



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 12 2011

THE ADMINISTRATOR

The Honorable Jeff Merkley
United States Senate
Washington, D.C. 20510

Dear Senator Merkley:

Thank you for your recent letter about the way that carbon dioxide (“CO₂”) emissions from biomass burning will be treated in Clean Air Act permitting of construction projects at large stationary sources. As you know, biomass can be part of a national strategy to reduce dependence on fossil fuels, and efforts are underway to foster the expansion of renewable resources and promote biomass as ways of addressing climate change and enhancing forest management.

Last July, EPA solicited views from the public on approaches to accounting for CO₂ emissions from biomass and other biogenic sources, including whether some or all of a source’s biomass CO₂ emissions could be discounted based on a determination that they are canceled out by the CO₂ absorption associated with growing the fuel. EPA received information supporting the conclusion that certain biomass – such as waste materials whose inevitable decomposition will result in greenhouse gas emissions anyway – have only very limited climate impacts when combusted as fuel. EPA also, however, received information indicating that the use of certain other biomass as fuel could have more significant climate impacts.

In November, EPA announced that it was reviewing the public’s comments with the goal of deciding whether the Clean Air Act would allow the use of some kind of discounting system or other method reflecting the net impacts of biomass combustion in determining the applicability of the pre-construction permitting requirement to CO₂ emissions from biomass-fired units. Your recent letter urges EPA to make a positive determination and to start a rulemaking promptly.

As of January 2, 2011, only those large stationary sources that trigger the pre-construction permitting requirement for other pollutants need to address greenhouse gases such as CO₂. No source will be subject to the pre-construction permitting requirement solely because of its greenhouse gas emissions until after July 1, 2011. That is one result of the Tailoring Rule that EPA issued last year. With the approach of July 1 in mind, I am announcing today that, by that date, EPA will complete a rulemaking to defer for three years the application of the pre-construction permitting requirement to biomass and other biogenic CO₂ emissions.

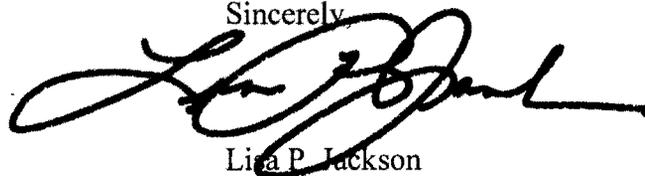
The purpose of the deferral is to give EPA time to effectuate a detailed examination of the science associated with biogenic CO₂ emissions and to consider the technical issues that the agency must resolve in order to account for biogenic CO₂ emissions in ways that are scientifically sound and also manageable in practice.

EPA will ensure that partners within the federal government and scientists outside of it with relevant expertise play meaningful roles in the examination. Following the examination's completion, EPA will use its work product in establishing, by notice-and-comment rulemaking, the system for determining the applicability of the Clean Air Act's pre-construction permitting requirement to projects that result in biomass and other biogenic CO₂ emissions. EPA's intent is to ensure that both the scientific examination and the resulting rulemaking are completed within the three-year deferral period mentioned above.

Concurrent with the proposal to defer application of the pre-construction permitting requirement (known as "Prevention of Significant Deterioration," or "PSD") to biomass and other biogenic CO₂ emissions, EPA intends to issue interim guidance to help permitting authorities establish a basis for concluding that the best available control technology (or "BACT," which is one of the statutory conditions for receiving a permit) for greenhouse gas emissions at such sources is simply combustion of biomass fuels. As noted above, under the Tailoring Rule, as of January 2, 2011, large stationary sources that become subject to PSD for other pollutants will need to address greenhouse gases such as CO₂. If such permits are issued before July 1, 2011, then existing regulations might require that the permits meet the BACT requirement for greenhouse gas emissions during an interim period of time. In guidance issued last November, EPA explicitly recognized that a permitting authority might determine that certain types of biomass by themselves are BACT for greenhouse gas emissions after considering the environmental, energy, and economic benefits of using the fuel. EPA's supplemental guidance will provide a basis that permitting authorities may use to support the conclusion, during the interim period, that BACT for CO₂ at such sources is simply the combustion of biomass fuel.

I hope you will see the steps described in this letter as following through on my prior commitment to exercise whatever discretion the Clean Air Act affords to avoid discouraging the use of renewable, domestically-produced fuel in power plants and factories. If you have additional questions, please do not hesitate to contact me or to have your staff contact David McIntosh in EPA's Office of Congressional and Intergovernmental Relations.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", written in a cursive style.

Lisa P. Jackson