

August 16, 2022

U.S. Environmental Protection Agency
EPA Docket Center, WJC West Building, Room 3334
1301 Constitution Avenue NW
Washington, D.C. 20004

[Submitted electronically via regulations.gov]

Attn: Biofuels and the Environment: Third Triennial Report to Congress (RtC3). Docket ID No. [EPA-HQ-ORD-2020-0682]

Re: Renewable Fuels Association Comments on Additional Candidates Added to the Peer Reviewer Pool for the Biofuels and the Environment: Third Triennial Report to Congress (87 Fed. Reg. 46,958; August 1, 2022)

The Renewable Fuels Association (RFA) appreciates the opportunity to submit these comments regarding the U.S. Environmental Protection Agency's (EPA) proposed addition of two candidates to the original pool of 20 candidates for the external peer review of the Biofuels and the Environment: Third Triennial Report to Congress (RtC3). On May 24, RFA submitted comments on the initial pool of candidates, in which we expressed concerns with several of the candidates individually, along with general concerns about the imbalance of the pool overall.¹ The EPA's Federal Register notice regarding the additional candidates only heightens those concerns.

RFA is the leading trade association for America's ethanol industry. Its mission is to drive expanded demand for American-made renewable fuels and bioproducts worldwide. Founded in 1981, RFA serves as the premier organization for industry leaders and supporters. With over 300 members, we work every day to help America become cleaner, safer, and more economically vibrant.

RFA recognizes that EPA is conducting the RtC3 triennial review process as part of its obligation under Section 204 of the Energy Independence and Security Act (EISA). We welcome the use of the peer-review process to scrutinize the triennial review report, solicit expert feedback, and guide decision making. RFA is confident that a truly objective and science-based examination of the RFS would show that the program has yielded significant environmental benefits, including reduced emissions of greenhouse gases (GHGs) and criteria air pollutants. An impartial and fact-based analysis would

¹ See RFA RFS Triennial Peer Review Candidate Comments, https://d35t1syewk4d42.cloudfront.net/file/2241/RFS%20Triennial%20Peer%20Review%20Candidate%20Comments_Final.pdf

also show that the biofuels used under the RFS reduce impacts on soil and water in comparison to the petroleum-derived fuels they replace.

However, we have concerns about one of the additional nominees and the manner in which the candidate pool is being expanded, as well as continued concerns about the composition of the overall pool. According to the EPA, the additions were made to “strengthen expertise gaps and allow a more balanced panel.” However, based on the earlier-named candidates and the aims of the RtC3 process, it is not clear that both new candidates fill gaps that actually existed in the original list, and several gaps that RFA identified in its prior comments were not addressed.

Given our objection to several of the original nominees, if any action were taken to strengthen expertise gaps or allow a more balanced panel, it would include the replacement of disqualified candidates. We write to express concern as to whether the process is on track to carry out a fair, scientific, and unbiased peer review. As in our initial comments, we would encourage transparency and engagement with the public throughout the review process.

EPA should select reviewers who are free of ideological bias, funding conflicts, and controversial or inflammatory views that are far outside of the accepted scientific consensus. Furthermore, the viewpoints and fields of study represented on the panel should collectively create balance and not over- or under-represent any particular discipline or perspective.

I. Objection to Nominee

Harry de Gorter, Cornell University. Dr. de Gorter should be excluded from the external review panel since his work on biofuel policy relies on old data and pertains to long-expired policies, and since it is often used to support ideological viewpoints and fossil-fuel industry interests. Taken together, these factors suggest bias and possibly a lack of awareness of current science on the topic. Additionally, we see no reason Dr. de Gorter’s participation is necessary, as other nominees from the initial pool possess similar capabilities.

There are three specific reasons why Dr. de Gorter should be excluded. First, his published work on biofuel policy appears to be centered approximately a decade ago. As listed in his vita, most of Dr. de Gorter’s work in the last several years focuses on consumer food waste.² His most recent published work listed on biofuel policy is from 2018. RFA has concerns about a panelist in a triennial review not being particularly active in the field in recent years. Additionally, of his work in the field through the middle of the last decade, much of his scholarship focuses on commodity price events from 2007-2008 and 2010-2011. RFA believes that this outdated perspective is inconsistent with the purpose of a report that is required to provide an update on environmental

² See Harry de Gorter vita, <https://apps.business.cornell.edu/faculty-research/faculty/vita/hd15>

developments every three years. This is especially true when the review concerns an industry defined by improving technology and practices.

Next, Dr. de Gorter's affiliations give rise to concerns of bias or undue influence. Dr. de Gorter is listed as a Visiting Fellow by the Cato Institute.³ The list of Dr. de Gorter's work on his Cato webpage would support an inference of ideological attachment to deregulation, which would predispose him against policies such as the RFS. Furthermore, Dr. de Gorter's association with the Cato Institute is more problematic in this context because of the institute's co-founder and major source of funding, Charles Koch. This link between Dr. de Gorter and Koch Industries' oil interests creates a potential conflict.

Finally, the addition of Dr. de Gorter to the pool of nominees appears unnecessary because other panelists possess current and unbiased expertise in economics. The stated intent of adding nominees was to "strengthen expertise gaps and allow a more balanced panel." In particular, Dr. Farzad Taheripour is well versed in current economic analysis of biofuels policy impacts. Other nominees with economic backgrounds include Lyubov Kurkalova and Nathan Parker. Dr. de Gorter's addition would not improve the ability of the pool of nominees to carry out an objective review that reflects the current state of the science.

II. Comments on the Overall Candidate Pool and Selection Process

In its May 24 comments, RFA expressed its belief that several of the original candidates are qualified and have backgrounds that will benefit the peer review process. However, we also voiced concerns and questions regarding the impartiality and scientific integrity of particular candidates, and we noted that the list was lacking in coverage of certain principal issues and fields of study. The two additional candidates do not fill these voids, and the nomination of Dr. de Gorter only adds to concerns over the impartiality of a panel that would be selected from the current list.

The EPA's Science and Technology Policy Council Peer Review Handbook provides extensive guidance on conflicts of interest and issues related to impartiality.⁴ Section 5, Peer Reviewer Qualifications and Selection, starts by stating that "reviewers must not only be subject matter experts, but also must be independent and free from ethics issues such as potential conflicts of interest (COIs) or an appearance of a loss of impartiality." The handbook later goes on to require, "When determining if a proposed peer reviewer may have an actual or potential conflict of interest, the contractor shall incorporate the following yes/no questions." Three questions applicable to the list of triennial peer review candidates are:

³ See Cato Institute: Harry de Gorter, Visiting Fellow, <https://www.cato.org/people/harry-degorter>

⁴ See Science and Technology Policy Council Peer Review Handbook, 4th Edition, <https://www.epa.gov/osa/peer-review-handbook-4th-edition-2015>

- “To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse’s research support and project funding, including from any government source, during the past 24 months?
- Have you made any public statements or taken positions on or closely related to the subject topic under review?
- Have you had previous involvement with the development of the document (or review materials) you have been asked to review?”

Dr. de Gorter has certainly taken positions on biofuels, as alluded to above. Other candidates from the original pool have made public statements and taken positions on biofuels as well. As noted in RFA’s May comments, in **Jason Hill’s** commentary on the newest Lark et al. study, he suggests that the anomalously high GHG emissions estimates by Lark et al. actually “represen[t] a floor, not a ceiling,” without providing any meaningful evidence or analysis to support this statement.⁵ In another example, during a briefing hosted by the National Wildlife Federation (NWF) about the EPA’s Second Triennial Report to Congress, **Kent Hoekman** stated, “What is clear is that at today’s production level of ethanol in the United States, the costs far outweigh the benefits.”

Another candidate, **Tyler Lark**, participated in the same briefing. Dr. Lark and his colleagues have received significant funding from the NWF, including for the Feb. 2022 study Environmental Outcomes of the US Renewable Fuel Standard.⁶ The NWF is a politically active organization that has repeatedly advocated for repeal or reform of the RFS, and it co-sponsors an anti-biofuel group called Rethink Ethanol. As noted in RFA’s May comments, given that Lark’s work was cited extensively in the EPA’s Second Triennial Report to Congress and that members of EPA staff have subsequently coauthored research with him, it appears probable that his recent research will be featured in the Third Triennial Report. If Dr. Lark is selected for the panel, he likely would be in the position of reviewing a document referencing his own work.

Given such issues and the fact that the EPA has now opened the door to amending its list of candidates, we recommend that the EPA take a step back and solicit a new round of nominations to provide a more balanced pool covering a broader range of disciplines needed for a comprehensive and objective peer review process. Otherwise, to reiterate RFA’s original comments, we strongly encourage EPA to ensure that representatives of the biofuels industry are allowed to provide their perspective *and* feedback on both the triennial report and the peer review process.

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⁵ See The Sobering Truth About Corn Ethanol, <https://www.pnas.org/doi/full/10.1073/pnas.2200997119>

⁶ See Environmental Outcomes of the US Renewable Fuel Standard, <https://www.pnas.org/doi/10.1073/pnas.2101084119>

RFA appreciates the opportunity to provide these comments on the RtC3 process. We hope that EPA carefully considers our input.