



Pending Litigation for EPA's Failure to Implement the RFS for Electric Vehicles

When Congress enacted the Energy Independence and Security Act of 2007, it directed EPA to include electricity to meet the renewable fuel mandates of the RFS when sourced from qualified feedstocks (such as biogas, waste wood and the biogenic portion of municipal solid waste). In the 2010 Final Rule implementing EISA, EPA recognized electricity as a transportation fuel but it was not until 2014 that the Agency approved a specific pathway (biogas electricity from digestors, wastewater treatment facilities and landfills). Following the 2014 Rule, numerous facility biogas registrations were submitted along with pathways seeking approval of a variety of statutorily authorized feedstocks such as waste biomass and the biogenic portion of municipal solid waste. To date, not a single registration has been processed nor additional pathways approved.

In the face of EPA's refusal to act, the RFS Power Coalition (www.rfspower.com) filed a notice under the citizen suit provisions of the Clean Air Act, alleging that EPA's continued failure to process registrations and pathways was a failure to perform a non-discretionary duty under Section 304 of the Clean Air Act, and that EPA's refusal to include production of qualified electricity for EVs in annual volume obligations was contrary to law.¹ Thereafter, we were informed that the Agency had no intention of implementing the electricity requirements of EISA. Accordingly, on February 6, 2019, we sued EPA in the DC Circuit for the Agency's failure to include qualified electricity in the 2019 annual renewable volume obligation ("RVO") (*RFS Power Coalition v. EPA* ([Case 19-1027](#))). The Court heard oral arguments on the case on September 25, 2020. A decision is expected in 2021. We also filed a similar action for the 2020 RVO (*RFS Power Coalition v. EPA*) ([Case 20-1046](#)). Petitioner's Briefs are due January 29, 2021 and EPA's response is due April 30, 2021.

On numerous occasions, Congress has reinforced its strong support for electricity in the RFS, directing EPA to process outstanding registrations and pathways.² This support has been met with the Administration's outright refusal to act even in the face of numerous requests by bipartisan coalitions in the House³ and Senate⁴, and notwithstanding EPA's own data showing that electricity from such fuels as biogas is 96% less carbon emitting than conventional fuels.⁵

Upon taking office, we request that the Biden Administration seek an immediate stay of the *RFS Power Coalition v. EPA* litigation, and quickly convene all stakeholders to arrive at an agreement to implement the program expeditiously (starting no later than 2Q21) as intended by Congress and for the good of the environment.

¹ See <https://rfspower.com/wp-content/uploads/2019/03/BPA-Letter-EPA-re-eRINs.pdf>

² See Consolidated Appropriations Act, P.L. 116-6 (Congressional directive for EPA to process pending electric pathway applications within 90 days), HR 1865 (FY 2020 funding that included 90 day directive)

³ See <https://rfspower.com/wp-content/uploads/2019/06/Press-Release-Letter-Updated.pdf>

⁴ See Bi-partisan letter from led by Senators Collins and Merkley dated June 11, 2019 (<https://rfspower.com/wp-content/uploads/2019/06/Senate-Letter-press-release.pdf>) and again on December 19, 2019 (<https://rfspower.com/wp-content/uploads/2020/12/2019-12-19-FY20-E-Rins-Language.pdf>)

⁵ Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements, 79 FR 41227, 42142.