



June 29, 2022

Via Electronic Mail

Joseph Goffman  
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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

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Vice President, Renewable Energy  
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