

## Letter 100

Jim Sandoval, P.E.  
Tri-TAC Air Committee

November 10, 2009

### **Comment 100-1**

Commenter believes any regulation proposed for greenhouse gas emissions should distinguish between anthropogenic and biogenic carbon dioxide emissions. Biogenic carbon dioxide emissions can take several paths before reentering the atmosphere, such as, biofuel and wastewater treatment processes. Unlike fossil fuel emissions, biogenic carbon dioxide emissions do not change the atmospheric concentration of carbon dioxide.

### **Response 100-1**

SB97 does not distinguish between the sources of greenhouse gas emissions. Thus, it would not be appropriate for the Natural Resources Agency to treat the different categories of emissions differently absent a legislative intent that the Guidelines do so. Notably, neither AB32 nor the Air Resources Board's Scoping Plan distinguishes between biogenic and anthropogenic sources of greenhouse gas emissions. On the contrary, the Scoping Plan identifies methane from, among other sources, organic wastes decomposing in landfills as a source of emissions that should be controlled. (Scoping Plan, at pp. 62-63.)

The Natural Resources Agency notes, however, that proposed section 15064.4(b)(1) would allow a lead agency to consider the extent to which a project results in an increase or a decrease in greenhouse gas emissions compared to the existing environmental setting. If an agency has performed an analysis that demonstrates that a particular process does not result in an increase in greenhouse gas emissions compared to what already occurs in the existing environment, that evidence would support a conclusion that the project will not cause an increase in greenhouse gas emissions. Thus, to the extent the comment suggests that certain biogenic emissions should not be considered new emissions, the text in proposed section 15064.4(b)(1) is broad enough to encompass the type of analysis suggested, subject to the limitation that such analysis could not be used in a way that would mask the effects of emissions associated with the project. For example, if the emissions occurring in the short-term will have impacts that differ from emissions occurring in the future, those differences may need to be analyzed.

No revision is required in response to this comment.

**Comment 100-2**

Commenter is concerned that CEQA significance thresholds will not distinguish between fossil fuel based (and other anthropogenic CO<sub>2</sub> emissions) and renewable or biogenic emissions of CO<sub>2</sub>. Absent such a distinction, combustion of renewable fuels may trigger a false determination of significance and discourage the use of renewable fuels/non-fossil fuels

**Response 100-2**

The proposed amendments do not establish any threshold of significance. The Natural Resources Agency acknowledges, however, that several air districts are currently considering adopting recommended thresholds of significance for greenhouse gas emissions. The Natural Resources Agency cannot in the CEQA Guidelines authorize lead agencies to ignore certain categories of emissions in performing environmental analyses required by CEQA. To the extent that the combustion of renewable fuels, such as methane and digester gas, may cause adverse effects on the environment, those effects would need to be analyzed under CEQA. As the Third District Court of Appeal recently explained:

“[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]” .... There may be environmental costs to an environmentally beneficial project, which must be considered and assessed.

(*Cal. Farm Bureau Fed. v. Cal. Wildlife Cons. Bd.* (2006) 143 Cal. App. 4th 173, 196.) Nothing in SB97 altered this rule. Thus, lead agencies must consider whether the greenhouse gas emissions resulting from biogenic emissions may cause adverse environmental effects. However, to the extent that substantial evidence demonstrates that such biogenic emissions do not result in a change in the existing environmental setting, a lead agency may consider that information in determining whether such emissions are significant pursuant to section 15064.4(b)(1). No revision is required in response to this comment.

**Comment 100-3**

Commenter recommends that lead agencies be advised that biogenic emissions exert no net adverse impact on the environment. Therefore, the Guidelines should advise lead agencies to not consider biogenic emissions in any “bright-line” significance threshold or performance standard under CEQA.

**Response 100-3**

As explained in Responses 100-1 and 100-2, above, SB97 did not authorize the Natural Resources Agency to limit the scope of analysis of greenhouse gas emissions to exclude biogenic emissions. Further, the comment provides no evidence to support the claim that such emissions result in no adverse environmental impacts. Lead agencies must determine whether such emissions cause adverse environmental impacts after examining all substantial evidence in the record. No revision is required in response to this comment.

**Comment 100-4**

Expansions to public sewage treatment services are sized for projected growth based on land use planning. The example in existing section 15064(d)(2) inaccurately portrays sewage treatment plant construction as facilitating growth, when in fact, facilities are constructed to safely collect and treat sewage projected to be generated in the long-term under local government General Plans. The comment requests that the Natural Resources Agency find a different example of an indirect physical change in the environment.

**Response 100-4**

As the comment notes, the example given in section 15064(d)(2) is a hypothetical. Moreover, it reflects case law indicating that the indirect, growth-inducing effects of infrastructure need to be analyzed, even if the project is consistent with a general plan. (*See, e.g., City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1331-1333.) Finally, the comment goes to issues that are not address in the proposed amendments, and therefore exceeds the scope of the Natural Resources Agency's rulemaking package. For these reasons, the Natural Resources Agency declines to revise section 15064(d)(2) as suggested in this comment.