

Dodging a Bullet With the Renewable Fuels Standard

by Tom Munteer

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The renewable fuels standard (RFS) is one of the federal initiatives that will bring about a reduction in greenhouse gas (GHG) emissions even before the U.S. Congress enacts comprehensive climate change legislation. When President Barack Obama announced the U.S. Environmental Protection Agency's (EPA's) final RFS rule at a White House meeting with state governors in February, he was able to dodge a bullet previously aimed at the RFS.

The bullet that President Obama dodged is whether corn-based ethanol provides a net GHG emissions reduction relative to fossil fuels. When the U.S. House of Representatives was considering the Waxman-Markey climate change bill last summer, corn-ethanol industry lobbyists took aim at this issue. They succeeded *politically*. Since then, EPA responded *scientifically* in its RFS final rule. As a result, a "political" fix was no longer needed.

The RFS is the outgrowth of two laws. In the Energy Policy Act of 2005, Congress directed EPA to design a program to blend renewable fuels into the nation's motor vehicle fuel supply. In the Energy Independence and Security Act of 2007, Congress set a target of 36 billion gallons of ethanol (21 billion gallons from cellulosic sources or biomass) to be used in transportation fuels by 2022. The 2007 law set an interim target for this year of nearly 13 billion gallons.

These laws impose so-called renewable volume obligations (RVOs) on

transportation fuel producers. Subject producers have to achieve four different percentage rate RVOs (for four categories of renewable fuels) relative to the total volume of fuel they produce.

For a producer to be able to count a renewable toward its RVO, Congress dictated that the renewable produce 20% fewer GHG emissions than gasoline. Congress also told EPA how to go about assessing the GHG emissions associated with renewables. Specifically, Congress directed EPA to undertake a full life-cycle assessment of renewables—including indirect GHG emissions that would result from land use changes arising from growing more corn and other food grains to make these substitutes. (In the 2007 law, Congress exempted corn-based ethanol produced in natural gas-fueled power plants, estimated to be about 12 billion gallons of capacity, from these performance standards.)

Congress directed EPA to undertake this assessment by rulemaking. Accordingly, EPA issued a proposal that provided that the Agency would take into account the "significant emissions from indirect land use changes that occur in other countries as a result of the increased domestic production or importation of biofuels into the U.S."¹

EPA's proposal essentially concluded that, as a substitute for gasoline or diesel transportation fuels, corn-based ethanol would not be effective in combating climate change. The Agency found that—taking into account the direct and indirect GHG emissions from



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producing ethanol, including *overseas* land use changes—corn-based ethanol would achieve only a 16% GHG emissions reduction. So, corn-based ethanol would not meet the statutory 20% fewer GHG emissions standard.

EPA issued its RFS proposal in the midst of the House's formulation and consideration of the Waxman-Markey climate change bill. Chairman Edward Markey's (D-Mass.) discussion draft bill would have essentially ratified EPA's approach to accounting for the life-cycle GHG emissions of transportation fuels.

Because of the potentially negative effect of EPA's proposal for quantifying the GHG effects of the indirect land use changes (ILUC) in evaluating ethanol, agricultural interests swung into action. House Agricultural Chairman Collin Peterson (D-Minn.) strongly objected to EPA's proposal. In order to win the support of farm state members, the final version of the Waxman-Markey Bill passed by the House essentially forbade EPA from considering emissions from ILUC outside the country of the renewable feedstock's origins. In other words, it overturned the Agency's proposed approach.

Between the time of the House's passage of Waxman-Markey and EPA's issuance of the final RFS rule,

EPA had a change of heart. What was it that brought about the dramatic change between EPA's proposed and final rules?

In finding new data to show that (even taking into account increased fertilizer and land use) ethanol's displacement of gasoline or diesel transportation fuels could help fight climate change, EPA's final rule allowed President Obama to dodge the bullet.

EPA's final rule was based on revised projections about crop yields and land productivity. It was based on estimates of higher future corn yields and corn residue use for animal feed, compared with estimates in its proposed rule. On the basis of these estimates, EPA concluded that less overseas land would be converted from forests to crop land.

EPA Administrator Lisa Jackson cloaked the final RFS rule with the mantle of the "soundest available science"²—a characterization from which environmentalists generally shy away. In past Administrations, those opposed to stringent environmental regulations frequently appealed to "sound science" as their basis for opposing regulation.

Skepticism persists in some quarters. After release of EPA's final RFS, some continue to believe that GHG emissions arising from ILUC exceed the GHG emissions saved by using corn-based ethanol as a substitute for conventional gasoline or diesel fuels. They allege that EPA relied on overly optimistic assumptions and, in doing so, defied Congress' criteria for defining a fuel as a renewable.

That debate may rage on, and one expects EPA's methodology to be questioned. In fact, on May 25, the Clean Air Task Force and Friends of the Earth petitioned for administrative reconsideration of the final rule and filed a judicial challenge in the U.S. Court of Appeals for the District of Columbia Circuit.³

(Endnotes)

1. Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program: Proposed Rule, 74 Fed. Reg. 24903, 24912 (May 26, 2009).
2. Stephen D. Cook, *EPA Issues Final Rule Outlining Fuels That Qualify as Renewable Under Energy Law*, WORLD CLIMATE CHANGE REPORT (Feb. 3, 2010).
3. Friends of the Earth v. EPA, No. __ (D.C. Cir. May 25, 2010).