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EPA Proposes Biogas Amendments to the Renewable Fuel Standard: RIN Generation on Electricity from Biogas, Cellulosic RIN Generation and Other Changes

On May 21, the Environmental Protection Agency (EPA) proposed amendments to the federal Renewable Fuel Standard (RFS) that would further incorporate the use of biogas into the RFS. The RFS requires gasoline and diesel refiners, blenders and importers to purchase and use an ever-increasing number of renewable fuel credits (known as RINs) representing volumes of renewable fuel to offset the annual production of petroleum-based transportation fuel. While the EPA has always permitted RIN generation on biogas used as a transportation fuel, today's proposal would significantly increase the number of RINs generated on biogas and potentially the value of those RINs.

Presently, the EPA allows the generation of Advanced Biofuel RINs on biogas produced at landfills, wastewater treatment plants and manure digesters used as a transportation fuel provided that the biogas is used as a gas rather than being converted to electricity and then used as a transportation fuel. Under the RFS, one RIN is generated for every 77,000 BTUs of biogas used as a transportation fuel. Advanced Biofuel RINs presently trade at \$1.00/RIN or \$12 - 13/mmbtu of biogas used as a transportation fuel.

Under the proposal, biogas from landfills would qualify as a Cellulosic Biofuel, which would generate a D3 RIN. This RIN price is hard to ascertain because currently there is extremely little cellulosic production. However, Cellulosic RINs meet three of the RFS tiered-mandates – Cellulosic, Advanced and Total Renewable Fuel. Biogas from waste treatment plants and waste digesters would continue to be classified as an Advanced Biofuel. The EPA has also proposed that the “producer” of renewable fuel, and the entity that generates the RINs, would be the company that compresses or liquefies the gas into CNG or LNG. This could be a significant change for entities that do not compress or liquefy gas but are otherwise positioned to ensure compliance with the EPA rules.

Additionally, the proposal will allow RIN generation on electricity from biogas, provided that electricity is used as a transportation fuel. A significant amount of the biogas collected at landfills, wastewater treatment plants and dairy farms is presently converted to electricity. Under the proposal, electricity from landfills will be eligible for RIN generation provided certain, very specific requirements are met by all parties involved in owning, operating and converting the biogas to electricity as well as those parties selling or distributing the electricity for use as a transportation fuel.

Biogas and renewable electricity from biogas are attractive fuel sources in today's market because they are not subject to the same blending concerns as many other types of renewable fuel. There are concerns that the United States is reaching the “ethanol blend wall,” the point at which no more ethanol can be added to the transportation fuel pool in the United States. For legal and liability reasons, in the United States ethanol generally is not blended into gasoline in concentrations greater than 10%. With the EPA and many in the industry predicting that the RFS mandates will require the use of renewable fuel in excess of that “blend wall” in either 2013 or 2014, corn-ethanol RIN prices have increased exponentially over concerns on whether higher blending is feasible. Unlike ethanol, biogas and electricity face no such “blend wall.” With electric and natural gas vehicles beginning to proliferate throughout the United States, today's proposed expansion of the RFS biogas provisions may further incentivize the use and distribution of those vehicles and the fuel that powers them.

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Sutherland Asbill & Brennan has more than 30 years of experience in working with industry and EPA on rulemakings and regulatory amendments that impact the regulation of transportation fuels, including those developed from renewable resources as well as petroleum based fuels. Sutherland attorneys assist stakeholders in developing comments on such rulemakings and coordinate discussion with regulatory officials.



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