

BIOCYCLE[®]

2019 Renewable Fuel Standard Update

Three associations, including the American Biogas Council, filed a petition in February to activate the renewable electricity pathway of the RFS.

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On February 6, 2019, the RFS Power Coalition, newly formed by the American Biogas Council (ABC), Biomass Power Association (BPA) and Energy Recovery Council (ERC), filed a lawsuit against EPA to challenge its 2019 fuel targets for failing to account for fuel in the renewable electricity pathway again — for the fifth year in a row. This action was taken to activate the renewable electricity pathway of the federal Renewable Fuel Standard (RFS), a program that encourages production of renewable transportation fuel to replace fossil fuels and reduce greenhouse gases. Biogas, if used in compressed natural gas vehicles, can participate in the RFS today, but the Environmental Protection Agency, which administers the RFS, has failed to allow biogas projects that power battery or fuel cell electric vehicles — known as the “eRIN pathway” — to participate.

One of ABC’s most important priorities is ensuring that state and federal policy help advance the growth and development of the biogas industry. And the RFS, which requires any transportation fuel sold in the United States to contain a minimum volume of renewable fuels, is a program that does just that. The program originated with the Energy Policy Act of 2005 and was expanded and extended by the Energy Independence and Security Act (EISA) of 2007. During the 2007 expansion, Congress included electricity made from qualifying renewable fuels in the RFS, which includes renewable electricity from biogas.

While the EPA has had over 12 years to implement the law, the agency still has not allowed any projects producing renewable electricity to register with the RFS program. That means biogas to electricity projects are not able to generate valuable eRIN credits and revenue for the renewable power they produce. The biogas industry, along with other renewable fuel industries, wants to fully utilize the RFS to encourage growth in the sector by building new infrastructure. The RFS could also help existing biogas-to-electricity

systems that were built many years ago when electricity prices were higher, and help them stay operational, providing energy and nonenergy related benefits like manure management and odor and cost reductions.

Throughout this process, the ABC has taken every action possible to avoid litigation: meeting with EPA staff, top EPA leadership and Administration officials, meeting with the White House, sending letters as well as “sign on” letters with over 100 signatories, filing official comments to EPA rulemakings, getting members of Congress to make calls and send letters to EPA, and having members of Congress meet in person with the EPA Administrator on this issue. None of these actions has produced the result ABC seeks: EPA processing the renewable electricity applications it already has.

Call To Action

As a result of this inaction, the ABC, in conjunction with its colleagues at the Biomass Power Association and the Energy Recovery Council, formed the RFS Power Coalition to create the visibility needed to push the EPA to activate the renewable electricity pathway in 2019. The Coalition is focused on three main goals:

Raise Awareness: The RFS Power Coalition’s new website, www.rfspower.org, summarizes the problem and its importance to our industries. There are letters that biogas producers and other qualifying electricity producers have sent to the EPA, as well as correspondence between the EPA and members of Congress who support eRINs, including the entire Maine and New Hampshire delegations, as well as California House members from both political parties. This website will be a handy tool for educating anyone who wishes to learn about eRINs. Other organizations can sign on as supporters.

Political Outreach: ABC will continue to build on the considerable support it has already received from members of Congress. The Council expects to send a new letter soon to the EPA signed by many members of Congress asking EPA to act, and is working with Congressional champions on legislation that requires EPA action.

Challenging EPA: The way the RFS Power Coalition reads the law, the EPA is in violation of a congressional mandate to implement the renewable electricity pathway. This is one of the legal arguments in the Coalition’s litigation against the agency.

Anytime throughout this process, the EPA can help all parties avoid litigation by taking action and activating the pathway. We hope the Agency will do so but if not, the Coalition is prepared to see this process to completion. If we proceed with litigation, challenging the 2019 fuel targets is likely the most expedient method of contesting EPA’s inaction, but an immediate ruling is not expected.

The United States Court of Appeals for the District of Columbia will first determine if the case has merit and then likely combine it with other challenges to the 2019 fuel targets, also called the RVOs (Renewable Volume Obligations). After that, the case will progress with additional filings and oral argument. Ultimately, the hope is that the Court directs the EPA to reopen the 2019 RVOs and include an increased volume of biogas fuel with direct

recognition of the fuel that will be produced in the renewable electricity pathway. In the meantime, stay tuned by joining ABC's mailing list and visit the RFS Power Coalition website and add your organization's support.

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