

August 31, 2017

Mr. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Submitted via regulations.gov

RE: Comments from ActionAid USA, Clean Air Task Force, Earthjustice, National Wildlife Federation, Oxfam America, and Sierra Club on the U.S. Environmental Protection Agency's Proposed Rule - "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019" 82 Federal Register 34206 (July 21, 2017); EPA-HQ-OAR-2017-0091

Dear Administrator Pruitt:

As national environmental, conservation, and development organizations, we are pleased to provide joint comments on the Environmental Protection Agency's (EPA) proposed rule - Docket No. EPA-HQ-OAR-2017-0091 - "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019" that was published in the Federal Register at 82 Fed. Reg. 34206 on July 21, 2017. Our groups represent millions of members who are concerned with fighting global warming, protecting human health, promoting human rights, preserving natural habitats, and advocating for clean energy. We believe that setting appropriate volumes for the Renewable Fuel Standard (RFS) and effectively implementing the habitat-conversion protections in the RFS are critical to achieving these goals. In addition to these joint comments, individual organizations will submit more detailed comments concerning areas specific to their expertise.

Our comments are centered around six primary aspects of the proposed rule, which are listed below. More details on many of these issues can be found in joint comments that many of our groups submitted to EPA on the 2017 renewable volume obligation (RVO) proposal. These comments are available here - http://www.catf.us/resources/filings/biofuels/20160711-2017_RVO_Joint_ENGO_Comments_Final.pdf.

I. Reducing Corn Ethanol Volumes

EPA must ensure renewable volume obligations do not incentivize increased production of corn ethanol, a biofuel that has resulted in numerous environmental problems and has constrained commodity markets. According to EPA's own data, current corn ethanol production may increase – instead of decrease – greenhouse gas (GHG) emissions.¹ Increased production of corn ethanol (and greater demand for corn) has also resulted in

¹ Lester Lave, et al. 2011. *Renewable Fuel Standard: Potential Economic and Environmental Effects of U.S. Biofuel Policy* (Report by the National Research Council Committee on Economic and Environmental Impacts of Increasing Biofuels Production) (internal citations omitted) (http://www.nap.edu/openbook.php?record_id=13105); Clean Air Task Force (CATF), CATF White Paper: Corn Ethanol GHG Emissions Under Various RFS Implementation Scenarios (April 2013) (<http://www.catf.us/resources/whitepapers/files/20130405-CATF%20White%20Paper-Corn%20GHG%20Emissions%20Under%20Various%20RFS%20Scenarios.pdf>).

the loss of millions of acres of native grasslands and wetlands,² important wildlife habitat for more than 60 percent of the nation's ducks and other waterfowl, monarch butterflies, and numerous threatened and endangered species. This unlawful land conversion has also created more water and air pollution. Increased demand for corn ethanol and substitute crops has also been linked to food security risks due to volatile commodity prices.

II. Limiting Growth of Vegetable-Based Biofuels by Ending Practice of Backfilling

EPA has rightfully proposed to end the practice of backfilling gaps in cellulosic and advanced biofuel consumption with other food-based biofuels such as soy biodiesel and sugar ethanol. By reducing the overall renewable fuel and advanced biofuel mandates by the same amount that the cellulosic biofuel mandate is reduced (via EPA's cellulosic waiver authority), EPA proposes to limit incentives to further increase production of biofuels derived from food crops, especially vegetable oils. Ending the use of backfilling is something that the undersigned groups have supported for several years,³ and we share EPA's view that "it would not be appropriate to set an advanced biofuel standard that would require the market to backfill a portion of the shortfall in cellulosic biofuel"⁴—particularly when industry analysts project that such gaps would be filled by biomass-based diesel (BBD).⁵ If the no-backfilling proposal is finalized, it will reduce incentives for further production of palm oil biodiesel - a biofuel fails to meet even the minimum 20 percent GHG reduction threshold in the RFS. Palm oil biodiesel has been tied to the destruction of forests and loss of carbon-rich peatlands in countries such as Malaysia and Thailand, leading to increased GHG emissions and other environmental, social, and land rights problems.

III. Reducing Biomass-Based Diesel and Other Biofuels Volumes

Similarly, EPA should reduce the 2019 volume of BBD and 2018 volumes of advanced biofuels and total renewable fuel below the proposed levels of 4.24 billion gallons and 19.24 billion gallons, respectively, to levels that do not result in an increase in the demand for vegetable-oil based biofuels or, indirectly, for the vegetable oils that are used to make those fuels, thereby avoiding competition with food markets and other industries that use vegetable oil. According to Scott Irwin and Darrel Good of the University of Illinois, because BBD is the lowest-cost biofuel option for filling gaps in the proposed conventional and advanced mandates, EPA's proposal—taken as a whole—is likely to result in the production of 2.965 billion gallons of BBD in 2018 (*e.g.*, 865 billion gallons higher than the nominal 2018 BBD mandate).⁶ As EPA acknowledges in its proposed rule, this kind of "feedstock switching could result in unintended negative consequences, such as market disruption in the

² Tyler Lark, *et al.* 2015. Cropland Expansion Outpaces Agricultural and Biofuel Policies in the United States. *Environmental Research Letters* 10. DOI: 10.1088. (<http://iopscience.iop.org/article/10.1088/1748-9326/10/4/044003/meta>).

³ Joint comments from ActionAid US, Clean Air Task Force (CATF), Environmental Working Group, and National Wildlife Federation (NWF) (hereinafter "Joint NGO 2017 RVO Comments") on the U.S. Environmental Protection Agency's Proposed Rule - "Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018" 81 Federal Register 34778 (May 31, 2016) (EPA-HQ-OAR-2016-0004), at 8-9 (http://www.catf.us/resources/filings/biofuels/20160711-2017_RVO_Joint_ENGO_Comments_Final.pdf).

⁴ EPA, Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019—Proposed Rule, 82 Fed. Reg. 34206, 34210 (July 21, 2017).

⁵ See Irwin, S. and D. Good. "The EPA's Renewable Fuel Standard Rulemaking for 2018—Still a Push," *farmdoc daily* (7):125, at 5 (July 12, 2017) (<http://farmdocdaily.illinois.edu/2017/07/epa-renewable-fuel-standard-rulemaking-for-2018.html>).

⁶ Irwin and Good at 5.

renewable oils market, which could offset some of the anticipated benefits of the production and use of advanced biofuels.”⁷

IV. Consideration of Severe Environmental Harm Waiver

While EPA does not propose to use severe environmental harm as justification for invoking its general waiver authority to reduce RFS volumes, the Agency requests comments on such an approach.⁸ As our organizations have commented in the past,⁹ the RFS has caused a wide range of environmental problems for our soil, water, air, and wildlife habitat, all of which were detailed in EPA’s first Triennial Report to Congress in 2011 (with a second report due later this year, which we urge the agency to complete). In addition to the very large impacts to habitat and wildlife populations noted above, the effect of additional corn production has been disastrous to water quality and quantity. Additional farm runoff is polluting water bodies from coast to coast, particularly afflicting the Great Lakes with ever growing algal blooms and the Gulf of Mexico, which is currently experiencing its largest dead zone ever. Multiple independent analysts have also disputed the assertion that corn ethanol (the biofuel that accounts for the vast majority of RFS compliance) reduces GHG emissions, one of the primary goals of the RFS.¹⁰ And while the corn ethanol industry has touted a 2017 U.S. Department of Agriculture (USDA)-commissioned report claiming that ethanol reduces GHG emissions by up to 43 percent,¹¹ that claim is severely undermined by a recent analysis by Dr. Chris Malins that finds that the USDA-commissioned report relies on several inaccurate assumptions and flawed methodologies.¹² Additional GHG emissions from corn ethanol production contribute to climate change, which constitutes a severe environmental harm.

V. Resetting Future RFS Volumes

As we have discussed in previous comments to EPA,¹³ the RFS’s reset provision offers the Agency an important opportunity to establish a more rational, environmentally sensible path forward for RFS volumes. The provision requires EPA to assess the impact of biofuels “on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply” in addition to energy security, future production of renewable fuels, impact on infrastructure, consumer costs, and “other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.”¹⁴ Our organizations look forward to working with EPA as it begins to reevaluate each of the RFS mandates to ensure that the environmental benefits envisioned by Congress are best realized.

VI. Ending Unlawful RFS-Induced Land Use Conversion and Loss of Sensitive Land

⁷ 82 Fed. Reg. 34224/2 (July 21, 2017).

⁸ 82 Fed. Reg. 34229 (July 21, 2017).

⁹ Joint NGO 2017 RVO Comments at 2-7.

¹⁰ See, e.g., Lave, et al. (2011); Congressional Budget Office. 2014. *The Renewable Fuel Standard: Issues for 2014 and Beyond* (internal citations omitted) (<https://www.cbo.gov/publication/45477>).

¹¹ ICF. 2017. *A Life-Cycle Analysis of the Greenhouse Gas Emissions of Corn-Based Ethanol* (prepared for the U.S. Department of Agriculture Climate Change Program Office) (https://www.usda.gov/oce/climate_change/mitigation_technologies/USDAEthanolReport_20170107.pdf).

¹² Malins, C. 2017. *Navigating the Maize - A critical review of the report ‘A Life-Cycle Analysis of the Greenhouse Gas Emissions of Corn-Based Ethanol’* (commissioned by CATF and NWF) (http://www.catf.us/resources/publications/files/Navigating-the-maize_July2017.pdf).

¹³ Joint NGO 2017 RVO Comments at 7-8.

¹⁴ CAA 211(o)(2)(B)(ii).

EPA should stringently implement the statutory requirement that RFS biofuel feedstocks be derived from “renewable biomass,” instead of from feedstocks that are grown on recently cleared land. EPA’s current practice, known as “aggregate compliance,” fails to ensure that RFS-driven feedstock production does not promote environmentally destructive land use change.¹⁵

VII. Conclusion

The undersigned groups urge EPA to ensure that the 2018 RVOs (and those for biomass-based diesel for 2019) do not allow food-based biofuels to backfill the advanced or cellulosic biofuels gaps and to prevent further expansion of corn ethanol, a biofuel that contributes to numerous environmental problems and costs, in addition to increased food prices. Furthermore, we urge EPA to alleviate demand for palm oil, which is tied to numerous social and environmental problems, by finalizing a 2019 volume requirement for biomass-based diesel and 2018 volume requirements for advanced and total renewable fuels that do not incentivize increased production of biodiesel and vegetable oil. We also remind EPA that, in addition to having the authority to reduce RFS volumes based on severe environmental harm, the Agency is statutorily required to comprehensively adjust future RFS volume mandates based on the “reset” provision and to strictly implement the “renewable biomass” definition in the RFS that was enacted to limit land use change from increased biofuel production.

Thank you for the opportunity to provide comments. We hope that our remarks provide useful guidance for EPA’s final decision. We appreciate your consideration.

Respectfully submitted,

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¹⁵ See, e.g., Lark et al. (2015); C. K. Wright and M. C. Wimberly. 2013. Recent Land Use Change in the Western Corn Belt Threatens Grasslands and Wetlands. *Proc Natl Acad Sci USA* 110(10): 4134-9. DOI: 10.1073 (<http://www.ncbi.nlm.nih.gov/pubmed/23431143>).