



2025 M Street, NW  
Suite 800  
Washington, DC 20036

p: 202.367.1163  
f: 202.367.2163  
www.nafoalliance.org

December 1, 2010

Submitted via [www.regulations.gov](http://www.regulations.gov)

Air Docket  
Attention Docket ID No. EPA-HQ-OAR-2010-0841  
Environmental Protection Agency  
Mail Code: 6102T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

EPA Docket Center  
Attention Docket ID No. EPA-HQ-OAR-2010-0560  
Mail code 2822T  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

**Re: National Alliance of Forest Owners' Comments on "PSD and Title V Permitting Guidance for Greenhouse Gases," Docket: EPA-HQ-OAR-2010-0841**

To Whom It May Concern:

The National Alliance of Forest Owners ("NAFO") welcomes the opportunity to submit the following comments in response to the "PSD and Title V Permitting Guidance for Greenhouse Gases" (Guidance), issued by the Environmental Protection Agency (EPA) and noticed in the Federal Register on November 17, 2010. Notice, PSD and Title V Permitting Guidance for Greenhouse Gases (GHGs), 75 Fed. Reg. 70,254 (Nov. 17, 2010). As described below, NAFO welcomes EPA's movement toward recognizing the carbon benefits of utilizing forest biomass. However, the guidance does not alleviate the significant regulatory and permitting burdens that are currently discouraging the development of clean energy projects utilizing biomass. EPA should take action now to reconsider its treatment of biogenic emissions in the PSD permitting program, amend the Tailoring Rule accordingly, and restore consistency with government policy recognizing the climate benefits of the carbon cycle through the use of biomass as a

principal source of domestic renewable energy.<sup>1</sup> NAFO also asks that these comments be considered as part of EPA's response to the "Call for Information" it issued on July 15, 2010, Call for Information: Information on Greenhouse Gas Emissions Associated With Bioenergy and Other Biogenic Sources, 75 Fed. Reg. 41,173 (July 15, 2010), and is submitting these comments in that docket as well.

NAFO's mission is to protect and enhance the economic and environmental values of private forests through targeted policy advocacy at the national level. At the time of this submission, NAFO's members represent 79 million acres of private forests in 47 states. NAFO was incorporated in March 2008 and has been working aggressively since then to sustain the ecological, economic, and social values of forests and to assure an abundance of healthy and productive forest resources for present and future generations. NAFO is a solutions-oriented organization and is prepared to answer any questions EPA has regarding biomass combustion and the lifecycle of forest biomass and to assist the agency in developing a long-term policy that helps achieve the nation's renewable energy and climate change objectives.

In recent years the United States has aggressively sought to reduce its overall energy carbon footprint. Our nation's forests are of paramount importance in this effort, supplying renewable feedstock to the ongoing transition to cleaner fuels and energy, sequestering carbon dioxide (CO<sub>2</sub>) from the air as part of a carbon neutral lifecycle, and displacing use of fossil fuels that EPA has found endanger public health. Unfortunately, EPA's recent Tailoring Rule curtails these efforts by—for the first time in any jurisdiction in the world—treating clean renewable forest biomass identically to fossil fuels. As NAFO has described in other contexts, this stark and sudden reversal of established government precedent is inconsistent with well established science and renewable energy policy and causing irreparable harm to the nation's private forest owners, renewable energy industry, and manufacturers who wish to lower their carbon footprint in the near term. While NAFO supports and appreciates EPA's recognition in the Guidance that the use of forest biomass leads to lower carbon emissions, the Guidance as a whole does nothing to relieve the ongoing harm to the industry and the significant frustration to achieving our nation's low carbon energy goals the Tailoring Rule has

---

<sup>1</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 74 Fed. Reg. 55,292, 55,351, 55,352, 55,361 (Oct. 27, 2009).

caused—harm, that as described below, is impacting renewable energy projects at this moment. The only mechanism to restore the appropriate policy of favoring low carbon, renewable energy is to grant NAFO's Petition for Reconsideration immediately, initiating a notice and comment process that fixes the Tailoring Rule's treatment of forest biomass. We respectfully urge EPA to take these steps in advance of the January 2, 2011 trigger for the Tailoring Rule.

#### **I. Background: EPA's CAA Permitting Programs and the Tailoring Rule**

EPA's Tailoring Rule concerns two Clean Air Act stationary source permitting programs: the Prevention of Significant Deterioration (PSD) pre-construction permit program and the Title V operating permit program. Prevention of Significant Deterioration pre-construction permits must be obtained before constructing or modifying a major source of air pollutants, and require the covered source to adopt the Best Available Control Technology (BACT) for each regulated pollutant it emits. Title V operating permits must be held by each major source of air pollutants, and must catalog emissions standards to which the source is subject. Whether a source qualifies as "major" depends on whether it emits quantities of a pollutant over certain thresholds, prescribed by the Clean Air Act and agency regulations. The purpose of EPA's Tailoring Rule was to prescribe the thresholds for emissions of carbon dioxide and five other greenhouse gases, which EPA will be adding to these permitting programs on January 2, 2011.

The established domestic and international practice is that carbon dioxide emissions from biomass combustion are not counted toward regulatory thresholds, because such emissions do not raise global concentrations of carbon dioxide. This is because growing plants absorb carbon dioxide from the atmosphere. Indeed, all plant materials are ultimately derived from this carbon dioxide, which is drawn from the atmosphere. When plant biomass materials, such as biofuels made from forest biomass, are burned, the carbon dioxide emitted contains the same carbon that was sequestered by the plant feedstocks. Thus, the combustion of biofuels does not result in net carbon dioxide emissions—that is, it is "carbon neutral." All carbon dioxide emitted is a product of the carbon dioxide absorbed, making the carbon dioxide released back to the atmosphere a net zero with respect to the natural carbon cycle. As EPA has repeatedly reported—and properly admits again in the Guidance—if one considers net

fluxes of carbon dioxide from the forestry sector as a whole, including growth and parallel combustion, the sector “is a net carbon sink.” Guidance at 8–9.<sup>2</sup>

NAFO appreciates EPA’s proper recognition of the benefits of forest biomass in the Guidance. However, the Guidance does not address the adverse consequences of EPA’s approach to biomass in the Tailoring Rule. In setting new thresholds for emission of carbon dioxide under the PSD and Title V programs, EPA’s proposed Tailoring Rule properly maintained the government’s traditional position of not counting carbon dioxide emissions from biomass combustion. It dictated that for “the applicable [global warming potentials] GWPs” of individual greenhouse gases and “for guidance on how to calculate a source’s GHG emissions in tpy CO<sub>2</sub>e,” sources should rely on “EPA’s “Inventory of U.S. Greenhouse Gas Emissions and Sinks.””<sup>3</sup> The inventory correctly excludes emissions from “combustion of biomass and biomass-based fuels,” based on the principle of carbon neutrality—“[i]t is assumed that the C released during the consumption of biomass is recycled as U.S. forests and crops regenerate, causing no net addition of CO<sub>2</sub> to the atmosphere.”<sup>4</sup> The inventory elaborates on this reasoning in the context of woody biomass, stating “in the long run the CO<sub>2</sub> emitted from biomass consumption does not increase atmospheric CO<sub>2</sub> concentrations, assuming that the biogenic C emitted is offset by the uptake of CO<sub>2</sub> that results from the growth of new biomass.”<sup>5</sup> Using this approach, the proposed Tailoring Rule appropriately treated biomass combustion as carbon neutral.

In a sudden and unprecedented reversal of this policy, the final Tailoring Rule provided that CO<sub>2</sub> emissions from biomass combustion *would* count toward the rule’s applicability thresholds for the PSD and Title V permitting programs. See 75 Fed. Reg. 31,514 (Jun. 3, 2010). EPA provided no substantive explanation for this reversal. In the preamble to the final rule, EPA misconstrued comments by NAFO and others,

---

<sup>2</sup> This actually understates the extent to which biomass combustion lowers global concentrations of carbon dioxide, because it does not account for the fact that biomass combustion displaces combustion of fossil fuels that raise atmospheric levels of carbon dioxide.

<sup>3</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 74 Fed. Reg. 55,292, 55,351, 55,352, 55,361 (Oct. 27, 2009).

<sup>4</sup> EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-1997 at Energy 3-1–3-2.

<sup>5</sup> *Id.* at Energy 3-59.

suggesting that these parties were seeking an “exemption” to the rule as opposed to a continuation of conventional policy that would not subject biomass emissions to regulation in the first place. EPA further declared for the first time that it would count CO<sub>2</sub> emissions from biomass combustion toward the PSD and Title V thresholds, without regard to the carbon sequestration occurring in the natural carbon cycle, beginning on January 2, 2011, when greenhouse gas permitting begins.

On July 30, 2010, NAFO petitioned EPA to reconsider the Tailoring Rule’s treatment of biomass combustion, and stay the Tailoring Rule’s imposition of permitting requirements on biomass combustion. As explained in that petition, EPA’s decision to count carbon dioxide emissions from biomass combustion is arbitrary and capricious for at least two reasons. First, EPA has not offered a reasoned explanation for reversing the position it took in the proposed Tailoring Rule, for ignoring NAFO’s comments that it should maintain that position, or for rejecting the policy of EPA and other federal agencies regarding CO<sub>2</sub> emissions from biomass combustion. Second, EPA’s unexpected change-of-course in the final Tailoring Rule is not a logical outgrowth of its proposed Tailoring Rule and thus is a violation of the Administrative Procedure Act and the Clean Air Act. EPA has not yet taken any action on NAFO’s petition for reconsideration or request for a stay. As explained below, EPA should promptly grant the stay and begin the reconsideration process to mitigate the harm to the biomass sector the Guidance fails to address. See *infra* Section III. NAFO has also petitioned for review of the Tailoring Rule in the United States Court of Appeals for the District of Columbia Circuit. See *NAFO et al., v. EPA*, D.C. Cir. Case No. 10-1209 (filed Aug. 2, 2010). That case is still pending.

On July 15, 2010, EPA issued a “Call for Information” on the appropriate treatment of emissions from biomass combustion. 75 Fed. Reg. 41,173. NAFO submitted extensive comments demonstrating that biomass combustion does not increase atmospheric levels of carbon dioxide. See *infra* Section III.B (summarizing NAFO’s comments). In the call for information, EPA asserted that “the Tailoring Rule did not take final action one way or another concerning . . . an exclusion [for biomass emissions].” *Id.* at 41,173. But EPA has finally adopted the Tailoring Rule, which states that biomass emissions count toward its thresholds, and the Tailoring Rule thresholds are now codified in the Code of Federal Regulations, so unless EPA takes further action,

the previous action of EPA will stand, and biomass emissions will be counted and regulated as of January 2, 2011.

## **II. EPA's Guidance Does Not Remove The Tailoring Rule's Barriers To The Use Of Renewable Energy**

On November 17, EPA published notice in the Federal Register of new guidance on implementing the PSD program for greenhouse gases to provide direction to local permitting authorities. Notice, 75 Fed. Reg. 70,254. The Guidance offers some positive comments and suggestions regarding the benefits of biomass, but fundamentally and legally does nothing to solve the problems EPA has created by including emissions from biomass combustion in its Clean Air Act permitting programs.

### **A. The Guidance Properly Acknowledges The Benefits of Biomass Without According Biomass The Appropriate Regulatory Treatment**

First, on the positive side, the Guidance acknowledges the benefits of biomass combustion, and the importance of aligning the Clean Air Act permitting process with other federal and local programs designed to promote biomass combustion as an alternative to fossil fuel use. Most importantly, EPA acknowledges that biomass combustion does not result in a net increase in atmospheric carbon dioxide because combustion and production of biomass results in a carbon neutral cycle—in fact, it leads to a significant decrease in concentrations of carbon dioxide due to expanding forest stock. Guidance at 8–9. EPA states: “the Land-Use, Land-Use Change and Forestry (LULUCF) sector (including those stationary sources using biomass for energy) in the United States is a net carbon sink, taking into account the carbon gains (e.g., terrestrial sequestration) and losses (e.g., emissions or harvesting) from that sector.” *Id.*

Unfortunately, the Guidance does not follow this acknowledged principle to its logical conclusion—that emissions of carbon dioxide from biomass combustion should not be counted toward the applicability thresholds of the Clean Air Act permitting programs. Instead, EPA suggests that permitting authorities could account for the reality of carbon neutrality in more limited, vague, or as yet undefined ways. Specifically, the Guidance suggests:

- “permitting authorities may consider, when carrying out their BACT analyses for GHG, the environmental, energy and economic benefits that may accrue from the use of *certain types* of biomass . . . for energy generation,” *id.* at 9 (emphasis added);
- “it is appropriate for permitting authorities to account for both existing federal and state policies”—which are part of “a national strategy to reduce dependence on fossil fuels and to reduce emissions of GHGs”—“and their underlying objectives in evaluating the environmental, energy and economic benefits of biomass fuel,” *id.*;
- “permitting authorities might determine that, with respect to the biomass component of a facility’s fuel stream, *certain types* of biomass by themselves are BACT for GHGs,” *id.* (emphasis added).

NAFO does not dispute that each statement standing alone could encourage the use of forest biomass. The Guidance, however, in no way collectively goes far enough to solve the problem that EPA created in the Tailoring Rule for several key reasons. Furthermore, EPA has stated it *may* provide additional guidance in January regarding the treatment of biomass, adding significant uncertainty as to the meaning of the statements made in this Guidance.

#### B. The Guidance Does Not Alleviate Any Of The Tailoring Rule’s Burdens

First, none of the options provided in the Guidance recognizes that emissions of carbon dioxide from biomass combustion are carbon neutral, and thus should not be counted toward the applicability thresholds of the Clean Air Act permitting programs in the first instance. EPA does not acknowledge that, because biogenic emissions have no adverse effect on the environment, the agency lacks the authority to regulate them under the PSD program at the outset. *See infra* at 16. Rather, the Guidance, by bringing the emissions within the regulatory reach of EPA and states, retains as a baseline that such emissions will be controlled and permitted similar to fossil fuels.

Second, because they are mere suggestions to local permitting agencies contained in Guidance, none of the options provides assurance to stakeholders that local permitting authorities will not impose onerous regulatory requirements under the

Clean Air Act permitting programs on GHG emissions from biomass combustion. Nothing in the Guidance prevents states from treating biogenic emissions identically to fossil fuels, thus removing the regulatory incentives to utilize biomass over fossil fuels. Further, a potential patchwork of fifty or more differing approaches to forest biomass will provide further disincentive to create national markets for such clean and renewable fuels. The Guidance also inconsistently instructs states on the one hand not to require fuel switching in permitting decisions, but arguably encourages fuel switching to forest biomass, generating policy and legal inconsistencies and vulnerabilities within the document itself. The only appropriate way for EPA to proceed in a manner that appropriately encourages the use of forest biomass is to implement a consistent national rule recognizing the full carbon cycle in the treatment of biogenic emissions and specifying that, because such emissions do not add to overall atmospheric carbon, they are not subject to Clean Air Act permitting requirements in the first place.

Third, and crucially, the options only apply to the requirement of adopting Best Available Control Technology *for greenhouse gases*. Once a proposed source is subject to PSD permitting, it must adopt BACT for *each* pollutant it emits in significant amounts, even if it does not emit “major” amounts of those pollutants. Thus, the Tailoring Rule will newly capture biomass facilities that emit major amounts of biogenic GHGs, subjecting them to the PSD program—and BACT requirements—for every pollutant they emit, even though those facilities’ emissions of such pollutants are below the congressionally mandated major source thresholds for conventional pollutants. This means biomass facilities will face heavier permitting burdens than fossil fuel facilities that have a similar impact on net atmospheric concentration of pollutants. Consequently, any solution that is limited to BACT for greenhouse gases is dramatically incomplete; once biomass facilities are made subject to PSD, they will face onerous and unjustified burdens for every pollutant they emit, even if those emissions are too small to justify regulating them individually under existing law.

Fourth, none of these options addresses the onerous and unjustifiable administrative burdens that the PSD and Title V programs would place on biomass facilities, quite apart from any cost of adopting BACT. Using data on the current PSD program, EPA estimates that applying for and obtaining a PSD permit costs approximately \$84,500 per applicant in administrative costs alone, and delays the onset of construction by a year. Tailoring Rule, 75 Fed. Reg. at 31,534–35. Similarly, EPA

estimates that applying for and obtaining a Title V permit costs \$46,350. *Id.* at 31,563. These estimates, however, are almost certainly too low because of the novelty of GHG permitting. As EPA acknowledges, the unprecedented nature of GHG permitting means it will take longer to “develop control recommendations” and to respond to “comments from various stakeholders, [and] from citizens groups to equipment vendors, who will seek to participate in the permit process.” 75 Fed. Reg. at 31,540. Finally, CAA Section 304, 42 U.S.C. § 7604, authorizes citizen suits challenging the validity of a proposed source’s permit. If biomass sources must obtain CAA permits, they will be newly vulnerable to lawsuits brought by numerous interest groups that may have a variety of reasons for wanting to obstruct development of biomass facilities.

### C. EPA’s Uncertain Future Actions Will Not Prevent Immediate Harm

The Guidance also announced EPA’s plans to take two potential and uncertain future actions related to treatment of biomass combustion:

- EPA may “issue guidance in January 2011 that will provide a suggested framework for undertaking an analysis of the environmental, energy and economic benefits of biomass in Step 4 of the top-down BACT process,”—including the carbon neutrality of some types of biomass—“that, as a result, may enable permitting authorities to simplify and streamline BACT determinations with respect to certain types of biomass,” *id.*;
- “EPA also plans to determine by May 2011 . . . whether the issuance of a supplemental rule is appropriate to address whether the Clean Air Act would allow . . . permitting authorities . . . when determining the applicability of PSD permitting requirements to sources of biogenic emissions, to quantify carbon emissions from bioenergy or biogenic sources by applying separate accounting rules for different types of feedstocks that reflect the net impact of their carbon emissions,” *id.* at 9.

NAFO is encouraged that EPA recognizes that it must act to correct the shortcomings in the Tailoring Rule regarding biomass combustion. Unfortunately, neither of these contemplated steps appear to solve the problem.

EPA's contemplated further guidance in January 2011 is deficient in at least three ways. *First*, any guidance cannot prevent biomass facilities from being inappropriately included in the Clean Air Act permitting programs on the basis of emissions from biomass which are properly considered carbon neutral in the first instance. Indeed, the contemplated Guidance would apparently be focused on the fourth step of the five-step BACT process, which consists of assessing the environmental, energy, and economic impacts of various BACT alternatives. This means that, even for greenhouse gases, biomass facilities would be forced to go through the entire, onerous, five-step BACT process even when their emissions have no net impact on the environment. Streamlining limited to the fourth step of the BACT process falls short of recognizing the benefits of biomass combustion and removing the regulatory disincentives to the use of such energy. *Second*, as mere guidance, the anticipated January 2011 action could not provide biomass facilities with the certainty they need that local permitting authorities will not impose even more onerous requirements through the BACT process. *Third*, again, this proposed action is limited to BACT for GHGs, which does nothing to solve the additional problem of requiring biomass facilities to comply with all of the requirements of the PSD program, including adopting BACT for *each* pollutant emitted by the facility regardless of whether such emissions are independently significant.

EPA's suggestion of a May 2011 decision on supplemental rulemaking, while potentially closer to the mark as a possible rule fix, is also inadequate. Unlike the other suggestions, which narrowly focus on providing biomass some possible benefit in determining BACT for GHGs, a rule fix could account for the full biogenic carbon cycle and conclude that carbon dioxide emissions from biomass combustion should not be counted toward permitting applicability thresholds in the first instance, and thus bring the Tailoring Rule in line with previously established policy. In other words, this proposal could go further than helping biomass facilities in determining BACT for GHGs, potentially saving biomass facilities from having to get a PSD permit at all. For these reasons, we support issuance of a supplemental rulemaking. Unfortunately EPA's approach is flawed in two important respects.

First, EPA says that by May 2011 it merely plans "to determine whether the issuance of a supplemental rule is appropriate." *Id.* at 9. EPA does not specify whether it would issue a final supplemental rule in May 2011, a proposed supplemental

rulemaking in May 2011, or as the literal wording suggests, merely issue a decision to proceed with a supplemental rule of some kind. EPA will begin counting emissions from biomass combustion toward permitting applicability thresholds on January 2, 2011. Each of the options proposed by EPA introduces further and unnecessary delay into the process of correcting the Tailoring Rule. EPA has the means to act much earlier than May and, indeed, could do so before the January 2, 2011 trigger date by granting NAFO's Petition for Reconsideration and beginning a public notice and comment process on how to address this issue under the Tailoring Rule itself. This would seem an efficient use of EPA's time given that the consideration EPA would put into further BACT guidance covering biogenic emissions would likely be identical to the analysis needed to propose a supplemental rule. Ultimately any BACT guidance must be consistent with the underlying rule. Therefore, clarifying the treatment of biomass in the rule is a prudent step to ensure that a uniform policy fully recognizing the carbon benefits of biomass energy is administered across the biomass sector as opposed to a confusing and potentially contradictory patchwork of policies at the state level under an evolving federal program.

Moreover, there is another reason for immediate action on EPA's part—even at this date no new plan for a facility could hope to receive a permit and be completed by January 2011, or even July 1, 2011. This means that at this time, while federal and state law is encouraging and mandating increased use of biomass, actual development of new facilities is stymied by the prospect that they will be subject to onerous and unnecessary permitting requirements. A forthcoming study by Forisk Consulting, conducted for NAFO, found a major economic impact because of this regulatory uncertainty.<sup>6</sup> EPA must act immediately to provide the biomass industry the certainty it needs to meet local and national renewable energy goals, and thereby help the country increase its use of domestic renewable energy while also helping to achieve reductions in net greenhouse gas emissions. As explained in Section III below, EPA should respond to NAFO's petition for reconsideration and a stay by immediately staying application of the Tailoring Rule to carbon dioxide emissions from biomass combustion. This would provide breathing space for EPA as it takes corrective action to put in place an appropriate

---

<sup>6</sup> As soon as this study is available, it will be posted on NAFO's website at <http://www.nafoalliance.org/tailoring-rule-economic-impact>, and submitted to the Guidance and Call for Information dockets.

treatment of biomass emissions without holding up development of the nation's biomass capabilities.

Although EPA has offered few hints about the ultimate contours of its proposed May 2011 action, the limited insights provided in the Guidance suggest that it could be flawed in another crucial respect. EPA says that it will determine whether permitting authorities may use "separate accounting rules for different types of feedstocks that reflect the net impact of their carbon emissions." Guidance at 9. This is troubling. NAFO acknowledges that it may be appropriate to distinguish biomass combustion from combustion of biofuels that are regulated separately under the Renewable Fuel Standard. But under no circumstances should EPA authorize permitting authorities to divide woody biomass into multiple categories differentiating perceived carbon benefits based on different types of woody biomass, or particular methods of forest management. Forest management is already regulated by a well-established framework of federal, state, and local authorities that has succeeded in placing the U.S. as a world leader in sustainable forest management. Empowering local air authorities to regulate forests on top of the existing framework would be to subject forest owners to crippling, overlapping, and unjustifiable regulation that could contradict well-established practices and significantly increase legal exposure with no marginal environmental benefit. Furthermore, feedstock-by-feedstock regulation of woody biomass would undo all the good of the established government policy of not counting emissions from biomass combustion, because the accounting rules and associated verification requirements could be just as onerous as PSD permitting requirements. EPA must reject this course.

**III. The Deficiencies of the Guidance Make Plain That EPA Must Exercise Its Clear Authority to Stay Application of the Tailoring Rule to Emissions of Biomass, and Begin Reconsideration of Its Approach to Biomass**

**A. EPA Must Immediately Grant NAFO's Petition for Reconsideration and Stay to Give the Agency Time to Develop a Final Policy**

NAFO has asked EPA to reconsider the Tailoring Rule's treatment of biomass emissions and to stay application of its Tailoring Rule to emissions from biomass combustion while it is reconsidering this issue. Carbon dioxide from biomass combustion will first be counted on January 2, 2011. In light of that looming deadline,

EPA should immediately: 1) grant NAFO's Petition for Reconsideration; 2) stay application of the Tailoring Rule to emissions of carbon dioxide from biomass combustion; 3) convene a proceeding for reconsideration of the treatment of biomass in the Tailoring Rule and set a reasonable deadline for a final decision on the treatment of biogenic emissions in the PSD and Title V regulatory programs. As soon as possible thereafter, EPA should propose an amendment to the Tailoring Rule concluding that emissions of carbon dioxide from biomass combustion should be excluded from the PSD and Title V regulatory programs.

It should be noted that under CAA § 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), EPA at this time may grant NAFO's petition and request for a stay without making any final decision on the appropriate treatment of emissions from biomass combustion. Granting NAFO's petition merely *begins* the reconsideration process. NAFO understands that EPA will want to consider many comments, including those submitted in the Call for Information, 75 Fed. Reg. 41,173 (July 15, 2010), before finalizing any amendment to the Tailoring Rule.

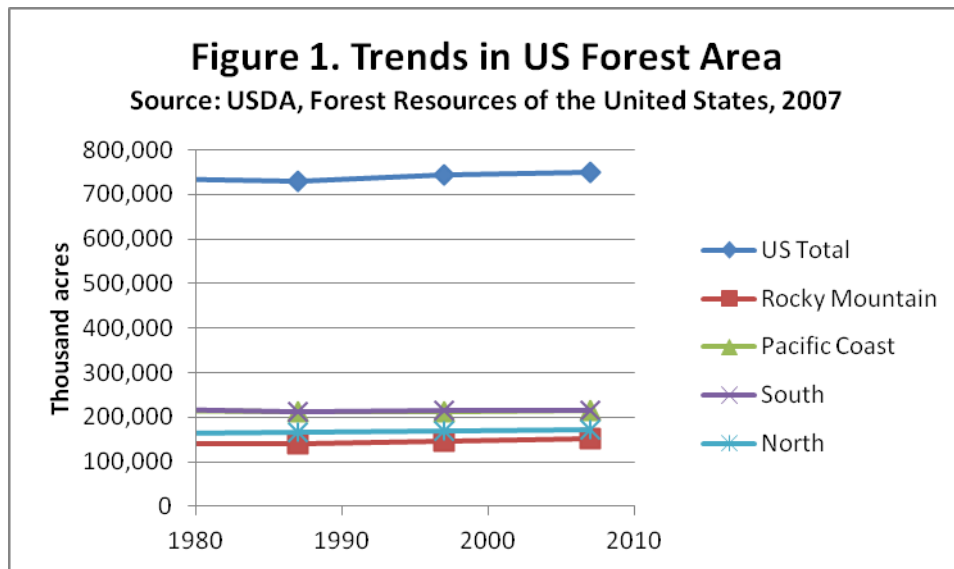
However long it will take to reach such a final decision, EPA has no justification for waiting to grant NAFO's petition for reconsideration; that petition should be granted now. NAFO's petition presents a simple issue: should EPA at least *reconsider* its sudden course reversal in the final Tailoring Rule? There is no need for further consideration of that question. Indeed, EPA has already indicated that it will, in some as yet unspecified manner, reconsider nearly identical questions in May 2011. Guidance at 9. Furthermore, EPA should immediately grant NAFO's request for a stay to avoid irreparably damaging the nation's biomass efforts during the period in which EPA considers the appropriate course for biomass emissions. See Pet'n for Reconsideration, Att. 1.

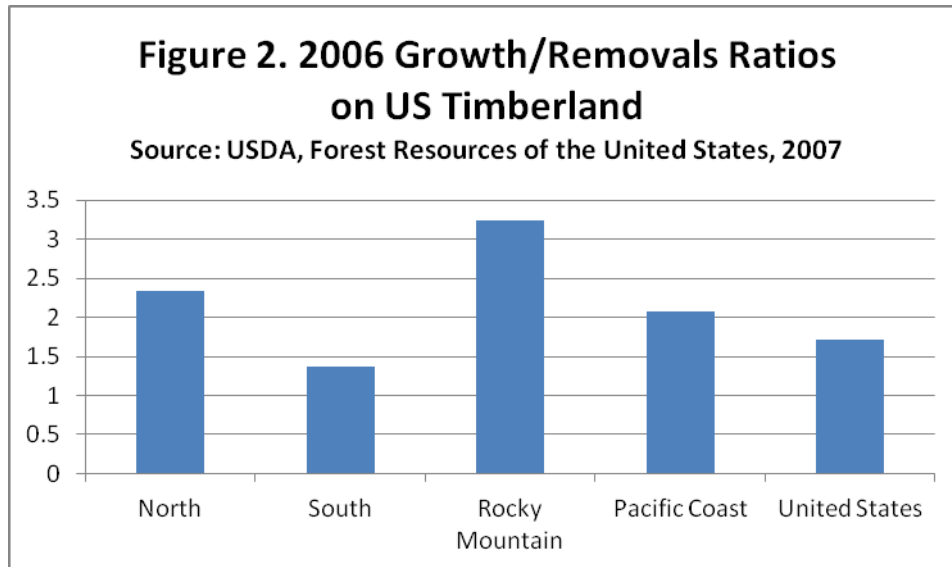
B. Ultimately, EPA Can and Should Determine That Carbon Dioxide Emitted From Biomass Combustion Does Not Trigger Permitting Requirements

EPA may grant NAFO's petition without reaching an ultimate decision on how biomass should be treated. On this ultimate decision, it is clear that under the Clean Air Act, EPA has discretion to distinguish biomass combustion from combustion of fossil fuels and exclude biomass combustion from its permitting programs. As NAFO

documented in its submission to EPA regarding the Call for Information, unlike carbon dioxide emissions from fossil fuels, emissions from biomass combustion do not increase net atmospheric levels of carbon dioxide and thus have no net effect on the environment. See NAFO's Comments on the Call For Information, Attachment 3. This is because any emissions associated with biomass combustion were initially sequestered by the forest, and are offset by growing forest stocks which remove carbon dioxide from the atmosphere, leading to a neutral carbon lifecycle.

This carbon neutral cycle actually leads to *less* atmospheric carbon in two respects. First, as shown in the graphs below, forest stocks are actually increasing nationwide, meaning more carbon is taken out of the air from growing forests than is added to it from biomass combustion.





Second, biomass combustion has the promise of displacing combustion of fossil fuels. This is why EPA's Greenhouse Gas Reporting Rule does not count emissions from biomass combustion, and why the Department of Energy and virtually every government agency in the world has recognized that biogenic CO<sub>2</sub> emissions have no adverse effects. The government's recent Draft Federal Greenhouse Gas Accounting and Reporting Guidance, issued by the Council on Environmental Quality (CEQ), also makes clear that biogenic emissions are not subject to agency reduction targets because they are "naturally 'recycled,' since the carbon in the biofuel was in the atmosphere before the plant was grown and would have been released normally through decomposition after the plant died." See 75 Fed. Reg. 41452 (July 16, 2010). Furthermore, a recent study by noted experts at the University of Washington strongly supports the government's policy of supporting carbon neutrality. See Bruce Lippke and Elaine Oneil, *Unintended Consequences of the EPA Tailoring Rule: Treatment of Biomass Emissions the Same as Fossil Fuel Emissions* (Sept. 10, 2010), Attachment 4. As this study notes, the Tailoring Rule's contrary position fails to recognize "that biogenic emissions are offset by forest carbon removed from the atmosphere in contrast to the one way flow of fossil emissions to the atmosphere." *Id.* at 17. Consequently, the Tailoring Rule will result in "a decrease in US production [in the forestry sector] and an increase in . . . fossil intensive substitutes" that will increase atmospheric concentrations of carbon dioxide. *Id.* at 18.

Beyond sound policy and science, EPA has clear legal authority to not bring biogenic emissions within the PSD and other permitting and regulatory systems. First, it goes without saying that the Clean Air Act does not authorize EPA to regulate emissions which do not adversely affect the environment, such as the carbon dioxide emissions from biomass that do not increase overall atmospheric carbon. Under the Clean Air Act, EPA only regulates those pollutants which have an adverse environmental impact. See 42 U.S.C. § 7408(a)(1); 42 U.S.C. § 7521(a). Thus, in the Endangerment Finding for greenhouse gases, EPA concluded that emissions of greenhouse gases from vehicles cause and contribute to air pollution that endangers public health and welfare because they raise net atmospheric concentrations of GHGs. See 74 Fed. Reg. 66,496 (Dec. 15, 2009). That finding should not apply to biogenic carbon dioxide emissions, because they do not have a net adverse effect on the environment so EPA does not have the authority to regulate them.

Moreover, under the applicable case law, EPA has clear discretion to distinguish biogenic CO<sub>2</sub> emissions from other CO<sub>2</sub> emissions. In its landmark *Massachusetts v. EPA* decision, the Supreme Court declared that EPA had “significant latitude as to the manner, timing, content, and coordination of its regulations.” 549 U.S. 497, 533 (2007). EPA has already exercised this discretion to limit the reach of its greenhouse gas regulation by limiting its definition of “greenhouse gases” to six gases that it judged to have the most serious impact. EPA certainly could assert similar discretion to make clear that the PSD permitting program does not include carbon dioxide emissions from biomass combustion because biogenic emissions in the United States do not increase net atmospheric carbon dioxide and serve to offset the utilization of fossil fuels for combustion.

Furthermore, EPA has consistently demonstrated its wide authority and discretion to avoid applying its permitting programs to emissions with negligible or de minimis environmental effects. Thus, despite its mandate to control emissions of volatile organic compounds, EPA has established a longstanding regulatory exclusion of certain volatile organic compounds (VOCs) from the otherwise applicable statutory definition. 40 C.F.R. § 51.100(s); see also 40 C.F.R. §§ 52.21(b)(2)(ii) and 52.21(b)(3). Specifically, EPA’s PSD regulations exclude certain compounds from the definition of VOCs even though they are technically “volatile” and “organic,” because such compounds would have negligible environmental impact. See 40 C.F.R. § 51.100(s).

Similarly, EPA's permitting rules have long contained *de minimis* exceptions for emissions with essentially no adverse impact. As noted, biomass combustion has no negative impact—indeed it has a positive impact—and should, similarly not be included in EPA's permitting programs.

## **Conclusion**

NAFO appreciates the opportunity to provide input on EPA's Clean Air Act Permitting Guidance. While this Guidance in some ways reflects a welcome change of intent in EPA's recent treatment of biomass, it ultimately is inadequate to address the problems that EPA has created through the Tailoring Rule's position on biomass combustion. Consequently, NAFO urges EPA to speedily grant NAFO's request for a stay of the Tailoring Rule to emissions of carbon dioxide from biomass combustion, and begin the reconsideration process free from the impending application of that rule on January 2, 2011.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Tenny', with a long horizontal stroke extending to the right.

David P. Tenny  
President and CEO  
National Alliance of Forest Owners