



February 10, 2023

Submitted electronically to: <https://www.regulations.gov>

David Korotney
Office of Transportation and Air Quality
Assessment and Standards Division
Environmental Protection Agency
2000 Traverwood Drive
Ann Arbor, MI 48105

Re: Docket ID No. EPA-HQ-OAR-2021-0427
Renewable Fuel Standard Program: Standards for 2023-2025 and Other Changes

Dear Mr. Korotney:

The National Waste & Recycling Association (NWRA) and Solid Waste Association of North America (SWANA) are pleased to submit comments on the U.S. Environmental Protection Agency's (EPA's) proposed rule on the *Renewable Fuel Standard Program: Standards for 2023-2025 and Other Changes*. NWRA and SWANA represent companies, municipalities, and professionals in the solid waste industry. NWRA is a not-for-profit trade association representing private solid waste and recycling collection, processing, and management companies that operate in all fifty states. SWANA is a not-for-profit professional association in the solid waste management field with more than 10,000 members from both the private and public sectors across North America. Members of both organizations strive to deliver collection, composting, recycling, and disposal services that are protective of the environment in a safe, science-based, and technologically advanced manner. Our members are the leading producers of renewable natural gas (RNG) and renewable electricity from landfill biogas in the country.

Although NWRA and SWANA joined separate comments submitted by the Coalition for Renewable Natural Gas, NGV America, Energy Vision, and the American Public Gas Association, we offer these additional comments to elaborate on matters that are particularly relevant to the landfill sector.

Proposed Cellulosic Biofuel Volume Requirements for Compliance Years 2023-2025

- We are concerned that the proposed volume requirements do not reflect the projected growth of the RNG sector. EPA calculated the annual growth in RNG production based on performance during the COVID pandemic—which is not indicative of historic growth trends.
- Our members have publicly announced over \$2 billion in planned investments.¹ In addition, we expect that the Inflation Reduction Act, which included tax credits for RNG production, electricity generation, and carbon capture and sequestration, will contribute to significant additional investment in this space.
- Given the forgoing, we encourage EPA to increase the proposed cellulosic volume obligations to reflect the proposed alternative growth rate of 30.4 percent, at a minimum, for RNG.
- EPA also should work closely with environmental engineering firms in reevaluating the eRINs component of the cellulosic biofuel obligations to avoid basing agency estimates on unrealistic registration delays.

Surplus D3 RIN Generation

- Our members are particularly concerned about market reactions to surplus D3 RIN availability, as underestimating cellulosic biofuel volume obligations could lead to significant volatility in the market for D3 RINs.
- We recommend that EPA continue to evaluate the discretion afforded to the agency under the Clean Air Act in implementing a stabilizing mechanism that could be utilized on an annual basis to adjust cellulosic volume obligations to protect the market from excessive volatility. This mechanism is critical at a time when there is significant uncertainty around EPA's assumptions, especially with regard to the volume of renewable electricity that may be available for program participation.

Regulatory Program for Renewable Electricity

- We are concerned with the potential impact of the proposed rule on how our members engage with utilities and other renewable electricity offtakers, and the broader relationship among EPA's eRIN program and state Renewable Portfolio Standard (RPS) programs.
- Many of our members own or host landfill gas-to-electricity facilities with existing power purchase agreements that bundle environmental attributes with the sale of the underlying renewable electricity.

¹ See publicly available sources:

- <https://media.republicservices.com/2022-05-05-Republic-Services-and-Archaea-Energy-Launch-Landmark-Joint-Venture-to-Develop-39-New-Renewable-Natural-Gas-Projects-Across-U-S>
- <https://mediaroom.wm.com/2022-04-28-WMS-RENEWABLE-ENERGY-INVESTMENTS-EXPECTED-TO-POWER-OVER-1-MILLION-HOMES-BY-2026>
- <https://www.wasteconnectionscanada.com/ridge-landfill/news-and-events/>

- In the interest of allowing EPA’s eRIN program to flourish alongside state RPS programs, we urge EPA to clarify that renewable electricity generators may share renewable electricity data only with a renewable electricity RIN generator. That is, the renewable electricity generator and the renewable electricity RIN generator (and other third-party agents, as delegated) are the only parties that may participate in the right to generate eRINs on quantities of qualifying renewable electricity.

Biogas Regulatory Reforms

Compliance Deadline

- EPA proposes a January 1, 2024, deadline to comply with the biogas regulatory reforms; however, if the rule is not finalized until June 2023, stakeholders likely will not have enough time to comply putting biogas producers in an untenable position.
- We urge EPA to defer the proposed compliance deadline by 12 months or, perhaps more appropriately, consider the timing of the reforms in a separate rulemaking to provide an opportunity for more robust feedback from stakeholders.

Reporting and Registration Deadlines

- EPA proposes that parties have an EPA-accepted registration prior to engaging in activities regulated by Subpart E; however, the timing for registration is unclear.
- For example, in one section, EPA requires applicants to submit registration applications at least 60 days prior to January 1, 2024. But elsewhere, EPA’s proposed regulations state that “[p]arties required to register under § 80.145 may register with EPA beginning on the effective date of the final rule.”
- We request that EPA clarify the registration deadlines biogas producers must meet.

Existing Biogas Production & Storage

- EPA proposes to allow a RERNG to generate RINs for renewable electricity through April 30, 2024, regardless of whether the renewable electricity generator, biogas producer, or both have had their registration(s) accepted by EPA. However, EPA makes no similar accommodations for biogas producers whose product is intended to be consumed as renewable CNG/LNG and must make new registrations. EPA also proposes to prohibit RINs from being generated for biogas/RNG that is produced and stored offsite prior to the acceptance of a producer’s registration, contrary to longstanding practice that has been acceptable to EPA.
- During the application process, biogas producers and RNG producers will continue to produce biogas and RNG. It is unclear how EPA will be able to process applications in a manner that allows current biogas producers and their RNG producers to come into regulatory compliance in a timely fashion.
- Also, presently, some biogas producers have contracts to provide biogas to other RNG producers/RIN generators that effectively obliges them to utilize offsite storage. This could result in difficult short-term business decisions for early adopter producers to reduce rather

than increase levels of biogas and RNG available on the grid, and adversely impacting the program by removing critical storage capabilities.

- EPA should specifically allow existing biogas/RNG producers to continue to produce qualifying biogas/RNG until the EPA has accepted their applications.

Landfill Biogas Producer Registration Requirement

- EPA proposes to require all biogas producers to register to avoid double-counting.
- The volumes of collected biogas at landfills are closely monitored to comply with air permits and regulations. As such, double-counting is not a concern within our sector.
- We suggest that EPA exempt landfills from the registration requirement and instead limit the registration requirement to facilities that produce renewable LNG/CNG on site, serve as the biogas closed distribution system RIN generator, or produce renewable electricity on site.

Multiple Electric Generating Units and/or RNG Processing Facilities at the Same Landfill

- It is common practice for landfills to install multiple biogas processing units as landfills expand into new cells.
- The volumes of collected biogas delivered to each RNG facilities/electricity generating units are closely monitored to comply with air permits and regulations. As such, double-counting is not a concern within our sector.
- We recommend that EPA revise 40 C.F.R. § 80.105(k) to avoid unnecessarily restricting landfills from using biogas for use as a renewable transportation fuel.

Location of Any Establishment from Which the Waste Stream Consisting Solely of Separated Food Waste is Collected

- The requirement for renewable fuel producers to keep “[d]ocuments *demonstrating the location of any establishment(s)* from which the waste stream consisting solely of separated yard waste, separated food waste, or biogenic waste oils/fats/greases is collected” has been interpreted as a provision requiring customer lists.
- Given that this is considered confidential business information (CBI), it is a significant disincentive to participate. To date, attempts to resolve this problem have been unsuccessful.
- We request that EPA explicitly state that it recognizes that customer lists are CBI and that CBI is not required to be shared with processors.

Independent Allocation of Environmental Attributes

- The Greenhouse Gas Protocol (GHGP) has drafted rules that severely restrict or entirely prohibit the allocation of environmental attributes (EAs) from market-based mechanisms as emissions reductions in GHG reporting.² GHGP also indicates that it is concerned of additionality and double-counting of emissions reductions.

² See language in [Annex B of GHGP’s Land Sector and Removals Guidance](#) as well as their [surveys on methodology updates](#), especially questions 31-45 of the market-based mechanisms survey.

- Statements that RINs/eRINs are simply financial vehicles devoid of any EAs would be helpful in clarifying the issue for GHGP.
- Therefore, we request that EPA explicitly state that RINs/eRINS are solely financial vehicles.

Thank you for your consideration of our comments, and we look forward to continuing to partner with EPA on this topic. Should you have any questions about our comments, please contact Anne Germain, COO & SVP of Regulatory Affairs for NWRA, at agermain@wasterecycling.org. You may also contact Jesse Maxwell, Senior Manager, Advocacy & Safety for SWANA, at jmaxwell@swana.org.

Very truly yours,



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