BioEnergy Producers Association
Clean Technology for Renewable Energy

DOCKET
03-RPS-1078
DATE SEP 09 2010
RECD. SEP 09 2010

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September 9, 2010

California Energy Commission
Dockets Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Docket numbers 02-REN-1038 and 03-RPS-1078 -- RPS Proceeding

Dear Friends:

The BioEnergy Producers Association is a coalition of private and public entities dedicated to the development and commercialization of environmentally preferable industries that produce renewable sources of power, fuels and chemicals from agricultural, forestry and urban biomass. Our membership includes bioenergy firms, electric utilities and waste management companies.

We welcome this opportunity to comment on the draft changes proposed for the proposed revisions to the RPS Eligibility Guidebook and the overall Program Guidebook.

The BioEnergy Producers Association is grateful for the Energy Commission's support of AB 222, and for its endorsement by the Air Resources Board and CalRecycle, as well. This legislation would have clarified a number of the issues being addressed in these proceedings. Since so many projects for the conversion of solid waste to renewable energy are under consideration or pending in the state, regulatory clarity is needed.

<u>MSW as an Eligible Biomass Feedstock</u>

In current statute, full RPS credit is provided to "gasification" and "biomass conversion." Consistent policy would provide this credit for all conversion technologies. The state of Colorado recently passed legislation increasing its goal for the RPS to 50%, and in so doing, authorized MSW as an approved feedstock for RPS credit, without reservation.

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In this nation's quest for energy independence, it is clear that the non-biogenic/fossil fuel-based materials in the MSW waste stream constitute a productive and high BTU content resource for the production of not only electricity, but advanced biofuels and other products, and that the cost of separating all biogenic materials from the post-recycled waste stream would be burdensome on biobased technology providers.

The CEC should make a determination as to what is reasonable, what enables biobased technology providers to operate efficiently, and therefore, what portions of the waste stream should qualify.

However, recognizing current trends in federal legislation and regulatory policy, if it is determined that RPS eligibility is to be limited to the biogenic portion of the waste stream, the BioEnergy Producers Association strongly recommends that the regulations allow the entire mixed stream to be processed to achieve the maximum energy recovery from this resource, with the requirement that the facility conduct periodic waste characterizations and submit reports to the appropriate regulatory agencies (i.e., CEC & CalRecycle) identifying the percentage of non-biogenic materials in the feedstock that are ineligible.

This would enable high BTU content materials like plastics to be converted to productive use (rather than landfilled), even though they do not qualify for RPS credit.

At a minimum, consistent with the consideration of MSW as an eligible RPS feedstock, the definition of "Biomass" in the Overall Program Guidebook (p.19) should be revised to specifically call out the biogenic fraction of MSW in the list of eligible organic materials.

RPS Eligibility Guidebook

The CEC's reference point for the development of eligibility criteria is grounded in the existing statutory definition of "gasification" (PRC Section 40117), a definition that is universally acknowledged as being scientifically inaccurate. For example, it requires that "the technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control, and that it "produces no discharges of air contaminants or emissions, including greenhouse gases, as defined in subdivision (g) of Section 38505 of the Health and Safety Code." This definition establishes environmental standards that are required of no other manufacturing process in the state, and which are theoretically impossible to achieve from a compliance standpoint, depending upon how these standards are interpreted.

Clearly, we would have no electricity generation facilities or refineries in the state if they had to adhere to these repressive standards.

As the actual language is scientifically inaccurate, and it is a fundamental premise that government cannot pass legislation with which its citizens cannot comply, it should therefore be recognized that the intent of these criteria is to ensure that 1) generating facilities operate in an environmentally sound manner, 2) these CEC regulations create a level playing field with regard to industry environmental standards generally, and 3) the eligibility criteria should reflect the way in which compliance with air, water, and hazardous waste regulations would be measured by responsible agencies.

Therefore, in drafting these new guidelines, we urge the California Energy Commission to focus on how it would reasonably measure compliance with this definition, such as establishing a De Minimus standard for the criterion, which is achievable through the application of best available control technologies.

We assert that the California Energy Commission has the authority to take such action, because:

1. There are now some 270 technologies in various stages of development, construction or operation that process municipal waste in the process of energy recovery. Among them, not all thermal biomass conversion technologies may be strictly defined as gasification (the only thermal technology referenced in statute). They include an expanding list of plasma and pyrolysis processes, which can convert biomass into oils for combined heat and power. The Guidebook cannot, therefore, rely solely upon the limiting language in statute to develop standards/eligibility criteria for the complete range of conversion processes.

2. With regard to the Guidebook criteria:

a. Current statute limits the use of oxygen in a gasification facility to "ambient air to maintain temperature control." However some technologies, which co-produce advanced biofuels and other products along with electricity, inject a limited amount of oxygen into the system, not for the purpose of temperature control, and not certainly to achieve combustion (as these are strictly defined as non-combustion, non-incineration technologies), but to make more efficient the biochemical process of converting synthesis gas to alternative fuels. Making an allowance for this use of oxygen in the process should be a priority for the CEC, in keeping with your mission and goals.

b. The CEC should employ regulatory language that reflects the same standards that are applied to any other RPS-eligible technology, such as biomass combustion plants and other electrical generating facilities. The CEC should clarify how facilities would comply with California's air emissions, water quality, and other environmental standards. For example, a reasonable standard for air emissions would be to meet or exceed standards set by the State Air Resources Board, local air pollution districts, or local air quality management districts regarding air contaminants and emissions, including greenhouse gases, as defined in subdivision (g) of Section 38505 of the Health and Safety Code.

c. Further, we submit that it would be impossible in the state of California to achieve the goal of processing and marketing all "marketable green waste compostable materials." Neither the facilities nor the markets to facilitate such a requirement exist. The existence of such language effectively rules out the recovery of energy from green waste. This is inconsistent with the fact that green waste is now being placed in landfills throughout the state for use as alternate daily cover, and for this the participating jurisdictions are receiving credit for "landfill reduction." Such practices, although authorized through statute, are inconsistent with the regulatory requirement that "all marketable green waste compostable materials be removed from the solid waste stream and composted." If it is acceptable to use green waste for alternate daily cover, it most certainly should be appropriate to use green waste as a feedstock for renewable energy production.

In summary, there is a need for the CEC to be uniform in its interpretation and treatment of the subject regulations, recognizing that it cannot promulgate and administer regulations with which neither industry nor public jurisdictions can comply.

We appreciate your consideration of these remarks.

Sincerely,

BioEnergy Producers Association

James L. Stewart, Chairman

Senator David A. Roberti (Ret.), President

Kay Martin, Vice President