

F. JAMES SENSENBRENNER, JR.

FIFTH DISTRICT, WISCONSIN

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON  
CRIME, TERRORISM, AND  
HOMELAND SECURITY  
CHAIRMAN

COMMITTEE ON SCIENCE, SPACE,  
AND TECHNOLOGY  
VICE-CHAIRMAN



Congress of the United States  
House of Representatives  
Washington, DC 20515-4905  
February 13, 2013

WASHINGTON OFFICE:

ROOM 2449

RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-4905  
202-225-5101

DISTRICT OFFICE:

120 BISHOPS WAY, ROOM 154  
BROOKFIELD, WI 53005-6294  
262-784-1111

OUTSIDE MILWAUKEE METRO

CALLING AREA:  
1-800-242-1119

WEBSITE:

[HTTP://SENSENBRENNER.HOUSE.GOV](http://SENSENBRENNER.HOUSE.GOV)

The Honorable Lisa Jackson  
Administrator  
The Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Administrator Jackson:

The Environmental Protection Agency (EPA) has again proposed nonsensical standards for renewable fuels. For 2013, EPA will require fuel refiners to purchase 14 million gallons of cellulosic biofuel. This standard will virtually ensure that refiners are again forced to pay fines for failing to comply with EPA regulations that are completely impossible to comply with. These fines are, of course, passed on to consumers in the form of higher gas prices.

The phantom biomass rule has become standard practice at EPA. In 2010, EPA estimated that 5 million gallons of cellulosic ethanol would be available. The actual amount available was zero gallons.<sup>1</sup> Despite this, EPA increased its projection for 2011 to 6.6 million gallons. Again in 2011, none was available. Nonetheless, EPA again increased its projection for 2012 from 6.6 to 8.65 million gallons.

For 2013, EPA has taken the audacious step of nearly doubling the mandated amount of fuel to 14 million gallons. EPA's action is absurd, against consumer interests, and blatantly illegal. The Energy Independence and Security Act of 2007 (EISA) requires refiners to purchase cellulosic biofuels in 2013. The Act also, however, instructs the EPA to reduce that amount based on projections of actual production. EISA states:

(D) CELLULOSIC BIOFUEL— (i) For any calendar year for which the projected volume of cellulosic biofuel production is less than the minimum applicable volume established under paragraph (2)(B), as determined by the Administrator based on the estimate provided under paragraph (3)(A), not later than November 30 of the preceding calendar year, *the Administrator shall reduce the applicable volume of cellulosic biofuel required under paragraph (2)(B) to the projected volume available during that calendar year.*<sup>2</sup>

On July 18, 2012, I wrote to you with similar concerns. These concerns were summarily dismissed as EPA argued that it was bound—not by the express statement of the law—but by its own interpretation of congressional intent. It is statements like these that lead Members of Congress and the public to conclude that yours is an agency run amok.

<sup>1</sup> Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards, Environmental Protection Agency, 40 C.F.R. pt. 80 (Jan. 9, 2012).

<sup>2</sup> The Energy Independence Security Act of 2007, 42 U.S.C. §17381(7)(D)(i) (2007) (emphasis added).

EPA's position was rebuked last week in *American Petroleum Institute v. EPA*.<sup>3</sup> The U.S. Court of Appeals for the D.C. Circuit concluded that EPA did not have the authority to use an unreasonably optimistic methodology to "project" the volume of cellulosic biofuels. Instead, the court held that EPA must base its standard on actual projected availability.

In the wake of this decision, EPA nonetheless increased the cellulosic biofuel mandate from 8.65 million gallons in 2012 to 14 million gallons in 2013. The below table compares EPA's historic projections with actual biofuels production:

Year	EPA's Cellulosic Mandate <sup>4</sup>	Actual Cellulosic Production
2010	5,000,000	0
2011	6,600,000	0
2012	8,650,000	25,000
2013	14,000,000	?

In its regulatory announcement proposing the new cellulosic biofuel standard, EPA declared—without supporting evidence—that it was consistent with the D.C. Circuit's decision because it was "a reasonable representation of expected production."<sup>5</sup> By nearly doubling its 2012 projection, EPA appears to be merely paying lip service to the D.C. Circuit's opinion while continuing to follow its predetermined political agenda.

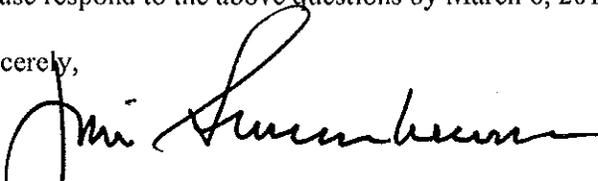
In your response, please respond to the following questions:

1. Does the EPA continue to believe that it has the authority to set fuel targets above actual projections?
2. Given historic production, how can EPA's projection be considered reasonable?
3. What evidence does the EPA have to support its contention that 14 million gallons is a reasonable projection?
4. In a September 4, 2012 letter from Gina McCarthy, EPA wrote: "In directing the EPA to project cellulosic biofuel production for purposes of setting the annual cellulosic biofuel standard, Congress did not specify what degree of certainty should be reflected in the projections."

What "degree of certainty" does EPA attach to its 2013 projection for available cellulosic biofuel?

Please respond to the above questions by March 6, 2013.

Sincerely,



F. JAMES SENSENBRENNER, JR.  
Member of Congress

<sup>3</sup> *American Petroleum Institute v. EPA*, No. 12-1139 (D.C. Cir. Jan. 25, 2013).

<sup>4</sup> All quantities in gallons.

<sup>5</sup> Regulatory Announcement, *EPA Proposes 2013 Renewable Fuel Standards*, EPA Office of Air Quality, EPA-420-F-13-007 (January 2013).