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February 10, 2023

David Korotney  
Assessment and Standards Division  
Office of Transportation and Air Quality  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

**RE: Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes (Docket ID No. EPA-HQ-OAR-2021-0427)**

Dear Mr. Korotney:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the proposed 2023-2025 standards for the Renewable Fuel Standard (RFS) Program (87 FR 80582; December 30, 2022). NACWA represents the interests of over 350 public clean water agencies nationwide, serving the majority of the sewered population in the US. Protecting public health and the environment through appropriate management of wastewater – and the sludges, biosolids, and biogas produced from treating it – has traditionally been the primary function of publicly owned treatment works (POTWs). However, POTWs are now evolving into resource recovery facilities that reuse water, extract nutrients, and produce energy.

The potential to generate Renewable Identification Numbers (RINs) through the RFS program is an important consideration for POTWs that produce energy from the anaerobic digestion of biosolids. Biosolids are an organic byproduct of the wastewater treatment process, and anaerobic digestion of biosolids is the most commonly used technology to produce energy at POTWs. The revenue potential of RINs – particularly cellulosic biofuel (D3) RINs – can be the deciding factor for whether or not an investment in a biogas project is economically feasible. The availability of consistent revenue from D3 RINs can allow more POTWs to make investments to recover energy from their continuous, renewable supplies of municipal wastewater.

The addition of food waste to POTW anaerobic digesters is an efficient method of beneficially managing food waste and increasing biogas production at POTWs. Under the current RFS regulations, POTWs co-digesting food waste would have all of their biogas designated with advanced biofuel (D5) RINs, which have a lower value than D3 RINs.

NACWA supports EPA's proposed regulatory framework to add food waste to anaerobic digesters at POTWs without devaluing the D3 RIN value of the fuel produced from digestion of the biosolids without the added food waste. NACWA also supports EPA's proposed regulatory framework for the renewable electricity pathway, which will allow additional incentives for POTWs to recover energy from their biosolids. NACWA's comments below provide recommendations for improving both of these proposed regulatory frameworks.

### **Co-Digestion of Food Waste**

NACWA appreciates EPA's work to find a reasonable method to apportion RINs when food waste is co-digested with biosolids. NACWA supports EPA's approach of establishing a baseline of biogas production from biosolids only and assigning D3 RINs to this value, and then subtracting this volume from the total biogas produced, with the difference assigned D5 RINs. NACWA also supports the option to identify operational parameters based on minimum requirements in 50 CFR Part 503 for municipal sludge treatment to establish the baseline biogas production from biosolids. NACWA requests that the baseline biogas production from biosolids operating in compliance with 50 CFR Part 503 be set at 15 standard cubic feet (scf) of biogas produced per pound of volatile solids destroyed, with this volume awarded D3 RINs. This would greatly reduce ambiguity and streamline the process for POTWs, and it is supported by data submitted to EPA by the California Association of Sanitation Agencies (CASA).

Using 15 scf of biogas per pound of volatile solids destroyed is the preferred approach for POTWs. If this approach is not used, then NACWA requests that EPA modify its alternative option to use a value from literature to discount the biomethane potential. NACWA recommends that the proposed value of 50 percent be replaced by 80 percent, which is more realistic but still conservative. Additionally, NACWA asks that EPA allow site-specific calculations of the biogas baseline, rather than the prescribed formula in section 80.1426(f)(3)(vi)(D).

NACWA requests clarification of the requirements for registration, recordkeeping, and reporting for co-digested food waste. EPA should clarify that POTWs must only report the types of food waste and the types of facilities from which the food waste comes. Records of individual food waste sources and weights that must be kept by waste haulers should not be needed during registration and reporting.

Sections 80.105(k)(4) and 80.155(b)(5)(ii) appear to prohibit POTWs from receiving any feedstock that is less than 75 percent cellulosic, which would prevent co-digestion of food waste. These sections should be deleted, or the words "municipal wastewater treatment facility digester" should be deleted from them.

Finally, NACWA recommends that EPA establish a separate section in the regulations for how co-digested food waste is apportioned RINs. This would improve the clarity of the regulations and help prevent misinterpretation.

### **Biogas to Electricity Pathway**

NACWA recommends that EPA modify its proposed regulatory framework for the biogas to electricity pathway by designating the fuel producer as the RIN generator, rather than the Original Equipment

Manufacturers (OEM). NACWA disagrees with EPA's argument that the electric vehicle OEM will be in the best position to comply with the regulatory requirements of the RFS program. OEM have no experience with RFS program requirements, while biogas/electricity producers have managed these requirements since 2014.

The proposed structure also does not support the Congressional intent of the RFS program, which is to increase US energy independence and security by driving growth and development in next generation biofuels, since OEM do not produce biofuels. EPA states in the proposed rule that one reason it supports OEM as the RIN generator is to drive the growth of the electric vehicle industry, which was not the intent of the RFS.

Designating the OEM as the RIN generator does not recognize that the financial risk is taken on by the biogas/electricity producer, not the OEM. The entities that bear the risk from producing the fuel that generates RINS should also receive the benefits of the RINs. Under the proposed structure, biogas/electricity producers will be forced to contract with OEM, creating an unbalanced playing field that will benefit larger OEM and likely forcing biogas producers to generate only electricity or renewable natural gas, limiting their ability to benefit from producing other types of fuels.

NACWA asks that EPA define the term "qualifying renewable electricity" in the proposed rule, and the Association supports the following definition, which will allow POTWs to still receive full credit under the RFS for producing their own electricity and reducing or eliminating the electricity that they use produced by other sources.

*Qualifying renewable electricity* means electricity that is eligible to be covered by a RIN generation agreement under § 80.135 because it is produced from biogas included in Row Q or T of Table 1 to 40 CFR 80.1426 and meets any of the following requirements:

- (i) It is generated by a domestic electricity generating unit (EGU) connected to the commercial transmission grid serving the conterminous US and is placed onto that grid, or
- (ii) It is generated by a domestic EGU located at a facility connected to a commercial electrical grid serving the conterminous US, and is either placed onto that grid or used at that facility to serve onsite loads, excluding parasitic loads, that would otherwise be served by that grid, or
- (iii) It is generated by a foreign EGU connected to the commercial transmission grid serving the conterminous US that is capable of selling its electricity for use in the conterminous US, and is placed onto that grid.

In addition to the comments above, NACWA supports the comments submitted by the California Association of Sanitation Agencies (CASA) and the American Biogas Council.

NACWA Comments on RFS Standards

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Thank you for your consideration of these comments. Please contact me at 202-533-1836 or [cfinley@nacwa.org](mailto:cfinley@nacwa.org) if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Cynthia A. Finley". The signature is written in a cursive style with a large, stylized initial 'C'.

Cynthia A. Finley, Ph.D.

Director, Regulatory Affairs