In a post last week, I expressed puzzlement about the D.C. Circuit's failure to discuss standing in Center on Biological Diversity v. EPA, which involved EPA's decision to delay greenhouse gas regulations for facilities burning biomass. The question of standing in climate change cases has been controversial, so this mystery sparked extensive discussion among environmental law professors. Kevin Bundy at CBD was kind enough to contact me and send the briefs in the case, which clear up the mystery.

As it turns out, CBD was able to establish clear standing without relying on the effects of the greenhouse gases themselves. According to CBD's brief and supporting declarations by the individuals in question, CBD members were adversely impacted by EPA's delay because the rule also affected non-greenhouse emissions from the plants. The brief provides detailed information showing that:

> "Members of Petitioners' organizations live, work, or recreate in the vicinity of specific biomass-burning facilities that were permitted as minor sources but did not commence construction by July 1, 2011,or were proposed after July 1, 2011 and obtained minor source permits in direct reliance on the Biomass Exemption, and so in each case are currently exempt from PSD permit requirements as the result of the Biomass Exemption." As a result, individual members were exposed to higher levels of conventional pollutants, of special concern in several cases because the members suffered from respiratory ailments.
>
> "The Exemption also harms members who recreate in or enjoy the forests from which fuel for the facilities is harvested, as they are deprived of the opportunity to raise concerns about impacts on forests and the opportunity to mitigate those impacts . . . ."
>
> "By exempting proposed biomass-burning facilities from PSD permit requirements, EPA has deprived Petitioners' members of these procedural opportunities to advocate lack of need for a proposed facility or unacceptable environmental impacts."

In short, the CBD brief provides a textbook example of how to demonstrate standing.

From a broader perspective, this example shows that it's possible for environmentalists to bring cases relating to climate change without needing to establish specific climate-related injuries that satisfy standing requirements. When

the government under-regulates greenhouse gases, there will generally be collateral damage to the environment, which can provide an adequate basis for standing. Even in *Massachusetts v. EPA,* in which the Supreme Court confronted climate standing head-on, it probably would have been possible to find other arguments for standing. For instance, EPA regulation of tailpipe emissions of greenhouse gases would probably have led to lower gasoline consumption, which in turn would have reduced smog levels.