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GROUPS SUE EPA OVER FAILURE TO ADD E-RINS TO 2019 RVO

Three biomass energy trade groups are suing EPA over the agency's failure to include in its final 2019 Renewable Volume Obligations (RVO) cellulosic biofuel from renewable natural gas used to make electricity.

The RFS Power Coalition, which includes the Biomass Power Association (BPA), the American Biogas Council (ABC) and the Energy Recovery Council (ERC), last week filed a petition for review of the agency's 2019 Renewable Fuel Standard (RFS) targets with the U.S. Court of Appeals for the District of Columbia Circuit.

The RFS allows electricity generated from renewable resources and used in transportation to qualify for Renewable Identification Number (RIN) credits and EPA in 2014 approved a so-called e-RIN pathway for such biogas-derived electricity.

It has, however, failed to approve any projects under the pathway.

"It's been more than 11 years since President George W. Bush signed the RFS2, which included electricity as an RFS transportation fuel," Bob Cleaves, BPA president and CEO, said in a statement. "The EPA has had more than enough time to implement the law as Congress intended, and they have failed to do so. Meanwhile, biomass power producers and other qualifying electricity producers are missing out on participation in the RFS program. It's time for the EPA to act on this crucial part of the RFS."

In an interview Friday, Cleaves said the coalition's suit presents a "basic question to the court -- whether EPA in the face of an approved pathway can simply turn its back on this type of transportation fuel."

He added that some applications for approval under the pathway have been pending for more than four years. "Each year under the RFS EPA sets annual volume requirements and each year we comment and our comments are largely ignored," Cleaves added.

He said the groups consider it particularly important that EPA adjust its 2019 cellulosic biofuel target to include renewable given that the agency is set to conduct a "reset" of the target this year. Under the RFS, the agency is required to readjust annual statutory volumes if it uses its general waiver

authority to reduce totals for any biofuel category by at least 20% for two straight years by 50% in a single year.

EPA is widely expected to use the reset to reduce the 2020-2022 volumes of cellulosic, advanced and total biofuels when it releases its 2020 RVO.

"If EPA is not forced to include an approved pathway, then we're looking at years before being able to participate in this program," Cleaves said.

While EPA earlier said it needed to resolve several issues over how the renewable electricity program would work, officials with the group said those concerns have been addressed.

"EPA isn't saying it can't implement the program because it's unworkable," Patrick Serfass, executive director of the American Biogas Council, told OPIS. Rather, he said, senior agency officials have told the trade groups that EPA does not have sufficient resources to focus on the issue.

"The question we're asking ourselves is why should EPA have the right to decide where to place its emphasis? It is not the agency's prerogative and it is not what Congress intended."

Serfass said EPA to date has received more than 40 applications from electricity producers to participate in the RFS. "That means 40 projects were developed, investors committed funding and partners lined up to build new infrastructure using waste biomass to produce renewable electricity. But these projects sit dormant due to EPA's inaction to administer their own program.

"Biogas applicants include dairy farmers, food waste systems and wastewater facilities all of whom could be building valuable new infrastructure America needs to recycle organic material that would otherwise be wasted into renewable energy and soil products," he said.

The coalition estimates that including renewable electricity in the RVO would result in about 200 million gasoline gallon equivalents added to the D3 cellulosic fuel category of the RFS.

This category includes liquid and gaseous biogas fuels, but omits electricity. In its 2019 RVO, EPA set the cellulosic target at 418 million gallons.

Cleaves said that based on a "back-of-the-envelope" calculation, the coalition believes that the cellulosic target this year should be closer to 600 to 700 million gallons if renewable electricity is included.

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