



November 28, 2008

**VIA ELECTRONIC FILING AND ELECTRONIC MAIL**

Air and Radiation Docket and Information Center  
Environmental Protection Agency  
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Washington, DC 20460  
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ATTN: Docket ID No. EPA-HQ-OAR-2008-0318

Re: Comments on the Advance Notice of Proposed Rulemaking entitled Regulating Greenhouse Gas Emissions under the Clean Air Act. 73 Fed. Reg. 44,354 (July 30, 2008).

Dear Sir or Madam:

The Renewable Fuels Association (RFA) submits the attached comments on the Advance Notice of Proposed Rulemaking (ANPR) regarding Regulating Greenhouse Gas (GHG) Emissions under the Clean Air Act (CAA). 73 Fed. Reg. 44,354 (July 30, 2008). As the national trade association for the U.S. ethanol industry, RFA promotes policies, regulations and research and development initiatives that will lead to the increased production and use of fuel ethanol. The ethanol industry is a dynamic and growing industry that is revitalizing rural America, reducing emissions in our nation's cities, and lowering our dependence on imported petroleum. Today's ethanol industry consists of 180 ethanol plants nationwide that have the capacity to produce approximately 11.1 billion gallons of high octane, clean burning motor fuel (as of November 21, 2008). There are currently 21 ethanol plants under construction and several plants expanding that will raise capacity to over 15 billion gallons (as of November 21, 2008). America's domestic ethanol producers are providing significant economic, environmental, and energy security benefits today.

RFA members include public and private companies and farmer-owned cooperatives that represent the majority of U.S. ethanol production. The ethanol industry provides substantial benefits to the environment, this country's economy, and energy and national security. Our members are on the cutting edge of technology, pursuing new processes, new energy sources, and new feedstocks to increase efficiency and reduce emissions. Our members include the first company to start building a commercial-scale cellulosic ethanol biorefinery in the U.S.

Any EPA action to regulate GHGs under the CAA could impact Congress' decision to promote the use of renewable fuels through the renewable fuel standard (RFS), which was recently revised to substantially increase the portion of the nation's fuels that have renewable sources. With this in mind, RFA urges EPA to:

- o **Preserve the Benefits and Harmonize with the RFS:** Any legislation or regulation<sup>1</sup> that addresses GHG emissions from the transportation fuel sector must retain the RFS benefits to the environment, the U.S. economy, and national security. The RFS volume mandates provide substantial reductions in GHG emissions, assure private investments in advanced biofuels, and move this country toward energy independence. Any additional standard or program addressing fuels should not conflict or be inconsistent with the mandated volumes in the RFS.
- o **Any Lifecycle Analysis Used Should Be Based on Sound Science:** Any legislation or regulation<sup>2</sup> relying on lifecycle GHG emissions reductions from fuels must ensure that such analyses are based on sound science.
  - o **Limit to Significant Indirect Impacts:** Congress has already determined that indirect impacts should be included in a lifecycle analysis only if they are significant and should be directly related to increased biofuels use in the U.S.
  - o **Exclude Any Speculative International Land Use Impacts Until Sound Methodologies are Developed That Have Been Peer-Reviewed, Subject to Rulemaking, and are Objectively Verifiable and Reproducible:** Based on the current science, any lifecycle analysis should not include international land use changes until EPA can develop an objective and peer-reviewed methodology that is both transparent and reproducible to allow for an adequate opportunity for the public to comment.
- o **In Conducting Any Lifecycle Analyses, Provide A Fair Comparison of GHG Emissions With Baseline Gasoline:** EPA's analysis of lifecycle GHG emissions must ensure a fair comparison with other fuels, including the baseline gasoline.
- o **Focus GHG Reduction Requirements on Gasoline Not Already Subject to Such Requirements:** Despite the substantial reductions in GHG emissions provided under the RFS, RFA understands that additional GHG emissions reductions could be obtained from fuels not covered by the RFS or from petroleum refineries themselves. Any additional regulation under the CAA should focus on those emissions reductions. These reductions can, in turn, provide additional incentives to renewable fuel producers to continue to seek GHG emissions reductions through increased blending or through provision of credits for additional emissions reductions above those required under the RFS.
- o **Seek Congressional Action to Prevent Triggering New Source Permitting Programs under the CAA:** RFA is concerned with the potential for regulation of GHGs under the Act to trigger new source review permitting requirements. Such requirements could substantially delay the construction of new biofuel plants necessary to comply with the RFS and to develop advanced biofuels. Delays would undermine the benefits sought by Congress when it increased the RFS last December.

Fundamentally, given the extensive environmental and economic benefits of ethanol to this country, coupled with the need to reduce our nation's dependence on foreign sources of fuel, any EPA or Congressional action to address climate change should support the existing policies and promote the use of broader renewable blends, such as E85, throughout the country.

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<sup>1</sup> Of course, the proper CAA Section 211(c) findings would need to be made prior to any such action.

<sup>2</sup> Again, the proper CAA Section 211(c) findings would need to be made prior to any such action.

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RFA appreciates the opportunity to submit the attached comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Dinneen", with a long horizontal flourish extending to the right.

Bob Dinneen  
President and CEO

**Comments of the Renewable Fuels Association on EPA's Advance Notice of  
Proposed Rulemaking - Regulating Greenhouse Gas Emissions Under the  
Clean Air Act, 73 Fed. Reg. 44,354 (July 30, 2008)**

**Submitted November 28, 2008**

Due to the legal, economic, and environmental importance of any decision regarding whether and how to regulate greenhouse gases (GHGs) under the Clean Air Act (CAA),<sup>1</sup> RFA supports and commends EPA's decision to issue an Advance Notice of Proposed Rulemaking (ANPR) rather than proceeding directly to a proposed rule because it allows an opportunity for public comments to help shape any future proposal or Administration policies. As outlined in these comments, RFA believes any subsequent action regulating GHGs under the CAA should preserve and promote, rather than undermine, the benefits obtained through the mandated volumes of renewable fuels as established by Congress under Section 211(o) of the CAA.

I. ANY LEGISLATION OR REGULATION ADDRESSING GHG EMISSIONS SHOULD PRESERVE THE BENEFITS CONGRESS ENVISIONED IN ESTABLISHING THE VOLUME MANDATES UNDER THE RENEWABLE FUEL STANDARD.

The ethanol industry is a dynamic and growing industry that is revitalizing rural America, reducing emissions in our nation's cities, and lowering our dependence on imported petroleum. Today's ethanol industry consists of 180 ethanol plants nationwide that have the capacity to produce approximately 11.1 billion gallons of high octane, clean burning motor fuel (as of November 21, 2008). There are currently 21 ethanol plants under construction and several plants expanding that will raise capacity to over 15 billion gallons (as of November 21, 2008). America's domestic ethanol producers are providing significant economic, environmental, and energy security benefits today. The mandated volumes established by Congress are needed to ensure continued investment and development in renewable fuels, infrastructure, and advanced biofuels. Congress recognized the need for time to allow for that development, using mandated volumes. These requirements must be preserved.

A. The Renewable Fuel Standard Established by Congress Provides Numerous Benefits that Should be Preserved.

EPA must take into account the numerous benefits Congress sought in establishing the mandated volumes of renewable fuel when developing its policy for transportation fuels. The Energy Policy Act of 2005 (EPA Act) established the renewable fuel standard (RFS) as a means to find local, environmentally friendly ways to address this nation's energy supply needs. See S. Rep. No. 109-78, at 6 (2005) (S. 10). In establishing the RFS, Congress sought to boost the demand for renewable fuels, such as ethanol, acknowledging that renewable, domestically produced fuels can and should

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<sup>1</sup> Following *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007), EPA must still decide whether GHG emissions from motor vehicles should be regulated under CAA Section 202(a). EPA can decide not to make a Section 202 endangerment finding and regulate, but must provide a "reasonable explanation" for its decision. *Id.* at 1462-63.

play a larger role in meeting our nation's energy needs. Congress' passage of the RFS illustrates the recognition of the numerous benefits of renewable fuel.

In particular, ethanol is a clean, energy efficient, environmentally friendly fuel. Ethanol reduces tailpipe carbon monoxide emissions by as much as 30%, toxics content by 13% (mass) and 21% (potency), and tailpipe fine particulate matter emissions by 50%. As advocated by the American Lung Association of Illinois, E85, for example, should be a key component in any energy policy due to its environmental benefits,<sup>2</sup> which includes any strategy for the reduction of GHG emissions. The volume mandates are necessary to ensure continued incentives to develop the infrastructure needed to develop E85 as an alternative to petroleum. Because it is derived from renewable biomass, ethanol also provides advantages over petroleum with respect to water use and quality.<sup>3</sup>

In addition, ethanol is produced at facilities that create jobs and economic opportunity for rural communities where they are located, as well as promoting the national economy.<sup>4</sup> The ethanol industry also significantly contributes to the American economy by increasing market opportunities for farmers, generating additional household income and tax revenues, and stimulating capital investment. Increased ethanol use has also reduced gasoline prices, resulting in a savings of \$28 billion to \$49 billion based on annual gasoline consumption of roughly 140 billion gallons.<sup>5</sup>

Neither Congress nor EPA should undermine these goals envisioned in establishing the RFS in any subsequent legislation or regulation.

**B. Any Subsequent Legislation or Regulation Should be Harmonized with the GHG Emissions Reductions Provided Under the RFS.**

In establishing the RFS and expanding it along the lines envisioned by the President's 20-in-10 plan, Congress has provided for substantial reductions in GHG emission from renewable fuels. As a result of the analysis for the RFS rule implementing the volume requirements under the EPAct, EPA found that corn ethanol

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<sup>2</sup> The American Lung Association of Illinois -- The Time for E85 is Now!, News Release - Dec. 16, 2005, *available at* <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/12-16-2005/0004235601&EDATE=>.

<sup>3</sup> See Governors' Ethanol Coalition, *The Fate and Transport of Ethanol-Blended Gasoline in the Environment* (1999), *available at* <http://www.lincolnwayenergy.com/documents/fateandtransport.pdf>. A recent National Academy of Sciences report noted that "[i]n the next 5 to 10 years, increased agricultural production for biofuels will probably not alter the national-aggregate view of water use." Committee on Water Implications of Biofuels Production in the United States, National Research Council, *Water Implications of Biofuels Production in the United States* (2008), at 3, 5, *available at* [http://books.nap.edu/catalog.php?record\\_id=12039](http://books.nap.edu/catalog.php?record_id=12039). Technological advances have enabled farmers to boost agricultural productivity to meet demands, and to make fertilizer application more efficient, further reducing any impacts on water quality.

<sup>4</sup> See John M. Urbanchuk, LECG LLC, *Contribution of the Ethanol Industry to the Economy of the United States* (Feb. 20, 2008), *available at* [http://www.ethanolrfa.org/objects/documents/1537/2007\\_ethanol\\_economic\\_contribution.pdf](http://www.ethanolrfa.org/objects/documents/1537/2007_ethanol_economic_contribution.pdf).

<sup>5</sup> Department of Energy, *Fact Sheet: Gas Prices and Oil Consumption Would Increase Without Biofuels*, at 1 (June 11, 2008) (hereafter "DOE Fact Sheet"), *available at* [http://genomicsgtl.energy.gov/biofuels/FactSheet\\_%20Biofuels\\_Lower\\_Gas\\_Prices.pdf](http://genomicsgtl.energy.gov/biofuels/FactSheet_%20Biofuels_Lower_Gas_Prices.pdf).

reduced GHG emissions by 21.8% and cellulosic ethanol by 91% as compared to gasoline.<sup>6</sup> The Energy Independence Act of 2007 (EISA), which essentially codified the 20-in-10 plan, increased the amount of renewable fuel required under the RFS to 36 billion gallons through 2022, at which time EPA is given greater authority in setting the volume mandates subject to listed criteria.<sup>7</sup> EISA included express requirements for reductions in GHG emissions from renewable fuels. In the ANPR, EPA recognized that this expansion of the RFS “would be expected to displace a much larger portion of the petroleum-based fuel used in transportation and would similarly be expected to have a greater impact on GHG emissions.” 73 Fed. Reg. at 44,474.

In fact, renewable fuels are expected to provide these and more emissions reductions. Other studies have confirmed EPA’s initial findings regarding GHG emission reductions from renewable fuels -- including 19% reductions on average for corn ethanol and 86% reductions from cellulosic ethanol.<sup>8</sup> These reductions are more than that required under the expanded RFS. Moreover, the RFS has provided additional incentives for ethanol plants to continue to take actions to reduce their emissions. A study done by Argonne Laboratories found that ethanol plants decreased energy use by 21.8% in dry mills and 7.2% in wet mills from 2001 to 2006 and that there was a shift from coal to natural gas in dry mills during this time period.<sup>9</sup> In addition, we are not aware of any planned coal-fired ethanol plant, largely as a result of the EISA. Ethanol companies, such as ADM, are also developing carbon capture and storage technologies to further reduce their carbon footprint.<sup>10</sup> Thus, the RFS already provides for and creates incentives to reduce GHG emissions from renewable fuels. Any subsequent legislation should look to requiring reductions from conventional gasoline and build on, rather than undermine, the reductions already required from the renewable fuel industry.

In the ANPR, EPA looks at Section 211(c) as potentially providing authority to develop a GHG program in addition to the volume mandates under Section 211(o), such as addressing reductions from petroleum refineries. 73 Fed. Reg. at 44,476. RFA believes the RFS provides for substantial GHG emissions reductions from renewable fuels. Section 211(c) provides that EPA “may,” by regulation, control or prohibit any fuel or fuel additive for use in motor vehicles or engines or nonroad vehicles or engines if “in the judgment of the Administrator, any fuel or fuel additive or any emission product of

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<sup>6</sup> EPA, Greenhouse Gas Impacts of Expanded Renewable and Alternative Fuels Use, EPA420-F-07-035, April 2007, *available at* <http://www.epa.gov/otaq/renewablefuels/420f07035.pdf>. EPA is updating this analysis for the expanded RFS program, but has not yet issued a proposal as of the date of these comments.

<sup>7</sup> This criteria includes consideration of impacts on the environment, energy security, infrastructure, transportation costs, and the economy, including rural economic development and food prices. 42 U.S.C. § 7545(o)(2)(B)(ii) (as amended by the EISA).

<sup>8</sup> DOE Fact Sheet at 1.

<sup>9</sup> May Wu, Center for Transportation Research, Argonne National Laboratory, Analysis of the Efficiency of the U.S. Ethanol Industry 2007, at 1 (Mar. 27, 2008), *available at* [http://www1.eere.energy.gov/biomass/pdfs/anl\\_ethanol\\_analysis\\_2007.pdf](http://www1.eere.energy.gov/biomass/pdfs/anl_ethanol_analysis_2007.pdf).

<sup>10</sup> *Id.* (“CO<sub>2</sub> collection and production as a co-product is on the rise that a total of 23.5% of the ethanol production capacities responded exported CO<sub>2</sub>.”).

such fuel or fuel additive causes, or contributes, to air pollution . . . that may reasonably be anticipated to endanger the public health or welfare.” 42 U.S.C. § 7545(c)(1). Section 211(c) then grants EPA greater discretion in deciding to regulate GHG emissions with respect to fuel and fuel additives than may be provided under other CAA provisions.<sup>11</sup> The RFS will result in significant reductions in GHG emissions from renewable fuels and, thus, the requirements for an endangerment finding under Section 211(c) likely could not be shown for renewable fuels. One of the themes in the comments from other agencies is the need for EPA to consider regulations currently in place that address GHG emissions. Thus, EPA should consider such reductions, as well as the policy behind the EISA, and ensure that it considers whether any additional regulation will impair the objectives of the RFS, of which ethanol, including corn ethanol, is a vital part.

Assuming that the findings under Section 211(c) can be made, any additional regulation under Section 211(c) should complement the volume mandates under Section 211(o) by addressing reductions from fuels not covered under the RFS, including conventional gasoline and diesel, thereby preserving and expanding on the benefits of the RFS. A potential option to regulate fuels under Section 211(c), which has been included in some legislative proposals, is a proposed low-carbon fuel standard modeled after that being considered by California. This type of standard generally relies on determining lifecycle GHG emissions for transportation fuels and requires certain reductions from a fuel emission baseline. While under the RFS renewable fuels must show reductions in GHG emissions, the gasoline and diesel fuel does not have specific emissions reductions. As such, the low-carbon fuel standard should look to further reductions from the petroleum sector or from fuels not covered by the RFS. In addition, renewable fuel producers are subject to emissions reduction requirements under the RFS, but should be able to obtain credits for additional reductions above that required to further promote GHG emissions reductions. Such credits should benefit the renewable fuel producer (*e.g.*, credits for any requirements they may be subject to under a cap-and-trade program or credits that can be sold to petroleum refineries to assist in meeting any low-carbon fuel standard).

### C. The RFS Mandated Volumes Provide Incentives to Develop Advanced Biofuels.

The mandated volumes in the RFS provide incentives to develop advanced biofuels, which should be a key part of any additional legislation or regulation on GHG emissions. Congress was aware that a transition period would be needed for the renewable fuel market to mature. This is the very reason that mandatory volumes were established in Section 211(o) until 2022 and that EPA was only permitted to set the volume levels subsequent to the program establishment period. 42 U.S.C. § 7545(o)(2)

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<sup>11</sup> See *Dickson v. Sec’y of Def.*, 68 F.3d 1396, 1401 (D.C.Cir.1995) (“When a statute uses a permissive term such as ‘may’ rather than a mandatory term such as ‘shall,’ this choice of language suggests that Congress intends to confer some discretion on the agency, and that courts should accordingly show deference to the agency’s determination.”); *Int’l Union, United Auto., Aerospace and Agric. Implement Workers of America, UAW v. Dole*, 919 F.2d 753, 756 (D.C. Cir. 1990) (noting “usual presumption that ‘may’ confers discretion”).

(as amended by the EISA). The RFS and its expansion in 2007 provide needed incentives to promote advanced biofuels and reduce government subsidies.

Testimony before Congress confirmed that a strong corn ethanol industry, supported by the RFS, is necessary for the continued investment and development of cellulosic ethanol.<sup>12</sup> DOE and the U.S. Department of Agriculture confirmed that the RFS provides the type of stable predictable policy environment for investors required to achieve the “shared vision” of a “sustainable biofuels industry centered in rural America.”<sup>13</sup> The ethanol industry continues to move towards more advanced and efficient technologies. The incentives provided under the EISA are necessary to ensure availability of needed investments.

Both the EPCA and the EISA include provisions for numerous studies to assess the impacts of the biofuels program on the environment. Moreover, as part of the EISA amendments to the RFS, Congress included a stricter definition of renewable biomass that essentially prohibits any new lands from being converted into cropland for biofuels. Further, Congress gave EPA authority to take various considerations into account in setting the RFS in later years, but only *after* the mandated volumes have ended.<sup>14</sup> Thus, Congress and EPA should continue to respect these sound policy decisions for the continued promotion of advanced biofuels.

II. ANY STANDARD BASED ON LIFECYCLE EMISSIONS MUST UTILIZE A FAIR COMPARISON, INCLUDE ONLY *SIGNIFICANT* INDIRECT EMISSIONS, AND BE BASED ON SOUND SCIENCE.

EPA requests comments on “the ability (including considerations of uncertainty and the measurement of both direct and indirect emissions associated with the production of fuels) of lifecycle analysis to estimate the GHG emissions of a particular

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<sup>12</sup> Testimony of Dr. Mark Stowers, POET Vice President, Research & Development, POET before the House Subcommittee on Energy & Air Quality, at 11 (May 6, 2008), *available at* [http://energycommerce.house.gov/cmte\\_mtgs/110-eaq-hrg.050608.Stowers-Testimony.pdf](http://energycommerce.house.gov/cmte_mtgs/110-eaq-hrg.050608.Stowers-Testimony.pdf). The ethanol industry is also working to expand the infrastructure to support the delivery and introduction of renewable fuels to the market. This includes the infrastructure to transport, store, and blend ethanol into gasoline.

<sup>13</sup> Letter from Secretary Bodman, DOE, and Secretary Schafer, USDA, to the Honorable Jeff Bingaman, Chairman, Committee on Energy and Natural Resources at 1-2 (June 11, 2008), *available at* [http://genomicsgtl.energy.gov/biofuels/Secretaries\\_Bodman\\_and\\_Schafer\\_Ltr\\_to\\_Sen\\_Bingaman.pdf](http://genomicsgtl.energy.gov/biofuels/Secretaries_Bodman_and_Schafer_Ltr_to_Sen_Bingaman.pdf). See also Testimony of Steven G. Chalk, Deputy Assistant Secretary for Renewable Energy, DOE, before the Senate Committee on Environment and Public Works’ Subcommittee on Clean Air and Nuclear Safety, July 10, 2008, *available at* [http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=30897547-e486-412b-9444-829f28d2f51b](http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=30897547-e486-412b-9444-829f28d2f51b).

<sup>14</sup> EPA asks for comment on what impacts other GHG emissions should be considered as part of a potential fuels GHG regulation and how such impacts should be reflected in any policy decisions associated with the rule; “[t]hese impacts could include the potential impacts on food prices and supplies.” 73 Fed. Reg. at 44,475. While Congress has given EPA the authority to consider various issues after the end of the mandated volumes, it gave EPA limited authority to change the mandated volumes based only on severe economic impacts. 42 U.S.C. § 7545(o)(7). As EPA found, estimated impacts on food prices are not the type of impacts Congress envisioned as affecting the RFS mandates. 73 Fed. Reg. 47,168 (Aug. 13, 2008). Since that time, additional information only confirms EPA’s findings that biofuels do not significantly impact food prices and supplies. Corn prices have fallen approximately 50% since this summer, yet it is estimated that food prices will continue to increase in the near future.

fuel produced and used for transportation . . .” 73 Fed. Reg. at 44,475. Any consideration of lifecycle GHG emissions must utilize a fair comparison, include only significant indirect emissions, and be based on sound science and the most up to date information. In particular, considerations of international land use changes should be deferred until a sound model can be developed and has been subject to scientific scrutiny. RFA has submitted numerous comments to EPA and California on their ongoing work in developing a lifecycle analysis, which are provided as Attachment 1.

A. EPA’s Lifecycle Analysis Should Provide a Fair Comparison.

Any attempts to expand EPA’s use of the lifecycle emissions model it is developing for the RFS should ensure that the model is providing a fair comparison. For example, the EISA requires EPA to compare lifecycle GHG emissions from renewable fuels to that of 2005 baseline gasoline. EPA, however, appears to largely rely on current analyses, which EPA recognizes have not taken into account land use changes. Oil production has significant impacts on the environment including changes in land use that result from new oil production facilities. EPA should ensure that its analysis for baseline gasoline similarly considers direct and indirect emissions from production of gasoline, including those related to land use changes.

Moreover, EPA has failed to indicate how it will account for avoidance of emissions as renewable fuel replaces petroleum. For example, one key new source of petroleum is tar sands. Extracting oil from tar sands has significant impacts on the environment, including using much more water and emitting 300% more in GHG emissions. Utilizing more renewable fuels allows less reliance on these new sources of petroleum. A lifecycle analysis, therefore, should compare the renewable fuel to the average emissions of the marginal fuels being replaced or credit renewable fuels over the long-term based on the avoidance of having to turn to these more pollutive petroleum production processes.

B. EPA’s Lifecycle Analysis Should Only Include Significant Indirect Emissions and not Be Based on Speculative Science.

EPA should only consider “significant indirect impacts,” if at all, which it must determine based on sound science. EISA requires EPA to identify a renewable fuel’s lifecycle GHG emissions which is to include the fuel’s aggregate GHG emissions related to its full fuel lifecycle, “including direct emissions and significant indirect emissions such as significant emissions from land use changes.” 42 U.S.C. § 7545(o)(1)(H) (as amended by the EISA) (emphasis added). The use of the term “significant” twice in this provision is evidence that Congress intended to limit EPA’s discretion in considering indirect emissions, and that such a determination must be made based on sound science.

In particular, international land use changes are too speculative and uncertain to dictate policy.<sup>15</sup> Policy judgments should not be based on speculation, particularly given

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<sup>15</sup> See Letter to Science from Michael Wang, Center for Transportation Research, Argonne National Laboratory, and Zia Haq, Office of Biomass Program, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, at 3 (Original version submitted to Science on Feb. 14th, 2008; revised on March 14th, 2008), [http://www.transportation.anl.gov/pdfs/letter\\_to\\_science\\_anddoe\\_03\\_14\\_08.pdf](http://www.transportation.anl.gov/pdfs/letter_to_science_anddoe_03_14_08.pdf). This

the numerous benefits renewable fuels provide that Congress sought to promote. EPA has recognized that there is no single model that addresses land use changes related to biofuels. In addition, while EPA may have more information on domestic land use changes, EPA has inadequate information on yields in other countries, and any international land use analysis would be replete with uncertainties.

Much of the uncertainty lies in the impacts of a global economy, *i.e.*, that it is not possible to determine whether the land use changes are a result of increased ethanol production in the U.S., as opposed to increased local demand or demand from other countries. EPA cannot base its analysis on assumption after assumption, and there is simply no model that purports to show a causal link between the RFS and international land use change. There is little indication that any actions in the United States with respect to biofuel use has had or will have any influence in land use decisions in other countries. Moreover, the global community has recognized the importance of reducing GHG emissions and has been working towards more sustainable land use decisions. Thus, any reliance on lifecycle emissions analysis should not include international land use changes until EPA can develop a sound model that can establish a causal link.

Further, we are not aware of any independent review being conducted of EPA's analysis. Concerns have been raised by numerous experts in the field, urging that international land use changes not be included in a lifecycle analysis due to the scientific uncertainties associated with such an analysis. (Attachment 2). Several Senators recently wrote to EPA, raising numerous concerns with inclusion of international land use in its lifecycle analysis and requesting EPA to defer such analysis. (Attachment 3). Indeed, the Brazilian ambassador similarly requested EPA defer its analysis, noting that Brazil is working on an analysis of potential land use changes related to biofuels that is substantially different from EPA's preliminary results. (Attachment 4). Given these numerous concerns, EPA should keep in mind the guidelines under the Information Quality Act (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001), which, while not binding, provide "policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." 67 Fed. Reg. 8452, 8452 (Feb. 22, 2002). See *also* EPA, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by EPA, EPA/260R-02-008, at 3 (Oct. 2002). Peer review, among other things, is included as a means of assisting agencies in ensuring the quality of their scientific information. Scientific scrutiny is particular apt given the policy implications of this analysis. Therefore, EPA should at least provide for independent review of its methodology and then propose any such methodology for public scrutiny, making its methodology transparent to assure adequate opportunity for public review and comment.

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letter to Science outlines the numerous uncertainties and speculative assumptions made by Searchinger *et al.* in an article in *Scienceexpress*, "Use of U.S. Croplands for Biofuels Increases Greenhouse Gases through Emissions from Land Use Change," dated February 7, 2008, that purports to model international land use changes for renewable fuels.

### III. LEGISLATION SHOULD BE THE PREFERRED AVENUE TO ADDRESS GHG EMISSIONS GENERALLY AND SPECIFICALLY FROM STATIONARY SOURCES.

RFA echoes the comments EPA includes in the ANPR from several federal agencies regarding their view on using the CAA to regulate GHG emissions. Comments from various agencies, including the U.S. Departments of Agriculture, Commerce, Transportation and Energy and the Small Business Administration, affirmed the general consensus that the CAA is not the proper tool for regulating GHG emissions, largely because of the global implications and because of the economic burdens that would likely be imposed on all sectors of the economy. Although the ANPR outlines various possible pathways for regulating GHG emissions, none adequately address the climate change issue and all likely will create overly burdensome requirements. EPA Administrator Johnson himself recognizes that the ANPR demonstrates that the CAA, an “outdated law,” is “ill-suited for the task of regulating global greenhouse gases” and that regulation under the CAA would likely result in a “convoluted set of regulations.” 73 Fed. Reg. at 44,355. Administrator Johnson further recognized that “[t]he potential regulation of greenhouse gases under any portion of the CAA could result in an unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land.” *Id.*

RFA is especially concerned with the dramatic expansion of the Title V and prevention of significant deterioration (PSD) programs that could occur if an endangerment finding is made and subsequent regulations make GHGs subject to these permitting programs. We are concerned with this expansion of regulatory programs at a time when ethanol plants are themselves expanding and being built.

Given that permitting timelines already impose delays on projects, adding to these burdens on state permitting authorities could delay further construction and expansion of renewable fuel facilities needed to comply with the RFS. Moreover, many ethanol facilities have accepted emission limits to avoid these permitting requirements. By bringing GHGs into the scope of regulated pollutants, these very same facilities would by definition become major and potentially trigger PSD for the pollutants they have already limited. This is because under EPA policy, once a facility is major for one pollutant, like CO<sub>2</sub>, any non-de minimis increase could trigger PSD review. And, once major, all requirements for all pollutants would need to be included in the Title V permit. This means that EPA’s suggestion of a general permit to alleviate the Title V burdens for GHGs would not be helpful for ethanol plants.

The EPA Act and EISA included numerous provisions to develop renewable energy technology and advanced biofuels. Additional regulatory burdens would only serve to create disincentives for these programs, which are intended to address the very problem of GHG emissions. For example, in issuing a rule that sought to reduce the “potential obstacles” the PSD requirements posed for growth in the industry, EPA found that “continued growth of the ethanol industry will play a vital role in achieving our nation’s energy and environmental objectives.” 72 Fed. Reg. 24,060, 24,062 (May 1,

2007). Indeed, Congress included a specific provision in the EISA to ensure that PSD requirements were not triggered by the expansion of the RFS.<sup>16</sup>

EPA asks for comment whether GHG emissions are better regulated by legislation. As has been shown with the EISA, legislation would serve best to create a national solution to the climate change issue. Most bills that have been introduced in Congress involve a cap-and-trade program.<sup>17</sup> RFA generally supports market-driven mechanisms for regulating GHGs, and believes that continued support for renewable fuels in any such program is essential to addressing the GHG emissions from the transportation sector. To the extent that renewable fuel producers generate emissions reductions in excess of those required under the EISA, renewable fuel producers should be able to obtain credits for those reductions under any such program.

#### IV. CONCLUSION

RFA appreciates the Agency's approach of seeking broad public input prior to making any endangerment findings or issuing proposed regulations. Since the renewable fuels industry is at the forefront of regulatory GHG reductions, we are anxious to work with EPA to ensure that any action -- legislative or regulatory -- does not conflict with or undermine the efforts that our industry is making and the requirements for mandatory volumes of renewable fuels in the marketplace.

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<sup>16</sup> While ethanol plants may have GHG emissions that exceed 100 or 250 tpy to be considered a "major" source, they are, in fact, *de minimis* sources of GHG. In an inventory done by the Iowa Department of Natural Resources (IDNR) -- 2007 Greenhouse Gas Emissions from Selected Iowa Source Categories -- non-biogenic GHG emissions from ethanol plants paled in comparison to the largest emitters in the State. IDNR found that emissions ranged for 24 dry mill ethanol plants (22 natural gas-fired and 2 coal-fired) ranged from 0.0114 to 0.1822 million metric tons of carbon equivalent. This can be compared to the emissions from the ten highest emitters in the State (all coal-fired utilities) which ranged from 1.31 to 9.14 million metric tons of carbon equivalent. The emissions from these ten facilities accounted for 69% of the total GHG emissions from fossil fuel combustion in the State. EPA can determine *de minimis* sources of CO<sub>2</sub>, based on *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1980). Moreover, new ethanol plants already include the best available control technologies, making a case-by-case review overly burdensome with the potential for little added benefit.

<sup>17</sup> EPA's authority to establish a cap and trade program for GHG emissions under the CAA is unclear.