A HOUSE WITH NO CEILING – THE RISKS OF OPEN – ENDED AGENCY AUTHORITY

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I. INTRODUCTION

Spurred on by growing concerns of pollution and environmental deterioration, Congress established the Environmental Protection Agency (EPA) in 1970 to preserve human and environmental health.[1] Since then, the EPA has issued thousands of rules in furtherance of that purpose, regulating all sorts of entities and industries in the environmental realm.[2] In creating these rules, the EPA relies on authority granted by Congress, which endows the agency with limited power to issue regulations and accomplish delegated tasks.[3] As with all

1. Lily Rothman, *Here's Why the Environmental Protection Agency Was Created*, TIME (Mar. 22, 2017, 9:00 AM), https://time.com/4696104/environmental-protection-agency-1970-history/.

2. Phil Wisman, *Background: Why the EPA Was Established*, EPA (Nov.1985), https://www.epa.gov/archive/epa/aboutepa/epa-history-1970-1985.html.

3. Off. of the Fed. Reg., A Guide to the Rulemaking Process, FED. REG. (last visited Jan. 20, 2025), https://uploads.federalregister.gov/uploads/2013/09/The-Rulemaking-Process.pdf.

binding laws, claims may be brought against the agencies who create these rules when a party believes that, for one reason or another, the rule should not be allowed to stand.[4]

In 2007, Congress expanded the Renewable Fuel Program which required EPA to regulate aspects of the biofuel industry.[5] Under this regulatory authority, EPA crafted a rule allowing for the regulation of biogas producers for purposes of meeting renewable fuel standards; that rule created the dispute highlighted in *Coalition for Renewable Natural Gas v. EPA* (Coalition).[6] After analyzing the EPA's rule, its justifications for that rule, and the arguments presented by the Coalition, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) concluded that the EPA indeed acted within its statutory authority in creating the rule and regulating producers of biogas.[7] However, the court offered a troubling analysis to uphold its conclusion, calling the statute authorizing the EPA to regulate producers a "regulatory floor," and declining to opine what, if any, limit or "ceiling" caps the EPA's authority.[8] Lower courts and federal agencies could reach a broad interpretation: the EPA has especially wide-ranging authority, so long as it's in the name of meeting renewable fuel targets.[9]

This *Note* argues that a broad interpretation of agency authority such as the one invited by the court in *Coalition* introduces numerous risks, including heightened potential for agency overreach, increased difficulty in challenging agency actions rooted in broad interpretations of authority, and industry uncertainty. Part II of this *Note* provides insight into the parties involved in this dispute, as well as the unique characteristics of renewable fuel that were relevant in *Coalition*. These criteria include the nature and creation of biogas (the type of renewable fuel involved in this dispute), and how it relates to the broader category of renewable fuel. Part II also analyzes the legislation underpinning the EPA, its regulatory role in the renewable fuel process, and agency actions like the one discussed in *Coalition*. Part III is an in-depth analysis of the D.C. Circuit's decision, including a factual background and procedural history of the case. Part III concludes by exploring the problems associated with the court's incomplete conclusion and the potential future implications of this decision.

4. *Id*.

5. *Overview of the Renewable Fuel Standard Program*, U.S. EPA (last updated May 7, 2025), https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard-program#:~:text=The%20CAA%20provides%20EPA%20with,years%20after%202022%20via%20rulemaking.

6. *See* 108 F.4th 846, 850-51 (D.C. Cir. 2024).

7. *Id*. at 854.

8. *Id*. at 852.

9. *Id*.; *see also* Panama Refin. Co. v. Ryan, 293 U.S. 388, 415 (1935) (addressing concerns that statutory interpretations lacking clear limits allows for unfettered discretion when issuing rules based on that authority).

A. The Environmental Protection Agency

1. EPA Formation

Throughout the 1960s, the public was growing concerned about the increased pollution and contamination of the planet, and what that meant for their health.[10] These concerns climbed the executive branch, which was becoming increasingly aware of these environmental issues and the impact such issues would have if they were not addressed.[11] On December 2, 1970, President Nixon signed a law that created the EPA, and made it "responsible for the protection of human health and the environment."[12] Nixon spearheaded proposed legislation that would force clean-ups of government facilities that polluted both air and water, and required contingency plans for possible future disasters.[13] Such proposals lent support to EPA's ultimate goal of protecting the human and environmental health, a goal for which EPA would require new regulations and rulemaking.[14]

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10. *The Origins of EPA*, U.S. EPA (last updated Nov. 6, 2025), https://www.epa.gov/history/origins-epa; *see* Kenneth Olden, *The EPA: Time to Re-Invent Environmental Protection*, 108 AM. J. PUB. HEALTH 454, 454 (2018); *Milestones in EPA and Environmental History*, U.S. EPA (last visited Nov. 7, 2025), https://19january2021snapshot.epa.gov/history/milestones-epa-and-environmental-history_.html (The public's concerns and subsequent environmental protection efforts were kickstarted by a few events in particular. Two such events were the 1962 publication of Rachel Carson's "Silent Spring," discussing the silence of the forests after birds started dying from heavy pesticide uses, and the 1969 incident on the Cuyahoga River, which was so polluted that it erupted in flames).

11. *The Origins of EPA*, *supra* note 10.; *see Remarks on Signing the National Environmental Policy Act of 1969*, THE AM. PRESIDENCY PROJECT (Jan. 1, 1970), https://www.presidency.ucsb.edu/documents/remarks-signing-the-national-environmental-policy-act-1969#:~:text=States:%201969%20%E2%80%90%201974-,Remarks%20on%20Signing%20the%20National%20Environmental%20Policy%20Act%20of%201969,be%20hard%20as%20it%20is (President Nixon's remarks when signing NEPA that it was "now or never" to work on protecting the environment); *See* Massachusetts v. EPA, 549 U.S. 497, 507 (2007) (discussing the early stages of climate change studies by the U.S. Weather Bureau, which began to monitor carbon dioxide levels in the atmosphere. Studies found a continuous increase in carbon dioxide concentration in the environment, with levels reaching 325 parts per million by the time Congress passed the Clean Air Act in 1970).

12. *U.S. Environmental Protection Agency*, U.S. DEP'T OF THE INTERIOR (last visited Jan. 14, 2025), https://www.doi.gov/recovery/about-us/primary-agencies/EPA; *Special Message to the Congress About Reorganization Plans To Establish the Environmental Protection Agency and the National Oceanic and Atmospheric Administration*, THE AM. PRESIDENCY PROJECT (July 9, 1970), https://www.presidency.ucsb.edu/documents/special-message-the-congress-about-reorganization-plans-establish-the-environmental (President Nixon's remarks in a letter to Congress about Reorganization Plan No. 3 of 1970, saying that that as environmental concerns increase, it is important to better understand the environment as a whole, and that it "has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.").

13. *The Origins of EPA*, *supra* note 10.

14. *Our Mission and What We Do*, U.S. EPA (last updated Oct. 20, 2025), https://www.epa.gov/aboutepa/our-mission-and-what-we-do; *What Is Environmental Law - And Why Does It Matter?*, AM. PUB. UNIV. (June 1, 2023), https://www.apu.apus.edu/area-of-study/security-and-global-studies/resources/what-is-environmental-law/.

2. The Clean Air Act

During this era, congressional efforts targeting environmental protection steadily increased.[15] One of the most impactful implementations of policy in relation to the EPA was the Clean Air Act (CAA) of 1970, a pivotal piece of federal legislation governing the regulation of air emissions and quality control.[16] Formulated with previous key legislation as a blueprint, such as the Air Pollution Control Act of 1955 and the Air Quality Act of 1967, the CAA was a compelling tool to help alleviate nationwide health concerns regarding air pollution.[17] The CAA permitted the EPA to impose "national air quality, auto emission, and anti-pollution standards."[18] The EPA estimates that in the CAA's first two decades, its policies prevented the deaths of over 200,000 people by substantially lowering levels of several toxic air pollutants, including lead and sulfur dioxide.[19]

3. The Renewable Fuel Standard Program

The EPA administers the Renewable Fuel Standard (RFS) program pursuant to its delegated authority under the CAA.[20] The RFS program is a nationwide piece of legislation that "requires a certain volume of renewable fuels be used to replace or reduce the quantity of fossil fuel in transportation fuel, home heating oil, or jet fuel."[21] There are four types of renewable fuel under the RFS Program: biomass-based diesel, cellulosic biofuel, advanced biofuel, and total renewable fuel.[22] Under the CAA's renewable fuel program, the EPA is charged with setting "the applicable renewable fuel volume targets" and calculating "the applicable volumes of each biofuel category" to later be used in the U.S.'s transportation fuel.[23]

The CAA's RFS program further maintains that "obligated parties" ("refiners or importers of gasoline or diesel fuel") must remain in compliance with the

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15. *Milestones in EPA and Environmental History*, *supra* note 10.

16. *Id.*; *Summary of the Clean Air Act*, U.S. EPA (last updated July 25, 2025), https://www.epa.gov/laws-regulations/summary-clean-air-act#:~:text=(1970),from%20stationary%20and%20mobile%20sources; Shelia Hu, *The Clean Air Act 101*, NRDC (Aug. 11, 2025), https://www.nrdc.org/stories/clean-air-act-101#why; *Clean Air Act Requirements and History*, U.S. EPA (last updated June 5, 2025), https://www.epa.gov/clean-air-act-overview/clean-air-act-requirements-and-history#:~:text=Congress%20established%20much%20of%20the,of%20the%20national%20environmental%20movement (Prior to the CAA's implementation, a lack of cohesive federal regulation and increased industrialization resulted in dense smog overtaking several of the nation's cities, inciting heavy concern about environmental impacts, as well as the accompanying health hazards of polluted air. In response, Congress enacted the CAA to protect the public from air contaminants.).

17. Hu, *supra* note 16.

18. *Milestones in EPA and Environmental History*, *supra* note 10.

19. *Id.*; Hu, *supra* note 16. (Since the CAA's implementation, Congress amended the CAA several times. The 1977 amendments focused on preemptive protection plans for areas not yet heavily polluted and heightened restrictive standards for those not meeting the necessary clean air standards. The CAA amendments of 1990 were especially pivotal, proposing financially friendly ways to negate the problem of air contamination. These methods included the control of acid rain and the reduction of chemicals affecting the ozone layer.).

20. *Overview of the Renewable Fuel Standard Program*, *supra* note 5.

21. *Id.*

22. *Id.*

23. *Id.*

program's standards by "obtaining and retiring for compliance enough credits representing renewable fuel (Renewable Identification Numbers or RINs) sufficient to meet their Renewable Volume Obligation (RVOs) for each renewable fuel category."[24] Obligated parties are responsible for calculating their own RVOs and reporting these numbers to the EPA yearly in order to maintain compliance.[25] RINs are typically created when a party produces renewable fuel, and they can be traded between other parties, whether obligated or non-obligated parties (parties such as brokers or traders).[26] Additionally, "obligated parties can obtain RINs either by separating RINs from renewable fuel after blending with gasoline or diesel, or by purchasing already-separated RINs on the open market."[27]

B. Biogas and Renewable Fuel

1. Biogas defined

Biogas-derived renewable fuel is an important part of the RFS program.[28] Parties may obtain RINs by injecting biogas into the transportation fuel pipelines, even though it mixes with other gas in the pipelines.[29] Biogas is a renewable energy source consisting of methane from decomposing organic matter such as sewage, manure, or food scraps.[30] The decayed organic matter emits gases that are then captured, refined, and transported for later use as an energy source. [31] Biogas has a value as a transportation fuel.[32] However, only fuels produced from certain renewable biomass and used for transportation fuel can qualify under the RFS program as renewable fuel.[33] A few of these approved categories include soybean oil-derived jet fuel, ethanol from sugarcane, and "renewable compressed natural gas from landfills."[34] Once the biogas is converted to a qualified type of renewable fuel, the renewable gas producers can inject said natural gas into the pipeline system and receive a RIN, demonstrating their compliance with the RFS program.[35]

C. Administrative Law

1. Introduction to Administrative Law

Administrative law is the avenue by which federal, state, and local governments seek to "convert legislative directives into enforceable regulations

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24. *Overview of the Renewable Fuel Standard Program*, *supra* note 5.
25. *Id*.
26. *Id*.
27. *Id*.
28. *Overview of the Renewable Fuel Standard Program*, *supra* note 5.
29. *Id*.
30. *What Is Biogas?*, NAT. GRID (last updated Feb. 23, 2023), https://www.nationalgrid.com/stories/energy-explained/what-is-biogas.
31. *Id*.
32. *Id*.
33. 42 U.S.C. § 7545(o)(1)(J) (2009).
34. *Overview of the Renewable Fuel Standard Program*, *supra* note 5.
35. 40 C.F.R. § 80.125 (2025).

and policies."[36] Regulatory agencies (such as the EPA) are paramount to administrative law, and vice versa.[37] Their role is to enforce laws that "reflect legislative intentions while adapting to the dynamic needs of the sectors they oversee."[38]

2. The Administrative Procedure Act

Federal agencies must follow the Administrative Procedure Act (APA), which helps maintain the integrity of the rulemaking process.[39] The APA describes how agencies must "develop and issue regulations" and makes these processes transparent to the public.[40] The APA is a crucial piece of administrative legislation, and requires agencies to publish "notices of proposed and final rulemaking in the Federal Register", which creates opportunities for the public to be heard vis-à-vis the agency's proposed rule.[41] This procedure is known as "notice and comment rulemaking" or "informal rulemaking," and is the most frequently used avenue for agency rulemaking.[42] This process gives the public meaningful due process, with an opportunity to participate in the rulemaking process and to provide agencies with feedback so that the finalized rule is (ideally) reasonable and effective.[43] The public has various avenues for their voices to be heard during rulemaking, which can consist of submitting written data and comments, arguments, and (sometimes) chances for oral presentation of their views.[44] Agencies are then obligated to take material feedback into account when formulating the final rule for publication.[45]

III. ANALYSIS

A. Factual Background

In *Coalition for Renewable Natural Gas*, the parties are the usual suspects: the Coalition for Renewable Natural Gas (Coalition) is a biogas trade group, and the EPA is (of course) the federal agency charged with administering the CAA's Renewable Fuel Program (RFP).[46] The Coalition is a non-profit trade organization with members consisting of entities involved in various parts of the renewable

36. *Understanding Administrative Law*, CARUSO SCH. OF L.: PEPP. L. BLOG (Mar. 19, 2024), https://law.pepperdine.edu/blog/posts/understanding-administrative-law.htm.

37. *Id*.

38. *Id*.

39. *Summary of the Administrative Procedure Act*, U.S. EPA (last updated July 9, 2025) https://www.epa.gov/laws-regulations/summary-administrative-procedure-act.

40. *Id*.

41. *Id*. (emphasis omitted).

42. Todd Garvey, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW, CONG. RSCH. SERV., at 1, 2 (last updated Mar. 27, 2017), https://www.congress.gov/crs-product/R41546.

43. *Understanding Administrative Law*, *supra* note 36.

44. ANDREW F. POPPER ET AL., ADMINISTRATIVE LAW: A CONTEMPORARY APPROACH 38 (4th ed. 2021).

45. *See* Perez v. Mortgage Bankers Ass'n, 575 U.S. 92, 96 (2015) ("An agency must consider and respond to significant comments received during the period for public comment.")

46. Coalition for Renewable Nat. Gas v. EPA, 108 F.4th 846, 852 (D.C. Cir. 2024).

natural gas process, including biogas producers.[47] According to the RFP, the EPA must calculate the applicable amount of renewable fuel sold in the United States as transportation fuel yearly.[48] The EPA must also place "renewable fuel obligation[s] on refineries, blenders, and importers, as appropriate" to guarantee contributions of renewable fuel into the United States' energy market by those organizations.[49] These agencies listed by the RFP ("obligated parties") generate RINs through the EPA's "credit-trading program" by producing or importing renewable fuel, thus showing their compliance with the imposed renewable fuel obligations.[50]

However, the EPA noted significant technical complications with the RIN process.[51] Specifically, the fuel can only be labeled "renewable" if it satisfies two criteria.[52] First, the fuel must be used for transportation.[53] Second, the fuel must be derived from a specified source described in EPA's RFP regulations.[54] Renewable natural gas (RNG) is refined and injected into pipelines, and once it is injected it is not technically possible to track or differentiate a single RNG molecule from the other natural gas molecules.[55] As such, it proved difficult to discern not only where the biogas fuel would end up at the conclusion of the process, but where the biogas originated.[56] As a result, the EPA focuses heavily on the integrity of RINs.[57]

Further, the value of the RINs in demonstrating compliance with obligations provided an unforeseen incentive – a motive for entities to purposefully mislabel nonrenewable products as renewable fuel so that they may reap the benefits of RINs without having to comply with the tedious and expensive measures necessary to comply with existing regulations.[58] Finally, mistakes were routinely made in the creation of RINs, which created friction and inefficiency within the RIN program.[59] To help mitigate the risk of fraud and error, the EPA made significant changes to its RIN distribution process in 2023.[60] The EPA declared that "only [renewable natural gas] producers may generate RINs for renewable natural gas injected into a natural gas commercial pipeline system" and required renewable natural gas producers wanting to obtain RINs to "obtain their biogas

47. *Renewable Natural Gas Projects & Policy*, RNG COAL. (last visited Jan. 14, 2025), https://www.rngcoalition.com/#:~:text=RNG%20Coalition%20is%20a%20501,renewable%2C%20clean%20fuel%20and%20energy; *see also* Coalition for Renewable Nat. Gas v. EPA, 108 F.4th 846, 852 (2024).

48. *Coalition for Renewable Nat. Gas*, 108 F.4th at 850.

49. *Id*. (citing 42 U.S.C. § 7454(o)(2)(A)(iii)(I) (2009)).

50. *Id*.

51. *Id*. at 851.

52. *Coalition for Renewable Nat. Gas*, 108 F.4th at 851.

53. *Id*.

54. *Id*.

55. *Id*.

56. *Coalition for Renewable Nat. Gas*, 108 F.4th at 851.

57. *Id*.

58. *Id*.

59. *Id*.

60. *Coalition for Renewable Nat. Gas*, 108 F.4th at 851.

from biogas producers that have registered with the EPA."[61] The EPA also required certain prerequisites for biogas producers hoping to take part in the RFP.[62] These requirements included, but were not limited to, having to "register with the EPA, submit reports, keep records, and follow a sampling, testing, and measuring regime."[63]

B. Procedural History

The decision analyzed here arises from the EPA's final agency action to publish a rule updating its regulations governing the renewable fuel process.[64] The rule, entitled "Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes,"[65] went through the standard notice-and-comment process, during which the Coalition voiced its concerns.[66] In particular, the Coalition commented that the EPA was overstepping its authority in attempting to regulate biogas producers, and that the rule itself was too stringent on the members of the Coalition involved in the transportation fuel process.[67] The EPA ultimately published the finalized rule, which led to the Coalition petitioning the D.C. Circuit to review the rule.[68]

C. United States Court of Appeals Decision on the Coalition's Petition for Review

The D.C. Circuit reviewed the EPA's final rule under the usual standards of review under the APA, examining whether the agency's action was the "arbitrary and capricious, or "an abuse of discretion" and whether the EPA had acted properly within its statutory authority and followed the appropriate procedures in creating the rule at issue.[69] And, because the Coalition's case included a challenge to a procedural rule, the court added that it would only "invalidate EPA's rules for a procedural error" if that error was "so serious" and so central to the rule "that there is a substantial likelihood that the rule would have been significantly changed if such error had not been made."[70] With the standards of review set in place, the court went on to address all nine of the Coalition's claims against the EPA's updated regulations.[71] This Note focuses only on the Coalition's claim that the EPA exceeded its authority.

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61. *Id*. (internal citations omitted).

62. *Id*.

63. *Id*.

64. *Coalition for Renewable Nat. Gas*, 108 F.4th at 852.

65. *Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes*, 88 Fed. Reg. 44,468 (July 12, 2023) (to be codified at 40 C.F.R. pts. 80, 1090).

66. *Coalition for Renewable Nat. Gas*, 108 F.4th at 852.

67. *Id*.

68. *Id*.

69. *Id*.

70. *Coalition for Renewable Nat. Gas*, 108 F.4th at 852 (internal citations omitted).

71. *Id*.

The court first analyzed the Coalition's claim that the EPA is not authorized to oversee biogas producers.[72] In justifying such regulation, the EPA pointed to section 7545 of the CAA, which entrusted the EPA with the task of introducing regulations for ensuring the appropriate volume of renewable fuel is introduced into United States transportation fuel commerce.[73] Regarding those required regulations, a later portion of section 7545 specifies that the regulations "shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements" are met ('the "shall-contain" mandate').[74] The Coalition argued that because producers were not named on that list, the EPA cannot regulate them pursuant to section 7545.[75] However, the court interpreted the "shall-contain" mandate differently, stating that because the "provision requires only that EPA regulations *include* rules governing those specified parties," the provision is thus a "regulatory floor," rather than a ceiling.[76] Considering the "shall-contain" mandate as a minimum requirement rather than an exhaustive list meant that the entities named in the Section were not the *only* entities under the EPA's umbrella of authority, but that Congress meant for the EPA to at least *include* these enumerated entities in their regulations.[77] The court's final determination was that the EPA's regulatory powers were not limited to the specific list of renewable natural gas market participants, but could instead extend to other parties.[78]

This Section imposed upon the EPA the task of ensuring transportation fuel introduced into United States commerce contained the necessary volume of renewable fuel.[79] For EPA to perform its duties under the RFP, EPA must have the technical capability to verify where the biogas they are required to account for originated.[80] Without regulating production, EPA had concerns that the verification process would be compromised; this meant EPA would fall short of its duty to ensure the appropriate volume of renewable fuel was being produced.[81] Hence, the solution of requirements for biogas producers put an end to this problem.[82] The court agreed with the EPA, finding that Congress authorized the EPA to regulate producers if they choose to opt into the RIN program, noting that the EPA's verification of renewable fuel sources per the fuel's producers is

72. *Id*.

73. *Id.*,; 42 U.S.C. § 7545(o)(2)(A)(i) (2009).

74. *Coalition for Renewable Nat. Gas*, 108 F.4th at 852; 42 U.S.C. § 7454(o)(2)(A)(iii)(I) (2009).

75. *Coalition for Renewable Nat. Gas*, 108 F.4th at 852 (emphasis in original).

76. *Id*. (emphasis in original); The court's decision in *Coalition* was issued shortly after the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) overturned the principle of *Chevron* deference under which courts previously gave heightened deference to agency interpretations of ambiguous statutes. *See* Chevron, U.S.A, Inc. v. Natural Res. Def. Council, 467 U.S. 837 (1984). Accordingly, the court does not defer to the EPA's interpretation of section 7545 in issuing its decision, as it would have under *Chevron*. Instead, consistent with the ruling in *Loper*, the court's decision in *Coalition* reflects its best reading of the statutory language at issue.

77. *Coalition for Renewable Nat. Gas*, 108 F.4th at 852.

78. *Id*.

79. *Id*.

80. *Id*.

81. *Coalition for Renewable Nat. Gas*, 108 F.4th at 853.

82. *Id*.

necessary to fulfill the task set before them by Congress.[83] In fact, those biogas producers are free to withdraw from the program at any time if they do not wish to comply with the regulations.[84] Biogas producer participation in the transportation-fuel economy is fully optional (and market-driven), as renewable fuel derived from biogas is only one of several ways that the EPA can meet its quota of renewable fuel.[85] If biogas producers decide that they want to participate in the EPA's RIN program, however, the court stated that they must adhere to the "anti-fraud, anti-error compliance measures that are part and parcel of the program."[86]

D. Examination of the Court's Decision

The court here, understandably, held that Congress vested in the EPA the statutory authority to regulate biogas-derived renewable fuel producers who opt into the EPA's RIN credit program.[87] However, its analysis that led to this conclusion raises some cause for concern.[88]

1. The Court's Analysis – A Potentially Slippery Slope

In the court's analysis, its interpretation of the "shall contain" mandate from which the EPA drew its authority as a "regulatory floor" as opposed to a ceiling carries the risk of vesting the EPA with more power than Congress intended.[89] The court cited the "plain text" of the mandate in determining that it merely required the EPA to *include* the enumerated entities listed therein, but that the EPA was not limited to regulating *only* those entities.[90] The court reconciled this determination in part by noting that the "shall-contain" mandate is silent in regards to restrictions on the functions of the regulations and to whom they are applicable.[91] However, the court's determination did not enumerate clear upper boundaries of the EPA's authority in light of this silence, a holding that could be construed as encouraging an open-ended and overly flexible interpretation of the EPA's regulatory authority.[92]

While this interpretation lends support to the EPA's authority and regulations, the court stopped short of addressing where that "regulatory cap" actually *ends*.[93] The Court called its decision "narrow," explaining that the EPA's authority under Sec. 7545 merely extends to regulations in furtherance of the goal

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83. *Id*.

84. *Id*.

85. *Coalition for Renewable Nat. Gas*, 180 F.4th at 853.

86. *Id*. at 854.

87. *Id*. at 853.

88. *See* Scott H. Angstreich, *Shoring Up Chevron: A Defense of Seminole Rock Deference to Agency Regulatory Interpretations*, 34 U.C. DAVIS L. REV. 1, 56 (2000) (explaining that clear and unambiguous agency rules make it easy for regulated entities to know what regulations they are bound to and how to comply with those regulations).

89. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852.

90. *Id*.

91. *Id*.

92. *Id*.

93. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852-854.

of verifying renewable fuel volume targets, and that such regulations *may* be applied to participating biogas producers.[94] Despite this, the court does not draw any bright lines clarifying the upper limits of the EPA's authority.[95] Specifically, the court's interpretation does not disclose the limit of regulatory authority that the Section delegates to the EPA in congruence with its statutory obligations – and, based on the court's analysis, it could prove difficult to find a workable limit.[96] Further cause for concern stems from the court's reliance on biogas producers' "voluntary" participation in the program as the reason they may be regulated by the EPA.[97] While the Court notes that regulating biofuel producers is necessary to ensure that the volume of biofuel qualifying as renewable is actually renewable (108 F.4th at 853), its broad interpretation of "including" could be read in future cases to grant EPA authority to regulate nearly any entity involved in the renewable fuel supply chain under the guise of moderating renewable fuel processes in adherence to their statutory duty.[98]

2. Potential Future Implications of Broad Legislative Interpretation of Agency Power

An overly broad interpretation of the EPA's statutory authority by courts breeds the possibility of future uncertainty for agencies, courts, and consumers alike.[99] First and foremost, this interpretation paves the way for regulatory overreach.[100] The court's analysis of the "shall-contain" mandate as a regulatory floor rather without a corresponding a cap imbues the EPA with significant regulatory power over parties not listed in the statute, so long as the purpose is – somehow, some way – to fulfill the renewable fuel goals under the RFP.[101] In theory, a future EPA might rely on the Court's statement that "[n]othing in the shall-contain mandate restricts what those regulations can otherwise do or to whom else [the regulations] apply" to reach even to fields far beyond the fuel itself, like preventing fraud or ensuring appropriate reporting requirements related to renewable fuel.[102] These far-flung actions would indeed fall somewhere beneath the especially wide umbrella the Court may have handed to the EPA.[103] At the same time, the court's ruling also tends to condone the EPA's creation of more

94. *Id*. at 854.

95. *Id*. at 852, 854.

96. *Id.* at 852-54.

97. *Coalition for Renewable Nat. Gas*, 180 F.4th at 853-54.

98. *Id*. at 854.

99. *See* Angstreich, *supra* note 88, at 56-57 (explaining that clear and unambiguous agency rules make it easy for regulated entities to know what regulations they are bound to and how to comply with those regulations).

100. *Compare* Panama Refin. Co. v. Ryan, 293 U.S. 388, 415 (1935) (upholding concerns that statutory authority lacking clear limits or constraints allows for unfettered discretion when issuing rules based on that statutory authority), *with* Coalition for Renewable Nat. Gas, 180 F.4th at 853 (with the Court here interpreting that EPA indeed had statutory authority to implement their new regulations and enforce them upon biogas producers "as appropriate" to ensure renewable fuel targets were being met, without providing a limit or "ceiling" to that regulatory authority).

101. *Coalition for Renewable Nat. Gas*, 180 F.4th at 853-54.

102. *Id*. at 853, 855.

103. *Id*. at 852-53.

rules and regulations and their imposition on any entity involved in the renewable fuel economy under the shield of fulfilling statutory duties, with no specific limitations given.[104]

Of course, there is no guarantee that the EPA would exercise what it could interpret as its nearly unlimited power in the renewable energy field to such severe heights. However, the mere opportunity to do so breeds uncertainty for regulated entities.[105] The lack of regulatory transparency and predictability could create a chilling effect that prevents market participants from engaging in the RFP space, which results in complications and unpredictability in the transportation renewable fuel field at large.[106] The issue in this case was not whether the Court should defer to the EPA's interpretation of its authority.[107] This after all was a post *Loper Bright* case[108] in which the Court reached its own interpretation of the agency's authority to issue the regulations at issue.[109] But the full scope of that authority was not answered by the Court in this case, the only guidance being that the EPA's statutory authority went far beyond what the Coalition suggested.[110] Even still, while the EPA may deign to make nothing but reasonable and transparent rules and regulations, a federal court ruling interpreting such a broad level of statutory power certainly provides justification for other agencies with similar authorization to adopt rules that "include" but do not expressly limit the parties to which those rules can be applied to test the limits of their authority under a similar claim of upholding their own statutorily required duties.[111]

Further, because the court did not clearly qualify its interpretation of the EPA's regulatory authority under the "shall-contain" mandate, it may be harder for entities to challenge the EPA on grounds of exceeding its statutory authority

104. *Id.* ("Nothing in the shall-contain mandate restricts what those regulations can otherwise do or to whom else they can apply". While the court notes that § 7545 (o)(2)(A)(iii)(II) states "that EPA's regulations 'shall not' do certain things", no further explanation of EPA's limitations is offered by the court before concluding that EPA's regulatory authority under the shall-contain mandate constituted a regulatory floor rather than a ceiling. An examination of § 7545 (o)(2)(A)(iii)(II) reveals merely that the EPA's regulations "shall not" "(aa) restrict geographical areas in which renewable fuel may be used; or (bb) impose any per-gallon obligation for the use of renewable fuel." These restrictions provide minimal clarification on what the regulatory ceiling over the EPA would be in terms of regulating entities in the renewable fuel field or the types of regulations that may be imposed.)

105. *See* Angstreich, *supra* note 88, at 56 (explaining that clear and unambiguous agency rules make it easy for regulated entities to know what regulations they are bound to and how to comply with those regulations).

106. *See* Panama Refin. Co. v. Ryan, 293 U.S. 388, 415 (1935) (upholding concerns that statutory authority lacking clear limits or constraints allows for unfettered discretion when issuing rules based on that statutory authority (which could deter entities from participation to avoid overregulation)).

107. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852.

108. Loper Bright Enter. v. Raimondo, 608 U.S. 369, 373 (2024).

109. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852.

110. *Id.*

111. Dena Adler & Max Sarinsky, *With or Without Chevron Deference, Agencies Have Extensive Rulemaking Authority, by Dena Adler and Max Sarinsky*, YALE J. ON REGUL. NOTICE & COMMENT BLOG (May 13, 2024), https://www.yalejreg.com/nc/with-or-without-chevron-deference-agencies-have-extensive-rulemaking-authority/ (stating that vague statutes "grant broad discretion to agencies to pursue their policy objectives").

under the RFP.[112] Although this case is limited to regulation of entities involved in the renewable fuel economy, there will be a temptation for claimants and agencies alike to expand EPA's reach.[113] Nevertheless, the conclusion that the EPA is statutorily entitled to regulate *any* entity in the renewable fuel field for the purpose of fulfilling its Congressional duties, without a specified "cap" on such power, is enough to provide a substantial roadblock for any party attempting to challenge the EPA on grounds of exceeding its jurisdiction.[114] However, it may also have the opposite, but equally undesirable, effect.[115] If future agencies read the "shall mandate" interpretation to give them a longer leash than regulated entities believe justified, this might well encourage an influx of future claims against agencies for overreaching in their authority.[116]

3. A Flawed Analysis for an Overall Correct Conclusion

While the court's arguably insufficiently qualified interpretation of the "shall-contain" mandate raises some unanswered questions, the overall conclusion reached by the Court in this case is a sound one.[117] The Coalition's argument that the EPA lacks authority to regulate biogas producers simply because producers were not explicitly named in the "shall-contain" mandate does not hold water (or gas).[118] The mandate specifies that the EPA's renewable fuel regulations "shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements are met."[119] As the court accurately noted, the mandate does not include restrictive language such as "only" or "limited to" to specify to whom those compliance provisions may, or may not, apply.[120] Nor does the mandate indicate that the enumerated entities within make up an exhaustive list.[121] The court reasonably interprets the mandate and the words '"as appropriate' to ensure that the requirements are met" to mean that the Congressional intent behind the mandate was to empower the EPA with the authority to regulate entities directly involved in the renewable fuel process, for

112. *See* Molly Pela & Andrew Good, *Unraveling the Oversight and Authority of Rulemaking Powers by Federal Agencies*, OLIVIA GIBBS LLP (August 4, 2023), https://oglawyers.com/unraveling-the-oversight-and-authority-of-rulemaking-powers-by-federal-agencies/ (proposing that a narrowing or overturning of the Chevron doctrine (in other words, a decrease in broad deference to agency authority) would make it easier for parties to bring claims against agencies for regulatory overreach).

113. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852 (2024).

114. *Id*.

115. *Id*.

116. *Id*.

117. 42 U.S.C. § 7545(o)(2)(A)(i) (2009) (entrusting the EPA with the task of ensuring certain amounts of renewable fuel are being introduced into the United States transportation fuel marketplace); *see also* 42 U.S.C. § 7545(o)(1)(J) (2009) (defining renewable fuel as "fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel" thus allowing the EPA to verify renewable fuel sources to make sure that they meet this standard enumerated in the mandate).

118. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852.

119. 42 U.S.C. § 7545(o)(2)(A)(iii)(I) (2009).

120. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852.

121. 42 U.S.C. § 7545(o)(2)(A)(iii)(I) (2009).

the specific purpose of ensuring that the annual renewable fuel targets are being met.[122]

The court then reasonably concluded that the means to accomplish this task included being able to verify the source of biogas-derived renewable fuel from its producers to ensure it could be accurately labeled as renewable.[123] It follows then, that if biogas producers are actively choosing to participate in the RFP by introducing biogas-derived renewable fuel into the transportation fuel market, a market directly under the authority of the EPA, and they are reaping the benefits of such a program, that they should be regulated as a result of that voluntary participation.[124] The Court's singular flaw in reaching this sound conclusion was failing to specify at what point the EPA's statutory authority was limited under the "shall-contain" mandate, as such an omission invites uncertainty in understanding the exact scope of the EPA's authority.[125]

IV. CONCLUSION

Ultimately, the D.C. Circuit's holding that the EPA was acting within its statutory bounds in enhancing its biogas regulations certainly passes muster when the arguments raised and responses offered are considered as a whole.[126] The court rejected the Coalition's concern that the EPA had no authority to regulate biogas producers partly because of unique technical feasibility issues.[127] The opinion highlighted that the EPA had the non-negotiable task of establishing procedures to ensure that the transportation fuel sold in the United States "contains at least the applicable volume of renewable fuel."[128] It went on to state that the statute also provided the means to complete this task, reasoning that the fuel source verification by producers is crucial to getting the job done, ultimately concluding that Congress undoubtedly allowed for the EPA's regulation of producers.[129]

While this conclusion is both reasonable and well-explained, the path to that conclusion – and the road that follows – is riddled with landmines. It's concerning for the court to characterize EPA's authority in this space as a "regulatory floor"

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122. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852-53; Loper Bright Enter. v. Raimondo, 603 U.S. 369, 394 (the Court specifically stated that words like "appropriate" in a regulatory statute do indeed give agencies considerable, albeit not unbounded discretion; "In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion…to regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility,' such as 'appropriate' or 'reasonable.'") (citing Michigan v. EPA, 576 U.S. 743, 752 (2015)); *see also* White Stallion Energy Ctr., LLC v. EPA, 748 F.3d 1222, 1266 (2014) (Judge Kavanaugh's concurring opinion describing the term "appropriate" as "the classic broad and all-encompassing term that naturally and traditionally includes consideration of all relevant factors…").

123. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852-53.

124. *Id*. at 853-54.

125. *See* Angstreich, *supra* note 88, at 56-57 (explaining that clear and unambiguous agency rules make it easy for regulated entities to know what regulations they are bound to and how to comply with those regulations, suggesting that ambiguous and unclear delegations of authority lead to confusion and uncertainty for regulated entities).

126. *Coalition for Renewable Nat. Gas*, 180 F.4th at 852-54.

127. *Id*. at 852.

128. *Id*. at 853.

129. *Id*.

without imagining a regulatory ceiling.[130] These concerns include the risk of regulatory overreach, increased difficulty in challenging agency actions based on broad interpretations of authority, and industry uncertainty based on the ambiguous delegation of power to the EPA, as well as the unclear precedent such a ruling sets for other federal agencies down the line.[131]

130. *Coalition for Renewable Nat. Gas*, 108 F.4th at 852.

131. *See* Angstreich, *supra* note 88, 56-57 (explaining that clear and unambiguous agency rules make it easy for regulated entities to know what regulations they are bound to and how to comply with those regulations); *see also* Pela & Good, *supra* note 112 (proposing that a narrowing or overturning of the Chevron doctrine (in other words, a decrease in broad deference to agency authority) would make it easier for parties to bring claims against agencies for regulatory overreach); *see also* Panama Refin. Co. v. Ryan, 293 U.S. 388, 415 (1935) (upholding concerns that statutory authority lacking clear limits or constraints allows for unfettered discretion when issuing rules based on that statutory authority); *See* John Adams, *John Adams to Thomas Jefferson, with Postscript by Abigail Adams*, FOUNDERS ONLINE (last visited Nov. 7, 2025), https://founders.archives.gov/documents/Jefferson/03-09-02-0285 (John Adams made the following statements on power: "Power always [s]incerely, conscientiously, de tres bon [f]oi, believes itself [r]ight. Power always thinks it has a great [s]oul, and vast [v]iews, beyond the [c]omprehension of the [w]eak; and that it is doing God Service, when it is violating all his [l]aws…And I may be deceived as much as any of them, when I say that [p]ower must never be trusted without a [c]heck.")