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News Alert

EPA Announces Plan to Classify Wood-Based Power as Carbon Neutral

The US Environmental Protection Agency (EPA) plans to propose a rule that would classify wood as carbon neutral power produced from the combustion of forest biomass. If eventually adopted, such a rule would begin to provide clarity to an issue that has been plagued by uncertainty for nearly ten years.

Background on Biomass Carbon Neutrality

Since 2010, EPA has struggled to develop an accounting framework for biogenic CO_2 emissions.

Following EPA's decision to regulate greenhouse gas (GHG) emissions under the Clean Air Act, which came in response to the Supreme Court's decision in *Massachusetts v. EPA*, it became necessary to develop a framework for accounting for GHG emissions when issuing stationary source permits under the Title V and the New Source Review (NSR) permitting programs. In mid-2010, EPA published in the Federal Register a "Call for Information: Information on Greenhouse Gas Emissions Associated With Bioenergy and Other Biogenic Sources." 75 Fed. Reg. 41173, July 15, 2010. That request generated extensive comments and set in motion a lengthy scientific process to assess the carbon neutrality of biogenic CO_2 emissions.

In 2011, EPA submitted a draft technical report to its Science Advisory Board (SAB) for peer review, which contained a draft framework for assessing biogenic CO_2 emissions associated with

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biomass combusted for power generation at stationary sources (the 2011 Draft Framework). At bottom, the 2011 Draft Framework sought to develop a Biogenic Accounting Factor (BAF) based on a carbon lifecycle approach, and that would enable individual stationary sources to calculate their biogenic CO_2 emissions. In 2012, the SAB released the results of its review of the 2011 Draft Framework, noting that it contained "a number of important limitations", including differences in calculation methodology based on feedstock, a lack of definition of key features of the 2011 Draft Framework, and a failure to address "unintended consequences." As a result, the SAB called on EPA to develop a set of "default" BAFs that could be applied, rather than requiring a facility-level analysis.

In 2014, EPA released a second draft of its technical report (2014 Revised Framework), which incorporated SAB input, stakeholder comments, and other information, and which presented a revised framework for assessing biogenic CO_2 emissions. Since then, the SAB has been unable to finalize a response to the 2014 Revised Framework due to disputes regarding the appropriate accounting framework, assumptions, and other technical considerations. As a result, EPA had not—until now—announced a clear regulatory policy governing biogenic CO_2 emissions.

EPA's Recent Biomass Policy Announcements

On April 23, 2018, EPA issued a policy statement indicating that "EPA's policy in forthcoming regulatory actions will be to treat biogenic CO_2 emissions resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral." Within the 2018 policy statement, EPA indicated that its policy "is not a scientific determination and does not revise or amend any scientific determinations that EPA has previously made." Instead, EPA's goal was (and is) to "promote[] the environmental and economic benefits of the use of forest biomass for energy at stationary sources, while balancing uncertainty and administrative simplicity when making programmatic decisions." That statement acknowledges the scientific uncertainty surrounding the SAB's work, and the need for clear regulatory policy even in the face of continued debate on an accounting framework for biogenic CO_2 emissions. Congress had previously requested such action by EPA.

The federal treatment of biomass as carbon neutral may send a signal to the states.

EPA's 2018 biomass policy statement followed a letter sent by EPA Administrator Scott Pruitt in February, 2018 to New Hampshire Governor Chris Sununu, which came in response to an inquiry from the Governor and indicated that EPA would seek to "provide clarity and incorporate consistent treatment of biomass through the range of EPA's regulatory programs." Later in 2018, EPA and the U.S. Department of Agriculture and U.S. Department of Energy also sent a joint letter to the Senate and House Committees on Appropriations that described their coordinated efforts "to ensure consistent federal policy on forest biomass energy and promote clear policies that encourage the treatment of forest biomass as a carbon-neutral renewable energy solution."

EPA apparently plans to make good on the promises it made in 2018. On April 2, 2019, EPA Administrator Andrew Wheeler told lawmakers that EPA intends to propose a new rule that would treat biogenic CO_2 emissions from power plants as carbon neutral. The proposal is expected this summer and, if adopted, the rule will have implications for the power generation industry as well as other industry sectors.

Implications of a Carbon-Neutral Biomass Policy

Since the EPA began regulating GHGs as a pollutant under the Clean Air Act, there has been a lot of discussion around how greenhouse gases should be incorporated into the NSR program. Specifically, there has been some debate about how to evaluate the Best Available Control Technology (BACT) for GHGs. Ultimately, if a source is required to obtain a NSR permit, and the source meets the GHG production threshold, then the source must evaluate BACT for GHG emissions. However, if biomass is considered carbon neutral, a facility could arguably exclude all biogenic CO_2 emissions from its inventory and could evaluate biomass co-firing or fuel-switching when setting BACT.

EPA also has signaled its desire to reevaluate federal procurement recommendations in conjunction with the development of the carbon neutral policy. Currently, there are few certifications that qualify a forest for federal procurement opportunities. However, if federal procurement recommendations are reconsidered in conjunction with the biomass proposal, then the number of forests that are eligible to participate in federal procurement opportunities could increase. Furthermore, a carbon-neutral biomass policy could expand the government's acquisition of goods produced via sustainable environmental practices, allowing industry and government to meet other established sustainability metrics.

Finally, the federal treatment of biomass as carbon neutral may send a signal to the states. This could play out in both air permitting, and also during the implementation of a state's renewable energy goals and Renewable Portfolio Standard (RPS). Presently, nearly 40 states have their own RPS, which requires a specified percentage of saleable electricity to come from renewable sources. State treatment of biomass varies widely: some states disfavor biomass, or require a complex lifecycle analysis of carbon neutrality, while other states take a more permissive approach. Federal policy could encourage certain states to expand the role of biomass within their RPS program.

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