



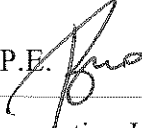
North Carolina Department of Environment and Natural Resources
Division of Air Quality

Beverly Eaves Perdue, Governor

Dee Freeman, Secretary
B. Keith Overcash, P.E., Director

March 18, 2010

TO: Donald R. van der Vaart
Chief, Permits Section

FROM: B. Keith Overcash, P.E. 

SUBJECT: Senate Bill 3 Implementation Issues

Senate Bill 3 (SB3) (Session Law 2007-397) contains a requirement for any biomass combustion process that is otherwise not subject to the Best Available Control Technology (BACT) requirements of the Prevention of Significant Deterioration (PSD) program and that is determined to be a “new renewable energy facility” to meet BACT. This requirement is referred to as SB3 State BACT. To date, according to the North Carolina Utilities Commission (NCUC) there have been approximately 10 facilities with biomass combustion processes certified as “new renewable energy facility[ies].” See Session Law 2007-397 (N.C.G.S. §62-2(g)).

SB3 defines “new renewable energy facility” as a facility that either

- a. Was placed into service on or after 1 January 2007.
- b. Delivers or has delivered electric power to an electric power supplier pursuant to a contract with NC GreenPower Corporation that was entered into prior to 1 January 2007.
- c. Is a hydroelectric power facility with a generation capacity of 10 megawatts or less that delivers electric power to an electric power supplier.

It is not clear from the language of SB3 when a “new renewable energy facility” must “meet BACT.” Under the PSD program, BACT is a preconstruction requirement. However, under the definition of “new renewable energy facility,” facilities can be determined to be “new renewable energy facilit[ies]” simply by having a contract with NC Green Power prior to 2007. Similarly, the NCUC has determined that even facilities that have been operational for many years can, for the purposes of SB3, be found to have been “placed into service” after January 2007. As a result of the definition of “new renewable energy facility” it is not reasonable to construe the SB3 State BACT as a preconstruction requirement. This memorandum establishes an implementation schedule for those facilities that are subject to SB3 State BACT.

The Division of Air Quality will notify, in writing, any facilities potentially subject to the SB3 State BACT requirement. The facility will be given 30 days to confirm the applicability of SB3 State BACT

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or demonstrate that SB3 is not applicable. Within 90 days following the NCDAQ's written confirmation of SB3 State BACT applicability, the facility shall submit a permit application that includes a SB3 State BACT analysis for each air pollutant that will be emitted as a result of the combustion of biomass from the designated emissions unit. Any facility that submits an administratively complete application shall be deemed to be in compliance with the SB3 State BACT requirement until such time the NCDAQ either: 1) issues a permit with SB3 State BACT emission limits, or 2) issues a letter stating that the facility's existing permit contains emission limits meeting NCDAQ's SB3 State BACT requirements. If the facility must make physical or operational changes to achieve compliance with the SB3 State BACT emission limits (e.g. install emission control systems), the permit will include an implementation schedule allowing up to, but not exceeding 12 months from the date of permit issuance to comply with the limits. If the facility is unable to meet the SB3 State BACT limit within the 12-month period, the facility will be considered out of compliance with SB3 State BACT.

c: Sheila Holman
 Mike Abraczinskas
 John Evans
 William Willets