Court Says EPA Overestimates Biofuels Production

MARY CLARE JALONICK,Associated Press

WASHINGTON (AP) — A federal appeals court has ruled that the Environmental Protection Agency is overestimating the amount of fuel that can be produced from grasses, wood and other nonfood plants in an effort to promote a fledgling biofuels industry.

At issue is a 2007 renewable fuels law that requires a certain amount of those types of fuels, called cellulosic biofuels, to be mixed in with gasoline each year. Despite annual EPA projections that the industry would produce small amounts of the biofuels, none of that production materialized.

There have been high hopes in Washington that the cellulosic industry would take off as farmers, food manufacturers and others blamed the skyrocketing production of corn ethanol fuel for higher food prices. Those groups said the diversion of corn crops for fuel production raised prices for animal feed and eventually for consumers at the grocery store. Lawmakers hoped that nonfood sources like switchgrass or corn husks could be used instead, though the industry hadn't yet gotten off the ground.

The 2007 law mandated that billions of gallons of annual production of corn ethanol be mixed with gasoline, eventually transitioning those annual requirements to include more of the nonfood, cellulosic materials to produce the biofuels. As criticism of ethanol has increased, lawmakers and even Presidents George W. Bush and Barack Obama have talked of the cellulosic materials as the future of biofuels.

But the cellulosic industry stalled in the bad economy and still hasn't produced much. According to final EPAestimates, no cellulosic fuel was produced in 2010 or 2011. Last year's estimates aren't yet available.

"What you have in our industry is a technology that is ready to go but has had a hard time punching through commercially because of a very challenging global financial climate," said Brooke Coleman of the Advanced Ethanol Council, which represents companies trying to produce cellulosic fuel. Coleman said there are better hopes for 2013 as several plants are coming online.

The court faulted the EPA for setting last year's projections at 8.7 million gallons even though the two previous years had shown no production, and also for writing in the rule that "our intention is to balance such uncertainty with the objective of promoting growth in the industry."

Judge Stephen Williams on Friday threw out the too-high EPA estimates in response to a challenge filed by the American Petroleum Institute, which represents the oil

industry.

Williams, an appointee of President Ronald Reagan, said the law was not intended to allow the EPA "let its aspirations for a self-fulfilling prophecy divert it from a neutral methodology."

The court rejected the oil industry's arguments that the EPA also should have lowered the total production requirement for renewable fuels once the cellulosic goals were not met, saying the EPA had authority to decide to maintain those requirements.

An EPA spokeswoman would only say the agency will "determine next steps." The oil industry praised the decision.

"The courts have reined in a mandate for biofuels that don't exist," said Bob Greco of the American Petroleum Institute. "It's a voice of reason."

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Associated Press writer Matthew Daly in Washington and AP Energy Writer Jon Fahey in New York contributed to this report.

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