



Sustainable Conservation

June 27, 2007

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California Energy Commission
Dockets Office, MS-4
Re: Docket No. 06-BAP-1
1516 Ninth Street
Sacramento, CA 95814-5512

Attention CEC Commissioners and Interagency Working Group Members:

I want to first complement you on your efforts to date to advance the goals set forward by both legislation and Governor Schwarzenegger to more fully utilize our biomass energy resources. We are a State that is fortunate to have an abundance of biomass, some of which is available to help reduce our dependence on petroleum, lower greenhouse gas emissions and make our economy become more environmentally sustainable.

I have previously provided detailed comments on AB 1007 implementation and the Integrated Energy Policy report. I will not repeat those comments here. I will focus on what I believe is one of the largest barriers to new energy and biofuel facility development. California's approval and enforcement process for air (CARB and Regional Air Districts), water (State and Regional Water Boards) and solid waste (Integrated Waste Management Board) can act to discourage or prevent the installation of new facilities that we will need to build if we are to reduce greenhouse gas emissions and meet renewable electricity and biofuel goals. In fact it is harder to get approval today for some facilities today than it was just a couple of years ago. Here are three examples.

Methane digesters for renewable electricity, pipeline gas or biofuel. The new WDR process adopted by Region 5 Water Quality Control Board applicable to dairies will make digesters significantly more expensive to build and entail a lengthy approval process of uncertain duration and outcome. As a result, few dairymen will pursue this option. Add to this uncertainty of what are the appropriate emission standards ARB and/or the San Joaquin Valley Air Pollution Control District apply to engines burning biogas for electricity generation and lack of suitable technology for reducing NOx emissions to SB 700 target levels and we have a recipe for few new facilities.

Oil seed extraction technology for processing biodiesel feedstock. If California is to have a viable native biodiesel industry using California grown feedstocks, we have to figure out how to build plants that economically extract oil from seed. Extraction technology exists but it requires, in most cases, hexane to get the additional oil need to make the proposition financially attractive. It is unlikely that key Air Districts will approve any new facilities using such technology today and that could mean we will rely on oil imported into California for most of our production.

Gasification for biofuel/electricity. The way current regulations are written and/or interpreted, gasification and pyrolysis plants that convert many types of wastes into fuel and/or electricity are handled under several agency regulations including problematic Integrated Waste Management Board regulations that are designed for solid waste facilities. Even putting aside the CEQA review process, that will likely mean to build a gasification plant will take many years to complete the regulatory processes with uncertain outcome of approval. That will not engender many (or any) new facilities using this or other innovative waste conversion technologies.

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The above are but a few examples of regulatory barriers that serve to inhibit or prevent innovative technologies that reduce fossil fuel dependence, lower greenhouse gas emissions and/or provide other environmental benefits. You may be familiar with these specific examples but there are many others. What hasn't happened is finding a way to overcome regulatory hurdles. Having State agencies coordinating with one another is a great idea but it won't solve the fundamental problems. A new dynamic is needed. Let me repeat, a new dynamic is needed. And that won't happen without some difficult and innovative steps. Here are three specific recommendations.

1. Each agency should be required to host a website page where the regulated community gets to detail specific barriers to gaining approval for environmentally beneficial projects. The web page should be periodically updated but the content and editing should be left to the regulated community. Each respective agency head and senior management staff's performance review should be tied, in part, to how well they overcome identified barriers. A "customer satisfaction survey" should be one criteria used in the evaluation.
2. There needs to be a public policy directive from CalEPA to each agency under the CalEPA umbrella that states that "a regulatory standard is not the same as a public health standard". There are hundreds, if not thousands of examples of projects that have huge environmental benefits encompassing air, water quality, land use, etc. However they fail to move forward or do so significantly scaled back because of the problem of regulatory "sudden death". For example you can have a project that decreases existing air or water pollution by 1000 units while increasing one specific compound (like NOx) by 10 or 20 units; currently that results in rejection. An approval process that is multi-media, looks upstream and downstream and considers environmental tradeoffs needs to be devised. We have to allow "forward sliding" and not just prevent "back sliding". One way to do this is to allow intra and interagency "pollution credit trading". I will not detail here the particulars of how such a system would work, but there are significant environmental and public health benefits as well as precedent for how to implement such a system.
3. Each agency should be required to annually produce a report delineating the unintended consequences of existing and proposed regulations, policies and practices. Such a document should describe the adverse affects on the environment for projects that don't move forward as a result of the agencies actions or inactions (i.e. maintaining the status quo). For example a farmer piling manure 20 feet high with no cover or pad has little or no regulatory oversight whereas setting up a manure composting facility can trigger rigorous air district and/or IWMB approval criteria. That has resulted in almost no new composting facilities being built (exacerbating, among other things, water quality impacts from nitrate leaching when the manure is land applied). Each agency's report should have an action plan with a timeline to overcome agency barriers to environmentally beneficial project approval. Specifically, it should identify what the agency is doing to change regulations, modify policies, restructure processes, educate/train employees, hire new staff and/or other changes that will allow beneficial projects to move ahead. That report should be sent to Cal EPA and the Governor's office. Specific annual incentives should be put in place for staff who find solutions that both protect the public health and allow environmentally advantageous projects to go forward in a timely manner.

Those are just three specific suggestions for moving beyond the current state of affairs.

Sincerely,



Allen Dusault

Program Director – Sustainable Agriculture