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VIA ELECTRONIC FILING (www.regulations.gov)

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Administrator
U.S. Environmental Protection Agency
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ATTN: EPA-HQ-OAR-2017-0091

Re: Renewable Fuel Standard Program: Standards for 2018 and Biomass -Based Diesel Volume for 2019; Availability of Supplemental Information and Request for Further Comment, 82 Fed. Reg. 46,174 (Oct. 4, 2017)

Dear Administrator Pruitt:

The Coalition of Renewable Natural Gas (RNG Coalition) respectfully submits these comments on the Environmental Protection Agency's (EPA) notice entitled "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; Availability of Supplemental Information and Request for Further Comment," published at 82 Fed. Reg. 46,174 (referred to herein as "Request for Further Comment"). The RNG Coalition is a non-profit association of companies and organizations dedicated to the advancement of Renewable Natural Gas (RNG) as a clean, green, alternative and domestic energy and fuel resource. RNG qualifies as cellulosic biofuel under the RFS program, and members of the RNG Coalition produce RNG for transportation fuel use under the RFS. As such, we have a significant interest in EPA's implementation of the RFS program and its treatment of advanced biofuels.

The Request for Further Comment on possible re-interpretations (or as of yet identified interpretations) of EPA's waiver authority under the RFS creates instability in the market. Any interpretation of EPA's waiver authority to reduce the statutory volumes and any proposed new methodology on how EPA should set those volumes could be used to further restrict cellulosic biofuels, undermining the investments made and the certainty needed to continue seeking investments. As such, we submit these comments to oppose the suggested revisions to EPA's waiver authority interpretations and request that EPA withdraw the notice altogether.

Instead, we urge EPA to address the real data cited and significant concerns raised by the biofuels industry with EPA's proposal, not to speculate about further ways to reduce the required volumes under the RFS. In our comments submitted on August 31, 2017, EPA-HQ-OAR-2017-0091-3650, we urged you to change the methodology for projecting cellulosic biofuels set forth in EPA's proposal for the 2018 RFS back to a more robust facility-by-facility approach that considers not just a limited set of historical EPA Moderated Transaction System (EMTS) data, but rather (1) all available renewable identification number (RIN) generation data, (2) volumes from projects that are pending registration with EPA and (3) volumes from projects that are under construction or in substantial development.

We provided substantial data to support higher RNG projected volumes, and our goal is to provide EPA with the best real-time information available about what we expect for RNG in 2018 and later years. Specifically, we supplied signed affidavits for 2018 RNG project data representing 417.22 million gallons of qualified cellulosic biofuel. Even if EPA discounts data supporting volumes from projects under construction (and for which affidavits have been submitted) by 50%, the data supports a minimum 345.78-million-gallon cellulosic biofuel renewable volume obligation (RVO) from renewable natural gas, plus projected liquid cellulosic biofuel production (and available carryover RINs). We appreciate EPA's efforts and willingness to work with our industry, but believe EPA's focus should remain on implementing Congressional intent.

I. EPA is Obligated to Meet the Directives of Congress and Fulfill the Purposes of the RFS Program, and, Thus, EPA Should be Considering *Increases* to the 2018 Proposed Volumes, Not Reductions.

As an initial matter, the RNG Coalition is concerned that EPA is spending time seeking ways to *further reduce* the volumes from the proposal when it should be considering the information provided in response to its 2018 RFS proposal that, in fact, supports *higher* volumes. Instead, EPA asks the public to speculate about issues that have no bearing on whether advanced biofuels can be available to achieve the goals Congress set. Congress did not intend to open the volume requirements to speculation about what may or may not happen or how the market might react. Indeed, the RFS is a mandate that was intended to influence the market.

Rather than speculate, EPA should consider the data provided and the substantial efforts that have been made to move the renewable fuels industry forward and meet the objectives

of the RFS. In particular, the RNG Coalition submitted comments on EPA's 2018 RFS proposal (EPA-HQ-OAR-2017-0091-3650). In those comments, we submitted substantial data (asking our members to submit affidavits and provide commercially sensitive information) that project over 100 million more gallons of RNG production than included in EPA's proposal, which alone should increase the cellulosic biofuel volume and, thereby, the advanced biofuel volume.

We also raised concerns with EPA's "new methodology to project production of CNG/LNG derived from biogas used as transportation fuel." 82 Fed. Reg. 34,206, 34,219 (July 21, 2017). This "new methodology" resulted in a cellulosic biofuel volume proposed for 2018 that is a reduction from the volume finalized in 2017 and essentially the same as that finalized in 2016. But, there have been significant investments, improvements and expansions in cellulosic biofuel development and production since EPA finalized those volumes. And, as the D.C. Circuit found, the requirement that EPA project production "seems plainly to call for a prediction of what will *actually* happen." *API v. EPA*, 706 F.3d 474 (D.C. Cir. 2013). EPA must project production *for 2018* with a "neutral aim at accuracy." EPA, however, now appears to be tipping the scales, which the D.C. Circuit rejected in *API v. EPA*, albeit in the opposite direction toward lower volumes.

This "new methodology" is based on an "industry-wide approach, rather than a[sic] projecting production from each specific facility or company, to project the 2018 production of CNG/LNG derived from biogas." 82 Fed. Reg. at 34,219. This "industry-wide approach" considers limited data for five months in both 2016 and 2017, and assumes this growth rate "is representative of the annual growth rate." *Id.* But, EPA previously found differences in production of CNG/LNG throughout the year, and did an assessment to understand those differences, finding greater growth in the last months of the year. EPA-HQ-OAR-2016-0004-3687.

EPA further asserts that "this growth rate accounts for both the potential for future growth and the challenges associated with increasing RIN generation from these fuels in future years."¹ 82 Fed. Reg. at 34,219. But, the statute requires that EPA project *production* in 2018, not EPA's view of potential growth or use, and, thus, implications of a limited CNG/LNG transportation market is not sufficient to explain why this growth rate is representative. And, a "neutral aim at accuracy" does not allow EPA to take other factors into account beyond *projected production*.

EPA also does not explain how this "industry-wide" approach is consistent with the facility-by-facility approach used by the Energy Information Administration (EIA) for estimating cellulosic biofuel production.² See, e.g., EPA-HQ-OAR-2010-0133-0214. EPA's projections must be "based on" EIA's estimates, yet EPA's approach renders EIA's estimates meaningless. Presumably EPA will assert that EIA does not track biogas specifically,

¹ That EPA is not just considering projected production is clear by its reference to total CNG/LNG *used* as transportation fuel.

² The D.C. Circuit agreed with EPA's methodology in 2016 because, in part, EIA's estimates did not include data from cellulosic biofuel plants that EPA had determined to be potential sources of cellulosic biofuels in 2016. EPA still followed a facility-by-facility approach for those plants.

leaving EPA “largely on its own,” but EIA is in the business of estimating fuel production, and EPA must show respect for EIA’s general methodology in estimating cellulosic biofuels. As apparent throughout the Request for Further Comment, it is clear EPA is attempting to re-write the statute in light of *ACEI v. EPA* to find ways to reduce the costs to obligated parties. But, EPA’s obligations are to ensure the statutory volumes are met, and move this country toward renewable fuels.

That EPA’s “new methodology” is insufficient is illustrated by EPA’s own EMTS data. Considering EMTS data available through August, rather than simply through May as in the proposal, CNG/LNG production has increased by 22% from the same time period in 2016.³ EPA reports over 130 million gallons of CNG/LNG through August 2017, which is almost at the 140 million gallons reported in 2015. Thus, the industry is growing at a more rapid pace than EPA’s proposed 9.3% growth rate. As explained in our comments, EPA’s “new methodology” based on limited historical data and trends is insufficient to *actually* project production in 2018. This is further supported by an analysis conducted by Argus Consulting Services, on behalf of Growth Energy, which found a significant error rate when applying EPA’s “new methodology” to past experience (EPA-HQ-OAR-2017-0091-3681 at 9-10, Ex. 1). Moreover, EPA has yet to act on several registration requests, which has limited the “rate of growth” of renewable CNG/LNG in 2017. This “new methodology” allows EPA to ignore these viable projects and production.

Thus, EPA’s approach is not aimed at accuracy. Nor is it a “neutral” aim, as EPA provides no explanation why this particular rate of growth is, in fact, representative of a growing industry that continues to see new entrants. It is not. EPA’s approach clearly has a “special tilt” to disfavor growth, failing to take into account new facilities or expansions that are coming on line. EPA itself admitted as much, finding such an approach does not take a neutral aim at accuracy to project cellulosic biofuel production. 81 Fed. Reg. 89,746, 89,761 (Dec. 12, 2016).

EPA contends that this “new methodology” is “warranted” because of (1) the over-projection of CNG/LNG derived from biogas in 2016 and (2) the relative maturity of the CNG/LNG industry relative to the liquid cellulosic biofuel industry. 82 Fed. Reg. at 34,219. As an initial matter, EPA found that such over-estimation did not “bias” the results, and that it was not aware of how to improve the accuracy of EPA’s methodology. EPA-HQ-OAR-2016-0004-3687 at 4. The D.C. Circuit was aware of the “over-projection” of EPA’s methodology for 2016, yet it rejected claims by the obligated parties that this rendered

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	Jan-May (EPA’s Proposal – 82 Fed. Reg. at 34,219)	Jan-Aug (EMTS data)
2016	62.91 MG	107.2 MG
2017	68.75 MG	130.5 MG
Growth rate	9.3%	22%

This is even less than the trend in annual growth rate that has been seen. EPA-HQ-OAR-2017-0091-3650 at 7. In other words, to determine an appropriate rate of growth, one cannot look at a small snapshot in time. Rather one must consider several factors, such as new facilities and any expansion plans at new facilities.

EPA's methodology arbitrary in *ACEI v. EPA*.⁴ EPA has not asserted that its proposed new approach improves the accuracy of its projections and, as noted above, it can significantly bias the results. This also ignores the availability of carryover RINs and cellulosic biofuel waiver credits, which EPA previously found were sufficient to address shortfalls from its estimated volumes. See EPA, Denial of AFPM Petition for Waiver of 2016 Cellulosic Biofuel Standard, Jan. 17, 2017 (rejecting request to reduce 2016 cellulosic biofuel volume based on over-estimation of actual production); see also EPA-HQ-OAR-2017-0091-3650 at 10.⁵

In addition, the RNG industry, while based on mature technologies, is still growing and in its early stages. EPA previously agreed. 81 Fed. Reg. at 89,761. As the data provided by the RNG Coalition shows, the industry continues to grow, and there is an enormous potential for new biogas and RNG systems across the U.S. to use existing waste resources. Even if the technology is considered "mature," EPA's approach skews the numbers against growth and also deviates from EIA's methodology in projecting fuel production. Thus, this is not a rational explanation for EPA reversing course.

We raise these issues as the Request for Further Comment again illustrates the concern expressed in our comments on the proposal that EPA is making "adjustments for political or policy purposes." For example, despite the D.C. Circuit upholding EPA's authority to consider information from the cellulosic biofuels industry in setting the volumes, it now raises questions about the "lack of transparency" of the data provided. But, we found no data or transparency as to the purported concerns being raised by the obligated parties, upon which EPA's Request for Further Comment appears to be based. This lack of data or analysis, nonetheless, appears to be the basis behind the suggestions in the notice of significant changes from prior EPA interpretations of the extent of its authority that do not meet the intent or language of the statute. We again urge EPA to consider the actual data that has been submitted in response to its proposal, rather than speculation. This data establishes higher volumes of advanced biofuels are available, particularly the expected increased production of RNG in 2018.

II. The RNG Coalition Opposes EPA's Attempts to Rewrite its Waiver Authority Under the Statute.

The Request for Further Comment merely outlines possible scenarios and numerous questions on which it purports to seek comment. As an initial matter, this does not meet

⁴ EPA may properly increase the final volumes based on updated data, and rejecting this "new methodology" to one more akin to EPA's prior actions based on comments received is obviously a possible outcome of the proposal.

⁵ Generated RINs represent production, and, while a shortfall in projected production of cellulosic biofuels in the next year can trigger a waiver, 42 U.S.C. §7545(o)(7)(D)(i) requires EPA to set the cellulosic biofuel *minimum applicable volume* at "the projected volume *available*." (Emphasis added.) Moreover, EPA's regulations are required to ensure that the cellulosic biofuel waiver credits do not "reduce the use of other renewable fuels." *Id.* §7545(o)(7)(D)(iii). And, EPA agreed that its regulations should ensure that cellulosic biofuel waiver credits are not "overutilized" at the expense of actual use. 75 Fed. Reg. 14,670, 14,727 (Mar. 26, 2010). By not accounting for these carryover RINs, which are likely available as a result of use of credit waivers, EPA is allowing reductions in other advanced biofuels and, more important, not fully promoting actual use of cellulosic biofuels being produced.

the procedural requirements of the Clean Air Act. Without a clear proposal, it is difficult for the public to provide meaningful comments.

That being said, the RNG Coalition believes EPA must follow the rulings of the D.C. Circuit with respect to its general waiver authority and consider the following in assessing the limited nature of that authority.

- The RFS is a *mandate* intended to provide certainty for the promotion of *biofuels* to reduce this country's dependence on *fossil fuels*. See, e.g., Pub. L. No. 110-140, 121 Stat. 1492 (2007) (listing purpose of Energy Independence and Security Act of 2007 "[t]o move the United States toward greater energy independence and security, [and] to increase the production of clean renewable fuels"); see also S. Rep. No. 110-65 at 1 (2007); *NPRA v. EPA*, 630 F.3d 145 (D.C. Cir. 2010), *reh'g denied*, 643 F.3d 958 (D.C. Cir. 2011), *cert. denied*, 132 S. Ct. 571 (2011). In so doing, Congress sought to provide numerous economic and environmental benefits that EPA must consider in deciding to take the extraordinary step of reducing the RFS volumes. This is particularly true when EPA's proposal is already at levels below earlier years, and, thus, sets the program backwards.
- EPA must follow the procedural requirements Congress imposed on use of the waiver authorities, as well as EPA's own prior precedents, requiring sufficient information to support a claim for a waiver *in the first instance*. Only in this way can the public meaningfully comment.
- EPA also must promote certainty by providing a consistent methodology by which the industry can react, and such methodology must be consistent with the terms of statute and Congressional intent, not the policy choices of obligated parties.
- EPA has consistently, and properly, considered whether foreign production facilities are available to provide cellulosic biofuels to the United States. EPA's interpretation here may have a direct impact on how EPA sets the cellulosic biofuel volumes in the future. It is not appropriate to count imports towards compliance without considering them as part of the "domestic supply," as this would reduce demand for domestic production even further, hurting U.S. producers without any real impact on imports.

III. Conclusion

RNG, which is made from organic waste, provides an important energy source to accelerate growth of biofuels and progress toward energy security. With the abundant availability of waste feedstock at landfills, wastewater treatment plants, and agricultural waste digesters, there remains significant untapped potential for RNG production.

But, certainty and stability in EPA's implementation of the RFS program is necessary to ensure continued investments in cellulosic biofuel. We urge EPA to withdraw its Request for Further Comment and its proposed "new methodology" for projecting RNG production in 2018. We refer EPA to our comments on the 2018 RFS proposal and the data submitted,

and again ask EPA to adopt a more robust methodology for projecting RNG volumes that goes beyond a limited set of historical EMTS data and accounts for all available RIN generation data, volumes from projects that are pending registration with EPA, and volumes from projects that are under construction or in substantial development. As the affidavits submitted by the RNG Coalition show, numerous additional projects can be up and running in 2018, and this data supports *a minimum* cellulosic biofuel volume for 2018 of 345.78 million gallons, plus projected liquid cellulosic biofuel production.

As more fully explained in our comments on the proposal, we also urge you to, in determining the forecast of available volume for a given year, account for the amount of volume available and not used for compliance in the prior year, including carry-over created by the purchase of cellulosic waiver credits (CWC). If a volume of fuel (*i.e.*, RINs) is available and not used for compliance in one year, it ought to be considered “volume available” in the subsequent year.

We look forward to continuing to work with EPA to ensure the RFS program is successful and a cleaner, more diverse fuel supply is available for all Americans.

Sincerely,

A handwritten signature in cursive script that reads "David Cox".

David Cox
General Counsel
Coalition for Renewable Natural Gas