

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

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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?₁₀



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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



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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

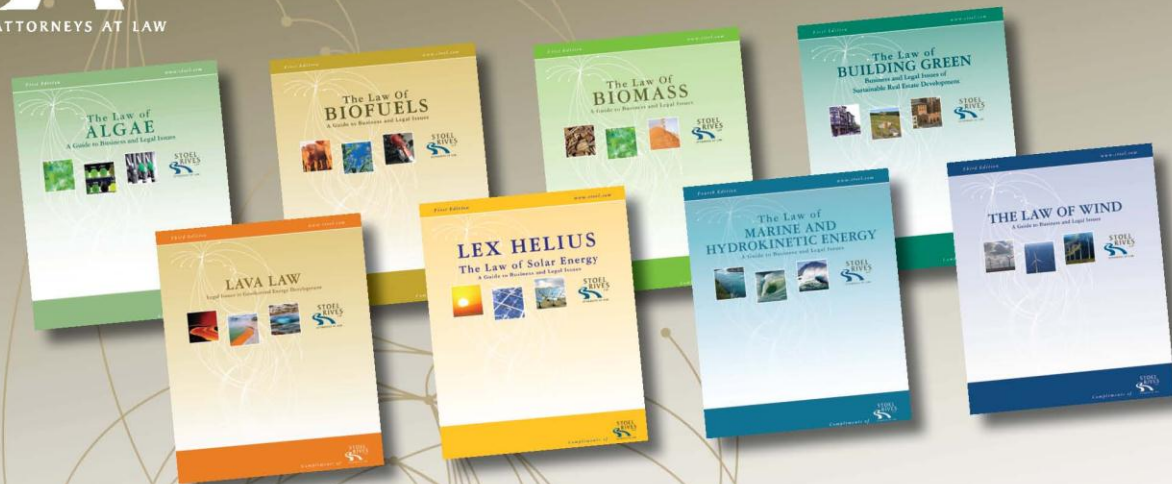
- Request for Information under Clean Air Act:
 - Document Demand
 - 30 Day Timeframe
 - Reporting PLUS Recordkeeping PLUS Associated Contracts

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

Alaska California Idaho Minnesota Oregon Utah Washington

Thank You

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