The Renewable Fuels Standard and EPA Enforcement

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Overview

- Renewable Fuel Standard 1
- RFS 2
- Renewable Identification Numbers (RINs)
- EPA Enforcement
RFS 1

- Energy Policy Act of 2005
- Focused on Increased Ethanol Usage
RFS 2

• Energy Independence and Security Act of 2007
• Advanced Biofuels that Meet Green House Gas (GHG) Performance Standards
RFS 2
Changes and Impacts

• New Categories of Fuels
• Renewable Biomass
• GHG Performance Standards
• New Fuel Pathways
• Factors Influencing RIN Values
RFS 2

- Four Separate Standards
  - Cellulosic Biofuel: 16 billion gallons by 2022
    - Renewable fuel produced from cellulose, hemicellulose, or lignin
    - E.g., cellulosic ethanol, BTL diesel, green gasoline, etc.
    - Must meet a 60% lifecycle GHG threshold
    - Only 8.65 M in 2012
  - Biomass-Based Diesel: 1 billion gallons by 2012
    - E.g., Biodiesel, BTL diesel, “renewable diesel” if fats and oils not co-processed with petroleum
    - Must meet a 50% lifecycle GHG threshold
RFS 2

• Four Separate Standards (cont.)
  – Advanced Biofuel: 21 billion gallons by 2022
    • Includes cellulosic biofuels and biomass-based diesel plus an additional 4 billion gal
    • Essentially anything but corn starch ethanol
    • Must meet a 50% lifecycle GHG threshold
    • 2 billion gallons in 2012 (ethanol baseline)
New Categories of Renewable Energy

– Renewable Fuel: 36 billion gallons by 2022
  • Includes up to 15 billion gallons conventional biofuel (ethanol derived from corn starch or any other qualifying renewable fuel)
  • Must meet 20% lifecycle GHG threshold
  • Only applies to new fuel production capacity
  • 15.2 billion gallons in 2012 but subtract others

(EPA Sourced Material)
GHG Performance Standards

Fuel is Sum Total of its GHG Parts:
- Feedstock - Inputs, Farming, Harvesting
- Feedstock Penalties - Indirect Land Use Change
- Transportation of Feedstock
- Processing
- Transportation of Finished Product
- Finished Product Emissions
Fuel Performance Testing

- Four Facets of a Fuel:
  - Feedstock
  - Process Energy
  - Process
  - Finished Fuel

- Informs Process for Establishing a New Pathway
- Underlies Feedstock Certification Requirements
- Necessitates Life Cycle Analysis: Methodology?
And Remember, It’s Motor Fuel

- Demanding Applications
- Slow Market Penetration and Acceptance
- Scale of Cultivating, Harvesting and Processing
- Capital Intensive Manufacturing Capacity
- Massive Scale
Impacts

- Four Categories of RINs
- More Complicated System
- GHG Performance Issues Throughout System
- Fluctuating Values for Different Categories
Legislating Science – Inherent Challenges

- Complex Problem
- Scientific Methodology
- New Market
- Transparent Analysis
- Stable Price
EPA Enforcement Activities

- Key Provisions
- Process
EPA’s Guiding Principle: Maintain the Integrity of the RFS

- EPA tasked with implementation of EISA goals of energy security and GHG reduction.
- RIN Generation
- RIN Importation
- RIN Retirement
Key Regulatory Provisions

- Title 40- Protection of the Environment
- Subchapter C- Air Programs
- RFS1 at 40 CFR 80.1100 et seq.
- RFS2 at 40 CFR 80.1400 et seq.
- Parallel Provisions- in many respects but some variability and annual revisions
Liability (§1461)

• Any person who violates §1460(a)-(d), or causes another to violate same provisions.
• Any person who fails to meet a requirement of any provision of Subpart (K, M) or causes another to violate.
• Extends liability to parent companies and joint venture partners.
Prohibited Acts (§1460)

- Importation without compliance
- Improper RIN Generation
- Create or Transfer Invalid RIN
- Fail to Acquire sufficient RINs or use invalid RINs
- Use a validly generated RIN for RVO where person uses fuel in non-qualifying use
Penalties

• Civil Penalty under 205 and 211(d) of Clean Air Act for every day of violation PLUS Amount of Economic Benefit or Savings
• Multiple Factors Used by EPA in assessing penalties
Process

• Request for Information under Clean Air Act:
  – Document Demand
  – 30 Day Timeframe
  – Reporting PLUS Recordkeeping PLUS Associated Contracts
Enforcement Process

- Administrative Penalty
- Civil Proceeding
- Criminal Proceeding
- Settlement Proceedings
We wrote the book on renewable energy law...

...in fact, we’ve written eight of them, plus a blog and a wiki:

www.lawofrenewableenergy.com  www.lawofalgae.com

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Thank You

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