

Message

From: Jack Barrow [jack.barrow@btr.energy]
Sent: 8/24/2017 2:33:40 PM
To: Kelly, Albert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08576e43795149e5a3f9669726dd044c-Kelly, Albe]; Frank.Keating@hklaw.com
Subject: Re: BTR Energy

Mr. Kelly -- I just wanted to let you know that I met Mr. Ben Hengst from Director Chris Grundler's team for coffee yesterday, as we had planned. He reported that the OTAQ staff do believe a rule-making is necessary to implement this program, but he hasn't seen our analysis of the existing regulations. As I've shared, we think there's a very strong case to move forward without a rule-making and that the staff are simply delaying.

If we're right, Ben also seemed to believe that we could get this done by the end of November, if it were made a priority. And he understood its importance.

He also suggested that we involve Mandy Gunasekara. Mandy is a Senior Policy Advisor and has worked closely with Ben on RFS issues like this. Sounds like she'd be the right decision maker. Ben thought she would appreciate our legal analysis and would likely be favorable to getting this done this year, without additional regulatory action.

I plan to reach out to Mandy directly, although if you felt comfortable making a connection after our meeting, that might speed things along. I'd hope we could meet with her next week.

Thanks for everything, and I look forward to our meeting tomorrow.
Jack

On Tue, Aug 22, 2017 at 9:47 AM, Jack Barrow <jack.barrow@btr.energy> wrote:

Mr. Kelly -- I started thinking more last night, and I wanted to send you a few notes ahead of your policy meeting as further response to Mr. Grundler and for additional context on the e-RIN program. I hope this is helpful in making it a priority the next few months, ahead of the November deadline. The attached document, explained below, has some powerful endorsements from two of our farm partners on pages 2 and 3.

- Mr. Grundler's statement "*we discussed the potential for such an "e-RIN" pathway in a proposed rulemaking last year*" is somewhat misleading. EPA created and finalized *the pathway* in the final rule in 2014. The proposed rulemaking Mr. Grundler references did not propose any changes to the *existing* electric pathway; it only asked for input on how best to *implement it*. That's just a few words but a crucial legal difference.
- If Mr. Grundler and his team are not completely confident in the decisions they make to "address significant policy issues" right now, they should still feel comfortable moving forward, as the 2014 final rule makes clear that EPA would best "learn from experience" (e.g. approving one or just a few applications) as it relates to this pathway. Over three years have passed since the pathway was finalized, and over 6 months have passed since EPA closed the comment period on how best to implement the program. They have all they need to move forward before the November deadline.
- Electricity is one of three types of RFS fuel pathways established by EISA in 2007 (liquid, gas, and electricity). While the politics electric vehicles (EVs) within the RFS can be somewhat controversial, EVs and EV manufacturers are just

a necessary component of the program to determine how much electricity was used. What is not controversial is that the

primary beneficiaries of the e-RIN program (or at least, BTR's e-RIN application) would be agricultural communities, just as Congress intended, as the program will have a much larger impact helping farms and animal ag businesses than it will on the EV market. EVs shouldn't scare anyone here; all RFS pathways require fuel production and demand, and there's both for this pathway.

- To illustrate that point, I've attached a 4-pg document that two teams at USDA asked us to prepare. Most of the information in this document is repetitive to what I've already sent you, but the "case studies" on pages 2 and 3 show how impactful this program could be for two of BTR's farm partners, Andrea Sensenig from PA and John Jacobs from WI. **Andrea actually told us that installing a digester "saved [her] farm." Imagine we could help other small family farms do the same -- that's why USDA is excited about the e-RIN program.**
- With the passage of time since the pathway was finalized, the opportunity cost to the agricultural community has become significant. People like Andrea and John suffer from further delays. And the benefits to ag can be realized by approving just one application, which means the lift for EPA staff is not huge. That's why I view this program as "surgical" in its impact on ag communities: relatively low financial cost, very high impact.

Anyway, I hope I'm not overloading you with information. I look forward to talking on Friday, as I find there's no substitute for a conversation!

Best,
Jack

On Mon, Aug 21, 2017 at 6:22 PM, Kelly, Albert <kelly.albert@epa.gov> wrote:
I have a policy meeting n this tomorrow. I will know more then

Sent from my iPad

On Aug 21, 2017, at 6:14 PM, Jack Barrow <jack.barrow@btr.energy> wrote:

Mr. Kelly -- thanks for sharing. I have met with Ben Hengst once before and had reached out to him many weeks ago asking for a status update after bumping in to him at an EPA hearing (before I contacted you via Governor Keating). I only just heard back from him today (my guess is that was prompted by your outreach to Mr. Grundler), and he offered to meet for coffee on Wednesday.

As an aside, Mr. Grundler's response is essentially what we've heard for the last three years. The "significant policy questions" are what we aimed to address in the draft Guidance document I sent you, though again, the statute gives EPA broad flexibility to move forward even without guidance. Essentially, these policy questions *have been addressed by industry* -- there are clear right answers that Mr. Grundler and his team likely understand and just need to agree to adopt -- and so implementing this program/ making it happen should not be a heavy lift for his team. It should not, in other words, compete significantly for time spent on other priorities.

Just my initial thoughts and opinion. I'll get an update from Ben and then I'm sure you and I will discuss this more on Friday.

Hopefully we've started the ball rolling.

Thanks again,
Jack

On Mon, Aug 21, 2017 at 5:27 PM, Kelly, Albert <kelly.albert@epa.gov> wrote:

Thought I would share with you. What is the status of the meeting he refers to as being this Wednesday?

Albert Kelly

Senior Advisor to the Administrator

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202 306 8830

From: Grundler, Christopher

Sent: Monday, August 21, 2017 5:09 PM

To: Kelly, Albert <kelly.albert@epa.gov>

Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>

Subject: Re: BTR Energy

Hi Mr. Kelly—

Thanks for your note, I appreciate your reaching out. As it turns out, my deputy in DC (Ben Hengst) is meeting with Mr. Barrow this Wednesday, and I understand they've met once before.

The pathway you are referring to would allow firms to generate credit under the Renewable Fuel Standard for electricity used in transportation, where the electricity is generated from biogas. We discussed the potential for such an "e-RIN" pathway in a proposed rulemaking last year.

It has been a busy stretch of time for the RFS program – annual volume rules, point of obligation, etc. – and we have not had a chance yet to brief this issue up to the senior leadership team (Mandy, Samantha, Brittany and others). There are a handful of significant policy questions related to e-RINs that we'd need to address before putting in place a system where stakeholders would be able to generate credits. We are more than happy to start

working these issues up the chain, but we simply have been working on other program priorities that the Administrator and his team have laid out for our office.

Please let me know if you need more on this.

Chris

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (DC)
734.214.4297 (Ann Arbor/NVFEL)

Sent from my iPhone

On Aug 21, 2017, at 2:22 PM, Kelly, Albert <kelly.albert@epa.gov> wrote:

Hello Mr. Grundler. I have not had the pleasure of meeting you but have the occasion to reach out to you regarding the above. The Administrator's office was contacted by Mr. Jack Barrow and asked to check with you as to possible procedure forward.

As I understand it, in 2014 under a law approved by congress, EPA granted itself the authority to consider and approve applications under part of the Renewable Fuels Standard called the "electric pathway". If I understand the nature of this, it would provide production procedures for generation of Renewable Identification Numbers by way of electricity using animal and food waste. It is represented to me that if this were approved and put in place, more farms and farmers could benefit by being incented to make electricity in this way.

So, my question is that if Congress mandated this program, what is the status of this and how do companies like BTR get access to it? Any further enlightenment that you could give me would be appreciated.

Albert Kelly
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Jack Barrow
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Ex. 6

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