
The grass, but not the tiger, can be used to make cellulosic ethanol.

I mentioned the other day that the D.C. Circuit struck EPA's cellulosic biofuel mandate for 2012. Today, the New York Times reported on EPA's 2013 quota. EPA has proposed to raise the mandate to 14 million (ethanol-equivalent) gallons for 2013.

EPA explicitly stated that it believes its 2013 proposal "is consistent with" the D.C. Circuit ruling. As I discussed previously, all the D.C. Circuit actually required of EPA was to not inflate its estimate based on policy reasons. The court did not prohibit EPA from setting a mandate, even one higher than the EIA estimate. (And, in fact, EIA's estimate for 2013 cellulosic production is only 13.1 million.)

Interestingly, EPA is also proposing a voluntary certification program to protect purchasers of renewable fuel credits (RINs) from fraudulently generated credits. Basically, the rule would establish procedures for third-party auditors to verify the credits. This quality assurance program could remove some of the motivation for the American Petroleum Institute's lawsuit and increase liquidity of the credit market.

I have to take issue with some of the press reporting on this case. The New York Times commits one of my personal pet peeves: running with a quote in the name of 'balance' without challenging, when appropriate, the veracity of that quote. Here is Bob Greco of the American Petroleum Institute, as quoted in the article:

> The court recognized the absurdity of fining companies for failing to use a nonexistent biofuel . . . [b]ut E.P.A. wants to nearly double the mandate for the fuel in 2013.

Sorry Mr. Greco: nothing in that quote is true. 14 is not double 8.7. The biofuel in question does exist; it is just not affordable and easy to produce. And the D.C. Circuit recognized no such absurdity.

First of all, any such absurdity stems from the Congressional statute, not EPA's regulation.

Second, you will search in vain for anything in that court opinion that comes close to what Mr. Greco is talking about. Court opinions are, in general, just not that interesting. I mean, here is where the court agrees with the Petroleum Institute:

> [W]e agree with API that because EPA's methodology for making its cellulosic biofuel projection did not take neutral aim at accuracy, it was an unreasonable exercise of agency discretion.

Exciting, right? Most of the opinion actually upholds EPA's authority to fine companies for failing to use, as Mr. Greco puts it, a "nonexistent biofuel."

So did the New York Times point out that Mr. Greco just made all that up? No, they just move on to discussing the proposed certification program. Mr. Greco is quoted simply because the previous paragraph quotes the president of the Advanced Biofuels Association on what a great investment opportunity the new mandate represents.

Not to be outdone, the Associated Press / Washington Post took Mr. Greco's implication to its logical conclusion: that President Obama's EPA is poking the D.C. Circuit in the eye with the new mandate. From the headline: "In spite of court ruling, Obama administration raises production estimate for biofuels." Hey, AP: the court ruling had nothing to do with the mandate for all other biofuels, of which cellulosic biofuel is only a trivial percentage.

And three paragraphs in: "An oil industry representative [Greco] said the Obama administration was thumbing its nose at a ruling last week . . . ." The entire tone of the first half of the article leads the reader to the mistaken impression that the biofuels mandate is some kind of massive power play by EPA versus the judiciary.

And here I thought I had to go to Fox News for such fair and balanced reporting.