Biofuelwatch Submission to Ofgem Call for Evidence

This submission is on behalf of Biofuelwatch, which provides information and undertakes advocacy and campaigning in relation to the climate, biodiversity, land and human rights and public health impacts of large-scale industrial bioenergy. Our focus, therefore, is on Ofgem in relation to bioenergy, more specifically biomass, and will very much focus on biomass sourcing by Drax and the recent Ofgem investigation. This is our specialism, however the issues highlighted by our knowledge of this area in terms of accountability transparency and effectiveness may well apply to other energy sources i.e. it could well serve as a case study that could apply to other areas of regulation.

With respect to biomass sustainability Ofgem has clearly not been doing a good enough job

With the recent investigation into Drax by Ofgem and the controversy surrounding this it is clear that current biomass sustainability arrangements are failing forests and the climate and that Ofgem as the regulator overseeing biomass electricity generation is, in this respect, not fit for purpose. It has taken the involvement of BBC Panorama and others to highlight failures in sustainability reporting, incidents which Ofgem has investigated *after the event* and found to be proven. This is completely unacceptable: it is the regulator's job to have a robust system for continually monitoring compliance with the standards in place.

There are inherent problems with the biomass sustainability standards, as there is no requirement for anyone to check compliance on the ground. Given the amount of public money involved, Ofgem should be far more proactive and tougher at scrutinising generators' performance. It should not be reliant solely on self-certification.

The National Audit Office concluded over a year ago that the government was unable to demonstrate that its current arrangements are adequate to give confidence that industry is meeting sustainability standards yet nothing effective has been done to address this criticism. This doesn't require the biomass sustainability criteria to be updated - the required improvement here rests with Ofgem.

Recent investigation

In 2024 Ofgem concluded from its investigations that Drax had provided incorrect environmental data, and did not know the origin of some of their wood from Canada. In September 2024 the Financial Times revealed that leaked Drax emails showed company executives knew that some wood likely came from primary and old-growth forests in Canada.

The BBC has investigated Drax's logging in Canada three times. The first of these investigations led to an investigation by Ofgem, the regulator. But without the BBC's investigation, no Ofgem investigation would have taken place. The latest investigation was published in February 2025 showing further logging from primary forests that has not been disclosed or investigated by Ofgem.

A decade of unsustainable sourcing

In May 2015 Investigators tracked logging trucks carrying whole hardwood trees and other large-diameter wood from a devastated wetland clearcut to major Drax supplier Enviva's Southhampton, Virginia and Ahoskie, North Carolina facilities.
In March 2016 Investigators tracked logging trucks carrying whole hardwood trees and other large-diameter wood to the Enviva Ahoskie, North Carolina facility. The cut left a large wetland area desolate. The clearcut site, captured in aerial and drone images, was located in the Roanoke River basin in North Carolina, just outside of Williamston, North Carolina.
In February 2017 Investigators tracked logging trucks carrying whole hardwood trees and other large-diameter wood from a destroyed bottomland hardwood clearcut back to the Enviva Sampson County, North Carolina facility.
In 2018 investigators tracked multiple logging trucks carrying whole hardwood trees and other large-diameter wood to the Enviva Southampton, Virginia facility. The cut left an area of mature wetland forest devastated as well as nearly 100 acres of surrounding natural forest; in the early spring of 2019, investigators tracked logging trucks from a mature hardwood forest going to Enviva's Northampton, North Carolina facility.
In late December 2021, investigators tracked logging trucks carrying wood chips from the town of Edenton and delivering those chips to Enviva's Ahoskie, North Carolina facility. Investigators witnessed hardwood trees, being chipped on site before going to Enviva's facility.
In November 2022, investigators found Enviva Ahoskie sourcing trees from a North Carolina coastal plain forest that was being cleared and advertised for future industrial development, debunking Enviva's promise that it only uses wood from sites that will be replanted and remain forests. Loggers were again chipping the trees on site which eliminates yet another opportunity to ensure chain-of-custody standards are being met, making sourcing verification possible only if an inspector was on site during the chipping process.

In 2022 BBC Panorama exposed Drax to have been clearcutting Primary forests in Canada. Last year, BBC Panorama investigated again and found Drax continuing to burn wood from primary forests. In February 2024, research conducted by Biofuelwatch, Conservation North and Bulkley Valley Stewardship Coalition showed that throughout 2023, Drax routinely sourced whole logs from logging Primary and Old Growth Forests, including from logging sites with a high proportion of 250-year-old Ancient Forest, while another investigation last year found Drax had breached environmental laws 189 times at its Canadian pellet mills.

On 9th February this year, the BBC reported that it had discovered a further year of misreporting by Drax of its burning of wood from primary forests not looked at by Ofgem. In Europe, the UK's biomass comes from countries such as Estonia. There, 5,700 hectares of forests that are of "Woodland Key Habitat" quality, but aren't formally protected, have been logged, including for wood pellets. Logging licences have also been issued for over 82,000 hectares of forests within Natura 2000 areas, intended to protect rare and imperilled species.

In early 2024, a joint investigation by by Biofuelwatch and Portuguese NGO ZERO revealed that the Pinewells pellet plant in Portugal, which supplies pellets to Drax, had been sourcing trees from clearcuts in the mountainous Serra da Lousã Nature Reserve, a Natura 2000 site.

This shows that Drax's sourcing has been problematic across both time and geographical area. Ofgem is the regulator tasked with ensuring compliance and quite clearly has utterly failed at this. It is worth noting that most of these investigations have been done by small grassroots organisations with limited resources, therefore these are not cherry picked results from comprehensive monitoring, this is what is found whenever there is any spot checking/independent oversight into what is actually going on on the ground where Drax is sourcing from. Surely this is the regulator's job and should be better resourced by the regulator rather than the regulator only acting once alerted by these third parties?

Ofgem and the development of UK Biomass Sustainability Criteria

Sustainability criteria, including land and greenhouse gas criteria for solid biomass eligible for renewable energy subsidies were introduced in 2015 and have remained unchanged, with the exception of the greenhouse gas threshold, which has been incorporated into the Standard Terms and Conditions for CfDs since 2018.

Shortly after they came into force, Biofuelwatch published an analysis of the land criteria as well as the Ofgem guidance. We highlighted that the criteria were very vague and relate to general principles rather than detailed standards against which forest management can be assessed. We pointed out that they focused heavily on policies and procedures rather than outcomes, i.e. actual logging activities. For example, it was left open to companies how to interpret what "minimising environmental harm", or "protecting water, soil and biodiversity" means in practice. The criteria require the adoption of plans and policies, but not full compliance with them.

Weak though they are, we would have at least expected Ofgem to ensure these criteria were complied with. However, when Ofgem carried out a 'benchmarking' exercise and decision in 2015, it decided that the Sustainable Biomass Programme could be used for the purpose of certifying pellets as complying with the Land Criteria. All Drax and Enviva pellet mills are SBP certified. Therefore, based on Ofgem's guidance, even pellets made from mature trees from clearcut oldgrowth forests in Canada, or from Enviva pellets made from mature trees from clearcutting highly biodiverse forests in the Southeastern USA have been treated as 'sustainable' - even though it seems impossible to reconcile them with the wording of the land criteria as such. Ofgem's decision, that SBP can be used to "prove" full compliance with all of the criteria (except the Greenhouse Gas threshold) has never been reviewed despite huge amounts of evidence indicating that the criteria have systematically not been met in practice. The Ofgem decision to allow SBP to certify compliance must be reviewed as there are clear indications that it is not satisfactory

Reliance on voluntary certification schemes

There are inherent flaws in the approach of using voluntary certification schemes for showing compliance with biomass sustainability criteria - these have been documented in a recent report published by environmental NGO Fern. The report focuses on EU legislation, however, the problems identified in the report are equally relevant to biomass sustainability criteria in the UK. They include:

- ***Concealed conflicts of interest***, especially in relation to payment structures, whereby clients (such as Drax) choose from a number of different certification schemes and, within each scheme, from a number of different certification bodies, before contracting and paying their chosen certification body. This inevitably leads to a '***race to the bottom***' where a certification body that most strictly audits and enforces standards will be less likely to attract contracts and payments than a lax one.
- ***No government*** (or in the context of the report, European Commission) ***supervision of voluntary certification schemes***.
- ***Little transparency regarding the quality of the auditors and the conduct of the audits, and reliance on remote and paper-based auditing rather than detailed on-site inspections***. The latter very much applies to the Sustainable Biomass Program (SBP).
- ***No credible monitoring of the certification bodies by states/governments***.

For Ofgem to develop more robust and credible regulation of biomass sustainability it must adopt independent monitoring of the biomass supply chain with robust independent verification of this monitoring. The government has announced a new Biomass Sustainability Common Framework, and the appointment of an "independent sustainability adviser". It is unclear what remit this adviser will have and how they will operate in relation to Ofgem.

Scope of criteria - health impacts

Although out of Ofgem's current Scope, The Sunday Times published the results of an investigation showing that Drax's wood pellet mills in the southeast United States have breached environmental regulations tens of thousands of times and in Canada hundreds of times. These repeated environmental breaches where the wood pellets are made currently have no implications for whether the wood is classified as sustainable in the UK.
If meaningful standards are to be set for biomass sourcing these violations and the impacts on the communities living near the pellet mills should be relevant to the criteria.

Protecting consumers from generators gaming the system

An investigation by Bloomberg found that when electricity prices rose in 2022, Drax power station avoided paying back excess subsidies to the public under the CfD by shutting down power generation and selling its wood pellets. Clearly consumers were let down here and there was a lack of regulation or regulatory oversight to prevent this from taking place. The recent subsidy announcement has included a minimum annual contract floor of 22% to prevent

this from happening but this also means that consumers will be paying for Drax to generate electricity even when it is not necessary as more and more genuine non-emissive renewables come online. Ofgem should be in a position to intervene in these situations to protect consumers and ensure that energy suppliers act reasonably and in consumers interests.

Enforcement

In its recently announced Heads of Terms for new subsidies for Drax the government has announced a profit clawback mechanism to protect consumers - will Ofgem be responsible for overseeing this? So far Ofgem has lacked the teeth to take meaningful action so its powers must be strengthened either by Ofgem being granted greater powers or Ofgem making better use of the powers it has. *This could certainly apply to other electricity generators.*

The government has also announced in relation to these new subsidies that *Should Drax not comply with the sustainability criteria, then subsidy payments for electricity generated from whole consignments of biomass generation can be revoked and there is a termination right for repeated breaches of those requirements.* Will Ofgem be enforcing this?

This should have been the case for ROCs already issued where the sourcing of the biomass used to generate that portion of ‘renewable’ electricity has not complied with the land criteria, or in the cases of documented use of pellets from primary old growth forests where ROCS should have been revoked, but Ofgem has not enforced this - what would Ofgem need in order to enforce this properly? Again this poses the questions - has Ofgem been doing its job to the best of the powers available to it or as has been suggested, has Ofgem ‘fallen asleep at the wheel’?

Auditing

As long as the government relies on sustainability criteria, Ofgem's role should be strengthened to that of an auditor, doing on-the-ground spot-checks of pellet sourcing in sourcing countries - this will of course require funding. Or Ofgem should at least itself employ an organisation to audit Drax’s reports instead of being reliant on Drax-funded organisations. Drax's reports to Ofgem are audited by Bureau Veritas using what is termed "limited assurance" which as the name suggests does not involve detailed enquiries and checks. If Ofgem isn't going to take on auditing responsibility itself, then it should as a bare minimum insist on a "Reasonable Assurance Engagement" as offered by Bureau Veritas. However to reiterate it would be much preferable for Ofgem to engage an audit practice under their control in order to provide a trusted independent view, with full open reporting. Particularly when trees are being chipped at the forest then driven to the pellet mills how can it be known whether it’s whole trees or waste wood from a clear cut that is being turned into pellets unless there is an inspector onsite to ensure compliance?

Transparency and accountability

Currently Ofgem is demonstrating a lack of transparency and accountability. Recently Ofgem has not been disclosing information sought via FoI requests, the most well known being KPMG's

regulatory reporting review, as mentioned in Drax's 2023 Annual Report This has now been widely cited by politicians and in the media and there is clearly a growing public interest in the release of this report.

Ofgem has also declined to share emails between itself and Drax in relation to the investigation which given the huge amounts of public subsidy involved is also in the public interest.

Ofgem has also failed to answer questions from parliamentarians, for example in the DESNZ oral evidence session on 22nd January, Ofgem was evasive in its answers to questions around Drax's audit of its supply chain which Ofgem had requested as a result of the misreporting it had uncovered. Given the huge amount of public money involved and the high level of public interest, Ofgem must be more transparent..

There is also no accountability, Ofgem decided which sustainability standards are acceptable (in 2015) including SBP to show full compliance, yet despite the huge amount of evidence to the contrary spanning the last decade (see above) these standards have not been updated since, despite it being quite clear that the standards Ofgem is using are not guaranteeing compliance with the land criteria. *There appear to be no proper checks and balances to ensure constant review and update of these criteria.* One might think that as the regulator it is Ofgem itself that should provide such checks and balances, but it would appear that Ofgem has instead been rubber stamping compliance by those it is supposed to be regulating, even when they are clearly routinely breaching sustainability standards. This poses a fundamental question: who is regulating the regulator? Is another level of direct accountability required?