



AMERICAN FOREST & PAPER ASSOCIATION

GROWING WITH AMERICA SINCE 1861

August 31, 2005

The Honorable Charles Grassley
Chairman, Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Max Baucus
Ranking Member, Committee on Finance
United State Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Request for Written Comments on S. 1447, the Tax Technical Corrections Act of 2005

Dear Chairman Grassley and Ranking Member Baucus:

The American Forest & Paper Association is pleased to submit the following comments on S.1447, the Tax Technical Corrections Act of 2005.

The American Forest & Paper Association (AF&PA) is the national trade association for the forest products industry. We represent more than 200 companies and related associations that engage in or represent the manufacturers of pulp, paper, paperboard and wood products. America's forest and paper industry ranges from the state-of-the-art paper mills to small, family owned sawmills and some 10 million individual woodlot owners. The U.S. forest products industry is vital to the nation's economy. We employ approximately 1.3 million people and rank among the top ten manufacturing employers in 42 states with an estimated payroll of \$50 billion. Sales of the paper and forest products industry top \$230 billion annually in the U.S. and export markets. We are the world's largest producer of forest products.

AF&PA very much appreciates the inclusion of technical corrections clarifying the enhanced reforestation amortization (sec. 2(j)(2)(B) of S.1447) and the definition of open-loop biomass under IRC section 45 (sec. 2(t)(2) of S.1447).

Our comments focus on section 2(t)(2) of S.1447, which clarifies the definition of open-loop biomass under IRC section 45:

(2) Clause (ii) of section 45(c)(3)(A) [definition of open-loop biomass] is amended by inserting 'or any nonhazardous lignin waste material' after 'cellulosic waste material'.

The description of S.1447 indicates that this provision "clarifies that open-loop biomass resources include both cellulosic and lignin waste material." Joint Committee on Taxation, Description of the "Tax Technical Corrections Act of 2005", JCX-55-05, page 10.

Subsequent to the introduction of S.1447, this technical correction was enacted as part of the Energy Policy Act of 2005 (sec. 1301(f)(2) of H.R. 6).

AF&PA understands the legislative intent behind the word “nonhazardous” was to ensure that hazardous materials do not qualify for the credit. Lignin is not a hazardous material. In the context of our processes that produces steam and electricity from lignin, however, we are concerned that there could be unintended confusion as explained below. Similarly, we understand that “waste” was included to ensure that the tax incentive did not create competition for woody-biomass material that could be used to make paper or solid wood products. However, as explained below, there could be unintended confusion resulting from a previous IRS ruling that, in another context, found lignin to not be considered “waste.” For these reasons AF&PA is seeking further clarification of this language (see also “Written Statement for the Hearing Record,” submitted by AF&PA to the Committee on Finance, on April 15, 2005, copy attached).

Wood is composed primarily of cellulose (wood fibers) held together by lignin (the fiber binding agent). The processing of wood for making paper has several stages. The first stage involves the use of pulping chemicals to dissolve wood into cellulose wood fibers and wood residues (mostly lignin). The cellulose wood fibers then are separated and further processed to become paper products. What remains is a combination of pulping chemicals and wood residues or lignin. This combination is referred to as pulping liquors. The next stage involves a process to separate the pulping chemicals from the wood residues or lignin. The pulping chemicals are recovered for reuse in the pulping process. The wood residues (lignin) are burned to generate heat for making steam and electricity.

AF&PA requests two clarifications. First, a clarification that the wood residues are not considered hazardous because they are combined with pulping chemicals prior to their use to generate steam and electricity. Second, a clearer description of lignin to indicate it is a “by product” of the pulping process, rather than “waste” material. This is important because, in a different context, there is an interpretation by the Internal Revenue Service that lignin from the pulping process is not “waste” material (see Technical Advice Memorandum TAM 8722005, February 6, 1987).

AF&PA therefore suggests the following change to the Tax Technical Corrections Act language cited above, with the changes noted in bold:

(2) Clause (ii) of section 45(c)(3)(A) is amended by inserting ‘or **any by product of wood or paper mill operations, including lignin in pulping liquors,**’ after ‘cellulosic waste material’.

This clarification is consistent with the definition of biomass in new IRC section 48B(c)(4)(A) (relating to a new tax credit for qualifying gasification projects).

The description of this provision should be modified to read:

Open-loop biomass (including agricultural livestock waste nutrients) facility

An open-loop biomass facility is a facility using open-loop biomass to produce electricity. Open-loop biomass is defined as (1) any agricultural livestock waste nutrients, or (2) any solid, nonhazardous, cellulosic ~~or lignin~~ waste material or by product of wood or paper mill operations, including lignin in pulping liquors, which is derived from certain forest-related resources, solid wood waste materials, or agricultural sources and which is segregated from other waste materials. Eligible forest-related resources are mill residues, ~~other than spent chemicals from pulp manufacturing~~, precommercial thinnings, slash, and brush. Solid wood waste materials include waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings. Agricultural sources include orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues. However, qualifying open-loop biomass does not include municipal solid waste (garbage), gas derived from biodegradation of solid waste, or paper that is commonly recycled. In addition, open-loop biomass does not include closed-loop biomass or any biomass burned in conjunction with fossil fuel (co firing) beyond such fossil fuel required for start up and flame stabilization. (Excerpt from Statement of Managers of H.R. 6, page 17.)

AF&PA appreciates the opportunity to present you with these comments. We would welcome the opportunity to discuss this issue with you or to answer any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "David G. Koenig". The signature is written in a cursive, flowing style.

David G. Koenig
Director, Tax Policy
American Forest & Paper Association
202-463-5182
David_Koenig@afandpa.org

Attachment