



NEBRASKA ETHANOL BOARD

STATE OF NEBRASKA

PETE RICKETTS
GOVERNOR

TODD C. SNELLER
ADMINISTRATOR



July 25, 2015

The Honorable Gina McCarthy

Administrator
US Environmental Protection Agency

RE: Docket No. EPA -HQ-OAR-2015-0111
Renewable Fuel Standard

:

Dear Administrator McCarthy:

We respectfully submit the following for the Agency's consideration in the development of a final rule for the 2014-2016 Renewable Volume Obligations (RVO) for the Renewable Fuel Standard.

These joint comments are submitted on behalf of the Nebraska Ethanol Board (NEB) and the Clean Fuels Development Coalition (CFDC). Our coalition is a non-profit organization now in its 25th year with members and supporters from the ethanol, automotive, agriculture, technology, and engineering industries.

The NEB is a state agency supporting ethanol production and use in Nebraska and the development of markets nationwide. I have served as NEB Administrator since 1979 and am currently chair of the CFDC. CFDC Executive Director Douglas Durante has served in that capacity since 1987.

Our respective organizations have been involved in every public policy issue that has shaped the biofuels industry over the last three decades including the oxy fuel and RFG programs, the Blue Ribbon Panel on Oxygenates, and the Ad hoc negotiating committee for the RFS.

The RFS was designed as a public policy tool that is a true hybrid of energy, economic, and environmental policy. It has met and surpassed every policy goal in every sense. What seems to be the predominant theme behind the agency's history of setting the requirements lower than the statutory targets is your interpretation and definition of *inadequate domestic supply* with non-production factors such as the "ability to distribute, blend, dispense and consume those renewable fuels." The petroleum industry has, in our view, completely ignored their responsibility *to distribute, blend, and dispense* renewable fuels, thereby undermining the potential for increased consumption of renewable fuels. In so doing they flaunt the law and seemingly have convinced your agency that it is not possible to meet the requirements of the RFS.

You have an opportunity to get the program back on track by setting the bar as high as possible and we ask that you consider the following:

1. Congress Passed a Renewable Fuels Standard, not an ethanol only program, and certainly not just a requirement for corn ethanol.

This is critical to keep in mind as the petroleum industry has portrayed the perceived limitations of corn ethanol as the basis to undermine the entire program. As you know, in theory, the RFS volume requirements could be met without a single gallon of ethanol. Obligated parties are required to utilize *renewable fuels*, of which ethanol is one. It is a practical and efficient means to meet the obligation but certainly not the only one.

If the obligated parties choose to stop blending at 10% volume ethanol when nearly 80% of the cars on the road can use E15 and 18 million flex fuel vehicles are in use today, that is their decision. Many refiners have perpetuated the notion that their hands are tied and they cannot comply with requirements above 10 percent of the gasoline market. In fact, there is no such thing as a blend wall and the decision to not comply is just that-- a decision on the part of the obligated parties.

EPA has made little if any effort to educate media and the public that the RFS is not an ethanol mandate. Nor have we seen much in the way of statements from EPA that to the extent ethanol is used, it does not raise food prices, does not increase gasoline costs, and based on the agency's own approval of E15 does not hurt engines. Because these issues are considered by EPA they should be addressed in a factual manner in order to facilitate a more accurate understanding of the law EPA has been charged with implementing.

Ethanol has been much maligned during the implementation process. We believe EPA can help a great deal more in explaining the benefits of the RFS. The recent hearing in Kansas City was portrayed in the media as a determination of what amount of ethanol should be required to be blended in to gasoline when no such requirement exists. Congress capped the amount of ethanol from corn starch that is eligible for this program but did not require the use of a single gallon. If there was a more efficient way for the petroleum industry to meet the RFS they would do it but they have elected--up to this point-- to use ethanol.

From our perspective as ethanol advocates, EPA's recommendation of RVO targets below the statutory requirement arbitrarily limits the eligibility of ethanol to help meet targets established in the law despite the fact that ethanol is the most efficient and effective way to meet the requirements.

2. Obligated Parties Are Just That-- Obligated.

With the aforementioned public policy objectives in mind, the RFS requires that obligated parties producing our transportation fuels make at least some portion of their products using renewable resources. As noted, the menu of options includes ethanol but covers a range of both additive and drop-in fuels. If installing flex fuel pumps is what is required to meet their obligation, then so be it. If that is not viewed as a practical option then they must meet their obligation some other way.

We continually hear from the petroleum industry that there is no demand for higher ethanol blends. Major oil companies proclaim they do not control demand and price of fuels. That is preposterous. Of course they do. Demand to a large extent is driven by what is available and offered. If they made E15 or higher blends available and told consumers it was a high quality product, it would clearly drive demand. They do the opposite. They do not make these fuels available and to a large degree disavow these fuels as inferior products.

A final note with regard to obligated parties is EPA's own statement that came out with the proposed RVOs, as reported in numerous trade publications.

"We agree that obligated parties [refiners] have had years to plan for the E10 blend wall and that there clearly are steps that obligated parties could take to increase investments needed to increase renewable fuel use above current actions," the agency said in a statement.

"We also note, however, that biofuels producers could also have taken appropriate measures, and that nothing precludes biofuel producers from independently marketing E85 or increasing the production of non-ethanol renewable fuels.

This is an odd and largely inaccurate statement that illustrates the dilemma we face. The first part of this statement clearly supports our position. The agency acknowledges that refiners have not planned well for a post-E10 world. However, to then say biofuel producers could have done more is troubling. Our associates have produced the renewable fuel. In Nebraska we now have 24 operating plants producing over two billion gallons of renewable fuel annually. Much of that production capacity is a direct result of the certainty provided by the RFS. Renewable fuel production has created a multi-billion dollar direct and indirect economic benefit to our state. In short, we have done our part to provide the renewable fuel component. The production and use of renewable fuels benefit not just Nebraskans. By providing a lower cost alternative to gasoline we provide benefits to all US motorists, consumers and taxpayers.

Many of our producers and distributors have in fact independently marketed E85. But this activity is fraught with risks imposed by the petroleum industry. We are not obligated parties. Without the consent and support of the petroleum industry, their marketing, supply and branding requirements make the

projects expensive and risky. This fact makes the latter part of the aforementioned statement even more odd. How can investment flow to renewable fuel production and marketing if EPA does not enforce statutory volume requirements?

This attitude of capitulation seems to be embedded in EPA. At the Kansas City Hearing OTAQ Director Christopher Grundler opened the hearing-- which by definition should have been a true and objective effort to gather information -- by saying *it would be irresponsible of the agency to set volume standards and hope it was sufficient incentive for obligated parties to invest in the necessary infrastructure.*

To even imply this is a voluntary program where obligated parties need an incentive to comply is completely at odds with the Congressional intent of the RFS. Congress recognized that refiners and many in the petroleum industry are indeed in a position to reverse our reliance on petroleum based fuels and thus placed this obligation accordingly. It is EPA's responsibility to enforce these statutory requirements.

3. Congressional Intent was to Drive Technology, Clean Air and Infrastructure:

A casualty of EPA's failure to force volumes is the lost opportunity in terms of investment in advanced technology fuels. Once again, the petroleum industry argues that these fuels are not available. There is a conservative estimate of just under \$14 billion in frozen investment due to EPA's failing to consistently set volumes. Furthermore, as obligated parties, nothing precludes the petroleum industry from investing in and developing advanced biofuels and the legislative history of the RFS clearly supports the notion that Congress intended for them to do so.

Many of our Nebraska producers have the ability to add a variety of bolt on technologies such as corn fiber separation or utilizing stover or a mix of feedstocks to produce low GHG advanced fuels. Establishing aggressive requirements assuring a market for these products is critical. Recent statements by Novozymes and other major companies regarding curtailment of investment due to policy uncertainties created by EPA decisions illustrate this point.

Congress also knew we would need to move beyond the amount of ethanol that could be used in conventional vehicles and distributed in conventional pumps. The ripple effect of not forcing the volumes has crippled the momentum we had going in the Flex Fuel Vehicle (FFV) sector. Automakers see the same indecisiveness we see and have reduced the volume of FFVs they are producing. .

It is important to recognize how all these issues are interconnected. It goes without saying that advanced biofuels from cellulose were assumed to be the end game of the RFS. If the volumes were enforced it would have resulted in refueling infrastructure which would have resulted in OEMs making flex fuel vehicles available to respond to the demand.

In addition to Congressional intent to drive technology, auto production, and refueling infrastructure, biofuels represent a huge opportunity to reduce pollution and green house gases. Failing to replace every bit of petroleum based fuels that we can with biofuels ignores the significant health and pollution consequences of petroleum use. This fact seems to have gotten little attention in this debate.

The auto industry has consistently stated they will need higher octane fuels as they produce small bore, high compression engines to meet fuel economy and green house gas requirements. Octane is derived from the aromatic compounds of petroleum refining. These compounds include known and suspected carcinogens. The emissions of Ultra fine particulates represent an unregulated health threat that can be avoided by utilizing ethanol and taking advantage of its high octane. There is nothing in the refining toolbox of alkylates or reformates that can provide octane as cost effectively as simply adding ethanol to finished E10 gasoline to make an E25 or and E30 fuel blend. These fuels can be used in FFVs initially and then in newer cars that are likely to be certified for blends up to 30% volume. EPA's failure to reduce aromatics as required by the Clean Air Act is at best a lost opportunity to harmonize policy objectives whereby the RFS can be the tool for multiple policy objectives.

4. Precedent of a "Mandate":

The federal government, via Congress, has driven public policy not by a so called "free market" but by measuring the public benefit that comes from their actions. Seat belt laws, energy efficient appliances, handicap accessibility, minority hiring, food safety, and health standards--these are just a few of the areas where no advances would have been made without public policy initiatives.

The RFS, as passed in 2005 and extended as a key component of the Energy Independence and Security Act of 2007, is a prime example of prudent policy action. As stated throughout these comments, it was the intent of Congress, as clearly supported in the House Report on HR 6, 2007, to move away from fossil fuels and toward renewable fuels. This was unlikely to happen on its own and thus the requirements were put in place for the public benefit.

Why the RFS is immune to the legislative intent inherent in other government program requirements is unclear to us. One analogy would be to look at handicap accessibility requirements. A building has to have four doors with ramps that accommodate a wheelchair. But after installing two doors and ramps the builder says he cannot do the rest because the type of concrete they use on their ramps is not compatible with their mixers. There are other types of concrete and mixers available, just not the type they use. The fact that he has a financial interest in the first type notwithstanding, this would not be sufficient grounds for non-compliance. It is, however, exactly what is happening in the RFS decision making process today.

EPA has an opportunity with the 2016 requirements and beyond to set the bar higher and let the RFS program truly be all it can be. It seems clear that the RVO for 2014 and 2015 are going to reflect actual usage. But setting the 2016 volumes is critical given the fact that the agency can set a one-time permanent volume for 2017 and beyond.

We urge EPA to allow-- not require, but allow as the law intended-- the full volume of 15 billion gallons of corn-derived ethanol to be eligible for the RFS and to be qualified to generate a RIN. The Advanced, biodiesel and Cellulosic categories should be set at the highest possible volume so as to create a demand pull.

The full 15 BGPY allowance for conventional ethanol will result in vehicles and infrastructure that will in turn further incentivize the advanced biofuels thereby setting the stage for continued growth in renewable fuel production and use as intended by the Congress.

We appreciate the difficult task EPA faces in implementing the RFS program. However, the history of the ethanol and biofuel industry supports the notion that both production and consumption will respond to the influence of predictable public policy as Congress intended. The simple enforcement of the highest volumes allowed is the means to this outcome.

Sincerely,

Todd C. Sneller, Administrator

Nebraska Ethanol Board

Douglas Durante, Executive Director

Clean Fuels Development Coalition