



July 11, 2016

Administrator Gina McCarthy
Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted via: regulations.gov

Re: Docket ID No. EPA-HQ-OAR-2016-0004 -- Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018

Dear Administrator McCarthy:

DuPont, POET-DSM Advanced Biofuels, and Quad County Corn Processors are grateful for the opportunity to provide EPA with the following comments on the proposed standards for 2017 to implement the Renewable Fuel Standard ("RFS") program. We write jointly to address four issues of great concern that we all share.

While we appreciate EPA's return to an annual rulemaking as well the proposed increase in renewable volume obligations (RVOs) in comparison to 2016, we still have significant concerns with respect to the proposal. These concerns relate to (1) EPA's continued use of its "general waiver" authority, (2) the reduction in total renewable volumes in excess of the cellulosic waiver, (3) the accuracy of EPA's projections relating to cellulosic biofuels, and (4) cellulosic waiver credits. We believe that addressing these issues will allow the Renewable Fuel Standard to move towards its full potential with respect to the advancement of cellulosic ethanol technology that is poised to transform American fuel production.

I. Background

In order to help establish why the four issues outlined above are critical to each of our enterprises, we begin with some relevant background on DuPont, POET-DSM Advanced Biofuels, and Quad County Corn Processors.

- DuPont. DuPont brings the perspective of a company deeply involved in the agricultural and biofuels industries. Our seed business DuPont Pioneer sells corn seed to farmers growing for a

variety of end-use markets, including grain ethanol production. Our intimate relationship with our farmer customers and our extensive research provides us significant insight into the agronomics of the harvest and management of corn stover as a cellulosic feedstock. We provide a variety of products for the grain ethanol business as well, including saccharification enzymes and fermentation processing aids, and so have an intimate knowledge of the operation of these relevant sugar fermentation operations. One of DuPont's advanced renewable fuels is cellulosic ethanol. We have been developing our technology for a decade, and since 2009 we have operated a demonstration facility in eastern Tennessee producing ethanol from both corn stover and switchgrass. Our experience in Tennessee has made us very confident in our technology and engineering for a commercial-scale facility. In addition, we have worked closely with farmers, equipment makers and others for four years of large-scale corn stover harvest trials to demonstrate the ability to manage a cost-effective cellulose supply chain. This work has culminated in our construction of a 30-million gallon per year facility located in central Iowa that is scheduled to begin producing cellulosic ethanol from corn stover in 2016.

- POET-DSM Advanced Biofuels (“POET-DSM”). POET-DSM is a joint venture headquartered in Sioux Falls, South Dakota, formed by POET LLC (“POET”) and Royal DSM NV. POET operates more than two dozen biorefineries in the United States, using a unique business model in which the farmers who supply the feedstock for those biorefineries have significant ownership interests in the POET operation to which they sell. Royal DSM NV is a global science-based company active in health, nutrition and materials, and is a frontrunner in the technologies needed to bring cellulosic ethanol to the American fuels market. POET-DSM operates Project LIBERTY, a cellulosic ethanol facility in Emmetsburg, Iowa, that is co-located with a POET-managed biorefinery that produces conventional renewable fuel.
- Quad County Corn Processors. Quad County Corn Processors is a cooperative in Galva, Iowa formed in 2000 by 425 local investors. Our facility has the capacity to annually produce 2 million gallons of cellulosic ethanol, 35 million gallons of corn starch ethanol, approximately 1,375,000 gallons of corn distillers oil (used as a biodiesel feedstock or animal feed) and roughly 85,000 tons of high-protein animal feed. The operation of our plant generates direct employment for 42 full-time personnel and we provide a reliable value-added market for local farmers, annually purchasing 12.5 million bushels of corn from hundreds of growers.

II. The NPRM Incorrectly Interprets the General Waiver Provision in Section 211 of the Clean Air Act.

DuPont, POET-DSM, and Quad County Corn Processors continue to believe that EPA’s interpretation of the “general waiver” provision of the RFS is contrary to statutory authority. A coalition of renewable fuel supporters led by Americans for Clean Energy, Inc., filed a challenge to this interpretation in the D.C. Circuit.¹ DuPont intervened in support of the renewable fuels parties. We need not repeat the arguments that are the subject of that litigation, but re-emphasize that the framework set forth by EPA in the 2014-16 rulemaking has stifled the growth of the renewable fuels industry, including the advanced sector, in comparison with the promise of the statute. Supply does not equal demand, and

¹ Americans for Clean Energy v. EPA, No. 16-1005 (D.C. Cir.).

EPA should be looking solely to the renewable fuels industry's capacity to produce when analyzing whether the general waiver may be exercised.

III. Reducing the Overall Total RVO Will Thwart the Commercial Viability of Cellulosic Ethanol in the United States.

As we highlighted in our comments last year, there is a tight relationship between not just the cellulosic renewable volume obligation and the success of cellulosic ethanol, but also the total renewable volume obligation and the success of cellulosic ethanol.

First, the efficient production of cellulosic ethanol is often technologically intertwined with corn starch ethanol. For example, Quad County Corn Processor's method of producing cellulosic ethanol involves the processing of corn fiber residues from corn starch ethanol production. In another – the POET-DSM model – “bolting on” a cellulosic ethanol plant to a corn starch ethanol plant leads to tremendous efficiencies, including use of waste materials from the cellulosic production process to power the corn starch ethanol production process. Further, co-locating starch and cellulosic plants allows for common supply chain and product distribution management. In both cases, coupling cellulosic ethanol production with corn starch ethanol production allows for economies of scale that make future expansion of the cellulosic ethanol market feasible.

Second, the same entities that are engaged in corn starch ethanol production are leading the way with respect to cellulosic ethanol development. A robust total renewable fuel standard ensures that these companies have the ability to make continued investments in cellulosic production, while preventing one product from cannibalizing the other.

For these reasons, we think it is essential that EPA maintain the highest total renewable fuel requirements possible. At a minimum, EPA should not waive total renewable fuel levels below the carry-through of the cellulosic reduction. EPA should also avoid the uncertainty to the market created by triggering the reset provision.

IV. The Projected Production Volume for Cellulosic Ethanol Should Be Based on a Facility by Facility Accounting and Proper Projections for Biogas.

The Clean Air Act directs that EPA's annual “projected volume of cellulosic biofuel production” should be “based on” estimates of future production volumes provided by the Energy Information Administration (“EIA”). 42 U.S.C. §§ 7545(o)(3)(A), 7545(o)(7)(D)(i). Because the NPRM does not propose to apply EIA's estimates for cellulosic ethanol production, EPA must adopt a methodology for determining projected volumes of cellulosic ethanol production that neither systematically overstates nor understates those volumes.²

While there are a number of different approaches that EPA could have used to project cellulosic volumes for 2017 that would result in estimates consistent with the D.C. Circuit's instructions, our interest is in ensuring that to the greatest extent possible, all D3 gallons are purchased and blended.

² API v. EPA, 706 F. 3d 474, 477-79 (D.C. Cir. 2013).

This possibility can only be realized if EPA's cellulosic ethanol RVO is set at a value high enough to accommodate the actual production volumes. While we are generally supportive of the methodology that EPA chose for the proposed and final 2016 volumes and the proposed 2017 volumes, we believe that EPA could improve on the approach. Specifically, EPA's approach separates facilities into two major categories: (1) those facilities without consistent commercial scale production; and (2) facilities with consistent commercial scale production. For each facility, EPA calculates a "high-end" production estimate for 2017 based on a number of factors. For the first category, EPA then discounts the high-end estimate by 75% to come up with a 2017 projection. For the second category, EPA averages the actual RIN production over the 12 months prior to the proposal with the high end estimate for 2017 to come up with a 2017 projection. By applying this uniform methodology with respect to each category of facility, EPA does not adequately take into account facility-by-facility circumstances that greatly affect the likelihood that the "high-end" or even greater production levels can be achieved in 2017. We urge EPA to defer to the technical expertise of the cellulosic ethanol and biogas manufacturers including plant operators and engineers in their respective volume projections, while using EPA staff expertise and judgment on a facility-by-facility basis to examine what the likelihood of high-end or greater production will be for 2017. While predicting the future is difficult, this approach will result in the closest projection of what will actually happen in 2017 and future years for new and existing facilities coming on-line.

We are also concerned that EPA has underestimated the production volume for biogas for 2017. Given the nature of the CNG/LNG industry, we recognize that the amount of biogas that will be dedicated to the transportation sector is not easy to predict. However, the Coalition for Renewable Natural Gas conducted such an analysis and provided it to EPA in a March 2016 letter. The Renewable Natural Gas Coalition's fuel projection for biogas for 2017 is approximately 376 million gallons. We believe this should be the starting point for setting the 2017 cellulosic biofuel volumes. We offer this approach because biogas will comprise the overwhelming majority of the total cellulosic volumes and the projection from the Coalition for Renewable Natural Gas significantly exceeds the 284 million gallons that EPA proposed for 2017. Since biogas technology has been adequately demonstrated, we believe that EPA's approach is overly conservative.

Accurately projecting biogas volumes combined with an EPA effort to develop a more detailed interview process for D3 producers would improve the accuracy for projecting cellulosic ethanol volumes.

V. Modifications to the Cellulosic Waiver Credit Program are Needed to Require Obligated Parties to Purchase D3 Gallons

EPA's administration of the cellulosic waiver credit program and flexibility to make changes to it is critical to creating the right incentives for obligated parties to buy D3 gallons as opposed to defaulting to the waiver credit. Administering it in a way that requires obligated parties to buy D3 gallons is fundamental to the success of new cellulosic ethanol capacity and technologies and to attracting additional investment. While we realize that EPA did not request comment on the Cellulosic Waiver Credit Program, we view its administration as fundamental to the overall RFS program.

Some cellulosic biofuel producers are reporting that obligated parties are not engaging in full potential value offtake arrangements for liquid gallons of cellulosic biofuel. This is a result of the availability of Cellulosic Biofuel Waiver Credits (CWCs) and past decisions by EPA to refund obligated parties for

purchases of CWCs. Because of the current treatment of CWCs, offtake agreements in the market today are trading at 75 to 80% below the D5 + CWC alternative price, which does not incentivize investments in cellulosic ethanol capacity. Concerned parties in the cellulosic biofuel sector believe that EPA could remedy the problem by making adjustments to its current approach to administering CWCs. This section explores the legal question of how much flexibility EPA has under the statute to modify how it administers CWCs as part of its broader authorities under the RFS.

i. The Cellulosic Waiver Credit provision in the 2007 Energy Bill

EPA is required by Clean Air Act Section 211(o)(7)(D)(ii) to issue CWCs whenever it acts to waive any part of the cellulosic biofuel volumetric standard pursuant to its authorities and obligations under section 211(o)(7)(D)(i). Congress required EPA to promulgate regulations to govern the issuance of CWCs, based on the pricing formula established by Section 211(o)(7)(D)(ii) and to address certain policy objectives set forth in Section 211(o)(7)(D)(iii), which reads in its entirety:

(iii) Eighteen months after December 19, 2007, the Administrator shall promulgate regulations to govern the issuance of credits under this subparagraph. The regulations shall set forth the method for determining the exact price of credits in the event of a waiver. The price of such credits shall not be changed more frequently than once each quarter. These regulations shall include such provisions, including limiting the credits' uses and useful life, as the Administrator deems appropriate to assist market liquidity and transparency, to provide appropriate certainty for regulated entities and renewable fuel producers, and to limit any potential misuse of cellulosic biofuel credits to reduce the use of other renewable fuels, and for such other purposes as the Administrator determines will help achieve the goals of this subsection. The regulations shall limit the number of cellulosic biofuel credits for any calendar year to the minimum applicable volume (as reduced under this subparagraph) of cellulosic biofuel for that year.

In our view, one of the key questions is how much authority EPA has to control the number of CWCs issued in any given year. While Section 211(o)(7)(D)(iii) clearly specifies that the number of CWCs made available may not exceed the applicable volume of cellulosic biofuel (i.e., the cellulosic biofuel RVO for that calendar year), it clearly does not establish a minimum number of CWCs that must be made available by EPA.

ii. EPA's interpretation of Section 211(o)(7)(D)(iii)

The final rule establishing the RFS (published March 26, 2010) includes the rules governing the issuance of CWCs required by Section 211(o)(7)(D)(iii). As part of this process, EPA recognized that: (1) "Congress afforded the Agency considerable flexibility in implementing the system of cellulosic biofuel credits;" (2) the waiver credit system should facilitate the broader aims of the RFS to promote advanced biofuels; (3) the availability of waiver credits could have "unintended consequences," and, (4) restrictions on the use of waiver credits are being enforced by EPA at least in part to "ensure that waiver credits are not overutilized at the expense of actual renewable volume." As such, there appears to be agreement amongst affected parties and EPA that the Agency has considerable latitude to administer the CWC program in such a way as to facilitate rather than undercut the broader goals of the RFS program.

With regard to the legal constraints around the specific number of CWCs issued by EPA in any given year, the Agency appears to agree that Congress's use of the term "limit" establishes an upper bound for the quantity of CWCs issued rather than a requirement to align the quantity of waiver credits issued with the cellulosic biofuel RVO for the respective year. In summarizing its authority to issue waiver credits as part of the final rule, EPA states that "[w]henver EPA sets the cellulosic biofuel standard at a level lower than that required in EISA, but greater than zero, EPA is required to provide a number of cellulosic credits for sale that is no more than the volume used to set the standard." As such, there should be agreement among the parties that Congress capped the number of CWCs that can be issued by EPA in any cellulosic biofuel "waiver year" to the total cellulosic biofuel RVO for that year without prescribing that these quantities must match.

The issue with regard to the quantity of CWCs made available by EPA seems to stem from EPA's apparent decision, to nonetheless declare, that the quantity of waiver credits issued in a cellulosic biofuel "waiver year" would be "equal to" the cellulosic biofuel RVO for that year.³

EPA should address the unintended consequence that an abundance of cellulosic waiver credits has had on the cellulosic biofuel market. With the way EPA currently administers the CWC program, there is no certainty that available production of cellulosic biofuel with D3 RINs attached will be purchased or used by obligated parties and thus investment in cellulosic biofuels is not appropriately incentivized. The problem of CWCs being purchased in lieu of cellulosic biofuels with D3 RINs has been documented and provided to EPA. The magnitude of the problem will increase as cellulosic biofuel production increases during 2016. The consequence of available cellulosic volumes with D3 RINs attached not being purchased clearly falls within the category of unintended consequences that EPA has acknowledged could occur. EPA should promptly modify the rules which allow obligated parties to purchase CWCs in lieu of making good faith efforts to purchase cellulosic biofuel gallons in order to align the CWC program with Congressional intent.

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DuPont, POET-DSM, and Quad County Corn Processors thank you for the opportunity to comment on the NPRM. Please contact any of us if you have any questions about these comments.

³ Cellulosic Biofuel Standard Guidance. EPA-420-B-15-027, March 2015.

Sincerely,



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