

# Legal Pitfalls when Generating RINs and LCFS Credits on Your Biogas

**US EPA's Landfill Methane Outreach Program  
Denver, Colorado**

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# Energy, Environmental & Commodities Law

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Biogas Producers  
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## **Our Renewable Fuel Credentials**

- ◆ Leading law firm in advising on RFS and LCFS compliance
- ◆ Frequent defense counsel on RFS enforcement matters
- ◆ Defended client in the largest civil EPA RFS enforcement action to-date
- ◆ Drafted the standard terms for trading RINs and LCFS Credits
- ◆ Retained by the Bipartisan Policy Center to draft a White Paper on Reforms to the RFS
- ◆ Thought leader, and often quoted on the regulation of renewable fuels, gasoline and diesel

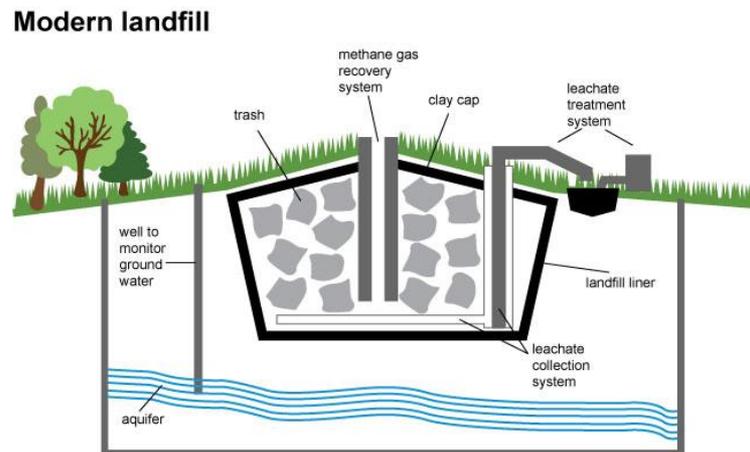
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# Overview

- *The Good News: Opportunities Abound*
  - The RFS and LCFS regimes continue to drive opportunities for landfills and other sources of biogas to leverage the value of the biogas being produced at their facilities.
- *The Not-So-Good News: Legal Obstacles Remain*
  - From a legal standpoint, the use of biogas as a transportation fuel *and* the treatment of biogas sources under the RFS and LCFS regimes remain in their infancy, and several areas of potential regulatory uncertainty remain.
- *The Takeaway:*
  - Even the most conservative approach under the RFS and LCFS may offer significant upside.

# Capitalizing on Biogas Opportunities

- Significant Revenue Potential from RFS and LCFS Programs
- RINs Not Mutually Exclusive of LCFS Credits (No RECs)
- Potentially Low Capital Investment with Existing Gas Capture System
- Significant Compliance Responsibility, but Can Shift Associated Costs to Larger Market Participants
- Must Use Biogas as a Transportation Fuel to Obtain Credits



# Renewable Fuel Standard – An Overview



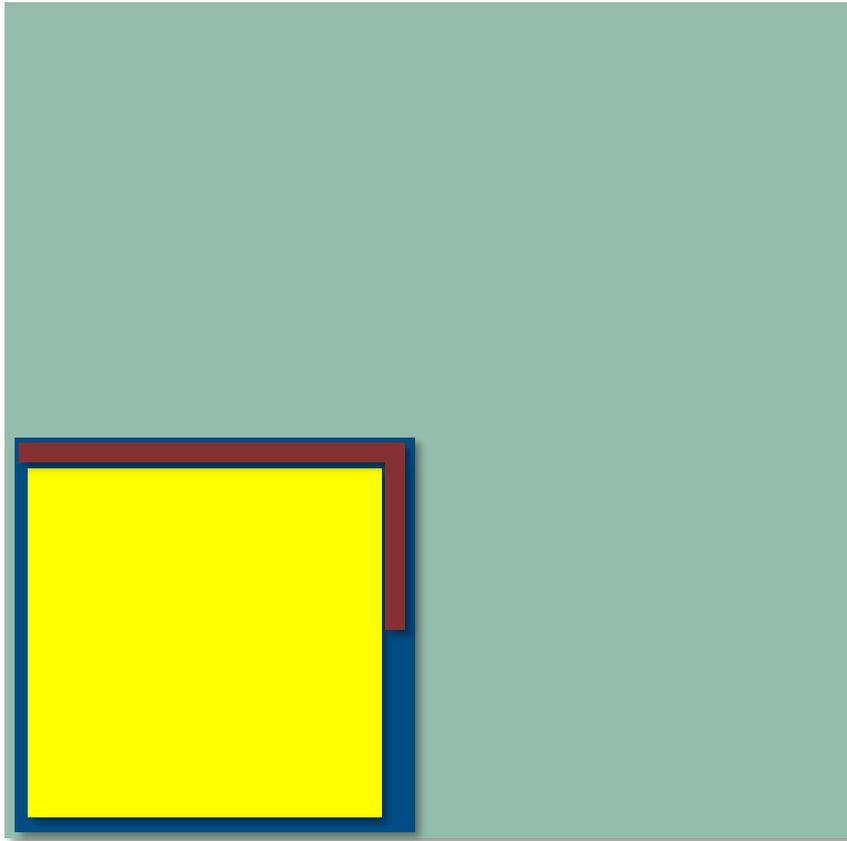
**I WANT YOU**

**TO MAKE RENEWABLE FUEL  
(Including Biogas!)**



- Requires refiners and importers of gasoline and diesel to ensure that renewable fuel replaces petroleum-based transportation fuel
- Renewable fuel producers generate credits (“Renewable Identification Numbers” or “RINs”)
- RINs separated once biogas dispensed as CNG/LNG to be used as a transportation fuel, and then traded
- RINs retired by refiners and renewable fuel exporters

# RFS Mandates – 2018 Final Rule



- Total Renewable Fuel – 19.29 billion gallons (D6 + D3, D4, D5, D7 RINs)
- Advanced Biofuel – 4.29 billion gallons (D5 + D3, D4, D5, D7 RINs)
- Cellulosic Biofuel – 0.288 billion gallons (D3, D7 RINs)
- Biomass-Based Diesel – 2.10 billion gallons (D4 RINs) (approximately 3.3 billion RINs)

# Generating RINs on Biogas: Rules of the Road

## — Sources

- Landfills
- Municipal wastewater treatment digesters
- Agricultural digesters
- Municipal solid waste digesters
- Waste digesters

## — Fuel Type – Must be Transportation Fuel

- CNG
- LNG
- Renewable Electricity

## — RIN Type

- D5 Advanced Biofuel RINs (waste digesters)
- D3 Cellulosic RINs (all other approved biogas sources above)

## — RIN Quantity

- Gas: 1 RIN for every 77,000 BTUs (LHV) with a 0.903 (LHV to HHV conversion factor)
- Electricity: 1 RIN for every 22.6 kW-hr



# Cellulosic RIN Price Driver

## — Cellulosic RIN Price =

- [Advanced Biofuel RIN price + Cellulosic Waiver Credit price] x Discount for uncertainty
  - The Cellulosic Waiver Credit price is inversely correlated to the wholesale price of gasoline (\$3.00 less the wholesale price of gasoline, adjusted for inflation in comparison to calendar year 2008).
  - Advanced Biofuel RIN price is dependent on many factors including price of sugar, soy, biodiesel, availability of gasoline for blending, etc.

## — *American Petroleum Institute v. EPA* (U.S. Court of Appeals, 2013)

- The Cellulosic Biofuel Standard should predict what will actually happen by striving for accuracy above all else. The Court struck down EPA's determination because it was "aspirational" in nature rather than "outcome-neutral." In light of this case, while EPA has discretion in setting the projection, which is the ultimate indicator of the applicable volume requirement for Cellulosic Biofuel for the next year, it may not pursue a number that is inaccurate and may not make its determination based on pursuing goals other than accuracy.

# RFS Compliance: An Overview

## — Registration

- All Obligated Parties, renewable fuel producers/importers/exporters, and all others who own RINs must register their company
- Set up registrations, CDX, EMTS before activity begins

## — Generating RINs

- 5 different types of RINs and 4 RIN markets
- Approved feedstocks
- Approved production processes
- Proper quantities

## — Separating RINs



# RFS Compliance: An Overview

## — Reporting

- Annual and quarterly reporting requirements for all parties

## — RIN Validity

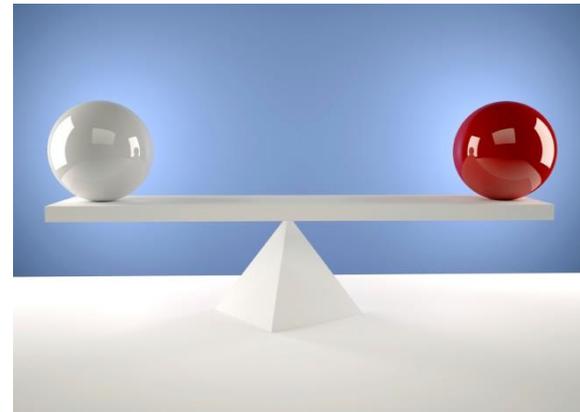
- Obligated Parties – burden on Obligated Parties to ensure these criteria are met

## — RIN Retirement

- Obligated Parties
- Renewable Fuel Exporters

## — PTD Requirements

## — Recordkeeping Obligations

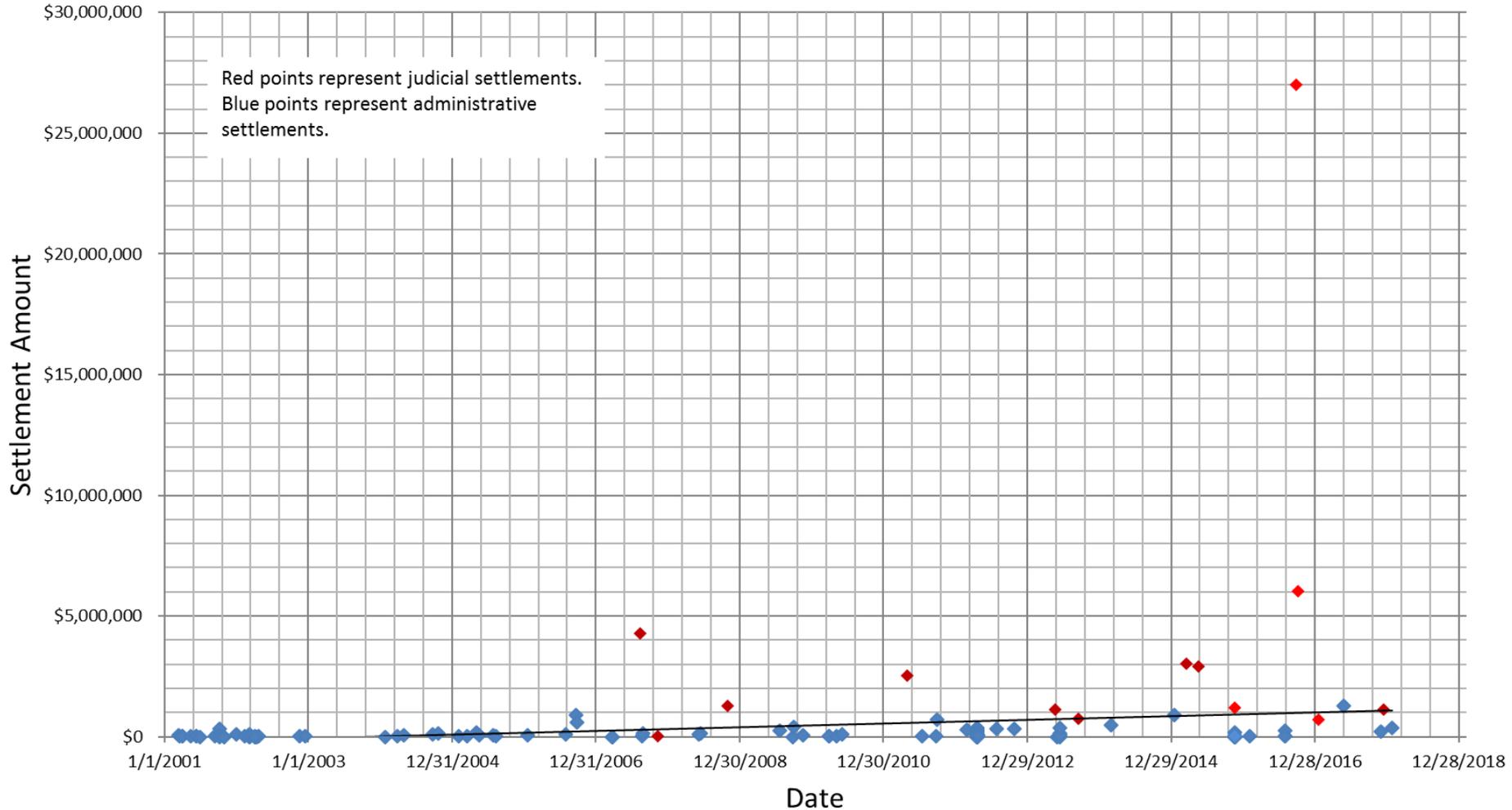


# Hot Legal Issues in Biogas

- Are you Injecting into a “Commercial Distribution System?”
  - Currently pending litigation and information requests
- Consider the chain of title in the “transport” of the biogas
  - E.g., owner/operator of the digester, gas marketer, compressor/liquefier, fueling station
- Pipeline capacity and transportation agreements
- Gas must be used as a transportation fuel
- Gas must be of “pipeline quality”
- Pathing of the gas - can the gas be injected into pipeline and be used many states away from where produced?
- Contractual documentation is *critical*
  - Liability shifting, clear understanding of regulatory responsibilities, pricing
- Registration ≠ RIN Validity

# Fines Assessed under EPA's Mobile Source Regulatory Program

EPA Settlement Fine Amounts



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