

Roth: A reprieve for ethanol?

By [Jim Roth](#), Director and Chair of the Firm's Clean Energy Practice Group. This column was [originally published in The Journal Record](#) on July 31, 2017.



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A reprieve for ethanol?

Have you ever driven by a gas or convenience station and saw a "100% real gasoline" sign posted proudly by the station owner?

In this summer driving season, I bet you have seen such signs somewhere in Oklahoma or elsewhere in America. At the heart of the "real gasoline" claim is that no amount of ethanol or other alternative fuel additive comprises the gallon of gasoline for your vehicle, but instead it's derived 100 percent from petroleum. And believe it or not, the oil industry and the Obama administration both agreed in recent years that less ethanol in Americans' gas tanks was a good thing and was legally possible for the 2016 total renewable

fuel volume requirements rule determined by the Environmental Protection Agency.

That was, at least, until the D.C. Circuit Court of Appeals ruled in July that Obama's EPA and the oil industry and refiners were both wrong, giving a major victory to the ethanol and alternative fuels industries instead, when it rejected the EPA's use of an inadequate domestic supply waiver to reduce ethanol levels in gasoline.

Congress adopted the Renewable Fuel Standard in 2005 and expanded it in 2007, both times signed by President George W. Bush. The program requires oil refiners to blend increasing volumes of renewable fuels with gasoline and diesel, culminating with 36 billion gallons in 2022. This has led to a domestic biofuels industry that some seem to either love or hate because of its effect on domestic oil prices and its environmental pros and cons.

On average, a 42-gallon barrel of crude oil yields about 19 gallons of gasoline when processed at an oil refinery. According to the U.S. Energy Information Administration, there are 137 operating oil refineries in America, including four in Oklahoma: Ardmore (Valero), Ponca City (Phillips 66), Tulsa (HollyFrontier) and Wynnewood (CVR Energy). These refineries are industrial process plants where crude is processed into gasoline, diesel, asphalt base and other petroleum products. And while many in the industry feel there aren't enough refineries in America to bring refined petroleum products to market quicker, most everyone now believes there is more than enough supply of domestic oil. Today there are no ethanol plants in Oklahoma.

Each year the EPA sets a new national renewable fuel mandate, via public rule promulgation process, to create what's called the Annual Renewable Fuel Standard, and in that process it can be allowed a waiver to lower the amounts of ethanol and alternatives. It did so in 2015 for the 2016 standard as it

does each year, but the alternative fuel industries sued, alleging that the EPA abused its authority. The former EPA, and the oil industry supporting its approach, apparently ran afoul of the law encouraging ethanol by going beyond the simple question of adequacy of supply of the alternative fuels themselves, when it tried to consider whether there were adequate biofuel refueling stations and ethanol pumps at gasoline stations. These types of market issues, according to the court, go beyond the EPA's legal discretion.

So now, the new EPA will have to redo the 2016 standard requirements that were already implemented, but here we are in the second half of 2017. It might make more sense for Congress to revisit the law now that the reality for domestic energies has changed so dramatically since 2005.

But then again, it might be easier for the EPA to build a time machine in 2017 to craft a fuel standard for 2016 today, rather than Congress to do anything.

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