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VIA ELECTRONIC FILING

Air and Radiation Docket and Information Center
Environmental Protection Agency
Mailcode: 2822T
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Washington, DC 20460
ATTN: Docket ID No. EPA-HQ-OAR-2012-0621

Re: RFS Renewable Identification Number (RIN) Quality Assurance Program; Proposed Rule, 78 Fed. Reg. 12,158 (Feb. 21, 2013)

To Whom It May Concern:

Genscape appreciates the opportunity to submit comments on the Proposed Rule for the Renewable Fuel Standard (RFS) Renewable Identification Number (RIN) Quality Assurance Program, 78 Fed. Reg. 12,158 (Feb. 21, 2013) (referred to as "QAP Proposal"). The QAP Proposal includes a voluntary quality assurance program and an affirmative defense intended to address recent issues of fraud within the program.

Genscape is the leading global provider of energy information for commodity and financial markets. Utilizing patented technologies and proprietary algorithms, Genscape provides accurate & timely data on capacities, flow and utilization for all major energy commodities.

In the past year, Genscape created its RIN Integrity Network™, which is the industry's most robust Quality Assurance Program (QAP) for RIN verification. Our goal is to reestablish a liquid RINs market by restoring integrity to RINs, providing better fundamentals as the foundation for market transparency, and establishing an electronic marketplace to make transactions of validated RINs more secure and efficient. For additional information on Genscape, please go to: <http://www.genscape.com/biodiesel-rin-integrity-network>

In February of this year, Genscape became the first service provider or auditor pre-registered under the EPA's QAP program for A-RIN and B-RIN assurance. The pre-registration continues to reinforce Genscape's market leadership in providing RIN assurance services to renewable fuel producers and obligated parties.

And earlier this month (April 10th), Genscape became the first Quality Assurance Plan (QAP) provider to assure QAP-B RINs. U.S. Biofuels, Inc., a World Energy Solutions biodiesel production facility located in Rome, Georgia, was the first RIN generator to attain B-RIN assurance. Using Genscape's RIN Integrity Network™, a visual platform, obligated parties can easily identify producers offering QAP RINs and which RINs have A-RIN or B-RIN status.

As a proactive participant in EPA discussions around the QAP proposed rule for over a year, Genscape has voiced support for strong QAP requirements that will help reestablish a liquid RINs market through increased transparency in pricing and services. Genscape believes that the EPA's QAP Proposal presents a clear framework to resolve the fraud that has been plaguing the renewable fuels industry. It sets the course for increased liquidity as intended. The EPA's inclusion and level of involvement of the industry as a whole in the formative and progressive stages of the rule created a thoughtful proposed rule that is already taking hold.

Nothing has evidenced industry adoption of the rule in its basic current form more than the growth in the demand for Genscape's services in the interim period¹. QAP-B RINs are being actively sought out now for obligated party holdings, and new service agreements with both obligated parties and renewable fuel producers have been gaining strong momentum over the last few weeks.

In the short time between the QAP Proposal's publication and now, we have seen an about-face in the attitude of some market participants toward adopting QAP in the interim period. Initially, these participants were skeptical and even reticent but are now inquiring about getting services started for production facilities.

A-RINs have just as an important place in the QAP landscape and are equally being taken advantage of during the interim period. Genscape has been engaged by one marketing firm to provide QAP-A assurance services to all of the firm's affiliated producers. Through this engagement and also direct producer commitments with Genscape, multiple producers have committed to generating 100% QAP-A RINs through the Genscape services across multiple renewable fuels.

Other signs of the industry adoption of the QAP Proposal include maturity of the QAP services evidenced by cost reduction. Through technology, Genscape has already lowered the cost of ongoing monitoring and has increased the breadth of services available to clients for the same pricing structure. Competition among QAP providers is also putting price pressure on services to drive down costs.

More strong evidence of the acceptance of the QAP Proposal came during the verbal testimony at the hearing on the QAP Proposal in Washington D.C. on March 19th. The testimony indicated that the

¹ The interim period was established by the EPA to facilitate early adoption of the principals of the rule and has allowed obligated parties to already begin taking advantage of the benefits of affirmative defense and the A-RIN backing in the QAP Proposal before the rule is final.

industry has digested the rule and supports its core tenants. Some modifications and ideas were offered up to possibly fine tune the assurance path forward for the industry, but witnesses were generally supportive of the rule.

Because the rule is already being incorporated in both the marketplace and the back office, Genscape strongly believes that any significant change to the constructs of the QAP Proposal would hurt the stability that the renewable fuel industry is gaining and would delay industry progress.

Genscape does believe that there are some considerations that would not involve any fundamental changes to the QAP Proposal that may help strengthen the rule for long-term sustainability. In this vein, Genscape's comments address the following topics in response to the provisions of the QAP Proposal provisions and requests for comment on several issues.

- Technology, Site Visits and Auditing
- QAP Auditor Independence
- Professional Qualifications of an Auditor
- Foreign Producers and Importers
- Separation Activities for Producers
- Range of Materials Reviewed
- Volume Standardization
- Importance of A-RIN Replacement
- Financial Mechanism for A-RIN Replacement
- Conditions for Auditor A-RIN Replacement
- Transparency and Confidential Business Information
- Remediation Procedures
- QAP Proposal Changes
- Reporting Timeframe
- Prospective RIN Validation

Technology, Site Visits and Auditing

Genscape strongly supports the use of remote monitoring technology in place of physical on-site visits for QAP-A, as written in 80.1472(b)(1)(iii). The use of technology in place of periodic elements of on-site visits offers the industry the opportunity for increasingly robust and more cost-effective RIN assurance. Similar to machine learning, remote monitoring solutions increase the ability to recognize patterns at a renewable fuel facility and to detect deviations that may be indicative of fraud. Fraud scenarios will become increasingly more sophisticated and the growth of technology to meet these challenges is critical to the sustainability of the RIN credit mechanism.

Genscape has already proven that technology drives down costs. Genscape recently reduced the overall cost of its QAP program by about \$10,000 per facility by implementing cost effective, remote

monitoring technology. Genscape used the \$10K savings to roll in other commercial offerings, such as attestation audits and engineering reviews by independent firms.

Genscape supports a natural extension of the proposed rule to enable the use of remote monitoring technology for QAP-B, so long as it is done in conjunction with ongoing monitoring. If Genscape's ongoing monitoring system meets the requirements and is approved for QAP-A RIN validation, then we encourage EPA to allow the same system to be used for QAP-B RIN validation, which is intended to have more lenient due diligence requirements. Such a monitoring system is over and above the minimum requirements of QAP-B; however, Genscape has shown such a system to be more cost effective and more preventative of fraud than quarterly site visits. Rather than obtaining independent information once a quarter, Genscape remote monitoring system provides independent information every five minutes, safeguarding the industry from the sophistications of the fraud of the future. Ongoing remote monitoring also reduces the likelihood and opportunity of collusion between a person performing a site visit and the renewable fuel producer.

Genscape encourages strict and clear standards for auditing. For QAP programs not using remote monitoring technology, site visits should be at least the proposed four times a year since the site visit is the only type of truly independent information collected by these types of QAP programs. Less independent information obtained about the RIN generator would put the RIN credit system at greater risk. A criminal mind could easily learn to submit information to these audit programs to provide consistently fraudulent information that supports illicit activities. Lessening the number of site visits would risk reducing the QAP program back to the standards of the status quo.

QAP Auditor Independence

From frequent and ongoing conversations with market participants, Genscape has discovered that the independence of the entity providing QAP verification services is paramount to the continued and long-term sustainability of the QAP program. From producer to obligated party, the importance of QAP independence resonates.

We strongly agree with the EPA where in the proposed rule it stated, "... one key requirement for the effective implementation of a QAP by a third-party party auditor would be that the third-party auditor must be free from conflicts of interest with renewable fuel producers that are being audited." Conflicts of interest can bias the auditor's verification process. A conflict of interest exists when professional actions or decisions are or have been influenced by considerations of personal or financial gain. This conflict of interest can arise from having a financial interest or relationship with the parties being audited as well as the parties on both sides of the transaction, but also from having an interest in the commodity being traded itself (i.e., the RIN).

There are several specific topics the industry participants have voiced are critical to QAP auditor independence and these topics are presented below.

- 1) The auditor conducting the verification process must be independent of any day-to-day RIN transaction activity. Having a RIN position in the market could bias toward subjectivity in auditing based on market conditions.
- 2) Financial interest in the QAP provider by a company that trades RINs or is financially dependent on the RINs generated by a QAP provider client is a notable conflict of interest.
- 3) There is a conflict of interest in a QAP provider generating and validating the same RINs. Allowing a QAP provider to generate RINs and validate those same RINs would be similar to allowing a homebuilder to perform a homeowner's inspection. This is the classic case of the fox guarding the hen-house.

For example, a QAP provider acting as a RIN generating agent could over-generate RINs, creating invalid RINs. Especially in the situation of QAP-A, there would be little or latent policing of the QAP provider by affected industry participants and the QAP provider could financially gain from the sale of the additional illicit RINs. The QAP provider could submit production reports on behalf of the producer to the EPA that could be illegally modified to support fraudulent activity.

Allowing this activity opens up a new opportunity for fraud that would be difficult to catch. Opening up new opportunities for fraud is counter-productive to the intended purpose of the QAP rule.

Genscape understands that access to EMTS records is an important function of auditing. To do this while avoiding conflict of interest, Genscape has been granted a "read-only" agent status from the EPA, so that it can read records in EMTS generated by a RIN generator but cannot "write" records on behalf of the RIN generator. This avoids any doubt of a conflict of interest, Genscape believes this should be the standard agency access for QAP providers.

There is no seeming conflict of interest in a QAP provider simply submitting RFS reports on behalf of a renewable fuel producer (in the absence of generating and validating the same RINs) so long as the producer signs-off on the report. Generating reports is a relatively simple exercise in aggregating data already being supplied by the producer and saves time, and thus cost, for the producer by not having to submit the same data twice.

- 4) "Self-policing" QAP providers should be prohibited because of conflict of interest in the value of the RIN. Any RIN generator or obligated party should be prohibited from acting as a QAP service provider and verifying RINs as A-RINs or B-RINs.

For assurance of independence, Genscape believes that any potential conflict of interest on the part of the auditor must be reviewed prior to approval through financial disclosures and as part of its EPA registration renewal. The auditor's objectivity must be paramount to ensure an effective verification process. Genscape also supports requiring those providing verification services to be registered with EPA and submit their proposals to EPA for approval. Genscape recommends that EPA maintain a webpage with the list of all parties that have submitted a proposal to provide verification services and the status of such applications. Auditing of QAP providers by the EPA is also supported.

Professional Qualifications of an Auditor

Genscape believes and has confirmed in conversations with market participants, that the verification process should be undertaken by a qualified and independent auditor whose program has been reviewed and approved by EPA. Generally accepted auditing standards include three key general standards: (1) the auditor must have adequate technical training and proficiency to perform the audit; (2) the auditor must maintain independence in mental attitude in all matters relating to the audit; and (3) the auditor must exercise due professional care in the performance of the audit and the preparation of the report. These standards should apply to any entity providing verification services. Other effective qualifications of a QAP provider include proof of an errors and omissions (or "E&O") policy and registration by the EPA.

Genscape supports the involvement of a licensed professional engineer by a QAP program. As stated by the National Society of Professional Engineers, "Licensure is the mark of a professional. It's a standard recognized by employers and their clients, by governments and by the public as an assurance of dedication, skill and quality."²

For some QAP tasks, the expertise of a licensed professional engineer is viewed as necessary or appropriate while for others it is not. Requiring a professional engineer only when necessary and appropriate will help drive down cost for the QAP program. The National Council of Examiners for Engineering and Surveying provides the testing criterion for a professional engineer which demonstrates the type of expertise appropriate to assign to a licensee. For a chemical engineer, for instance, the knowledge areas³ are the following:

- Mass/Energy Balances and Thermodynamics
- Heat Transfer
- Kinetics
- Fluids
- Mass Transfer
- Plant Design and Operation

² <http://www.nspe.org/Licensure/WhyGetLicensed/index.html>

³ http://cdn4.ncees.co/wp-content/uploads/2012/11/Exam-specifications_PE-Che-Apr-2011.pdf

In an effort to support the goal of making QAP programs as cost-effective as possible, below is a list of recommendations of QAP requirements where professional engineering licensure is viewed as appropriate based on typical knowledge areas of a PE.

- The setting of boundaries for a mass balance.
- The setting of boundaries for an energy balance or the judgment of items related to thermodynamics, such as a heating value.
- Any on-site visit required by the QAP program to examine plant design or operation, including laboratory procedures.

Specifically, the tasks include the following proposed assurance requirements for QAP-A and QAP-B:

- 80.1469(a)(1)(i)(A-B, E, G); (1)(ii)(A, B, D, E); 2(i)(A-C); 2(ii)(A, C, D, F); (3)(i)(E, F)
- 80.1469(b)(1); (2); (3)(ii, iv, v, vi).

Proposed regulations such as 80.1472(a)(4-6), regarding document collection tasks and contact with renewable fuel purchasers, could be just as well or better accomplished by QAP provider staff member who is trained in renewable fuel purchasing documentation and feedstock procurement. We encourage professional competency standards as the program becomes more established to set a standard for the evaluation of all tasks.

Foreign Producers and Importers

It is likely that the opportunity for fraud or rampant invalid RINs could most easily happen at a biofuel facility that is half-a-globe away from the EPA. Because of the physical distance between the fuel generator and the point of blending or end use of the fuel, we recommend that each renewable fuel gallon and RIN from a foreign producer be required to go through an EPA approved QAP. Genscape recommends the following procedures to be included as part of assurance of foreign producers and importers.

- The foreign producer (or producer and importer) should be subject to all assurance procedures necessitated for a domestic producer. The RIN generation, separation and retirement requirements should apply to the RIN generator, whether the foreign producer or the importer.
- The arrival of each shipment of fuel into the US should be independently assured.
- The volume of each shipment of fuel transported into the US should be assured.
- The volume of fuel should be traceable back to the producer through product transfer data.
- The destination of the fuel and the destination denoted in product transfer data should be assured.
- There should be ownership traceability of fuel from the producer through any interim foreign recipients before it reaches the United States.
- For QAP-A, there should be ongoing monitoring of physical fuel volumes from producer to the fuel recipient.

Already, there is market interest in importers participating in QAP from both obligated parties and renewable fuel producers. We have had discussions with at least one obligated party that has stated that all imports for all fuel types will need to be assured.

Genscape believes that both A-RIN and B-RIN programs should be available to foreign producers and importers who are RIN generators. This would allow continued QAP program flexibility to meet a range of obligated party risk management strategies for different producers, different transportation methods and different fuel types.

Separation Activities for Producers

RIN separation for small producers is necessary to accomplish one of the main objectives of the proposed rule: to increase greater liquidity in the market to re-establish the capabilities of smaller producers to sell RINs.

RIN separation is core to the business model of producers who serve local and regional markets and who have retail and community based business models. Separation activities need to continue for the livelihood of these producers. Often these producers are the sources of key innovations that drive renewable fuel technology forward.

To mitigate risks with RIN separation by the generator, we recommend that EPA mandate a QAP program for the RIN generator who is also separating RINs.

Range of Materials Reviewed

In the proposed rule, one remark was that "The QAP would be required to ... review ... contracts with any company that removes wastes, co-products, off-spec products for any other material other than renewable fuel from the facility." In our view, production of wastes does not need to be part of the mass balance or document review, because for many renewable fuels, waste is insignificant in comparison to renewable fuel or major co-product(s). In fact, variability in wastes could be misleading if attempted to be used as a metric for production. Rather, one or more major output quantities on the output side of the mass balance are enough to prevent fraud.

Volume Standardization

In our view, periodic as opposed to real-time monitoring of standardizations of volumes is sufficient. The reason is that once volume standardization practices are in place they seldom change. Hypothetically, not performing volume standardization would in many cases incur less error than the cumulative uncertainty in metering, temperature and other measurement devices.

Importance of A-RIN Replacement

To provide market parity for renewable fuel producer RINs, Genscape believes that the A-RIN mechanism is absolutely essential. At a minimum, market parity is expected between today's "Tier 1

RINs” and A-RINs. For producers that have been taking a five-cent or 10-cent or even 15-cent discounts, the A-RIN offers a much needed opportunity for market parity.

In today’s market, Genscape A-RIN assurance, including all due diligence, can be obtained for about \$0.02 per RIN, which provides a huge margin make-up compared to the typical discount. This also shows that the 2% replacement volume for a QAP provider creates a very manageable cost structure for the producers who need it. The 2% threshold also strikes a good balance between the QAP provider having enough "skin in the game" and having a financial obligation that is manageable for the QAP provider. Evidencing this balance, Genscape has obtained the approval of its board for its method of managing this financial obligation and also has commitment from multiple clients to use its QAP-A services.

Additionally, the flexibility of a mix of A-RINs and B-RINs to compose risk management strategy has been received well by industry participants. Based on market feedback, parties are considering, and some are already executing, a strategy of A-RINs for certain perceived risk levels and B-RINs for lower perceived risk levels.

Financial Mechanisms for A-RIN Replacement

Genscape recommends the prohibition of liability insurance as a financial mechanism for A-RIN assurance for the following reasons:

- Premium payments would have to be maintained on a liability insurance policy for it to remain in effect. If a QAP provider were to stop making liability insurance payments, the A-RINs are no longer covered. This creates inherent instability in the RIN replacement mechanism. Premiums would need to be paid up 5 years in advance.
- Annual renewals are typical for insurance policies which compounds the annual cost to the industry. Instead of paying for the assurance once, a QAP provider would end up paying for it five times for five years of assurance.
- Premiums go up as risk compounds, and there is no guarantee that an insurance company will continue underwriting for larger and larger volumes.

Conditions for Auditor A-RIN Replacement

Language in the proposed rule states that *"If the RIN generator did not replace an invalidly generated A-RIN **for any reason**, the regulations would require the third-party auditor to replace the invalid A-RIN."* Based on this language, a producer could potentially refuse to replace a RIN, even in good financial health. Genscape is concerned that a renewable fuel producer would not be incented to replace the RIN because of the language. The obligated party or any other counterparty holding an invalid A-RIN that could assert an affirmative defense would not be affected by the producer's

unwillingness to replace the RIN. Thus, there would be little pressure on the producer to replace the RIN.

Genscape would encourage additional conditions for the QAP provider to replace the RIN. One idea for a condition is to include the demonstration that the RIN generator's organization was financially unable to replace the RIN through a legal status of bankruptcy.

Transparency and Confidential Business Information

Genscape supports increased transparency in the marketplace and offers comments about the types of information and the delivery of the information in a way that protects free enterprise and health free market competition.

- Proprietary QAP processes and procedures should be treated as confidential business information for the following reasons:
 - If requested by a RIN purchaser, QAP providers could confidentially provide the processes and procedures to the clients who wished to better understand the procedures and to gain additional confidence in the procedures.
 - QAP is a commercial service where competition and innovations drives down cost.
- Genscape supports the additional transparency suggested by information disclosure. To delivery that information in a way that protects an individual facility from use of facility level data by its competitors that could result in anti-competitive behavior, Genscape supports a 90 day delay in the release of production or processing related information.

Remediation Procedures

RINs should continue to be A-RINs or B-RINs if there is an approved remediation procedure for a technical invalidity that does not cause the RIN volume to be changed. For example, EMTS coding errors should be able to be remediated without changing the status of RIN validity. These instances do not represent fraud, which is the culprit for reducing liquidity and the strength of the RFS program. A clean way to remediate without changing the QAP status decreases the potential for logistic errors and curtails problems for obligated parties holding innocuous RINs.

QAP Proposal Changes

EPA is requesting comment on whether a new QAP should be required to be submitted to the EPA if the audited facility changes operations, feedstock, fuel type, etc. Genscape believes that if the QAP provider has been registered to cover the changed operations, feedstock, fuel type, etc..., that there is not a need to submit an updated QAP proposal. Only if the QAP provider is not registered for the changes should a new proposal be submitted. Because the EPA would have already reviewed the QAP provider's practices for the new situation, the resubmission seems like redundant work for the EPA and QAP provider, and ultimately more cost for the program.

Reporting Timeframe

EPA is seeking comment on whether EPA should allow third-party auditors more or less time than within 24 hours of identifying a problem to report potential issues that arise during audits. Genscape performs a For-Cause Audit if there are flags triggered by its ongoing monitoring and auditing systems. If the For-Cause Audit results in a Potentially Invalid RIN (PIR), Genscape would use that as the point of notification to the EPA. This avoids notification of "false positives" that could be injurious to the producer and could create unnecessary recordkeeping work for the EPA. In this case, 24 hours of notification seems reasonable.

Prospective RIN Validation

EPA proposes that verifying a RIN in EMTS be prospective. Genscape seeks clarity on whether or not the prospective status applies to A-RINs as well as B-RINs. Prospective status for QAP-B RIN creates a potential 100-day window before an audit could capture a process change could be related to fraud. This creates a large window of risk for prospective B-RINs. Genscape believes that prospective looking A-RINs or B-RINs via ongoing monitoring have much less risk because RIN issues can be detected as they happen rather than retrospectively. Genscape recommends that prospective RIN validation be limited to QAP services that employ ongoing monitoring, as required for A-RINs.

In closing, Genscape has worked vigorously to bring what we believe is the best and most reliable RIN validation system to the renewable fuels marketplace. Additionally, we have been responsible in our approach to work with producers, obligated parties and the EPA on RIN related issues. We believe we – together with both renewable fuel producers and obligated parties – have already installed many of the safeguards that are necessary to have an industry free of invalid RINs. We respect the EPA's productivity and involvement of the industry and will continue to work with the EPA on implementing this program as a final rule over the next few months.

We appreciate the opportunity to submit these comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan D. Olson". The signature is fluid and cursive, with the first name "Susan" being more prominent.

Susan Olson

VP of Products, Agriculture & Biofuels
Genscape, Inc.