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Subject: Court says blend wall fears not enough to justify ethanol volume waivers

By Eric Wolff

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The D.C. Circuit today rejected EPA's decision to use a waiver to reduce conventional ethanol volumes in its rule setting volumes for 2014-2016, a win for ethanol producers.

The Renewable Fuel Standard allows EPA to lower volumes set by Congress if it determines domestic biofuel producers will not be able to provide adequate supply. But in its rule setting volumes for 2014-16, the agency said it had to issue the waiver because of inadequate demand for ethanol. If the agency required more ethanol than consumers would buy, a situation known as the blend wall, refiners feared complying with the program would be difficult and expensive.

The court held that EPA's attempt to argue that insufficient demand was the same as insufficient supply would not justify use of the waiver.

"We reject EPA's attempt to bootstrap the definition of 'renewable fuel' into a boundless general waiver authority," the three-judge panel wrote in its unanimous opinion.

The court rejected all other challenges in the case: It found that EPA does not have to address which companies bear the obligation for complying with the program in annual rules; it upheld EPA's separate waiver to reduce requirements for cellulosic ethanol; and it found that EPA does not need to consider the amount of leftover RFS credits from prior years when it sets future volumes.

The court also affirmed EPA's right to set biofuel requirements even when it misses statutory deadlines, a decision that could be important for EPA this year, as it is already behind schedule on setting final volumes for 2018.

WHAT'S NEXT: The court remanded the case back to EPA to figure out what to do now that its use of the waiver was invalidated for the previous three years.

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