



Clean Fuels Ohio



July 11, 2016

Via Electronic Transmission: regulations.gov

The Honorable Gina McCarthy, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington DC 20460

**Re: ID No. EPA-HQ-OAR-2016-0004
Renewable Fuel Standard Program: Standards for 2017**

Dear Administrator McCarthy:

The organizations signed to this letter represent the full value chain of cellulosic waste feedstock conversion to transportation fuel as regulated under the Renewable Fuel Standard (RFS). We thank the U.S. Environmental Protection Agency (EPA) for the opportunity to comment on the *Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018 (Proposed Rule)*. Given the scope of our respective representations we will limit our comments to issues impacting gaseous cellulosic biofuels.

I. ABOUT US

The Coalition for Renewable Natural Gas (RNG Coalition) is a non-profit association of companies and organizations dedicated to the advancement of RNG as a clean, green, alternative and domestic energy and fuel resource.

NGV America (NGVA) is a not-for-profit organization dedicated to the development of a growing, profitable, and sustainable market for vehicles powered by natural gas or biomethane.

The Canadian Gas Association (CGA) is the voice of Canada's natural gas distribution industry which deliver natural gas and meet the energy needs of approximately 6.5 million

homes, schools, hospitals, and places of worship. Increasingly, Canada's renewable natural gas producers are delivering ultra-clean, ultra-low carbon fuel to the North American transportation fueling markets.

Energy Vision (EV) is a not-for-profit think tank whose mission is to research, analyze and promote the technologies and strategies – viable today – required to transition toward a sustainable energy and transportation future. Since 2010, EV has been the leading independent environmental organization looking at the production and use of renewable natural gas (RNG) as a transportation fuel.

The National Waste and Recycling Association (NWRA) is a not-for-profit trade association representing private solid waste and recycling collection, processing, and management companies that operate in all fifty states.

The Solid Waste Association of North America (SWANA) is a not-for-profit professional association in the solid waste management field with more than 8,000 members from both the private and public sectors across North America.

Transportation Energy Partners (TEP) is a national organization that brings together the nation's nearly 100 Clean Cities coalitions and their 15,000 stakeholders in the clean transportation industry to advance policies that will reduce American dependence on petroleum-based fuels.

Virginia Clean Cities (VCC) assists the Commonwealth of Virginia's air quality, energy security, alternative fuel and vehicle adoption efforts.

Clean Fuels Ohio (CFO) is a non-profit organization that improves air quality and health, reduces environmental pollution, and strengthens Ohio's economy by helping businesses, governments, non-profits and individuals transition to cleaner, domestic fuels and energy-saving vehicles.

Lone Star Clean Fuels Alliance (LSCFA) is a non-profit Dept. of Energy Clean Cities coalition that promotes the use of alternatives to gasoline and diesel fuel in the transportation sector. LSCFA serve the Central Texas region of Bastrop, Caldwell, Hays, Travel, and Williamson Counties, and the Cities of Temple and Ft. Hood, Texas, to decrease our dependency on foreign oil, promote energy security, and improve air quality and public health.

II. COMMENTS ON PROPOSED RULE

We support the stated cellulosic biofuel provisions impacting Renewable Compressed and Renewable Liquefied Natural Gas of the Proposed Rule. However, the absence of explicit, additional considerations impacting fuel availability, including processes to account for newly available production data, prior year excess production, and cellulosic waiver credit purchases, lead us to the conclusion that additional inputs are needed. Accordingly, while we agree that Proposed Rule fairly assessed gaseous cellulosic biofuel *production* using the best data available to EPA at the time, we maintain that the Final Rule should incorporate these additional “fuel availability” factors, resulting in a higher 2017 RVO.

EPA proposes a 2017 cellulosic biofuel requirement of 312 million gallons. This number represents a 35% increase over the 2016 requirement of 230 million gallons. It is more than double the 140 million gallons produced under the program in 2015. This progressive increase in the cellulosic biofuel requirement is both warranted by law and supported by comprehensive and sound data that demonstrates the considerable growth and progress of the cellulosic biofuel industries.

As in years past, we anticipate that Renewable-CNG and Renewable-LNG will predominantly supply U.S. demand for cellulosic biofuel in 2017, as reflected in the renewable volume obligation (RVO) of the Proposed Rule.

EPA is Correct to set the 2017 Cellulosic Biofuel Requirement at a Level Below Statutory Table Volumes.

Congress intended that the RFS create and grow a cellulosic biofuels market in the United States. The Energy Independence and Security Act of 2007 (EISA) tables of statutory “applicable volumes”¹ demonstrate the growth in demand they intended the RFS to drive. While Congress overestimated the commencement and rate of industry growth, they offered provision for EPA’s alternative administration of the program.

The Clean Air Act requires that the RVO for cellulosic biofuel be the lesser of volume specified in CAA 211(o)(2)(B)(i)(III),² or EPA’s assessment of “projected volume available” during the calendar year in coordination with other federal agencies.³

We agree that EPA is correct in its determination that “projected volume available,” and not the statutory tables, is appropriate for setting cellulosic biofuel obligations in 2017. While the renewable natural gas industry is experiencing unprecedented growth in transportation fuel production, total capabilities for production have not yet reached statutory table levels.

¹ Clean Air Act (CAA) § 211(o)(2)(B)(i)(III).

² 5.5 billion gallons in 2017.

³ CAA § 211(o)(7)(D)(i).

Given market realities, we do not believe it is proper or prudent for EPA to set obligations at the statutory level. Doing so would destabilize the RFS, the RIN market, and the cellulosic biofuel industries since we would be unable to meet such high demand. The RVO process reflected in the proposed rule is preferred and proper.

EPA's Processes Yield Fair Predictions of Cellulosic Biofuel Production in 2017.

EPA is obligated to follow the court rulings that speak directly to the Agency's administration of the RFS. EPA is required by court order to employ a "neutral methodology"⁴ that is a "prediction of what will actually happen"⁵ when setting future year RVOs.

We agree that the proposed 2017 cellulosic biofuel volume requirement is based on a projection of production, as known to EPA at the date of publication, that reflects a reasonable aim at accuracy.

As of March 2016, we anticipated that Renewable-CNG and Renewable-LNG production should yield 376 million gallons (EGE) qualified under the RFS in 2017. This number is based upon thorough data from RNG projects currently online and flowing renewable natural gas, from existing projects undergoing expansion, from existing projects coming off contract from alternative non-transportation fuel applications and transitioning to transportation fuel application, and from planned and advancing new construction RNG projects with scheduled online dates in 2017.

EPA has accepted and considered this information, including primary source data submitted as Confidential Business Information. In total, the data reflects 51 RNG projects, including 27 projects that were online in 2015, 10 projects that have (or will) come online in 2016, and 14 projects currently under development with scheduled online dates in 2017. The RNG projects are located in 23 different U.S. States and Canadian Provinces.

EPA uses a baseline of 384 million gallons, including 167 million gallons from new facilities. Given the information available to us and to EPA at the time, this number is reasonable.

As in prior years, EPA uses a projection methodology applying percentile multiples to categories of projects. For new Renewable-CNG and Renewable-LNG projects the projected volume is marked at the 50% percentile of a range of likely production, with 167 million gallons on the high end and zero on the low end, for a total projected volume of 84 million gallons. For Renewable-CNG and Renewable-LNG projects with a history of production the projected volume is marked at the 75% percentile of a range of likely production, with 217 million gallons on the high end and 148 million gallons on the low end, for a total projected volume of 200 million gallons.

⁴ American Petroleum Institute v. Environmental Protection Agency, No. 12-1139 (C.A. D.C., Jan. 25, 2013), at 10.

⁵ Id.

It is certainly our intention to support cellulosic biofuel developers and help them all become successful producers under the RFS. However, given the history of production from cellulosic biofuel sources, we agree that EPA's methodology does a reasonable job at projecting *production* with a neutral aim at accuracy.

As EPA has done with prior year RVOs, it is critical that the 2017 RVO Final Rule consider new production data as it becomes available. We sympathize that determining future year production is akin to hitting a moving target. Already we are seeing actual and viable projects surface which were not readily known as of the publication of this Draft Rule. Your adjustments up until, and potentially after, publication of the Final Rule are essential to ensuring a strong program. We thank you for your prior commitments to incorporate this newly available data, especially since incorporation will likely result in a higher cellulosic biofuel RVO.

EPA's Final Rule Should Look Beyond Cellulosic Biofuel Production in Determining Volume Available.

As discussed above, EPA has a statutory obligation to set the RVO at the "projected volume available during the calendar year." The Proposed Rule includes projections of cellulosic biofuel production. It does not, however, appear to include provisions for volume available due to factors other than new production, such as prior year volume rollover due to either excess production or cellulosic waiver credit (CWC) purchases.

We understand that data regarding obligated party compliance, including use of CWCs and accounting for use of prior year RINs, is not yet available due to the fact that reporting deadlines have not yet arrived. As such, it is not surprising not to find such accounting in the Proposed Rule. However, we would expect to see discussion on how EPA will deal with these variables impacting fuel availability.

We urge that "volume available" does not necessarily equate to "fuel production." Volumes produced in any year and not used for compliance in that year, under EPA precedent^{6, 7, 8}

⁶ In the 2010 RFS2 Final Rule EPA noted that "it is ultimately the availability of qualifying renewable fuel, as determined in part by the number of RINs in the marketplace...". EPA further noted "These 2009 and 2010 RFS1 RINs will be available and can be used towards volume requirements of obligated parties." 75 Fed. Reg. 14,698 (March 26, 2010).

⁷ In the 2015 NPRM, EPA reiterated its approach that carryover RINs represent a component of available volume. "We believe that the availability of this full volume of carryover RINs will be important for both obligated parties and the RFS program itself in addressing significant future uncertainties." 80 Fed. Reg. 33, 130 (June 10, 2015).

⁸ It should be noted that, in the 2015 NPRM, EPA's rationale for not including carryover RINs in the D6 RIN applicable volume was not because such RINs were not available volume for compliance, but rather that they were needed to avoid the risk of supply shortages and possible harm to the economy. In the case of cellulosic biofuels, the statute prescribes an alternative method to prevent harm – the Cellulosic Waiver Credit – which is a built in relief valve to price impacts of volume shortages. Accordingly, EPA would have no basis for rejecting the inclusion of projected cellulosic biofuel carryovers as "available volume."

and court rulings⁹, are considered “volume available” for the subsequent year. In order to take a “neutral methodology”¹⁰ that is a “prediction of what will actually happen”¹¹ with respect to “volume available,”¹² EPA must take into account any volumes expected to be produced and not used for compliance in the prior year (i.e. excess production in the prior year). EPA must also consider any actual or expected CWC purchases that lead to excess volume availability in the subject compliance year.

Additionally, we urge inclusion of prior year over production within the current year RVO. For instance, EMTS shows 140 million cellulosic biofuel RINs generated in 2015. However, the 2015 Final Rule RVO required only 123 million gallons of cellulosic biofuel. The net difference of 17 million gallons should be accounted for in future year RVOs.

If EPA does not have such consideration in its RVO setting methodology, the methodology will have a bias toward excess availability, contrary to EPA obligations. Such a situation would undermine the objectives of the statute by putting adverse market pressure on the development of significant volumes of cellulosic biofuels. In order to create “market certainty” for renewable fuel producers and obligated parties, EPA should clarify that its methodology does and will include such considerations.

EPA Must Continue to Send Clear Market Signals to the Cellulosic Biofuel Industries.

Financing is among the most significant challenges cellulosic biofuel producers face in their efforts to bring new biofuel to the U.S. market. Underwriting requires a degree of certainty that the RFS has not yet sufficiently provided. Cellulosic biofuel producers must be able to demonstrate to their financiers that there will be a sufficient market for the fuel they produce.

EPA took a significant and positive step in that direction in 2015 with the release of three years of published RVOs. We thank EPA for putting the RVO process back on track. The reaction from the financing community has been positive. Cellulosic biofuel projects are more readily obtaining financing and receiving terms that reflect a more stable market. The continuation of the RVO process, on a regular schedule, and using consistent methodologies, will continue to send positive market signals.

Uncertainty surrounding the future of the RFS post-2022 continues to limit financing and contract commitments. We will continue to provide education about RFS and reassure

⁹ *Monroe Energy v. Environmental Protection Agency*, No. 13-1265 (D.C. Cir. 2014), at 12. The D.C. Circuit indicated it was appropriate for EPA to consider the availability of carryover RINs when determining whether supply was adequate for the purposes of the general waiver authority. “EPA reasonably concluded that ‘the availability of carryover RINs was certainly relevant... to volume requirement.’”

¹⁰ *American Petroleum Institute v. Environmental Protection Agency*, No. 12-1139 (D.C. Cir., Jan. 25, 2013), at 10.

¹¹ *Id.*

¹² CAA 211(o)(7)(D)(i).

decision makers that the program does not sunset in 2022. We request that EPA assist us in this effort by making clear and regular statements about the future of the program post-2022.

Additionally, we request that EPA continue to make clear and regular statements about its intent not to strand available cellulosic biofuel produced in compliance with the RFS, especially where total biofuel available is well under the statutory limits.

EPA Can Spur Additional Growth in Cellulosic Biofuel Production with Expedited Pathway Action.

Although they are not covered in the Proposed Rule, the biogas-to-electric-vehicles, renewable hydrogen, and bio-intermediates pathways under consideration by EPA will significantly impact cellulosic biofuel availability once finalized.

We urge EPA to expedite these pathways and to be mindful of their impact on the Final Rule and future RVOs. We otherwise reserve our comments on these pathways for the appropriate rulemakings.

IV. CONCLUSION

The Coalition for Renewable Natural Gas, Natural Gas Vehicles for America, Energy Vision, National Waste & Recycling Association, Solid Waste Association of North America, Clean Fuels Ohio, Virginia Clean Cities, Lone Star Clean Fuels Alliance, Canadian Gas Association, and Transportation Energy Partners thank EPA for consideration of our comments and for the significant effort you put into the Proposed Rule. The gaseous cellulosic biofuel industries are growing strong and gaining momentum, thanks in part to the cellulosic biofuel provisions of the RFS.

Continuing this growth trajectory requires that EPA consider all factors impacting fuel availability, including new data on supply, excess supply generated in a prior year, and excess supply available due to cellulosic waiver credit purchases.

We look forward to continuing to work with EPA to ensure sustained success and a cleaner, more diverse fuel supply for all Americans.

Sincerely,



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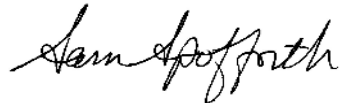
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