



Hon. Gina McCarthy, Administrator
U.S. Environmental Protection Agency
c/o E-Docket ID No. EPA-HQ-OAR-2014-0828
William Jefferson Clinton Federal Building 1200
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**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

_____)
Petition for Reconsideration by)
Biogenic CO2 Coalition of EPA) Docket # EPA-HQ-OAR-2014-0828
Aircraft Endangerment Final Rule)
_____)

PETITION FOR RECONSIDERATION

Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare, 81 Fed. Reg. 54422 (Aug. 15, 2016) Docket # EPA-HQ-OAR-2014-0828

The Biogenic CO2 Coalition (“*Coalition*”) respectfully petitions the U.S. Environmental Protection Agency (“*Agency*”) pursuant to section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), to reconsider the above rule (“*Aircraft Rule*”) with respect to the Agency’s treatment of biogenic carbon dioxide emissions from short-cycle annual herbaceous crop.¹

¹ The Coalition consists for purposes of these comments of the following: American Bakers Association, American Farm Bureau Federation, Corn Refiners Association, National Cotton Council of America, National Cottonseed Products Association, National Corn Growers Association, Enginuity Worldwide, National Oilseed Processors Association, and North American Millers’ Association.

The Coalition hereby incorporates by reference its prior comments on the Aircraft Rule, which can be found in the docket at the following URL:

1. <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0828-0916>

About the Coalition

The Biogenic CO₂ Coalition has previously commented on various EPA proposals to regulate greenhouse gases, including on EPA's proposed New Source Performance Standards for the Electric Generation Sector at 79 Fed. Reg. 1430 (Jan. 8, 2014) (EPA-HQ-OAR-2013-0495), EPA's proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units at 79 Fed. Reg. 34, 830 (June 18, 2014) (EPA-HQ-OAR-2013-0602), EPA's proposed Standards for Emissions from Modified and Reconstructed Stationary Sources at 79 Fed. Reg. 34, 959 (June 18, 2014) (EPA-HQ-OAR-2013-0603) (later combined with the NSPS final rule), and EPA's Proposed Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably be Anticipated to Endanger Public Health and Welfare, 80 Fed. Reg. 37757 (Jul. 1, 2015).

The members of Coalition or their associational members own or operate facilities that emit or may emit CO₂ directly from combustion, fermentation, processing or microbial wastewater treatment of biomass derived from short-cycle annual herbaceous crops (referred to as "crop-derived CO₂"). Coalition members also include farmers and ranchers who raise the crops used or to be used as feedstocks which become the food, fiber and fuel that drive the U.S. economy. Coalition members are pioneering the mainstreaming of "bio-based" products and "green chemistry" technologies to produce pharmaceuticals, bioplastics, bioenergy and commercial chemicals from herbaceous crop-derived materials, often by means of microbial action that generates CO₂ emissions, such as fermentation, which are the foundation of a new bioeconomy based on agricultural products.

The Coalition believes that emissions of crop-derived CO₂ resulting from combustion of biomass or biofuels derived from herbaceous crops or crop residues, and the biogenic CO₂ emissions associated with the production, harvesting and processing of crops or crop residues used in bio-based products, including biomass fuels and energy feedstocks, are harmless from a global warming standpoint and do not contribute to elevated atmospheric concentrations of greenhouse gases. The Coalition is greatly concerned that EPA's arbitrary and illegal penalizing of agricultural biomass the same as fossil fuels will stifle the development of agricultural biomass and bioproducts.

Basis for Reconsideration

The Coalition's previous comments on the proposed Aircraft Rule and the Coalition's petition for reconsideration focus on two critical flaws in the Aircraft Rule:

1. EPA's Treatment of Biogenic Emissions.

First, EPA must recognize that biogenic emissions from the combustion or processing of agricultural-based feedstocks are carbon neutral or negligible for the purposes of emissions accounting under the Clean Air Act, and at a minimum must be afforded exempt or *de minimis* status and accounted as carbon neutral. Because EPA has refused to recognize the fundamental distinction between crop-derived biogenic emissions and fossil fuel emissions, the Aircraft Rule is illegal to the extent that EPA has adopted default treatment of crop-derived CO₂ which penalizes biogenic emissions by considering these emissions to be equivalent to fossil fuel emissions. There is no authority in the Clean Air Act that allows or mandates that EPA ignore the source of the feedstocks associated with biogenic CO₂ emissions at stationary sources subject to air emissions permitting under the Clean Air Act, nor allows EPA to ignore the basic science of life cycle analysis applicable to greenhouse gas flows and stocks.

For similar reasons, the Aircraft Rule is arbitrary and capricious as it is unsupported by any scientific record or regulatory finding that would support treating crop-derived biogenic emissions the same as fossil fuel emissions. EPA nowhere made any scientific showing that crop-derived biogenic emissions should be counted as 100% equivalent to emissions from fossil fuels for purposes of the Aircraft Rule, and by operation of the Clean Air Act, as a pollutant subject to regulation for purposes of the Prevention of Significant Deterioration ("PSD") or Title V permitting program.

Likewise, the Aircraft Rule is illegal and *ultra vires* as EPA has not made any science-based endangerment or cause-and-contribute finding specific to crop-derived biogenic emissions from agricultural feedstocks demonstrating that crop-derived biogenic emissions are associated with elevated (as opposed to natural or baseline) atmospheric levels of greenhouse gases, which findings are a necessary predicate to regulation under the Clean Air Act. To the contrary, every other regulatory program in the world – even greenhouse gas regulatory programs in California and the European Union – recognizes that agricultural biogenic feedstocks are generally carbon-neutral on a life cycle basis and in many cases deliver a positive carbon benefit.

2. EPA's Regulation of Farm Practices.

Second, to the extent that in the future EPA intends to condition the eligibility of agricultural crop-derived feedstocks used in aircraft engine fuels on the means of agricultural production, whether expressed as "sustainability" or any other restriction on or evaluation of farming, agricultural production or processing practices, as it has with the Clean Power Plan, such an action would be likewise illegal, arbitrary and capricious and *ultra vires*.

EPA's attempt to regulate farm practices in the Clean Power Plan, or to require that States impose such a criterion as a condition to EPA's approval of section 111(d) state implementation plans that must be submitted by States under the Clean Power Plan, is illegal and *ultra vires* because no such authority over farming, farm fields, or agricultural practices exists in the Clean Air Act. Moreover, EPA's actions intrude on the authority and province of the Department of Agriculture and illegally abrogate rights of States to regulate land-use which are reserved to the States under the U.S. Constitution. Moreover, as discussed above, agricultural biomass is carbon neutral and there

is no rational need to condition regulatory treatment of biogenic emissions from use of such feedstocks on certain agricultural production practices. To the extent that the approach EPA has intimated in the Clean Power Plan is extended to the Aircraft Rule, such an approach would be similarly unacceptable.

Conclusion

For the reasons detailed in this petition and its comments incorporated herein, the Coalition respectfully requests that EPA take the following actions on a priority basis: (1) categorically exclude from the Section 231 endangerment and cause and contribute finding those CO2 emissions resulting from the combustion of biofuels derived from annual herbaceous crops; and (2) expressly confirm that such exclusion prevents any standard of performance for aircraft resulting from any endangerment or cause or contribute finding under Section 231 from making such CO2 “a pollutant subject to regulation” for purposes of the PSD and Title V permitting programs under the Clean Air Act.

In the event that EPA is unwilling to exclude such CO2 emissions categorically, the Coalition requests that EPA: (1) complete the development of its Biogenic Accounting Framework; (2) establish a default Biogenic Accounting Factor (BAF) of zero for such CO2 emissions; and (3) incorporate that BAF into any findings or standards under Section 231.

For the above reasons, the Coalition views any regulation of emissions of crop-derived CO2 as unlawful and unjustifiably burdensome. The Coalition, therefore, urges EPA to exclude emissions of crop-derived CO2 from the reach of the proposed Aircraft rule and any associated performance standard, as well as from the PSD and Title V permitting programs.

* * * * *

The undersigned associations appreciate the opportunity to submit this petition for reconsideration. If you have any questions, please contact the Chair of the Coalition, John Bode, at (202) 534-3498 or JBode@corn.org.

October 14, 2016

Respectfully submitted,



John Bode, Chair
Biogenic CO2 Coalition

American Bakers Association
American Farm Bureau Federation
Corn Refiners Association
Enginuity Worldwide
National Corn Growers Association

National Cotton Council of America
National Oilseed Processors Association
National Cottonseed Products Association
North American Millers Association

Biogenic CO2 Coalition Trade Association Members

American Bakers Association (ABA) is a national association that represents the interests of bakers before the U.S. Congress, federal agencies, and international regulatory authorities. ABA advocates on behalf of more than 700 baking facilities and baking company suppliers.



American Farm Bureau Federation (AFBF) is an independent, non-governmental, voluntary organization governed by and representing farm and ranch families united for the purpose of analyzing their problems and formulating action to achieve educational improvement, economic opportunity and social advancement and, thereby, to promote the national well-being.



Corn Refiners Association (CRA) is the national trade association representing the corn refining (wet milling) industry of the United States. CRA and its predecessors have served this important segment of American agribusiness since 1913. Corn refiners manufacture starches, sweeteners, corn oil, bioproducts (including ethanol), and animal feed ingredients.



Enginuity Worldwide makes an engineered solid biomass fuel, using agricultural residues and woody wastes as the feedstocks, that can be used to co-fire with coal in power plants to produce base load energy. Using carbon neutral farm-based biomass provides an immediate carbon benefit that can help power companies comply with their GHG reduction targets.



National Cotton Council of America (NCC) aims to ensure the ability of all U.S. cotton industry segments to compete effectively and profitably in the raw cotton, oilseed and U.S.- manufactured product markets at home and abroad. NCC serves as the central forum for consensus-building among producers, ginners, warehousemen, merchants, cottonseed processors/dealers, cooperatives and textile manufacturers. The organization is the unifying force in working with the government to ensure that cotton's interests are considered.



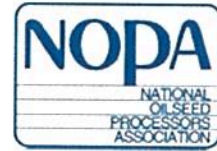
National Corn Growers Association (NCGA) represents more than 40,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 48 affiliated state organizations work together to create and increase opportunities for corn growers.



National Cottonseed Products Association (NCPA) is an organization of firms and individuals engaged in the processing of cottonseed and the marketing of cottonseed products, as well as cottonseed. These include oil mills, refiners, product dealers and product brokers.



National Oilseed Processors Association (NOPA) is a national trade association that represents 13 companies engaged in the production of food, feed, and renewable fuels from oilseeds, including soybeans, sunflower seed, canola, flaxseed and safflower seed. NOPA's member companies process more than 1.6 billion bushels of oilseeds annually at 63 plants located in 19 states throughout the country, including 57 plants that process soybeans.



North American Millers' Association (NAMA) represents millers of wheat, corn, oats and rye in the US and Canada. NAMA members take the raw grain and, through grinding and crushing, create flour and other products that are used to make such favorite foods as bread, pasta, cookies, cakes, and snack foods.

