



## Legal Updates

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### **Is Biomass "Carbon Neutral?" EPA Call for Information Signals Rigorous Review**

On July 15, EPA issued a Call for Information on the hot bioenergy topic of whether biomass and other biogenic materials should be considered "carbon neutral" and thus not subject to greenhouse gas (GHG) regulation. 75 Fed. Reg. 41176. The opening of this docket directly responds to the furor created by EPA's decision not to exempt biomass from its recently adopted GHG "Tailoring Rule" which prescribes Clean Air Act (CAA) permitting requirements for GHG emission sources beginning January 2, 2010.

This Call for Information represents a first step toward a rulemaking which will have far-reaching implications for future regulation of biomass electric energy production – but also possibly for landfills, manure management, wastewater treatment, ethanol fermentation, and even livestock respiration.

Under a number of international and national protocols, biogenic materials, including biomass used as a fuel, are treated as "carbon neutral," or as not adding to greenhouse gases in the atmosphere, because the plants are considered GHG "sinks" which absorb and sequester GHGs during their lifetimes. However, it's not surprising that EPA has declined to take a broad brush approach to "carbon neutrality" in the context of CAA permitting.

The concept of "carbon neutrality" relies upon a "lifecycle" emissions analysis – looking at the carbon emissions and carbon sequestration associated with the production of a fuel or feedstock over time and at distant locations, such as forests, plantations or farms. This may include both directly caused emissions and indirectly caused emissions (e.g., as a result of fertilizers used to produce a biomass crop or agricultural land use change).

This broad type of analysis has never been applied in the context of CAA facility construction and operating permits. As EPA explains, CAA provisions typically apply on a smaller scale (i.e., only to the direct emissions from combustion sources and other processes within the four corners of a facility). Indeed, EPA's only regulatory experience with GHG lifecycle emissions has been in the context of its recently adopted Renewable Fuel Standards – where determining the lifecycle GHG emissions of various biofuels proved extremely complex and controversial.

EPA's Call for Information asks for a variety of specific information – including suggested accounting approaches and analytical tools for determining the net impact on the atmosphere of CO<sub>2</sub> emissions associated with specific bioenergy projects, the time interval required for production and consumption of biological feedstocks, the appropriate spatial/geographic scale for conducting this analysis, and data and studies on topics such as "current and projected carbon sequestration rates in lands used to produce bioenergy feedstocks" and "economic, technological and land management drivers for projected changes in sequestrations rates."

With this Call for Information, EPA is clearly signaling that the devil is going to be in the details when it comes to demonstrating "carbon neutrality" for biomass or any other "biogenic material." This is a lesson the ethanol industry learned the hard way in the course of EPA's Renewable Fuel Standards rulemaking in which EPA ultimately tagged corn ethanol with extensive GHG emission increases from projected indirect "international land use changes" in addition to the direct feedstock and fuel production emissions.

EPA will accept information in this docket through September 13, 2010.

For further information on EPA's Call for Information, greenhouse gas regulation, and lifecycle emissions analysis, please contact:

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## **MORE INFORMATION**

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