

Center for Regulatory Effectiveness

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DRAFT

December __, 2013

The Honorable Regina A McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: BACT Availability Determinations

Dear Administrator McCarthy:

Having served on the EPA's Environmental Finance Advisory Board (EFAB) and having had the lead on its initial review of Carbon Capture and Sequestration (CCS) financing, I compliment you for utilizing the capabilities of this talented group and hopefully you will continue to benefit from their services.¹

Attached please find a report prepared by the Center for Regulatory Effectiveness (CRE),² *Carbon Capture and Sequestration: EPA's Technology Availability Determinations Need to be Reproducible*. The paper concludes that, under the Data Quality Act (DQA), EPA's BACT determinations are influential information and are subject to the law's reproducibility requirements.

EPA's pre-dissemination review process for BACT determinations which ensures that such determinations are DQA compliant is one of the issues discussed in CRE's paper. Because of EPA's pre-dissemination review requirements:

- There is a need to begin immediately a review of EPA's database on CCS to determine if the agency's statements on CCS availability comply with the DQA.

We believe that the traditional APA notice-and-comment period³ is too confining to address the complexities inherent in DQA issues related to CCS. Consequently, we believe you should encourage non-Federal parties to develop a discussion forum which would allow all stakeholders to participate in the review at no cost to EPA.

- A public discussion of CCS availability needs to be interactive and continuing; we are beginning the debate by posting the attached paper for public comment on CRE's CCS BACT

¹ For more information about my service on the EFAB, please see, http://thecre.com/pdf/20090309_EFAB_2009-2010.pdf.

² For more information about CRE, please see http://www.thecre.com/oira/?page_id=8.

³ For more information on the inadequacy of public comment periods, please see <http://www.thecre.com/oira/?p=2175>.

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Interactive Public Docket⁴ (IPD) which is available at <http://www.thecre.com/forum10/>

The aforementioned IPD developed by CRE will provide stakeholders with a forum to submit data and subject it to peer review 24/7 after the termination of the notice and comment period.

EPA has the authority under existing law not only to review the comments contained in an IPD but also has the authority to upload comments of their choice from the IPD if the said comments have a precursor comment in the docket generated during the APA comment period. See *Portland Cement*.

Periodically CRE will review the comments posted on the IPD and submit the results of its analysis to EPA, OMB, Congressional Committee and make it available to the public by posting it on the IPD.

■ To help spur public participation in the discussion process, we would appreciate EPA notifying the public of:

1. The availability of the CRE CCS BACT Interactive Public Docket <http://www.thecre.com/forum10/> in the forthcoming Notice of Proposed Rulemaking or through other means and
2. Announce the agency's views on whether its BACT determination for CCS is compliant with the DQA and its implementing guidance and if so providing the public with the relevant documentation in support of the agency's conclusion.

Respectfully,

Jim Tozzi
Member, Board of Advisors

Attachment, *Carbon Capture and Sequestration: EPA's Technology Availability Determinations Need to be Reproducible*.

⁴ See, http://en.wikipedia.org/wiki/Interactive_Public_Docket.

