noncompliance with federal clean air and water laws.

For example:

- EPA has recorded continuous Clean Water Act violations at WestRock's Kapstone Kraft facility in Roanoke Rapids, North Carolina beginning in July of 2016 and continuing to the present.
- In Pymouth, North Carolina, Domtar's mill racked up 12 quarters of "high priority" violations of the Clean Air Act, resulting in 13 separate enforcement actions and more than \$155,000 in penalties. EPA records show violations appear to be ongoing.
- At Lindsay Goldberg's Glatfelter facility in Spring Grove, Pennsylvania, EPA records show violations of three different environmental statutes and a total of 12 enforcement actions under the Clean Air and Clean Water Acts. Violations of the Clean Water Act as well as the Resource Conservation and Recovery Act appear to be ongoing.
- EPA records also show violations of the Clean Air Act and Clean Water Act at Lindsay Goldberg's Glatfelter mill in Chillicothe, Ohio, resulting in a total of 7 enforcement actions over the past 5 years.
- WestRock's mill in Covington, Virginia, has been the subject of both formal and informal enforcement actions under the Clean Air Act, as well as an informal action under the Clean Water Act. The air violations are particularly concerning because EPA data show this facility is the single highest emitter of toxic air pollutants in Virginia.
- Other Virginia mills belonging to WestRock also show violations of environmental statutes, including apparently ongoing Clean Water Act violations at its West Point facility and significant Clean Air Act violations at the Hopewell mill, resulting in formal enforcement action.
- EPA took a formal enforcement action under the Clean Water Act against International Paper's mill in Franklin, Virginia. Records also show a penalty assessed under the Clean Air Act.

#### WASTE-TO-ENERGY

§ 7-704(f)(2) also sets minimum recycling requirements for trash incinerators seeking to sell RECs under the RPS. The language in § 7-704(f)(2)(iii) makes it clear that this is an annual obligation for facilities to report so that their eligibility to sell RECs in a given year depends on the recycling goals being met in the previous calendar year. We have reason to believe that Wheelabrator Baltimore, and possibly Covanta Fairfax have been failing to meet this recycling standard. If that's the case, then all of the RECs they've sold to date could have been in violation of this statute.

For example:

- The Wheelabrator Baltimore trash incinerator (Baltimore City's #1 air polluter) has been fined for exceeding the legal amount of mercury air emissions, and draws most of their waste from the City of Baltimore, which fails to meet the recycling requirement.

- The Covanta Montgomery trash incinerator (Montgomery County's #1 air polluter) was cited with two emissions violations in 2014, and other violations relating to a major fire on their tipping floor in 2016.
- The Covanta Fairfax trash incinerator (Fairfax County's #1 air polluter and the worst air polluter within 20 miles of Washington, DC) had a major fire in 2017, and has been ignoring VA DEQ requests to test their ash more frequently, as required, which was one of two reasons why New Jersey has singled out Covanta Fairfax as ineligible to sell RECs into NJ's RPS market. Considering that nearly 20% of the waste accepted at Covanta Fairfax comes from Washington, DC, it's likely that Covanta Fairfax has also been failing to meet their recycling requirements.

#### MARYLAND IS FAILING TO ENFORCE THE LAW

By subsidizing these corporations, Maryland is diverting the hard-earned income of Maryland ratepayers to wealthy corporations with poor environmental compliance records and undermining the state's transition to clean renewable energy.

We understand, from the admission of PSC staff, that no one in the agency has the job of enforcing Public Utility Code § 7-704(f) requirements.

We urge that the Attorney General office investigate the PSC's failure to enforce this law, and also look into whether companies have been illegally profiting from REC sales charged to Maryland ratepayers when they are not in compliance with the RPS law's requirements for selling RECs.

#### MARYLAND SHOULD STRENGTHEN OVERSIGHT

We urge that the PSC develop regulations to interpret the law, and start enforcing it as soon as possible. We further urge that PSC collect the relevant compliance information for the past 15 years since the start of REC sales, and publish information on the compliance status of facilities whose owners have been profiting from REC sales to date.

In developing regulations, we specifically urge the PSC to develop reporting requirements, and to define the meaning of "substantially comply" in Maryland Public Utility Code § 7-704(f)(1), the definition of "substantially comparable" in § 7-704(f)(2)(ii), and the meanings of "full implementation," "recycling," and "solid waste" in Maryland Environment Code §§ 9-505(a)(18) and 9-505(a)(19). The PSC should not simply trust, but verify. There must be proper regulations and thorough annual reporting, accounting and verification. For trash incinerators in Tier 1, this must include detailed reporting by incinerators on each jurisdiction sending them trash, showing that at least 80% of the incineration facility's waste stream comes from jurisdictions recycling at least 35% by weight.

We believe that "substantially complying" with environmental laws does not include ever violating permitted emissions limits, or having uncontrolled fires that last nearly two weeks (as both Covanta plants did within a few months of one another). We believe that "full implementation" of the recycling requirements means that the populated jurisdictions that send trash to these three incinerators are required to recycle at least 35% of their solid waste as of January 1, 2016. The PSC should decide whether "solid waste" is limited to municipal solid waste, or all solid wastes. "Recycling" should include composting, but should not include tonnage sent to a recycling plant that does not actually get recycled. Recycling should only count if it reaches an end market, not just by going to a Material Recovery Facility

where as much as 25-40% could be sent for disposal due to contamination, and more could be disposed of for lack of markets, such as glass being landfilled as “alternative daily cover.” Similarly, dumping incinerator ash in landfills is not “recycling,” even if using it as cover material or for building temporary roads in the landfill, which simply become part of the landfill. Also, Maryland’s source reduction credits should not apply, since the law requires that the jurisdictions “[p]rovide[] for a reduction through recycling of at least 35% of the county's solid waste stream **by weight...**” (emphasis added).

For your convenience, the statutes cited above follow this letter.

We look forward to your timely response.

Sincerely,

Tim Whitehouse  
Executive Director  
Public Employees for Environmental Responsibility  
[twhitehouse@peer.org](mailto:twhitehouse@peer.org)

Michael Ewall, Esq.  
Executive Director  
Energy Justice Network  
[mike@energyjustice.net](mailto:mike@energyjustice.net)

**Maryland Public Utility Code § 7-704(f)**

- (f) (1) In order to create a renewable energy credit, a Tier 1 renewable source or Tier 2 renewable source must substantially comply with all applicable environmental and administrative requirements, including air quality, water quality, solid waste, and right-to-know provisions, permit conditions, and administrative orders.
- (2) (i) This paragraph applies to Tier 1 renewable sources that incinerate solid waste.
- (ii) At least 80% of the solid waste incinerated at a Tier 1 renewable source facility shall be collected from:
1. for areas in Maryland, jurisdictions that achieve the recycling rates required under § 9–505 of the Environment Article; and
  2. for other states, jurisdictions for which the electricity supplier demonstrates recycling substantially comparable to that required under § 9–505 of the Environment Article, in accordance with regulations of the Commission.
- (iii) An electricity supplier may report credits received under this paragraph based on compliance by the facility with the percentage requirement of subparagraph (ii) of this paragraph during the year immediately preceding the year in which the electricity supplier receives the credit to apply to the standard.

**Maryland Environment Code §9-505 (recycling requirements subsection)**

(18) For a county with a population greater than 150,000 according to the latest Department of Planning projections, include a recycling plan by July 1, 2014 that:

- (i) Provides for a reduction through recycling of at least 35% of the county's solid waste stream by weight or submits adequate justification, including economic and other specific factors, as to why the 35% reduction cannot be met;
- (ii) Provides for recycling of the solid waste stream to the extent practical and economically feasible, but in no event may less than a 15% reduction be submitted; and
- (iii) Requires full implementation of the recycling plan by December 31, 2015; and

(19) For a county with a population less than 150,000 according to the latest Department of Planning projections, include a recycling plan by July 1, 2014 that:

- (i) Provides for a reduction through recycling of at least 20% of the county's solid waste stream or submits adequate justification, including economic and other specific factors, as to why the 20% reduction cannot be met;
- (ii) Provides for recycling of the solid waste stream to the extent practical and economically feasible, but in no event may less than a 10% reduction be submitted; and
- (iii) Requires full implementation of the recycling plan by December 31, 2015.