



**Two RFS Power Coalition Members Testify at EPA Hearing:  
It's Time for the Federal Government to Do Its Job and Process eRIN Applications and  
Pathways**

Washington, DC – July 31, 2019 – Today, the Biomass Power Association and American Biogas Council delivered testimony at the Environmental Protection Agency (EPA) hearing in Ypsilanti, Michigan. Both witnesses called on the EPA to process applications that will allow biogas, biomass and waste-to-energy electricity producers to participate in the Renewable Fuel Standard (RFS), as intended by Congress when the bill became law 11 years and 224 days ago. None of these electricity producers are currently able to participate in the RFS due to EPA's inaction which effectively excludes electricity fuel from the RFS program.

The 2020 Renewable Volume Obligation (RVO), the focus on today's hearing, does not include any fuel volumes for electricity. The RVO sets the mandates for renewable fuels purchased or blended by obligated parties for the following year under the RFS. Without volumes for renewable electricity, no market will exist to buy or sell renewable identification number (RIN) credits under the RFS. Despite the fact that the EPA approved a pathway for biogas in 2014, the EPA has yet to process a single application from an electricity producer. Biomass and waste-to-energy electricity producers have also submitted applications, and their feedstocks qualifies them to produce RINs but the EPA has not yet created pathways for these forms of electricity.

The members of the [RFS Power Coalition](#) (the Biomass Power Association, American Biogas Council and Energy Recovery Council) [filed a lawsuit](#) in February 2019 in the D.C. Circuit to challenge the EPA's 2019 RVO for its lack of electricity volumes. The 2020 RVO repeats these legal flaws.

Testimony from each of the RFS Power Coalition representatives follows.

**TESTIMONY BY BIOMASS POWER ASSOCIATION BOARD MEMBER TOM VINE**

My name is Tom Vine. I serve as Plant Manager of Viking Energy of McBain, a biomass plant located in McBain, Michigan. Owned by Engie North America, McBain is a 17-megawatt power generating facility that powers more than 15,000 homes. Using 400,00 tons of waste wood that would otherwise end up in landfills or decay, McBain generates clean, renewable energy which it has done since the plant began commercial operation in 1989. Engie owns similar facilities in Lincoln, Michigan, as well as Massachusetts, New Hampshire, and Vermont totaling 93 MW.

I also serve on the Board of the Biomass Power Association, a national organization comprised of power facilities in 20 states.

On behalf of Viking McBain, Engie, BPA and an organization we created last year—the RFS Power Coalition—I wanted to share with you today some brief thoughts about the RFS. We will soon be submitting written comments as well.

Our message to EPA is simple and to the point: *It's time for the federal government to do its job.*

It has been nearly 12 years since Congress authorized electricity to be part of the RFS; 9 years since this Agency formally included electricity—along with renewable natural gas—into the final RFS rule; 5 years since electricity from biogas became an authorized pathway; and 2 years since the former Assistant Administrator, Mr. Wehrum, promised us that the delay was a function of resources and that EPA would make it a priority.

And yet here we sit, with the Agency refusing to process pending registrations for an approved pathway; and refusing to complete pathway processing for woody biomass. Not surprisingly and for a fifth year in a row, the Agency put out an annual RVO that makes not a mention of electricity. Not a word.

To be clear, the Congressional mandate to include electricity is unequivocal. Provided electricity is derived from renewable biomass pursuant to an approved pathway, it **must** be counted in the RVO. That was plainly recognized back in 2012, when the Agency—as part of that RVO—used data from the U.S. Energy Information Administration asserting that more than 300 million RINs could come from electricity but would not be recognized without an approved pathway. That hurdle was overcome, we thought, in 2014 when biogas-to-power became a pathway. Companies immediately filed registrations and following that, woody biomass companies filed pathway screening tools and petitions. EPA's response? It filed a notice in the federal register seeking comments on a rule that it already made final two years before and now, remarkably, two years have since passed without any action or proposed change.

As we will document in our written testimony, using EIA data and EPA's own methodologies, the 2020 RVO should recognize ***at a minimum*** 662 million D3 RINs. And 662 million RINs reflects *only* the approved biogas pathway, not the biomass or waste-to-energy pathways that have not yet been approved. It also does not reflect the greatly increased efficiency of an electric drivetrain compared to a traditional combustion engine, as recognized by the EPA. EPA is statutorily required to recognize this volume, and should immediately formally establish a pathway for other electricity sources derived from RFS-qualified feedstocks.

First, it is based on an approved pathway.

Second, it relies upon EIA data, which EPA is required by statute to consider.

And third, the 662 million RINs can be generated using regulations EPA itself adopted as final in 2014 regarding tracking, matching and verification.

If EPA wants to revisit the 2014 rules, it needs to follow the notice and comment requirements of the Administrative Procedure Act. In the meantime, the Agency cannot simply refuse to implement the very rule it adopted.

Our lawyers have informed me that as a matter of law, just because power facilities are not registered does not mean they cannot be counted. The agency has never limited production volumes to registered facilities. Doing so would give the Agency unfettered authority to limit production volumes simply by refusing to register companies. Indeed, that is precisely what the Agency is doing here.

EPA's failure to recognize electricity goes beyond the accuracy of the D3 number. The flawed number places in question the very legal basis for invoking the cellulosic waiver since the underlying production numbers are simply wrong. This in turn affects all other biofuel categories which are being reduced based on the cellulosic waiver. And for every year that EPA delays electricity, that means more and more RINs that someday, a Court may order be reinstated. In short, it's a house of cards.

Finally, EPA's flawed 2020 RVO is problematic not just because the Agency fails to follow its own rules but also because of the demonstrable, economic harm that results any time the federal government ignores the free market by favoring one form of energy over another. By refusing to include production volumes from qualified electricity, EPA achieves exactly the opposite result of Administrator Wheeler's stated goals of allowing free markets to decide winners and losers. By denying qualified electricity producers access to the RFS, while awarding RINs to other fuels derived from the same feedstocks, the result is that certain producers are receiving *nine times* the commodity value of their product. And biomass power, using the same feedstock and creating the same BTUs of energy, gets nothing. How does that even make sense? What policy is being achieved where the government so disrupts the private market?

The decision to exclude us has "real life" consequences to our employees and our entire industry. We at Viking McBain have been struggling to survive in a climate where power prices are dictated by cheap natural gas regardless of the economic and environmental benefits brought forth. We are far from the only biomass power facility in this predicament. A 2020 RVO that includes one sector of the biomass industry at the exclusion of the other is hardly a "level playing field." It's time for EPA to take its thumb off the scales and move ahead on implementing electricity into the RFS.

TESTIMONY BY AMERICAN BIOGAS COUNCIL DIRECTOR OF POLICY MAUREEN WALSH

Hello. I'm Maureen Walsh, Director of Policy for the American Biogas Council.

The mission of the American Biogas Council is to grow biogas business in the United States. With our 230 company members, which span the entire biogas industry, we build business by encouraging the development of new biogas systems, which create jobs, environmental sustainability, and energy independence. Over the last few years, the Renewable Fuel Standard has been one of the strongest drivers to help the biogas industry develop new biogas systems, but it has been weakened significantly over the last 12 months. We need to strengthen the RVO's and limit small refinery waivers to ensure that the RFS operates the way Congress intended.

Since 2014, when CNG and LNG derived from biogas first qualified as a cellulosic fuel under the RFS, the biogas industry has seen significant growth. Since then, CNG and LNG from biogas have made up the lion's share of all cellulosic biofuel gallons produced -- comprising over 85% of the called for volumes. The market provided by the RFS has driven growth in biogas systems which uses organic waste, many times viewed as an environmental liability, and turn it into a profit generating opportunity by converting it to renewable fuel and valuable nutrients. Today the U.S. has over 2,200 sites producing biogas in all 50 states from anaerobic digesters and landfills using waste from wastewater treatment facilities, farms and commercial and industrial food processing facilities.

The proposed RVOs, while recognizing the continued growth in the biogas industry, misses the mark in three ways: it does not come close to accounting for the full growth the biogas and RNG industry is experiencing today; it does not reallocate any of the 56 million gallons that have been eliminated by the flagrant and frequent issuance of hardship waivers; and once again, the RVO misses accounting for the gallons associated with the activation of the renewable electricity pathway that was approved in 2014 which should be calculated using data from the Energy Information Administration (EIA).

The ABC strongly urges the EPA to increase the cellulosic biofuel category alone by at least 770 million gallons greater than the 540 million gallons which was proposed by the agency. This includes:

- At least 60 million gallons for the biogas to renewable natural gas projects which are already being developed and are ready to come on line in 2020; plus
- 662 million gallons for the renewable electricity pathway, based on EIA data and EPA's own conversion factors; plus
- 50 million gallons to counterbalance the issuance of small refinery exemptions. Furthermore, we strongly argue that the continued abuse of the small refinery exemptions undermines the integrity of the RFS and is in direct contravention of the statute passed by Congress in 2007. We urge the EPA to limit the use of these waivers to only their intended purpose.

The biogas industry has played an important role in the growth of the RFS and has contributed to the safety, security and growth of the U.S. biofuels industry. Taking the action we are requesting will help ensure that continues in addition to creating new jobs, investment, and environmental protection.

Thank you for the opportunity to speak today.

#### **About the RFS Power Coalition**

The RFS Power Coalition is a group of organizations dedicated to activating the renewable electricity pathway of the Renewable Fuel Standard (RFS). The Coalition is led by the [Biomass Power Association](#), [American Biogas Council](#) and [Energy Recovery Council](#), the trade associations that represent, respectively, domestic biomass power producers who use organic fuels like forest residues, biogas-to-electricity producers like dairy farmers and wastewater treatment facilities, and waste-to-energy producers. All three fuels – biomass, biogas and biogenic waste – qualify as renewable transportation fuels that should be included in the D3 cellulosic and D5 advanced fuel categories of the RFS.

<https://rfspower.com>