



October 18, 2011

Via E-mail: stallworth.holly@epa.gov

Dr. Holly Stallworth
Designated Federal Officer
Science Advisory Board

**Re: Meeting of Science Advisory Board Biogenic Carbon Emissions Panel
(Washington DC, October 25-27, 2011)**

Dear Dr. Stallworth:

Please accept the following comments on behalf of the Center for Biological Diversity (the “Center”). The Center is a non-profit organization with offices throughout the United States and more than 320,000 members and online activists. The Center’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health. The Center also has worked for many years to protect the biodiversity and ecological integrity of the nation’s forests. In furtherance of these goals, the Center’s Climate Law Institute seeks to reduce U.S. greenhouse gas emissions and other air pollution to protect biological diversity, the environment, and human health and welfare. One of the Center’s top priorities is ensuring that the Clean Air Act is implemented in an expeditious and effective manner to reduce emissions of the air pollutants causing global warming, including emissions associated with biomass combustion.

The following comments are submitted for consideration by the Science Advisory Board (“SAB”) Biogenic Carbon Emissions Panel (the “Panel”) at its upcoming meeting to discuss an Accounting Framework for Biogenic CO₂ Emissions from Stationary Sources (the “Framework”) proposed by the Environmental Protection Agency (“EPA”).¹

We must note at the outset our firm conviction that EPA’s final rule deferring regulation of biogenic CO₂ under the Clean Air Act for three years pending scientific review is arbitrary, capricious, and contrary to the Act’s text and purpose.² Four petitions for review challenging this decision, including two in which the Center is a petitioner, are currently pending in the U.S. Court of Appeal for the District of Columbia Circuit

¹ Notification of a Public Meeting of the Science Advisory Board Biogenic Carbon Emissions Panel, 76 Fed. Reg. 61,100 (Oct. 3, 2011).

² Deferral for CO₂ Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs, 76 Fed. Reg. 43,490 (July 20, 2011) (hereafter the “Deferral Rule”).

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(consolidated case nos. 11-1101, 11-1285, 11-1328, and 11-1336). By submitting comments to the Panel, we expressly reserve and do not waive any and all claims and issues that we may raise in challenging the Deferral Rule.

The role of the Panel is to provide sound scientific advice to EPA in determining how to regulate CO₂ pollution from biogenic sources under the Clean Air Act. EPA is not writing on a blank slate; its decisions are constrained by the Act's statutory requirements. EPA has identified CO₂ as an air pollutant, and has found that its emissions endanger public health and welfare, based on the climate-forcing effects of increasing atmospheric greenhouse gas concentrations.³ EPA's approach to biogenic CO₂ emissions must be evaluated in this context. By the same token, EPA must not turn to this Panel solely to seek scientific cover for a policy decision already taken, especially where that policy decision does not comport with either science or law. On the contrary, this Panel should rigorously question the scientific credibility of EPA's policy-driven decisions, and it should not hesitate to recommend alternative approaches as the science dictates.

Our review of the relevant literature indicates that EPA's proposed Framework does not reflect the best scientific work in this area and is likely to produce arbitrary, inaccurate, and misleading results. The proposed Framework employs a landscape-level, inventory-based accounting approach that has been criticized in recent scientific literature as inadequate to provide a full and accurate account of the atmospheric consequences of biomass combustion. The Framework essentially would allow a biomass facility to "offset" its direct emissions with off-site biomass growth occurring at some as yet undefined landscape scale on an annual basis.

This type of landscape-level approach may be more or less consistent with guidance for preparing national greenhouse gas inventories; current IPCC guidance, for example, assigns bioenergy emissions to the land use sector in order to avoid double-counting of gross national emissions in annual reports. However, this approach does not provide an accurate account of "what the atmosphere sees" in terms of CO₂ emissions from construction and operation of particular biomass facilities over time.

The inadequacy of the Framework's approach is readily apparent from the arbitrary results it produces. As the case studies appended to the Framework illustrate, the exact same facility, burning the exact same feedstock, would appear to have a different atmospheric impact depending on the geographical scale of analysis. In the same manner, two identically designed facilities burning the same feedstocks might be found to have different atmospheric impacts depending solely upon their locations and the multitude of other activities occurring on the surrounding landscapes. These results cannot be correct as a physical matter; the emissions that the atmosphere "sees" will be the same regardless of whether the geographical scale of analysis can be manipulated so as to make them seem to disappear.

³ See generally Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

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Numerous recent scientific articles and studies have pointed out the inadequacies of an inventory-type approach to accounting for facility-level CO₂ emissions and have urged the adoption of more sophisticated and accurate accounting methods.⁴ Indeed, the European Environment Agency's Scientific Committee recently rejected an approach to bioenergy accounting based on assumptions similar to those EPA has outlined in the Framework.⁵ Measuring direct bioenergy emissions against annual fluctuations in current carbon stocks also ignores the tremendous historical "carbon debt" associated with deforestation and other forms of land conversion, all of which have contributed significantly to current elevated atmospheric CO₂ levels.⁶ Incentivizing the harvest and combustion of additional biomass right up to the point where forest sector emissions begin to exceed uptake will exacerbate, not ameliorate, the atmospheric conditions causing climate change.

We urge the Panel to consider these articles and studies in evaluating the Framework. We also urge the Panel to consider the comments on EPA's proposed Deferral Rule, and the numerous scientific exhibits thereto, submitted by Clean Air Task Force on behalf of the Center and numerous other organizations.⁷ Finally, we respectfully request that the Panel recommend alternative approaches to EPA that more accurately reflect the physical atmospheric impacts of biomass combustion over time.

⁴ See, e.g., Jon McKechnie, et al., *Forest Bioenergy or Forest Carbon? Assessing Trade-Offs in Greenhouse Gas Mitigation with Wood-Based Fuels*, 45 ENVIRON. SCI. TECHNOL. 789 (2011); MANOMET CENTER FOR CONSERVATION SCIENCES, MASSACHUSETTS BIOMASS SUSTAINABILITY AND CARBON POLICY STUDY: REPORT TO THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF ENERGY RESOURCES 103 (Walker, T., ed. 2010); GIULIANA ZANCHI ET AL., THE UPFRONT CARBON DEBT OF BIOENERGY (May 2010), available at http://www.birdlife.org/eu/pdfs/Bioenergy_Joanneum_Research.pdf (last visited Oct. 18, 2011); Timothy Searchinger, et al., *Fixing a Critical Climate Accounting Error*, 326 SCIENCE 527 (2009).

⁵ European Environment Agency Scientific Committee, Opinion of the EEA Scientific Committee on Greenhouse Gas Accounting in Relation to Bioenergy (Sept. 15, 2011), available at <http://www.eea.europa.eu/about-us/governance/scientific-committee/sc-opinions/opinions-on-scientific-issues/sc-opinion-on-greenhouse-gas> (last visited Oct. 18, 2011).

⁶ See, e.g., John S. Gunn, et al., *Biogenic vs. Geologic Carbon Emissions and Forest Biomass Energy Production*, GLOBAL CHANGE BIOLOGY BIOENERGY (2011), doi: 10.1111/j.1757-1707.2011.01127.x.

⁷ Comments of Center for Biological Diversity, Center on Race, Poverty, & the Environment, Clean Air Task Force, Conservation Law Foundation, Georgia Forest Watch, Natural Resources Council of Maine, Southern Environmental Law Center, Wild Virginia, and the Partnership for Policy Integrity Re: Deferral for CO₂ Emissions from Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs, 76 Fed. Reg. 15,249, EPA Docket No. EPA-HQ-OAR-2011-0083-0350 (May 5, 2011), available at www.regulations.gov.

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Thank you for your consideration of our comments.

Sincerely,



Kevin P. Bundy
Senior Attorney