December 1, 2014

The Honorable Gina McCarthy
Administrator, United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

To be submitted via: A-and-R-Dpclet@epa.gov

Re: Docket ID No. EPA-HQ-OAR-2013-0603

Comments to the EPA and States on the Proposed Clean Power Plan Regulating Existing Power Plants under Section 111(d) of the Clean Air Act.

Dear Administrator McCarthy:

The Biomass Power Association ("BPA") appreciates this opportunity to provide the Environmental Protection Agency ("EPA") with comments on the proposed Clean Power Plan.

BPA is the voice of biomass-to-electricity in the United States. The Association represents power plants in more than 20 states that use organic materials to generate baseload, grid-connected power. Our industry is an economic engine for rural America, providing some 14,000 jobs in communities hit hard by the closure of mills and manufacturing plants. Whether rice hulls in Louisiana, orchard prunings in California or wood residue in states from California to Maine, our members produce power from feedstocks indigenous to our host communities.

More than just power, we provide an environmental solution that separates us from most other forms of renewable power—we offer a mitigation strategy in the fight against climate change. By using low-value, organic materials that would otherwise be discarded, causing CO_2 emissions, we create feedstocks that displace fossil fuels, promote healthy forests and aid in the fight against wildfires, and participate in what EPA calls "the biological cycling of carbon" that can result in "minimal or no net atmospheric contributions of biogenic CO_2 emissions, or even reduce such impacts…" (Memorandum of Assistant Administrator Janet McCabe dated November 19, 2014 ("McCabe Memorandum")).

As you know, biomass power represents 22% percent of the Nation's renewable energy supply, according to the U.S. Energy Information Administration (EIA). Biomass qualifies as "renewable" in virtually every state renewable portfolio standard currently in force. Despite this state level support, the June draft of the Clean Power Plan left unresolved how the Agency was going to account for biogenic

carbon emissions, and which feedstocks could be utilized and thus form the basis for a successful compliance plan under Section 111(d) of the Clean Air Act. The McCabe Memorandum and the accompanying Revised Framework for Assessing Biogenic Carbon Dioxide Emissions from Stationary Sources ("Revised Framework"), issued earlier this month, provide important clarity on a number of issues and represent a significant step forward in providing states an important renewable, baseload energy resource long recognized by countries worldwide for inclusion in their carbon reduction strategies.

Pursuant to the McCabe Memorandum and the Revised Framework, EPA has concluded, correctly, that as part of Section 111(d), EPA is prepared to recognize the "biogenic CO_2 emissions and climate policy benefits" of waste-derived biogenic materials and forest-derived industrial by-products based on the Revised Framework. In addition, EPA has declared that "sustainably sourced" agricultural and forestry-derived feedstocks "may be an approvable element of [a] compliance plan." We welcome these policy determinations.

In light of the McCabe Memorandum and the Revised Framework, we request that EPA clearly and unequivocally exempt biomass generating facilities from the definition of an Affected Electric Generating Unit under the Plan. For investor confidence and for the sake of our employees and the communities they serve, it is essential that the regulatory risk of being regulated by the Plan be removed once and for all.

In addition, we offer the following information for EPA to consider as it revises the Plan to incorporate the McCabe Memorandum and the Revised Framework.

1. "Waste-Derived Materials" Must be Broadly Defined

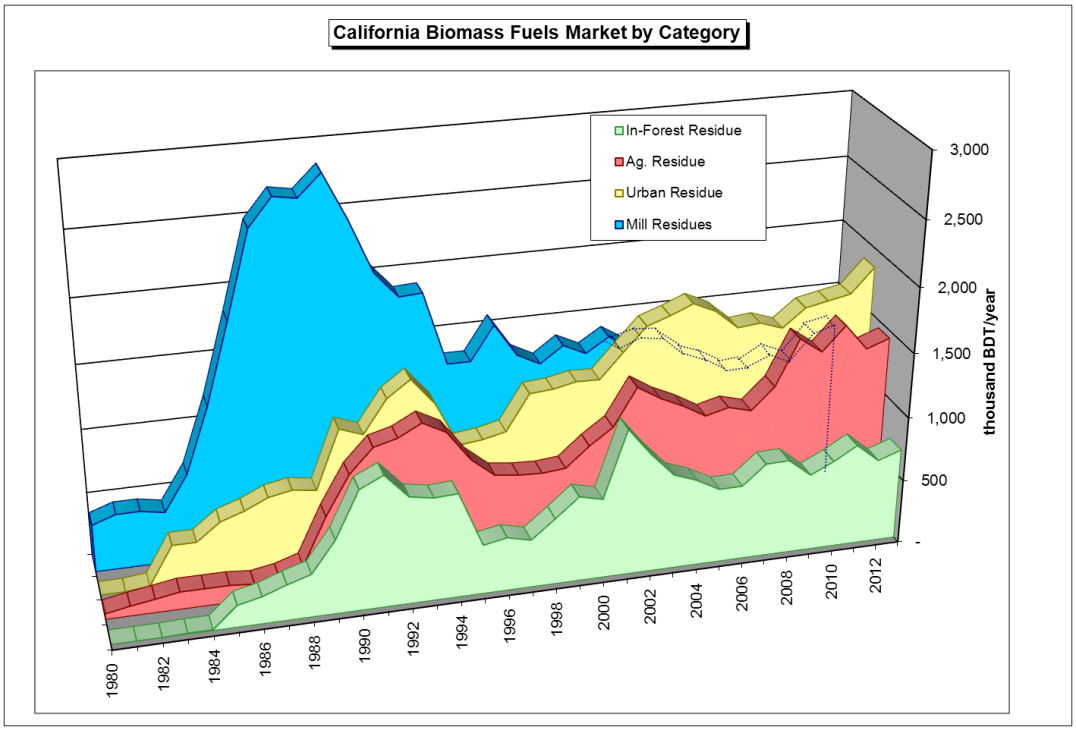
The McCabe Memorandum appropriately concludes that the carbon benefits of non-forestry "waste-derived materials" are obvious, given that (1) the so-called "landscape emissions effects" (primarily the growth of forests and land use changes) are not implicated since these wastes are generated regardless of potential use for bioenergy and (2) conversion to energy avoids methane emissions. While correct, this analysis should not only apply to municipal solid waste but also any non-forest organic material including such material as urban wood (or what EPA proposes to define as "clean cellulosic biomass" under proposed changes to the Non-Hazardous Secondary Materials ("NHSM") Rule (Vol. 78 Federal Register No. 26, February 7, 2013) as well as railroad ties and wood derived from construction and demolition debris (as defined by EPA's proposed amendments to NHSM, Vol. 79 Federal Register No. 71, April 14, 2014).

BPA cannot emphasize enough the importance of non-forestry wood waste. Given the contraction in the lumber and paper mill sector, our industry can no longer rely simply on low-grade wood such as forestry residue. Consider the

California biomass sector and the changes to that industry. There are 34 biomass facilities located throughout the state, often near timber harvest or agricultural operations. Most of these facilities were built immediately following enactment of the federal Public Utilities Regulatory Policy Act of 1978, which required utilities to purchase power provided by qualifying independent power producers at an avoided cost basis, allowing plants to be built. The result was that, over a relatively short period of time, the industry grew to approximately 19% of in-state renewable power.

Despite the success of the California biomass industry, there are numerous facilities currently closed. One contributing factor is economics. Like all renewable sources of power, biomass is forced to compete with historically low natural gas prices in a market that neither values baseload capacity nor adequately prices carbon benefits. But another factor, relevant to this rulemaking, is the industry's ability to source adequate wood supplies.

As depicted in the chart below, historically California's biomass industry relied upon sawmill wastes and forest residue from traditional wood product industries. The most recent data made available from California Biomass Energy Alliance suggests that both urban wood and agricultural residue are the leading sources of fuel.



For certain facilities located in areas of California where these residues are not easily sourced, the availability of non-forest wood as a fuel may represent the difference between keeping a plant open and permanently closing it.

Like municipal solid waste ("MSW"), wood from non-forest sources "would have been produced in the waste sector regardless of any potential use for bioenergy production"; they "do not require an analysis of the carbon cycle effects that transpired during the growth and harvest of the primary biogenic materials on the landscape"; and conversion to bioenergy provides an alternative pathway that reduces lifecycle CO_2 emissions. It is precisely this analysis that Professor Searchinger et al. used in labeling these feedstocks "biomass done right" (See discussion of municipal and industrial wastes "rich in organic matter in "Beneficial Biofuels—The Food, Energy, and Environmental Trilemma," *Science* July 17, 2009).

2. Sustainably-sourced Agricultural and Forestry-derived Materials

EPA proposes amending the Plan to recognize that state-based sustainable forestry and land management policies and programs can be part of an approvable compliance plan, and that the Agency intends to work with federal, state, private business and non-governmental organizations to help define what programs might meet sustainability goals and thus be approved under the Plan.

As EPA considers the meaning of "sustainability," it is important for the Agency to understand forest and agricultural feedstocks that our industry uses and how existing sustainability programs, whether private certifications or state or federal sustainability requirements, already influence and guide the industry.

A. Forestry-derived Residue With No Commercial Value is "Sustainable" By Definition

Apart from non-forestry organic material discussed above, the primary source of biomass feedstock for energy is what is called "low-value" wood—residues in the form of tops and limbs and fiber such as thinnings and low-grade wood that would not be used for saw timber or pulp. By and large, the value of these fuels does not justify a harvest solely for bioenergy. Because this material is a byproduct of another activity that would occur regardless of bioenergy, the collection and use for energy is, in and of itself, a sustainable practice. The generation of the residue is not caused by the need for producing power; indeed, the reverse is true—only the harvest for a non-energy use justifies the creation of the feedstock. The result is "sustainable" because the alternative fate of the material (landfilling or open burning) is avoided.

The State of Michigan provides an illustration of the important difference between "wood" and "wood wastes." PA 295, the so-called "Clean, Renewable, and Efficient Energy Act," draws the distinction between energy derived from "trees and wood" (requiring a demonstration of "sustainability") and energy from "wood wastes and residues," the latter category simply required to meet the definition of having "no commercial value." (See Michigan Public Service Commission Staff

Analysis, "Renewable Energy and Advanced Cleaner Energy Classification and Certification.")

Reinforcing the idea that simply the collection of "waste biomass" is "sustainable" is the observation by California's Air Resources Board staff:

> California biomass conversion operations result in negative GHG emissions. While these facilities result in direct GHG emissions (mostly as carbon dioxide) when biomass is burned, the majority of these emissions are biogenic, and not counted as discussed above. In addition, these facilities produce electrical power that results in avoided utility emissions that would come mostly from the combustion of fossil fuel such as natural gas. Finally, biomass that is not combusted in a facility may otherwise be landfilled or "open" burned, resulting in more GHG and criteria pollutant emissions. [P]reliminary estimates based on the facilities above indicate that biomass conversion facilities result in net negative GHG emissions of over 1 million MT CO_2e, or -0.24 MT CO_2e per ton of bone dry biomass.
>
> ("Biomass Conversion," California Air Resources Board, September 17, 2013)

Finally, in the context of implementing the Renewable Fuels Standard, EPA has deemed wood "wastes" as carbon beneficial ("renewable fuel produced from feedstocks consisting of wastes that would normally be discarded or put to secondary use, and which have not been intentionally rendered unfit for productive use, should be assumed to have little or no land use emissions of GHGs" (Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program; Final Rule." Vol. 75 Federal Register No. 58 (March 26, 2010): 14670-14904.)). They should do the same here.

B. Non-Wood Waste Forest Biomass

To the extent that bioenergy utilizes feedstocks that include forestry residue other than the organic materials discussed above, EPA correctly concludes that states can incorporate the use of "sustainably sourced" forest biomass in their Section 111(d) plans. That said, EPA is urged to recognize and find adequate the various state-based strategies and private certification programs that government and biomass power producers currently utilize to ensure sustainability standards for the production of bioenergy.

- In California, the Public Utilities Commission is responsible for implementing Senate Bill 1122, which amends California's feed-in tariff by requiring investor-owned utilities to procure mandated quantities of RPS-eligible generation from using specified types of bioenergy. For bioenergy byproducts of "sustainable forest management," IOU's are required to secure 50MW. The term "sustainable forest management" was undefined in the statute, leaving

the Administrative Law Judge (ALJ) to consider, appropriately, the views of the Department of Forestry and Fire Protection (CAL FIRE). The ALJ adopted CAL FIRE's criteria, ranging from compliance with standards regarding habitat, forest health, air and water quality protection, and societal and economic benefits. A copy of the draft decision can be found at (California Public Utilities Commission Agenda ID #13489, Decision Implementing Senate Bill 1122, November 18, 2014).

- In Michigan, in the case of biomass, renewable energy credits pursuant to the Clean, Renewable, and Efficient Energy Act of 2008 (MCL 460.1001 et seq.) require compliance with Michigan's sustainability criteria set forth in the PSC's Staff Analysis dated April 12, 2010. As discussed above, for "trees and wood" other than "wood wastes and residues," generators must meet one of the criteria set forth under 1984 PA 1931. These criteria offer a range of certification options.

- In virtually all states where biomass energy is produced, forests are sustainably managed in accordance with federal and state laws, and best management practices. There is no "one size fits all" when it comes to forest management requirements.

- In California, landowners cannot harvest more than they grow, and are required to submit a 100 year plan which demonstrates the growth and yield from their lands given the constraints of protecting public trust resources such as water quality, wildlife, archaeology and geological structure.

- In Maine and Vermont, while certification of private lands is prevalent, state forest officials, in coordination with federal environmental agencies, implement environmental laws and work with landowners on best management practices.

- In New Hampshire, voluntary best management practices through the "Good Forestry in the Granite State" program have resulted in a healthy statewide forest system. New Hampshire is 84% forested with 4.8 million acres of forestland. The annual growth is 200.4 million cubic feet, well in excess of the 138.8 million cubic feet harvested.

- Finally, sustainability can appear as a requirement of a power purchase agreement (See "Stewardship Incentive Plan for Biomass Fuel Procurement" adopted by the City of Gainesville, Regional Utilities Commission on April 2, 2009) or in the case of ReEnergy Holding's eight biomass plants in the Northeast, a voluntary third

party certification effort in partnership with Sustainable Forestry Initiative (SFI).

3. Tracking Carbon Benefits of Biomass

A number of biomass facilities across the country participate in a regional tracking system. For example, in Maine, power and environmental attributes are tracked by NEPOOL and its Generator Information System or "GIS." Because biomass qualifies as renewable both in Maine as well as other states participating in the NEPOOL GIS, biomass facilities often sell power locally but export the so-called "environmental attributes" – expressed in the form of renewable energy credits or "RECs." For the reasons below, it is essential that the Plan allow for the export of attributes and not limit the carbon benefits to the state where a biomass facility is located.

To restrict carbon benefits to the physical location of a specific facility would jeopardize the financial viability of many biomass plants that need the flexibility of selling into the most attractive state REC market, which sometimes is not the state where the facility is located. Restricting the ability of exporting carbon benefits would potentially disqualify a biomass REC in another state since state RPS programs are often premised on the belief that such "attributes" include carbon benefits.

In addition, we urge EPA to utilize existing state attribute tracking systems, like NEPOOL GIS, as the means to verify where such attributes are being accounted for to ensure transparency and accuracy of Section 111(d) Plans. Doing so avoids the risk of double counting and assures that the carbon benefits of biomass, like any form of renewable energy, are only counted by one and not multiple states.

Conclusion

We thank you for the opportunity to submit these comments on behalf of the biomass industry. We appreciate the Agency's consideration and look forward to working with EPA to further strengthen the proposed Clean Power Plan.

Please be in touch with any questions.

Sincerely,

Robert E. Cleaves
President
Biomass Power Association