BIOMASS POWER ASSOCIATION

100 Middle Street
PO Box 9729
Portland, ME 04104-5029

Robert E. Cleaves IV
207 228-7376 direct
207 774-1127 facsimile
207 671-0152 mobile
bob@biomasspowerassociation.org

Danielle Jones (via Electronic Mail)
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Re: Use of Railroad Ties as a Qualified Fuel

Dear Ms. Danielle Jones:

On behalf of the Biomass Power Association and its many members, I want to thank you for the opportunity to meet with OMB on October 6, 2015. As discussed, set forth herein is additional information in response to questions raised during our meeting.

As you know, EPA has proposed a rule to regulate what are called "non-hazardous secondary materials" (NHSM) including creosote-treated railroad ties ("CTRTs"). The purpose of this rule is to allow materials that are considered to be a "fuel" to continue to be used in the production of renewable energy, while "wastes" would be regulated through more stringent, "incineration" regulations. In the case of railroad ties, EPA's rule, as drafted, has the actual effect of discouraging the generation of renewable energy, will cause plants to close, and runs counter to both the Clean Power Plan and state efforts to mitigate climate change.

Biomass power comprises about a third of the Nation's renewable energy supply—a significant portion that supplements weather-dependent sources like wind and solar with reliable, baseload power. "Biomass" is broadly defined as organic material derived from a wide variety of cellulosic sources—forestry debris, agricultural byproducts, and wood products such as urban wood and CTRTs. Spanning 20 states and employing more than 14,000, the biomass industry is the lifeblood of many rural economies. The industry also serves as an important outlet for forestry debris and other materials that, if left in the forests or landfilled, would contribute to additional GHG emissions.

Despite providing significant environmental benefits, the biomass industry faces profound economic headwinds. Biomass is the only renewable energy source that *purchases* its fuel, including CTRTs. Further, the federal government's failure to place a price on carbon or adopt a renewable energy standard has forced the closure of many facilities—in California alone, 9 of 34 facilities are now shuttered, often because the cost of fuel exceeds the price that utilities are willing to pay for the energy produced.

At the federal level, the Administration considers biomass to be a central strategy in mitigating climate change and meeting the goal of reducing carbon by 32% below 2005 levels. Pursuant to the Clean Power Plan, generators of so-called "waste-derived" biomass –the material that would otherwise be landfilled, causing the release of a highly potent GHG, methane—are *encouraged* to convert these materials to energy through combustion. This form of energy will be recognized in federally approved state implementation plans based on EPA's finding that the use of such fuels is "likely to have minimal or no net atmospheric contributions of biogenic CO_2 emissions, or even reduce such impacts, when compared with an alternate fate of disposal." In California, which recently adopted a mandate of 50% renewable energy by 2030, CTRTs are considered "renewable," just as they are in virtually every state with a renewable portfolio standard.

Across the country, more than 800,000 tons of CTRTs are used as fuel each year in the production of renewable energy, representing nearly $50 million in value. Because CTRTs are not derived directly from forestry operations (in the same manner as tops, limbs, and thinnings), EPA is required to consider whether this material is a "fuel." In the proposed rule, EPA readily acknowledges that CTRTs share many characteristics with materials that it regards as "fuel," saying that they are a "valuable commodity," have "meaningful heating value," and are "used as a fuel." However, the Agency asserts that they are technically "discarded" because, in some cases, CTRTs are not immediately processed or collected. CTRTs can only escape designation as a "waste" if, as EPA proposes, they "have contaminants at levels comparable to or less than those in the traditional fuel that the facility was *designed to burn*." To meet this "design to burn" test, EPA has concluded that because CTRTs compare favorably to fuel oil, if a boiler is "designed to burn" fuel oil, that CTRTs in such a boiler would not be considered a waste.

The net effect of this rule is that if boilers were never designed to burn fuel oil—and many biomass boilers are not—then they cannot accept CTRTs without regulation under federal solid waste laws. For such boilers to qualify, biomass facilities—considered "renewable" by state and federal agencies—would be forced to install fuel oil delivery systems even if these systems would never be used. Both Greenleaf Power and GDF Suez—discussed at greater length below-estimate that the cost of installing a fuel oil delivery system approaches $1 million per facility. Clearly, these systems produce absolutely no economic or environmental benefit, and are necessary only to satisfy a federal rule that otherwise serves no public policy goal. In short, EPA is forcing renewable energy sources to install fuel oil delivery capability, the use of which is contrary the very purpose of a renewable energy generator.

Greenleaf Power

Greenleaf Power owns five biomass facilities in the US – four in California and one in Connecticut. Two of its California facilities are shuttered due to stiff competition with natural gas prices and the expiration of contracts entered into as the result of "PURPA," or the Public Utility Regulatory Policy Act of 1978. One of Greenleaf's remaining facilities is the 30-megawatt Honey Lake facility located in Lassen County, California. As one of the county's largest employers and taxpayers, Honey Lake relies heavily on CTRTs for its continued economic viability. The CTRTs at Honey Lake are an affordable, highly efficient fuel that complements the other organic fuels available

in the region. Honey Lake purchases about 30,000 tons of railroad ties per year, which represents a savings of $750,000 annually by using fuel that is much less expensive than forest residues or other agricultural material. Without this source of fuel, the future of Honey Lake, and the many jobs it provides, would be in jeopardy. In addition to the economic benefits of CTRTs, the CTRTs at Honey Lake provide a good balance to the moisture-laden agricultural and forest byproducts that comprise the rest of its fuel. This helps achieve the appropriate moisture content that ensures that its boilers run smoothly and efficiently – and reduces carbon emissions as well.

GDF SUEZ

GDF SUEZ is an international energy company with wind and biomass assets in the United States. Its Viking McBain and Viking Lincoln biomass facilities, 18 megawatts each and located in McBain and Lincoln, Michigan, purchase CTRT fuel from the local railroads that service the Michigan peninsulas. According to GDF Suez, the biomass facilities are the only option for the small railroads to make use of their replaced CTRTs.

Otherwise, these CTRTs would go to landfills, providing no benefit to the railroads or to the biomass facilities, and needlessly adding considerable volume to the landfills. Like Greenleaf, the addition of CTRT fuel into the fuel mix enables GDF SUEZ to achieve a consistent moisture content equivalent to the fuel moisture for which its boilers were designed. Use of CTRTs significantly reduces carbon emissions due to the high efficiency of the fuel mixture. The State of Michigan – one of a handful of states with a renewable portfolio standard and ambitious renewable energy targets – recognizes the environmental and economic benefits of using CTRTs as a feedstock. When GDF SUEZ suggested to state authorities that it may seek permission to install a fuel oil delivery system that would never be used, Michigan expressed reservations about the "sham" nature of such an amendment. For obvious reasons, it subverts the intent of the air permitting process.

DTE

DTE Energy Services is an energy company with investments in the renewable energy market. It has three biomass plants that are currently permitted to combust CTRTs. The plants are projected to burn between 90,000 -110,000 tons (1.1 - 1.5 million ties) in each of the next 5-7 years, another is expected to burn 40,00- 50,000 tons (500,000-650,000 ties) annually for the next 5-6 years and the third between 50,000 - 80,000 tons (600,000 – 1 million ties) per year for the next 10-12 years. . Finally, DTE anticipates applying for and receiving a permit for a facility to combust up to 110,000 tons (1.5 million ties) annually for the next 12-15 years beginning in 2016. Not being able to use CTRTs for fuel would result in the loss of between 25-35% of the total fuel requirement for DTE's portfolio of biomass plants and will increase the amount of material going into landfills. CTRTs are an integral part of its overall fuel strategy. In areas where the competition for traditional fuels is fierce, the ability to combust CTRTs is even more important. Eliminating the use of CTRTs is likely to bring economic hardship to DTE's facilities as they may (i) be unable to procure a substitute fuel, or (ii) face higher fuel prices given their inability to diversify their fuel supply. In addition, eliminating the use of

CTRTs will disrupt existing markets for CTRT, and send CTRTs to solid waste landfills, erasing years of efforts to find higher uses for these materials. The facilities that are not able to afford replacement fuel may shut down, eliminating a source of carbon neutral energy and eliminating facilities that are needed to manage agricultural biomass, forest biomass, and urban wood.

Proposal

Pursuant to 40 CFR Part 241.4, EPA can list creosote-treated railroad ties as a categorical non-waste fuel without finding that use of such material satisfies the legitimacy criteria of Part 241.3(d)(1). In accordance with Part 241.4(b)(5)(ii), the Administrator may grant a petition finding that a material is a fuel when "the non-hazardous secondary material is functionally the same as the comparable traditional fuel." Here, the Agency has abundant evidence that supports use of railroad ties as an affordable, highly effective substitute for "clean" biomass. Specifically, CTRT's are "functionally the same" as biomass listed in Section 241.2. Such fuels as sawmill residue, agricultural residues like walnut shells and rice hulls, and "clean" construction and demolition wood have similar btu characteristics as CTRT's and are clearly equivalent. In other words, CTRTs are "functionally the same" as biomass. Limiting the use of ties in boilers designed to burn fuel oil will frustrate clean energy goals, create further economic hardship, and achieve no legitimate public policy objective.

Thank you for your consideration of these issues.

Sincerely,

Robert Cleaves, President
Biomass Power Association

cc: George Faison, EPA (via Electronic Mail)
Kevin Bromberg, SBA (via Electronic Mail)