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## Memo

To: MGA Model Rule Subgroup  
c/o Jesse Heier, Daniel Stenberg and Nicholas Bianco

From: Mark Calmes

Subject: **Comments on the February 23, 2010 Version of the Midwestern Greenhouse Gas Reduction Accord Draft Model Rule**

At the Advisory Group meeting in Chicago this past Tuesday, March 16, 2010, I provided comments on the rationalization of certain language contained in the Advisory Group Report Final Recommendations of June 2009 (Recommendations) with corresponding language found in the subject Draft Model Rule (Rule). My comments today provide further clarification on these and other issues and request certain revisions or additions to the Rule.

### **Definition of Eligible Biomass (Rule page 6)**

On November 30, 2009 I provided comments to you concerning Applicability Exemption requirements in the Rule. Those comments were as follows:

**“Applicability Exemptions** - In the Program Scope section of the Advisory Group Draft Final Recommendations document, a section on biomass, biofuels, and biogenic emission exemptions was created. That section reads as follows:

**2.2 Biomass, Biofuels and Biogenic Emissions Exemptions.** *The following sources of emissions are exempted within the sectors otherwise covered in 2.1:*

2.2.1 *Carbon dioxide emissions from the combustion of biomass or biofuels, or the proportion of carbon dioxide emissions from the combustion of biomass or biofuels in a blended fuel, are not included in the cap-and-trade program, except for purposes of reporting.*

2.2.2 *Biogenic emissions of carbon dioxide from industrial fermentation processes used in the production of some biofuels, beer and distilled spirits, pharmaceuticals and other products, shall be treated as carbon neutral, except for reporting purposes. However, emissions from fuels used to provide process heat for fermentation, and to otherwise enable and support the manufacture of such products, remain subject to program coverage in 2.1.*

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The basis for these exemptions lies in language found in the Western Climate Initiative's Regional Cap and Trade Program Design Recommendations that provides a mechanism for proper carbon emission counting by not penalizing carbon neutral emissions from certain activities or processes.

Unfortunately, the exemptions above have been lost, for the most part, in the draft Model Rule. While it appears an attempt was made to provide relief, it is inadequate and puts these resources and industries at peril. The only language I can find that addresses these exemptions is the definition of "Eligible Biomass" found on page six of the draft Model Rule and the exemptions found in Section 1.4 Applicability on page 15. The "eligible biomass" definition is stated as:

*Eligible biomass includes sustainably harvested woody and herbaceous fuel sources that are available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, unadulterated wood and wood residues, animal wastes, and other eligible organic wastes, and biogas and other neat liquid biofuels derived from such fuel sources . Sustainably harvested will be determined by the REGULATORY AGENCY.*

This definition is unclear and poorly worded as it references biogas and biofuels. Does it pertain to emissions from the creation of these biofuels, the combustion of these biofuels, both or neither?

Furthermore, the exemptions found on page 15 are stated as:

*Exemption. Notwithstanding subdivision (a) of this section:*

- 1. A unit under subdivision (a)(1)(i) of this section that is an electricity source with a nameplate capacity less than 25MW shall not be considered a GHG budget unit.*
- 2. A unit under subdivision (a)(1)(i) or (a)(1)(ii) that combusts only eligible biomass shall not be considered a GHG budget unit.*

The problem under item one above is the exemption is for small electricity generation and has nothing to do with biomass, biofuel, or biogenic emissions. Under item two above, the exemption only pertains to "stationary sources" that combust eligible biomass at small electricity generators and industrial fuel combustion facilities. Again, there is no relief here for mobile sources burning biofuels or for biogenic emissions from applicable industrial processes. Additionally, there is no language that gives guidance on the combustion of a mix of eligible biomass and fossil fuels.

To rectify these problems, I strongly recommend the Model Rule Subgroup defer to the original exemption language found above from the Program Scope section of the Advisory Group Draft Final Recommendations document.”

Since the comments above were submitted, the Model Rule Subgroup has attempted to better rationalize the language in the Rule to meet the intent of the language found in Section 2.2 of the Recommendations. Unfortunately, the language in the Rule is still incomplete and needs further refinement to capture the true intent of the language in Section 2.2 of the Recommendations. For example, under the definition of Eligible Biomass in the Rule, currently produced biofuels, including corn ethanol and soy biodiesel, would not be considered eligible biomass. The definition reads:

*Eligible biomass. Eligible biomass includes: sustainably harvested woody and herbaceous fuel sources that are available on a renewable or recurring basis, including dedicated energy crops and trees, agricultural crop residues, aquatic plants, wood and wood residues; residues and byproducts from wood, pulp, and paper product facilities; animal wastes; other eligible organic wastes; and biogas and neat liquid biofuels derived from such fuel sources. Sustainably harvested and eligible organic wastes will be determined by the REGULATORY AGENCY.*

*Eligible biomass. Eligible biomass includes: sustainably harvested woody and herbaceous ~~fuel~~ sources that are available on a renewable or recurring basis, including dedicated energy crops and trees, agricultural crops ~~and their~~ residues, aquatic plants, wood and wood residues; residues and byproducts from wood, pulp, and paper product facilities; animal wastes; processed agricultural products and agricultural processing wastes; other eligible organic wastes; and biogas and neat liquid biofuels derived from such ~~fuel~~ sources. Sustainably harvested and eligible organic wastes will be determined by the REGULATORY AGENCY.*

In addition to the requested changes to the definition of Eligible Biomass above, the Model Rule Subgroup may want to expand the definition further to incorporate other biomass elements as found in the definition of biomass in USEPA’s Greenhouse Gas Mandatory Reporting Rule.

#### **1.4 Applicability Requirements (Rule pages 13-15)**

As with and through the definition of Eligible Biomass, the Model Rule Subgroup has attempted to use this section of the Rule to rationalize the language to further meet the intent of the language found in Section 2.2 of the Recommendations. This was done by inserting the phrase “excluding emissions from combustion of eligible biomass” in certain parts of the applicability requirements. While this addition of language has helped the rationalization, certain problems still exist with it. The following suggested language solves those problems. Section 1.4 (a)(1) reads in part:

(1) “Any source that emits over 25,000 metric tons CO<sub>2</sub>e annually in combined emissions, excluding emissions from combustion of eligible biomass and other carbon neutral emissions, from one or more of the categories listed in this paragraph. For sources that commenced operation prior to January 1, 2012, this determination shall be based on average annual emissions over the period 2009 – 2011, using emission data collected pursuant to XX-8. For sources that commence operation after January 1, 2012, this determination shall be based on emission data from the first full year of operation.

- (i) General stationary fuel combustion at industrial sources
- (ii) Process or other emissions from industrial sources in the following categories [*This list is tied to the development of the monitoring rule and assumes that appropriate monitoring metrics are available. If appropriate monitoring metrics are not available for a category process emissions from that category will not be included*].”

The simple inclusion of other carbon neutral emissions in the requirement above solves two problems. First, it allows rationalization with the Recommendation 2.2.2. A definition of “Other Carbon Neutral Emissions” should then be added using the language from 2.2.2. That definition would read:

*Other Carbon Neutral Emissions include emissions of carbon dioxide from industrial fermentation processes used in the production of some biofuels, beer and distilled spirits, pharmaceuticals and other products. However, emissions from fossil fuels used to provide process heat for fermentation, and to otherwise enable and support the manufacture of such products, remain subject to regulation as defined in 1.4 (a)(1).*

Second, it keeps other carbon neutral emissions from sources that produce them from being counted as additional process categories are added in the future as contemplated by the parenthetical qualifier above in 1.4 (a)(1)(ii). For example, USEPA has indicated an ethanol processing category will be eventually added to the list. While fossil fuel combustion emissions from those facilities should be subject to this Rule if applicable, carbon neutral fermentation emissions should not be.

### **Carbon Capture and Storage (CCS) Bonus Allowances**

The draft Model Rule does not provide sufficient incentives for the deployment of CCS. The deployment of CCS will provide crucial support to the Midwest effort to meet its GHG reduction requirements. Bonus allowances should be provided to entities that are utilizing CCS. Federal legislation has acknowledged the need for bonus allowances for early deployment of CCS. The Waxman-Markey and other bills contain specific language for bonus allowances.