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Lawsuit Challenges Clean Air Act Exemption for Biomass Burners

WASHINGTON — Conservation groups filed a lawsuit today challenging an Environmental Protection Agency rule that exempts large-scale biomass-burning facilities from carbon dioxide limits under the Clean Air Act for the next three years. The Center for Biological Diversity, Conservation Law Foundation, Georgia ForestWatch, Natural Resources Council of Maine and Wild Virginia are asking the federal Court of Appeals for the District of Columbia Circuit to overturn the carbon dioxide exemption for wood-fired power plants and other “biomass” incinerators.

The EPA’s unlawful rule will cause immediate harm, as it will encourage a rush to build biomass power plants and other facilities without accounting for, or controlling, carbon pollution that contributes to global warming.

“The EPA’s action will in the near term increase carbon dioxide emissions that will persist in the earth’s atmosphere and cause climate damage for more than a century,” said Ann Weeks, an attorney at the Clean Air Task Force who represents Conservation Law Foundation and Natural Resources Council of Maine. “The EPA knows this will occur and is offering up a complete exemption from regulation despite that knowledge.”

“The EPA has no authority to just waive the Clean Air Act for the benefit of politically favored industries, as it has for the forest products and bioenergy industries here,” said Kevin Bundy, senior attorney for the Center for Biological Diversity. “The science is clear: Burning our forests for energy makes no sense as a strategy for dealing with climate change. Widespread biomass development, which the EPA’s illegal exemption aims to facilitate, will undermine our ability to meet critical near-term greenhouse gas reduction goals and further degrade our nation’s forest ecosystems.”

“The South is already seeing a huge uptick in the number of new and retrofitted facilities that will burn woody biomass, which will create increasing pressure to cut native, standing forests for fuel,” said Frank Rambo, head of the Clean Energy and Air Program for the Southern Environmental Law Center, and an attorney for Georgia ForestWatch and Wild Virginia. “While certain types of biomass must be part of our nation’s move to clean, sustainable energy sources, science shows that cutting whole trees often *adds* to the carbon output.”

Recent scientific information indicates that burning biomass — trees, for example — can actually increase global warming pollution, even compared to fossil fuels. According to scientists, nearly all biomass fuels cause at least temporary near-term increases in atmospheric CO₂ concentrations, significant amounts of which will persist in the atmosphere and cause climate damage for a century or more. This near-term increase directly undermines efforts to reduce carbon dioxide emissions over the next several years, an effort that is essential to avoid the very worst damage due to climate change. The EPA's rule, however, grants all facilities burning any biogenic materials a three-year hiatus from having to obtain permits and control their CO₂ emissions.

“The EPA is abdicating its regulatory responsibility and writing a blank check to energy companies by allowing massive increases in carbon dioxide from biomass incinerators on the drawing board in Virginia,” said Ernie Reed of Wild Virginia.

“The EPA's duty is to protect American citizens and natural resources from significant risks. We are seeing the growing risks of a changing climate, including increased droughts and floods, tornadoes and record summer temperatures. This rule only delays the EPA from doing its job,” said Wayne Jenkins of Georgia ForestWatch.

“Biomass burning is not carbon neutral, and the EPA's action will result not only in excessive greenhouse gas emissions but also unacceptable decreases in forest stocks,” said Jonathan Peress of the Conservation Law Foundation. “By ignoring science, the exemption will cause a far greater share of the earth's carbon to be emitted into the atmosphere rather than stored in the forest.”

“Biomass energy is and should continue to be an important part of Maine's energy mix,” said Dylan Voorhees of the Natural Resources Council of Maine. “However, it is essential that we use tools like the Clean Air Act to ensure that we use biomass efficiently to minimize pollution, and that ensure our forests are managed sustainably. If we don't, our air, waters and forests will suffer.”

Legal Background

The EPA's rule marks a striking about-face for the agency. The agency's “tailoring rule” — the June 2010 regulation in which it spelled out how greenhouse gases would be regulated under Clean Air Act permit programs — treated biogenic and nonbiogenic greenhouse gas emissions similarly. When industry groups challenged this aspect of the tailoring rule, the organizations filing today's lawsuit intervened to defend the EPA's decision. That case, *National Alliance of Forest Owners v. EPA* (D.C. Cir. Case No. 10-1209), is still pending. The EPA, however, has since reversed course. Earlier this year, the agency improperly granted an industry petition for reconsideration of the tailoring rule, a decision that the organizations filing today's lawsuit challenged in *Center for Biological Diversity, et al. v. EPA* (D.C. Cir. Case No. 11-1101). The biomass exemption rule challenged in today's lawsuit is the final outcome of the EPA's reconsideration process.