

Comments on DRAFT RULE  
Case No. 23-2220-RULE  
submitted by  
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This comment relates particularly to Environmental Burdens such as “flooding or stormwater flows” and “damage to .. forests” or other harmful consequences related to “deforestation or forest degradation” and “damage to watersheds.”

- I. 30 V.S.A. § 8127 (h) clearly requires the Commission to regularly consider any harmful consequences that may arise from the implementation of the Clean Heat Standard:

(h) Review of consequences. ***THE COMMISSION SHALL BIENNIALLY ASSESS HARMFUL CONSEQUENCES THAT MAY ARISE IN VERMONT OR ELSEWHERE FROM THE IMPLEMENTATION OF SPECIFIC TYPES OF CLEAN HEAT MEASURES AND SHALL SET STANDARDS OR LIMITS TO PREVENT THOSE CONSEQUENCES.*** Such consequences shall include environmental burdens as defined in 3 V.S.A. § 6002, public health, ***DEFORESTATION OR FOREST DEGRADATION***, conversion of grasslands, increased emissions of criteria pollutants, ***DAMAGE TO WATERSHEDS***, or the creation of new methane to meet fuel demand.

- II. 3 V.S.A. § 6002 (2) further specifies that increased flooding or stormwater flows” and “damage to ... forests” are environmental burdens:

(2) ***“ENVIRONMENTAL BURDENS” MEANS ANY SIGNIFICANT IMPACT TO CLEAN AIR, WATER, AND LAND, INCLUDING ANY DESTRUCTION, DAMAGE, OR IMPAIRMENT OF NATURAL RESOURCES RESULTING FROM INTENTIONAL OR REASONABLY FORESEEABLE CAUSES.*** Examples of environmental burdens include climate change impacts; air and water pollution; improper sewage disposal; improper handling of solid wastes and other noxious substances; excessive noise; activities that limit access to green spaces, nutritious food, Indigenous food or cultural resources, or constructed outdoor playgrounds and other recreational facilities and venues; inadequate remediation of pollution; reduction of groundwater levels; ***INCREASED FLOODING OR STORMWATER FLOWS***; home and building health hazards, including lead paint, lead plumbing, asbestos, and mold; and ***DAMAGE TO*** inland waterways and waterbodies, wetlands, ***FORESTS***, green spaces, or constructed playgrounds or other outdoor recreational facilities and venues from private, industrial, commercial, and government operations or other activities that contaminate or alter the quality of the environment and pose a risk to public health.

- III. 30 V.S.A. § 8126 (c) requires the commission to provide opportunity for public comment prior to any revision of the Clean Heat Standard rules:

(c) The Commission's rules may include a provision that allows the Commission to revise its Clean Heat Standard rules by order of the Commission without the revisions being subject to the rulemaking requirements of the 3 V.S.A. chapter 25, **PROVIDED THE COMMISSION:**

(1) provides notice of any proposed changes;

**(2) ALLOWS FOR A 30-DAY COMMENT PERIOD;**

**(3) RESPONDS TO ALL COMMENTS RECEIVED ON THE PROPOSED CHANGE;**

(4) provides a notice of language assistance services on all public outreach materials;

- IV. The rule fails to acknowledge the Commission's statutory requirements to assess the harmful consequences and potential harms of clean heat measures, including the Environmental Burdens of "flooding or stormwater flows" and "damage to .. forests" (3 V.S.A. § 6002) and "deforestation or forest degradation" and "damage to watersheds" (30 V.S.A. § 8127).
- A. It is clear from silvaculturalists and organizations like the National Forest Service, that the "waste" from harvesting trees for lumber should be left on the forest floor and that the collection and processing of such waste into chips and/or pellets destined for combustion should be kept to an absolute minimum.
  - B. Removing the waste products of traditional lumbering adds to forest degradation by removing important nutrients vital for forest health and by reducing habitat opportunities for plants, animals and bird populations that comprise important elements of the forest ecosystem.
  - C. The removal of these waste products negatively impacts the ability of the forest to control erosion and water run-off. This contributes to downstream flooding.
  - D. The removal of these waste products also removes any carbon that would be stored within the forest soil if the waste were left to decay and decompose following natural processes.
  - E. The full life cycle accounting for the production, storage, transportation and combustion of these waste products into chips and pellets destined for the production of electricity or heat must also account for the potential for forest degradation, increased flooding and the loss of carbon sequestration and the GHG emissions resulting from waste wood combustion.
  - F. Current market forces, magnified by clean heat credits, leads to economic incentives for the logging industry to remove these to be chipped or pelletized.
  - G. There is intrinsic value of leaving waste products and non-commercially viable species in the forest. The value accrues to the viability, health and preservation of the forest ecosystem itself and outweighs any commercial or economic value derived from market forces and clean heat credits.
- V. Despite the requirement of 30 V.S.A. § 8127 (h), the draft rule fails to provide a process and procedure for identifying, remediating, avoiding, and/or eliminating such harms including, but not limited to Environmental Burdens.

VI. Contrary to 30 V.S.A. § 8126 (c), the draft rule fails to provide a process and procedure for receiving input and comment from the general public regarding harmful consequences incurred by implementing the Clean Heat Standard.

I recommend these changes to the draft rule:

- The final CHS Rule must include a process for assessing the harmful consequences of proposed and implemented clean heat measures, for remediating such harms, and for ensuring that clean heat measures that do create harmful consequences do not continue to be eligible for clean heat credits.
- The rule must require an annual review of the harmful consequences of implementing the Clean Heat Standard based on actual experience of the standards application.
- The rule must also include a means by which the public can voice concerns about a clean heat measure's harmful consequences.
- The rule must allow the public, with good reason, to petition the commission outside of the triennial emissions review process. Such reasons may include, but are not limited to, evidence that Vermont is not meeting its obligations to accurately assess harmful consequences attributable to implementation of the Clean Heat Standard and/or to comment upon any mitigation steps that may be proposed.