EJ Groups Raise Concern Over ESPS Memo Allowing Waste-Derived Fuel

Environmental justice (EJ) groups are warning that EPA’s existing source performance standards (ESPS) may encourage fossil fuel-fired power plants to burn waste-derived fuel that could be worse for the climate than coal while also exposing nearby communities to mercury and other toxics released when the waste is burned.

The groups say that a November memo from acting EPA air chief Janet McCabe on biogenic carbon dioxide (CO2) emissions suggests that the agency would allow some “waste-derived” feedstocks to be considered carbon neutral in the ESPS, along with biomass. EPA confirms the memo addresses both waste-derived and biomass fuels.

Further, the groups point to EPA’s controversial waste definition rule — known as the non-hazardous secondary materials (NHSM) rule issued under the Resource Conservation & Recovery Act — which defines what materials are waste and thus subject to strict incinerator rules when burned, and what materials are fuel and subject to less-stringent boiler rules, such as coal-fired boilers at power plants.

The Global Alliance for Incinerator Alternatives (GAIA) discussed the issue on an April 22 National Environmental Justice Advisory Council (NEJAC) call, and warned in an April 20 letter that the proposed ESPS, combined with the McCabe memo and the NHSM, means that EPA is allowing “significant policy incentives and financial subsidies to be directed to one of the most harmful industry sectors in the” United States. “Burning waste remains the most carbon intensive, toxic and expensive form of electricity generation, and continues to disproportionately impact environmental justice communities,” the alliance says.

The letter urges NEJAC to ask EPA to remove all support for waste and biomass energy in the ESPS — an issue the NEJAC did not take up on the call.

GAIA’s Monica Wilson told NEJAC members that the McCabe memo, along with the NHSM rule that includes “significant loopholes” for burning waste as fuel, will encourage coal plants to burn waste because those GHG emissions would not be counted. “It will end up pushing coal plants to burn garbage along with coal,” Wilson said. “We request NEJAC to advise EPA to remove pathways for burning waste in the” ESPS.

Wilson in a follow-up April 24 interview with InsideEPA/climate said the Nov. 19 McCabe memo — which was issued primarily to address biomass — “left a really big open door to calling all waste carbon neutral.”

For example, the memo refers to a new draft biogenic CO2 framework — released the same day as the memo and now undergoing review by EPA’s Science Advisory Board — as supporting “the finding that use of waste-derived feedstocks and certain forest-derived industrial byproducts are likely to have minimal or no net atmospheric contributions of biogenic CO2 emissions, or even reduce such impacts, when compared with an alternate fate of disposal.”

The memo also says that during ESPS implementation, EPA “expects to recognize the biogenic CO2 emissions and climate policy benefits of waste-derived and certain forest-derived industrial byproduct feedstocks” when the agency considers state compliance plans.

An EPA spokeswoman confirms to InsideEPA/climate that the McCabe memo addresses waste-derived fuels in addition to biomass, but declined to address further questions other than to say the agency will take all 4.3 million comments it has received on the proposal “into careful consideration as we work toward a final rule.”

Waste Materials

One industry source downplays the idea that coal plants will begin co-firing with solid waste in order to comply with the ESPS because coal boilers would not want to be subject to strict incinerator rules. However, the source confirms that plants may burn waste materials for which EPA has established fuel “legitimacy criteria” under the NHSM rule, such as construction debris, scrap tires, resinated wood and some other processed wastes.

Plants subject to the ESPS “would only want to co-fire a fuel that EPA has determined is a legitimate fuel that has been sufficiently processed and meets all of the other criteria to be considered a legitimate fuel,” the source says.

GAIA’s Wilson warns that the McCabe memo is written so broadly that states may opt to encourage coal plants to keep operating and co-fire with such materials for compliance purposes, even though the waste-derived fuels have just as much CO2 as coal and will release air toxics as well.

GAIA and other environmental groups, including Sierra Club and Earthjustice, also raised this issue as part of Dec. 1 comments on the ESPS, which warned that “incentivizing any form of combustion energy, whether it be coal, gas, trash, or biomass, raises serious concerns about increased public health impacts.”

The letter also said that by allowing exemptions for power plants using “waste-derived fuels . . . the EPA is sending a clear signal to a range of combustion energy companies that they can access a free pass for increases in their climate and toxic pollution loads.”

Waste Management in its Nov. 24 comments on the ESPS appears to confirm that waste-derived fuels, as defined in

the NHSM and related legitimacy criteria, could be used for compliance. “[W]e commend the agency for outlining its approach to addressing biogenic CO2 emissions from waste-derived materials and biogas, as well as the policy and climate benefits of recovering energy from those feedstocks. EPA’s communication of its intended approach to accounting for biogenic CO2 from particular feedstocks is vital to states that wish to include energy from biogenic feedstocks in their compliance plans.”

GAIA’s Wilson said in the interview that EPA has not responded to the group’s comments and the concern is growing, prompting the outreach to NEJAC. “If the memo stands as it is and interpreted as I fear . . . then it’s a really big problem” that could undercut far better solutions for the climate, such as renewable energy and efficiency.

“Once you call emissions from burning waste carbon neutral, then there’s this huge opportunity for those industries to get these types of subsidies that are meant for truly clean renewable energy programs like solar and wind. We’ve seen that in states where incinerators have greenwashed their way” into renewable energy programs, Wilson said. “Getting this right at the start is critical” for the ESPS.

Separately, environmental groups have challenged EPA over its NHSM and legitimacy criteria in a lawsuit, Eco Services Operations LLC v. EPA, that will be argued before the U.S. Court of Appeals for the District of Columbia Circuit May 11.

Wilson noted that whether the NHSM rule withstands legal scrutiny will have “a big impact on all of this.”

Another environmentalist familiar with the lawsuit adds groups are concerned a final ESPS that retains the carbon neutrality of waste-derived fuel will encourage more states to add waste to their renewable energy programs. The source notes that some of the waste that EPA considers fuel includes solid waste that has been minimally processed into pellets or sorted without necessarily removing harmful materials. “EPA has defined waste almost out of existence” under the rule, and allows almost anything to be considered a fuel, the source complains.

A third environmentalist adds that burning waste-derived fuel is not necessarily an immediate concern because the price of natural gas is so low right now, but if gas prices rise, then there could be a significant incentive to co-fire with such materials.

But the industry source says the materials are in fact carbon neutral because there would be no changes to land use or forest carbon stocks when they are burned. Also, EPA considers the biogenic portion of waste burned at waste-to-energy plants carbon neutral — through use of formula developed by an international standards organization that can determine what portion of GHGs are anthropogenic which are biogenic — while subjecting the plants to the strict incinerator rules. — Dawn Reeves