

Biomass Producers Sue EPA for Share of Biofuels Bonanza (1)

- Biomass, biogas, waste energy groups sue EPA to revisit 2019 biofuels targets
- Groups say timing is critical given EPA plans to overhaul RFS program

By Abby Smith | February 8, 2019 12:11PM ET

(Updates fourth and fifth paragraphs with additional detail on industries and RFS participation. A previous version of this story was corrected in the 12th paragraph to reflect the number of gallons.)

The EPA is facing a lawsuit over its Renewable Fuel Standard—not from corn or oil interests that have recently locked horns over the issue, but from producers of biomass, biogas, and waste energy.

Major trade groups for the industries that convert organic matter into renewable fuels and power filed suit this week trying to force the Environmental Protection Agency to implement part of the renewable fuels law that allows renewable electricity fuels from biomass, biogas, and waste energy to generate credits under the program.

Credits known as Renewable Identification Numbers (RINs) can be purchased and traded by fuel refiners and importers as they work to meet the law's annual biofuel quota. Over time, however, RINs have also become a financial commodity traded on Wall Street.

Biomass, biogas, and waste-to-energy producers want in the game. They say the updated RFS law passed by Congress in 2007 requires the EPA to include their industries. The EPA, however, hasn't approved a single application for electric RINs from their industries, the groups said.

Biomass producers focus on organic waste, such as wood waste and agriculture waste; biogas producers turn nonwoody waste, such as food waste and manure, into power; and

waste-to-energy facilities generate power from post-recycled waste that would otherwise be put in a landfill.

While important for the producers, renewable electricity fuels from these resources are a small part of the overall Renewable Fuel Standard (RFS), accounting for less than 1 percent of the program, Patrick Serfass, executive director of the American Biogas Council, told Bloomberg Environment.

Finding Resources

Acting EPA Administrator Andrew Wheeler, in written response to questions from senators after his nomination to be the EPA's permanent chief, said the agency is struggling to find resources to implement this portion of the program.

"There's no legal or regulatory reason why EPA shouldn't be following the law and shouldn't be recognizing" biomass-derived renewable electricity fuels, said Bob Cleaves, president and CEO of the Biomass Power Association.

The three trade groups that filed suit—the Biomass Power Association, the American Biogas Council, and the Energy Recovery Council—announced formation of the RFS Power Coalition on Feb. 8 to support their efforts.

"EPA really needs to be told it's not up to EPA to pick and choose among laws to implement," Cleaves added. "If they don't have the resources, they need to get them. If we need a court to tell EPA to get those resources, that's what we need to do."

2019 Values

The [lawsuit](#) filed in the U.S. Court of Appeals for the District of Columbia Circuit targets the EPA's rule setting 2019 renewable volume requirements. It asks the court to require the EPA to recalculate the volumes to include renewable electricity fuels derived from biomass, biogas, and waste energy.

The EPA will require refiners to blend 19.92 billion gallons of biofuel in 2019, a 3.3 percent bump over the law's 2018 requirements.

Around 15 billion gallons of the total can come from conventional sources such as corn-based ethanol, according to the Nov. 30 regulation, but at least 4.92 billion gallons have to be fulfilled by advanced biofuel. The latter amount includes 418 million gallons of cellulosic renewable fuel.

But biomass, biogas, and waste energy producers said those volumes don't include renewable electricity fuel derived from their resources. They are asking the EPA to revisit the 2019 volumes and add the potential gallons of fuel from biomass, biogas, and waste energy-derived fuels to the amount of cellulosic RINs refiners are required to purchase.

Timing is critical, the groups said.

"If we don't challenge the 2019 [volumes], it will be at least another year before we have the opportunity to take this action again," Serfass, of the American Biogas Council, said.

The groups are also concerned if their requests aren't resolved before the EPA releases its plans to update the RFS law, known as the "reset" proposal, it could be another decade before fuels derived from their resources would be considered in the program.

'Dog Ate Their Homework'

But the biomass, biogas, and waste energy producers are entering an already politically fraught territory.

Corn producers and oil producers—and the lawmakers that represent states abundant with either—are locked in a bitter fight over the future of the program, and the EPA's reset proposal will be at the center of that debate.

Nonetheless, the energy producers said the EPA has told them they have the tools to move forward with recognizing biomass, biogas, and waste energy in the RFS program.

EPA air chief Bill Wehrum told members of the American Biogas Council as much in a meeting in October 2018, but also noted Wehrum said his staff wouldn't address the issue until April of 2019, Serfass said.

The producers also note the EPA already established a pathway for biogas-derived fuels to generate RINs in a 2014 regulation.

EPA "is saying, 'We're not counting renewable electricity because those facilities aren't registered.' But they're also saying, 'We're not registering those facilities because we choose not to,'" Cleaves said. "As long as they continue not to register [these facilities]—because they choose not to, they can't, the dog ate their homework—we're left where we're not in the program."

The case is RFS Power Coal. v. EPA, D.C. Cir., no docket number available, petition filed 2/6/19.

To contact the reporter on this story: Abby Smith in Washington at asmith@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Chuck McCutcheon at cmccutcheon@bloombergenvironment.com