

July 18, 2022

Via Electronic Mail  
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Assistant Administrator Goffman:

We write in regard to EPA's development of a new Set rule for the Renewable Fuel Standard (RFS) and, in particular, to expand on the comments relating to "Programmatic and Market Stability" provided in the attached letter (Attachment B).

We recognize the difficulty and complexity related to RFS rulemaking. We offer our comments in the spirit of collaboration, and a sincere effort to provide constructive perspective and guidance as EPA works toward a proposal for the set rule.

In proposing the "Set Rule", you and your staff will face diverse challenges as well as opportunities. Among them is the opportunity to use the RFS to maximize investment in the least carbon intensive fuels. To achieve that, you will need to ensure the cellulosic elements of the program operate in a reasonably stable and predictable fashion.

We believe EPA should maintain key features of the current system that have provided stability and confidence necessary to drive the cellulosic investments since 2014. The current system has enabled growth in cellulosic fuels from 33 million gallons in 2014 to more than 600 million gallons in 2021. We also believe that EPA has an opportunity to make minor changes that would resolve periodic market imbalances and occasional excess volatility.

Excess volatility of environmental credit pricing will likely restrict capital investment, slowing growth in low carbon transportation fuels. We believe a few minor programmatic changes can address the potential oversupply of D3 RINs issue and better balance the risks and benefits of those investing capital in the production of D3 RINs and the obligated parties.

Our recommendation includes five key components for the set rule covering cellulosic biofuels – four of these are existing provisions. The fifth would be new – but would provide essential market smoothing for producers and investors to balance the market smoothing already provided to obligated parties.

Ensuring these five components are included in the set rule would ensure a high and sustained level of investment and growth in low carbon fuel production, while providing for market price stability. These five components are briefly summarized below and further elaborated upon in Attachment A:

1. Ambitious long-term targets (10 years or more) – original statutes provided clarity on targets for more than 10 years through 2022 making the program more stable
2. Annual rulemaking for cellulosic RVOs – enabled EPA with the ability to set annual targets with reasonable accuracy
3. "Neutral aim at accuracy" in setting cellulosic Renewable Volumetric Obligations (RVOs) – ensured that RVOs would be set fairly for both producers and obligated parties

4. An explicit mechanism to protect obligated parties from shortfalls in D3 RIN availability, such as the existing Cellulosic Waiver Authority - created an important protection for customers and provides obligated parties with a RIN bank limited only by the availability of RINs needed for pairing with waiver credits
5. An explicit mechanism to protect renewable fuel producers and investors from large surpluses in D3 RIN availability – a new mechanism to ensure significant surpluses are resolved

Four of these five components replicate the approach EPA has used in implementing the RFS. The only new element is #5, which calls on EPA to provide reasonable – and *predictable* – protection from large surpluses of D3 RINs developing. Thus far, EPA has taken an *ad hoc* approach to addressing (or not addressing) such problems as they arise. This has created episodic headwinds for investors and producers that have stalled investment and growth. Each element is discussed in greater detail in Attachment A.

EPA's language in the supporting documents for the most recently completed RFS RVO rulemaking suggest that EPA is on a different trajectory than what we recommend. Discussion of D3 surplus and price volatility issues in those documents suggest a view that past market disruptions have almost no chance of being repeated or to create market disruptions in the future. While we know EPA is committed to strengthening the program through the Set rule and must balance multiple perspectives through this process, our history as investors in low carbon fuels leads us to seek greater clarity on how RIN surpluses would be managed. As the EPA develops the future of the program, which will include a growing supply of new D3 RINs resulting from additional pathway approvals, we continue to see significant potential for market uncertainty and believe that:

1. Any number of events *could* combine to create a D3 surplus in the future;
2. There remains a non-zero chance that EPA *could* be constrained by future circumstances from providing a timely market-balancing response;
3. 100% of the risk created by items 1 & 2 above is borne by low carbon fuel producers and investors; and
4. Sensitivities to those risks create demonstrable, quantifiable headwinds delaying low carbon fuel investments.

At your earliest convenience we request a meeting to discuss how EPA can maximize the decarbonization signal of the RFS without creating implementation or compliance headaches for EPA or obligated parties.

Sincerely,

**anew**

**DTE VANTAGE**

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FUELS



## ATTACHMENT A

## OUTLINE OF RESPONSE TO EPA REGARDING CELLULOSIC STANDARDS UNDER THE SET RULE

### The Set Rule Should Sustain RFS Provisions Supporting Cellulosic Investment

EPA's Implementation of the RFS has done a good job of creating a positive investment environment for expanding cellulosic biofuel production capacity. Going forward, EPA should:

- Maintain key features of the current system that have provided stability and confidence necessary to drive the cellulosic investments since 2014.
- Improve on the current system which creates market imbalance and occasional excess volatility because it provides greater protections for obligated parties than it does for low carbon fuel producers and investors.

### Essential Elements for Achieving Programmatic and Market Stability

1. Ambitious long-term targets (10 years or more)
2. Annual rulemaking for cellulosic RVOs
3. "Neutral aim at accuracy" in setting cellulosic RVOs
4. An explicit mechanism to protect obligated parties from shortfalls in D3 RIN availability
5. An explicit mechanism to protect renewable fuel producers and investors from large surpluses in D3 RIN availability

#### 1. Ambitious, Long-Term Targets to Support Growth in Low Carbon Fuels

- How – EPA should establish a 10-year target for the volume of cellulosic biofuels based on its best assessment of potential growth over that period which includes the likely possibility of E-RINs, biointermediaries, and new cellulosic biofuels.
- Discussion – Since passage in 2007 of the law setting an ambitious long-term target for cellulosic fuels (with actual obligations managed and modified as needed by EPA) the market has an understanding that actual cellulosic commercial production will be welcome in quantities up to the limit of the law.
- Benefit – this long-term vision has helped the private sector to invest in and develop growth strategies for the least carbon intensive fuels that qualify for the RFS – which in recent years has supported meaningful year-on-year growth.
- Legal Authority – Nothing in the CAA prohibits the EPA from re-endorsing the Congressionally-established target of displacing 16bggy of petroleum fuels with low carbon renewable options.

#### 2. Rely on Annual Rulemaking for Cellulosic RVOs

- How – Even if only used for the cellulosic category while setting longer duration RVOs for other categories, EPA should continue its practice of annual RVO rulemakings for cellulosic biofuels.
- Discussion – By setting RVOs annually, EPA retains the opportunity to address market outcomes that are substantially different than its long-term targets
- Benefits – As EPA expands the available D3 RIN generation pathways, accurate projections of the market's actual production become more complex and less likely. The Annual Rulemaking for Cellulosic production enables EPA to incorporate new information more often and make appropriate adjustments to the RVO. As the smallest, and typically least controversial RVO, EPA may well be able to keep the cellulosic requirement updated annually while setting 2- or 3-year RVOs for other RIN categories.
- Legal Authority – Nothing in the law prescribes the duration of RVO periods under the Set Rule.

### 3. Neutral Aim at Accuracy in Setting Cellulosic RVOs

- How – EPA should establish cellulosic RVOs based on (a) its best projection of the volume of D3 RINs that will be available for compliance including both carryover RINs and deficit carry forwards
- Discussion – EPA By using its best effort to accurately project annual volumetric obligations based on existing and near-term expansions in production capacity, EPA has generally balanced annual demand for producers and obligated parties
- Benefit – It is essential that RVO's are seen as reasonably achievable, even while maintaining the overall ambitious long-term statutory targets. Neutral aim ensures that each new Administration maintains the integrity of the program, stays true to the purpose and intent of Congress, and does not use the cellulosic category of the RFS as a political tool. Artificially inflating RVOs has the potential to create a powerful political opposition if obligated parties are unable to comply, and the Court has already admonished EPA it lacked authority to inflate RVOs. Artificially reducing RVOs to ensure D3 RIN volumes will be sufficient for compliance will depress prices, deflate demand, and slow investment in otherwise viable D3 RIN production strategies and infrastructure.
- Legal Authority – It is difficult to read the law as directing an outcome other than neutral aim at accuracy – a point already made by the Court. The law is meant to encourage growth in D3 production and cannot be read to authorize EPA to set either unachievable or intentionally relaxed standards.

### 4. An Explicit Mechanism to Protect Obligated Parties from Shortfalls in D3 Availability

- How – EPA should continue to protect obligated parties' ability to comply with the RFS by maintaining use of EPA's cellulosic waiver authority.
- Discussion – By implementing the cellulosic waiver authority, EPA has helped maintain market balance from year to year while retaining the overall ambitious long-term statutory targets set by Congress. The provision for cellulosic waiver credits establishes an achievable and reasonable price target and ceiling for D3 RINs while ensuring access to compliance options for individual obligated parties that might otherwise be caught short of RINs in thinly traded markets. The inverse relationship between gasoline and CWCs helps to ensure affordability and political stability. The formulation for CWC pricing has broad acceptance and endorsements by both obligated parties and producers. Creating a new mechanism to serve this function would likely lead to unnecessary argument and debate.
- Benefits – Some mechanism to ensure the availability of D3 RINs will be required if either (a) EPA, in taking neutral aim at accuracy, over-projects the ability of the overall market to produce D3 RINs , or (b) individual obligated parties need D3 RINs for compliance that they are not able to find in the market. Availability of Cellulosic Waiver Credits provides multiple benefits:
  - Provides market smoothing benefits for obligated parties
  - Caps the D3 RIN price at a level that prevents legal or political concerns from undermining EPA's implementation
  - Creates a target price for D3 transactions in the market and an important boundary that increases investment certainty *provided there is not an oversupply of D3 RINs*.
- Legal Authority – While the Set rulemaking requires EPA to set volumes in a manner that does not require the use of the Cellulosic Waiver Authority, there is nothing in the law that precludes its use. EPA should implement the Set rule in such a way as to retain the effectiveness of key provisions that maintain market balance and limit instability. Since there is no prohibition against EPA maintaining what has proved to be a useful market smoothing mechanism, the Cellulosic Waiver Authority should be a key feature of the Set rulemaking which enables establishing long-term ambitious targets and maintaining market stability simultaneously.
- Additional Discussion – EPA has repeatedly stated its intent to allow a bank of surplus D3 RINs as it does for other RIN categories. We continue to strongly oppose this as a problematic addition to the more appropriate CWC market buffer for obligated parties. However, if EPA persists in maintaining its insistence on two sources of compliance surplus, it must take seriously the need to cap any D3 RIN

bank at the lowest possible percentage of total market share. EPA should pay close attention to the fact that a sustained 8% SRE-driven compliance surplus destroyed nearly 90% of D3 RIN value between Q4 2017 and Q3 2019. D3 RIN prices did not fully recover until Q1 2021. That 24 months of lost revenue and depressed investment signal revealed itself clearly in a slowed rate of production capacity additions in 2019 and 2020.

#### **5. An Explicit Mechanism to Protect Renewable Fuel Producers and Investors from Large Surpluses in D3 Availability**

- How – EPA should cap D3 RIN surpluses by, for example, ensuring available volumes of D3 RINs greater than the capped level are predictably incorporated into upcoming compliance obligations.
- Discussion – Driven by an 8% annual oversupply of available D3 RINs during the Trump Administration, price premiums for D3 RINs fell by nearly 90%. EPA appears to dismiss the prospects of this – or similar less dramatic downside price volatility events – from either reoccurring or creating headwinds for low carbon fuel investors and producers. However, as EPA successfully expands the available pathways for D3 RIN generation, it increases the uncertainties inherent in its projections of the market potential. The lack of a mechanism to predictably absorb and incorporate unexpected surpluses will clip market growth opportunities and hamper investments that otherwise would be made in meeting ambitious long-term targets.
- Benefits – Introduction of a predictable method of absorbing unexpected D3 RIN surpluses will protect producers and investors from the downside price volatility that has demonstrably slowed the rate of growth in D3 RIN production in recent years. The price crash in 2018 and 2019 led to slower growth in D3 production facilities coming online in 2020 and 2021. The rebound in D3 prices has driven new investment in production facilities that we expect will result in the restoration of those production expansion rates to 30% annual growth rates. By guarding against excess D3 surpluses, EPA can systematically avoid the downward pressure on investments and better support achievement of the Administrations appropriately ambitious GHG reduction targets.
- Legal Authority – While the RFS is limited in its details in many respects, its overall direction to EPA is to promote the displacement of fossil fuels with increasingly low carbon renewable fuel alternatives. Congress left significant implementation discretion to the Agency. It also left more than a few indications that all market participants should be treated fairly. For example, in its more detailed instructions for implementing the cellulosic provisions of the RFS, Congress directed EPA to include “such provisions” that the “Administrator deems necessary to assist market liquidity and transparency, to provide appropriate certainty for regulated entities, and renewable fuel producers...” We believe the law leaves EPA more than enough discretion and direction to justify implementation of this recommendation.

## ATTACHMENT B





June 29, 2022

Via Electronic Mail

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Dear Assistant Administrator Goffman:

The undersigned companies, industry leaders in the value chain for low-carbon transportation fuel from waste biogas, jointly submit this letter for the Environmental Protection Agency (EPA) to consider in developing standards for the Renewable Fuel Standard (RFS) program beginning in 2023 (the Set Rule). Based on the relative stability of the market for renewable identification numbers (RINs) over the past year, we have made substantial investments in infrastructure to produce renewable natural gas (RNG) and other low-carbon fuels. Our industry is poised to play a significant role in the decarbonization of the U.S. transportation fleet, but to do so we need sufficient business certainty to make long-term capital investments. We write to provide additional detail on our June 10, 2022, letter to Administrator Regan, merge conversations that our companies have had with the Office of Transportation and Air Quality, and provide input regarding several critical issues for your office to consider in developing the standards that will govern the future of the RFS.

**Forecasting Annual Production Levels**

We urge EPA to take advantage of the flexibility provided by the Set Rule to adopt market-forcing standards that are aggressive yet reasonable. For the post-2022 period, the Clean Air Act does not necessarily require EPA to establish annual volume obligations “based on” estimates from the Energy Information Administration (42 U.S.C. §7545(o)(3)(A), (o)(7)(D)(i)). Consequently, EPA has discretion to take action to encourage the production of cellulosic biofuels—in line with Congress’s original intent in enacting the RFS program—rather than basing cellulosic biofuel volume obligations on actual production estimates. We look forward to working with your office on providing information on the anticipated exponential growth in the production of low-carbon fuels, including RNG and renewable electricity, and how EPA can accelerate investment in cellulosic biofuels under the Set Rule.

## **Programmatic and Market Stability**

To the extent EPA is considering how to establish cellulosic biofuel volume obligations for multiple years without needing to engage in annual rulemakings, EPA can mitigate any uncertainty in the accuracy of its projections by adopting an approach in which excess cellulosic RINs or RIN deficits realized during a compliance year are carried forward and applied to compliance obligations for the following year. For RIN surpluses, EPA should consider carryover RINs as volumes “available” for compliance, rather than creating a buildup of surplus RINs that have no way of being cleared.<sup>1</sup> For RIN deficits, obligated parties need not be constrained by the two-year deficit carryover provisions of Section 211(o)(5)(D) because those provisions apply only to “regulations promulgated under [Section 211(o)](2)(A),” which govern the annual standards through 2022; in contrast, the annual standards established under the Set Rule derive from an entirely different statutory provision – Section 211(o)(2)(B)(ii).

EPA also can provide additional market stability by continuing to make cellulosic waiver credits available to obligated parties to address potential shortfalls in actual cellulosic production in a given year. This assumes, of course, that EPA will make annual adjustments to its cellulosic annual standards pursuant to Section 211(o)(7)(D), even if it sets multi-year standards, to make sure those standards reflect a more up-to-date assessment of the projected volume available for each upcoming calendar year.

## **Biointermediates**

We support EPA’s efforts around biointermediates, which will provide our sector with more flexibility and optionality in the use of biogas as a feedstock for renewable fuel production. EPA noted in the Reset Rule that it intends to address the use of biogas as a biointermediate in a future action, and we specifically encourage the agency to include additional biogas-derived feedstocks within the regulatory definition. Biomethane can be used directly as a finished renewable fuel and generate RINs in accordance with approved pathway Q from Table 1 to 40 C.F.R. § 80.1426, but biomethane also should be allowed as a biointermediate to:

- Synthesize renewable liquid fuels (e.g., gasoline, diesel, jet, methanol);
- Generate hydrogen through methane reforming for subsequent use as a fuel; and
- Generate hydrogen through methane reforming for hydrogenation of crude oil and production of liquid fuels with renewable content.

Consistent with EPA’s rationale for approving several biointermediates under the Reset Rule, we recommend that (a) RIN generation occur only after the pathway for which biogas being used as a biointermediate has been completed and (b) all entities using biogas as a

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<sup>1</sup> We acknowledge that EPA did not include available cellulosic carryover RINs in its volume obligations for compliance years 2020 through 2022; however, the agency noted that it intends “to monitor the cellulosic biofuel market closely and assess the efficacy of the program in providing a sufficient investment environment for cellulosic biofuels.” EPA also should recognize that section 211(o)(7)(D)(i) of the Clean Air Act does not necessarily apply to the agency’s administration of the RFS program beginning in 2023.

biointermediate participate in a mandatory Quality Assurance Program (QAP) for those biofuels. This should alleviate any concerns on the part of EPA of allowing biointermediate feedstock producers to work with more than one pathway or end user.

### **eRINs**

We encourage EPA to develop a regulatory framework that will unlock the full potential of biogas producers to generate cellulosic RINs from biogas-derived electricity that is used in transportation applications (eRINs). EPA should build its regulatory framework for eRINs consistent with its longstanding interpretation of RFS authorities in which RINs are provided to the renewable fuel producers—i.e., the entities that collect and convert feedstock into a commercial product (e.g., RNG, electricity, etc.) for use in transportation applications. Although we acknowledge the vital role that entities such as electric vehicle manufacturers and charging stations have in tracking and verifying the use of electricity in vehicle applications, our sector is best positioned to obtain the necessary verifying data from these entities to establish compliance with an approved pathway given our experience in this space ever since EPA approved RNG as a cellulosic biofuel. Moreover, providing us with the opportunity to generate eRINs would accelerate investment in infrastructure designed to capture methane emissions consistent with the overall goals of the Administration’s climate strategy.

Our sector also encourages EPA to consider the following additional recommendations that will be critical in ensuring the success of a nascent eRINs program:

- EPA should ensure that eRINs are additive to other types of cellulosic and advanced biofuels. This will provide producers with a better sense of how much electricity is being produced from biogas for transportation purposes. It will also provide greater clarity to obligated parties endeavoring to meet their annual cellulosic obligations.
- EPA should reexamine the equivalence value for renewable electricity of 1.0 and align with recent independent research and technical and scientific analysis.
- EPA’s approach should account for differences in the heat rate conversion factor going from biogas to electricity, given that all biogas is not of equal quality or grade, nor is it processed the same. Specifically, EPA should authorize eRIN generation based on the amount of electricity generated, regardless of the quantity or quality of the biogas or the efficiency of the conversion technology producing the electricity.
- Consistent with the D.C. Circuit’s 2017 opinion in *Americans for Clean Energy v. EPA* and the market-forcing intentions of Congress, EPA should not consider demand-side factors in setting annual standards for eRINs and should focus its inquiry on the supply of biogas for electricity, including projected growth in gas recovery systems at landfills and digesters that provide the biogas.
- EPA should encourage, but not require, participation in a QAP to avoid double-counting of RINs and ensure the proper accounting of RINs produced through this pathway. This approach would be consistent with EPA’s practice of not requiring a QAP for RNG under the RFS, including situations where producers “book and claim” RINs. The eRIN market participants should be allowed to determine whether and to what extent such assurances are

required for a given transaction, recognizing that the surrender of invalid RINs is, in itself, a violation of the RFS.

- EPA should recognize that the documentation commonly used to demonstrate that RNG is used as a transportation fuel has proven successful as a method of compliance assurance and may be extended to instill confidence in an eRINs program.

### **D3/D5 Split**

EPA has approved renewable fuel produced from separated yard waste as a cellulosic biofuel while renewable fuel produced from food waste and other wastes has been approved as advanced biofuel. EPA now has a valuable opportunity to promote landfill diversion, renewable energy production, and greenhouse gas emissions reductions by establishing procedures specifically for RNG produced through anaerobic digestion that uses both cellulosic and advanced biofuel feedstocks. We urge EPA to adopt a policy—particularly the “Simplified Biomethane Potential Approach” developed by the American Biogas Council—that would allow for an easy methodology to split RINs generated from RNG produced through anaerobic digestion involving both cellulosic and advanced biofuel feedstocks.

\* \* \*

Thank you for your time and consideration of our recommendations. We look forward to working with your office to ensure the continued success of the RFS program in driving job creation and economic development, catalyzing investment and more rapid deployment of low carbon fuels, and promoting the energy security of the United States.

Sincerely,

/s/ Randy Beck

Randy Beck  
Vice President, Renewable Energy  
Waste Management

/s/ Mike Koel

Mike Koel  
President  
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/s/ Viral Amin

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