

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re: Energy Answers Arecibo, LLC
Arecibo Puerto Rico
Renewable Energy Project

PSD Appeal No. 13-05

RESPONSE TO EPA REGION 2's MOTION FOR LIMITED VOLUNTARY REMAND

by
The Coalition of Organizations Against Incinerators
(La Coalicion de Organizaciones Anti-Incineracion)
(Petitioners)

November 29, 2013

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	3
ARGUMENT	4
TABLE OF ATTACHMENTS.....	10
STATEMENT OF COMPLIANCE WITH WORD LIMITATION	10

TABLE OF AUTHORITIES

Final Rule, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496, 66497 (December 15, 2009)	5
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ARGUMENT

On November 14, 2013, EPA filed a Motion for a Limited Voluntary Remand, to allow revisions of the Prevention of Significant Deterioration Permit granted to Energy Answers on June 11, 2013. The Coalition submits this response to the motion.

The Coalition believes that biogenic carbon dioxide emissions should be considered in the analysis of whether a permit should be granted. But EPA's motion and proposed permit revisions do not impose any meaningful restrictions on the facility's emissions of greenhouse gases. In reality, EPA's proposed revisions would allow the company to emit a *greater* amount of greenhouse gases than its *potential to emit* for greenhouse gases. An emissions limitation that is higher than a facility's potential to emit is no emissions limitation at all.

Given the multiple problems associated with locating a significant source of lead emissions in a nonattainment area for lead (as well as other contaminants and greenhouse gas emissions), the EAB should not view EPA's motion as a compromise that addresses the concerns of the Coalition. For all the reasons set forth in its petition for review and previous filings, and for the reasons set forth in this response, the EAB should grant the petition for review on the merits, and deny the permit.

EPA asserts that the proposed revised permit will incorporate carbon dioxide emissions limits from biogenic sources. *See* EPA's Motion at 8. But the real question is the significance of those limits. EPA incorrectly asserts that "[t]he revisions to the PSD permit for Energy Answers discussed herein facilitate resolution of this permit appeal by providing the relief requested in public comments...." *See id.* at 5-6. In addition, it incorrectly asserts that "[b]y including the biogenic CO₂ emissions in EA's annual GHG emissions limit upon limited remand, Region 2 would be providing precisely the relief sought by Mr. Rosario in his comment." *See id.* at 9. As

a member of the Coalition and a professor of environmental chemistry at the University of Puerto Rico, Osvaldo Rosario provided written and oral comments during the public hearings. However, EPA's motion is not responsive to the Coalition's concerns or Professor Rosario's comments. The Coalition filed a petition for review requesting that the EAB deny the permit. EPA continues to request that the EAB deny review of all other issues in the petition.

EPA appears to believe that the Coalition had no objection to the amount or effect of greenhouse gases from the facility. That is not the case. The Coalition objected to the release of greenhouse gases from the facility, during the public comment period:

... the very fact that the EPA allows a company like Energy Answers to not count as a contaminant CO₂ is flabbergasting into and of itself – *as if the argument that the fact that this material is organic or natural somehow makes it less toxic – as if the CO₂ would have a different effect just because it comes from that sort of natural material is insane*

See EPA's Motion, Attachment 1, Comment of Dr. Osvaldo Rosario López, Public Hearing Transcript 2, August 25, 2012, page 14 (italics added for emphasis). Because carbon dioxide is not typically viewed as a "toxic" chemical (except in extreme cases of acute exposure), Professor Rosario was objecting to both the public health and environmental impacts of greenhouse gases. It is well-known that greenhouse gases present a danger to both public health and the environment. Final Rule, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496, 66497 (December 15, 2009) ("Pursuant to CAA section 202(a), the Administrator finds that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.").

It is incorrect for EPA to suggest that "no commenters expressed concern with the control technique for either non-biogenic or biogenic CO₂." See EPA's Motion at 7. EPA's guidance

document requires that a company “identify all control options,” for the BACT analysis. EPA New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting, Draft (October 1990), page B.10. According to EPA’s motion, the best available control technology (BACT) for greenhouse gases for this facility is “combustion of municipal solid waste and high thermal efficiency.” See EPA’s Motion at 3. This conclusion is incorrect. The “combustion of municipal solid waste” is not a “control technology.” Rather, it is a description of the company’s business operations, which require a “control technology.” Moreover, while EPA’s guidance document contemplates that a “control option” can include an operating practice, that operating practice must *reduce* emissions:

Potentially applicable control alternatives can be categorized in three ways.

! *Inherently Lower-Emitting Processes/Practices*, including the use of materials and production processes and work practices that prevent emissions and result in lower "production-specific" emissions; and

! *Add-on Controls*, such as scrubbers, fabric filters, thermal oxidizers and other devices that control and reduce emissions after they are produced.

! *Combinations of Inherently Lower Emitting Processes and Add-on Controls*. For example, the application of combustion and post-combustion controls to reduce NOx emissions at a gas-fired turbine.

The top-down BACT analysis should consider potentially applicable control techniques from all three categories.

EPA New Source Review Workshop Manual, page B.10 (underlining added for emphasis).

Since the “control technique” of “combustion of municipal solid waste” is simply the nature of the company’s business operations, the Coalition expressed concern with this “control technique” when it expressed concerns about greenhouse gas emissions from the facility.

Specifically, Professor Rosario questioned not only the composition of unaccounted emissions, but also what the facility was going to do with them:

I think the EPA must answer the following questions:

- What is the composition of these unregulated emissions?
- *Where they're going to put these unaccounted for emissions coming out of that plant?*
- What is the health risk presented Arcibo's people of these mystery byproducts?

I do not see how the EPA thinks it can issue a PSD permit without answering such fundamental questions about this project.

See EPA's Motion, Attachment 1, Comment of Dr. Osvaldo Rosario López, page 15. The "unaccounted for emissions" that were the subject of his comment would include the biogenic greenhouse gases that are the subject of EPA's motion.

Dr. Obed García, President of the Arcibo chapter of the Colegio de Médicos-Cirujanos de Puerto Rico, also provided comments objecting to the CO₂ emissions proposed by the facility:

*He [the author of the impact statement for Energy Answers] also notes that this technology would reduce the impact environment by reducing CO2 emissions to the environment. Without But talk is talk about incineration combustion. The combustion reaction is simple. Burning a compound (for example a hydrocarbon) and produces CO2 or CO and water and heat. So this is not consistent with an environmental policy to reduce CO2 emissions. Which is the major effect of emissions. Incineration does not reduce greenhouse gas emissions related to the effect emissions. Although alleges that reduce emissions methane. This is not the only greenhouse gas and gas probably the most abundant greenhouse effect and is more responsible Global warming is CO2 and CO. This would go against an environmental policy to reduce greenhouse gases. [sic]*¹

*Exhibit 1, Comment of Dr. Obed García, Public Hearing Transcript 2, August 25, 2012, pages 60-61 (italics added for emphasis).*²

The revised permit provides no meaningful limitation on biogenic or non-biogenic carbon dioxide emissions. It allows for CO₂ equivalent emissions (biogenic and non-biogenic carbon

¹ There appears to have been a formatting error in the transcription of this comment. This is immaterial to the nature and substance of Dr. García's comment.

² This document is already in the possession of the EAB. See Filing #10.24. This excerpt is attached for its convenience.

dioxide), in the amount of 924,825.3 tons per year (TPY). *See* EPA’s Motion, Attachment 2, Draft Revised Permit, page 7. This limit is *higher* than the facility’s potential to emit CO₂ equivalent, which is calculated as 924,750 TPY. *See* EPA’s Motion, Attachment 4, E-mail from Energy Answers Consultant to EPA dated November 30, 2011, attaching GHG BACT Emission Calculations – Annualized Operations, Table 12. That revised figure is substantially the same as a previous figure for the potential to emit provided by the company during the course of the permit application. *See* EPA’s Motion, Attachment 3, Additional Information Requested by EPA for the PSD Air Permit Application, dated September 2011, Appendix C, Table 12 (listing maximum greenhouse gas emissions as 924,411 tpy CO₂e).

EPA admits that its proposed revisions would do nothing for the environment: “These changes are simple accounting revisions. The amount of actual CO₂ emissions will not change as a result of this permit revision” *See* EPA’s Motion at 8. All that EPA can offer is that “a greater portion of the actual total CO₂ emissions, already subject to monitoring, will now be counted.” *See id.* But they would be counted anyway under the terms of the existing permit. The only difference is they would no longer be subtracted out, under the revisions. This is an accounting exercise, not an effort to limit greenhouse gas emissions. Conspicuously absent from EPA’s motion is any meaningful effort to limit the emissions of CO₂, whether biogenic or not.

EPA now recognizes that the company is legally accountable for emitting two times the amount of greenhouse gases, as compared with before the litigation of the Deferral Rule. *See* EPA’s Motion, Attachment 2, Draft Revised Permit, page 7 (increasing permit limitation from 466,619 tpy CO₂ equivalent for non-biogenic CO₂, to 924,825.3 tpy CO₂ equivalent for biogenic and non-biogenic CO₂). This increased amount of greenhouse gas emissions increases the importance of rejecting EPA’s determination that the company’s business operations constitute

BACT. In addition, the fact that EPA can now identify the quantitative amount of the potential emissions of biogenic carbon dioxide provides additional support for rejecting the company's air emissions calculations, given the mass balance analysis offered by Professor Rosario.

The EAB should reject EPA's invitation to issue a remand order prior to reaching a decision on the merits of the petition for review. *See* EPA's Motion at 7, fn. 1 ("Region 2 does not concede here that it is necessary to complete review before the EAB to satisfy its mandatory duty under Section 165(c) of the CAA"). The granting of this motion would not expedite final agency action in a meaningful way. The EPA Regional Administrator would still have to issue a final permit decision (either granting or denying the permit), following the granting or denial of the petition for review. *See* 40 C.F.R. 124.19(1)(2). In a telephone conference in connection with this motion, EPA counsel represented to counsel for the Coalition that it would not take long (i.e., less than one week) for EPA to issue a revised permit along the terms proposed in its motion.

The Coalition requests that the EAB decide the petition for review at the same time that it decides EPA's motion for a limited voluntary remand, so that it would be clear when there is final agency action. EPA's motion does not present a compelling need for the EAB to expedite its careful deliberation on the petition for review, simply to accommodate EPA's permit revisions.

For the reasons set forth above, the Coalition respectfully requests that the petition for review be granted and the permit denied.

TABLE OF ATTACHMENTS

<u>Exhibit</u>	<u>Nature of Document</u>	<u>Reference to the Record</u>	<u>Date</u>	<u>Pages</u>
<u>1</u>	Comment of Dr. Obed García	Public Hearing Transcript 2, Petition for Review, #10.24	August 25, 2012	1-2, 60-61 (excerpt)

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

This brief contains a total of 1,885 words, according to the word-processing system.

Respectfully submitted,

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