

July 10, 2016

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Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
Mail Code 6101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Assistant Administrator McCabe:

I write to you today to submit comments on behalf of Rock House Advisors to the Notice of Proposed Rulemaking (NPR) for the Renewable Fuel Standard Program: Standards for 2017 and Biomass-based Diesel Volumes for 2018 - Docket ID No. EPA-HQ-OAR-2016-0004. Thank you for the opportunity to provide input on this important program.

As you know, I served as CEO for the National Biodiesel Board (NBB) for nearly two decades until recently when I started an independent consulting company. The NBB is the single, national, comprehensive trade association for the biodiesel industry in North America. While I served as CEO, NBB expanded its membership in 2013 to include Renewable Diesel companies to represent the entire biomass-based diesel category of the Renewable Fuel Standard ("RFS"). I helped lead the industry to grow from approximately 200,000 gallons 1999 to an estimated 2 billion gallons in 2016 from 200 plants nationwide. During this time the biodiesel industry grew from an experimental fuel with almost no sales, to the first fully commercialized, EPA-designated, Advanced Biofuel that now makes up over 5% of the nation's diesel fuel supply.

I want to begin by thanking you and your team for all of your hard work to get the RFS2 program to where it is today. In the seven and a half years since the passage of Energy Independence and Security Act of 2007 (EISA) there have been tremendous challenges in implementing this complex program. But the challenges have been met with diligence and perseverance and the program is now working toward achieving its energy policy goals of carbon reduction, diversification of the liquid fuel supply, and greater energy and economic security through the development of domestic renewable energy industries. More challenges remain and more can be done by working together to grow this program sustainably, which is why I am writing today.

I also want to commend you and your team for getting the program back on schedule last November with a final rule for renewable volume obligations for years 2014-2016 (and 2017 for Biomass-based diesel (BBD)). And I want to further commend you for promptly proposing the 2017 (and 2018 BBD) rule, and staying firm with your commitment to keep the program on track.

In general, I am writing in support of the National Biodiesel Board's comments to the Notice of Proposed Rulemaking (NPR) for the 2017 and 2018 Renewable Fuel Standard (RFS) volumes. But additionally I

am writing in support of the request by a number of RFS stakeholders for the EPA to conduct a rulemaking process to fully examine the merits and other implications of moving the point of obligation (PO) from refiners and importers to the position-holders of the fuel at the time of the distribution at the bulk transfer/terminal system (also known as “the Rack”). Moving the PO is fully within the agency’s administrative authority, and would not require a wholesale overhaul of the program. I encourage you to consider initiating a rulemaking to explore how the movement of the point of obligation might positively or adversely impact domestic biofuel production and distribution now and in the future.

There is a growing body of compelling evidence to suggest that moving the PO would have large number of benefits for the operation and effectiveness of the RFS for a majority of RFS stakeholders, and for consumers. However, the only way to fully explore and evaluate the impacts of this change is to conduct a rulemaking process where all interested parties can provide input and data to inform the analysis.

Some PO proposals have suggested that blenders become the obligated parties. To be clear I am writing in support of those proposals which move the obligation to a specific segment of blender, that of “Rack Seller”. The Rack Seller is the position-holder at the terminal that controls the gasoline and diesel fuel at the time it is sold. Under this scenario, “Rack Buyers” would not necessarily be obligated parties, and below-the-rack blending could still be done in a similar way that it is done now, especially for biomass-based diesel. The Rack Seller in most cases is the party that controls whether the fuel is blended with biofuel at the rack, and is the party that pays the federal excise tax on the fuel. Aligning the point of obligation with the party that makes the decision whether to blend gasoline or diesel fuel with actual wet gallons of biofuel, makes a lot of sense for a number of reasons. However, I will mention only three here.

Infrastructure Investment: The EPA has frequently pointed to a lack of infrastructure investment as a barrier to increased biofuel blending and sales, and as a justification for using EPA’s waiver authority. Separating the PO from the point of compliance appears to be a contributor to that barrier. With alcohol fuels, the infrastructure investment that needs to occur is mostly at the retail level with more E85 and E15 blends available to the consumer. Having the PO at the refiner level does not provide an effective incentive for that investment to occur. While BBD blending investment has occurred at an increasing number of terminals, most biomass-based diesel is still currently blended below-the-rack. That has not stopped biomass-based diesel from being sold at retail, as significant number of retail locations are offering blends up to B20 with great success. However, changing the PO to Rack Sellers would incentivize more BBD blending investment at the rack to achieve more efficiency and make the blends more available to more consumers at a lower cost. And it would encourage more blending overall, because the most cost effective means of compliance is for an obligated party to blend actual wet gallons of biofuel, separate the RINs, and ultimately submit those RINs for compliance purposes. And again, this change would not prevent below-the-rack blending when and where the blend economics are favorable to do so.

RIN Integrity: Prior to working for NBB, I was a fraud investigator. In addition to my background as a certified public accountant, I received extensive training from the federal government and considerable experience in criminal fraud investigation during that time. That experience was very instructive in my later role at NBB when the first serious signs of RIN fraud and abuse began to surface in 2011 during the early implementation phase of the RFS2 program. NBB led an aggressive effort to quickly develop a private sector RIN integrity solution working with the EPA and the petroleum industry. Much of the early RIN integrity work that we did was built upon to later develop the Quality Assurance Plans (QAPs) which the EPA later codified. Thanks to the EPA’s and other stakeholder’s diligent efforts, the vast majority of RIN Fraud was wrung out of the system. But it has not yet been eliminated entirely. As new advanced biofuels emerge, with new, risk-taking actors on the scene, mechanisms to further prevent RIN

fraud and abuse in those emerging biofuel sectors can and should be improved. Moving the point of obligation closer to the point of compliance inherently strengthens RIN integrity.

Narrowing the pool of obligated parties specifically to Rack Sellers rather than the broader pool of all blenders, makes the total number of obligated parties who are responsible for ultimate compliance smaller and more manageable. Indeed some data suggests that it would result in a similar if not lower number of total obligated parties to be regulated and monitored for compliance. A high percentage of the companies deemed obligated parties under the new PO would be the same companies deemed obligated parties under the current structure. And almost all of the parties under the new structure are already regulated parties that are registered and in the EMTS system under the current structure.

Separation of the PO from the point of compliance has also led to the creation of the RIN as a new, highly speculative commodity that is being traded by a broad range of traders, many of whom have no stake in the RFS program. Yet unlike other publicly traded commodities and investment instruments, RINs are not governed by the same set of regulatory rules and safeguards. Indeed they are inadvertently made less transparent and more obscured by confidential business information (“CBI”) and other complexities of the RFS program. The lack of more familiar, established regulatory safeguards attracts aggressive speculation, and makes RINs more inherently volatile than they should be. That volatility further attracts speculative behavior, which is artificial and does not advance the goals of the program. Tying the PO to the point and parties who pay federal excise tax adds a much higher degree of transparency, stability, enforcement capability, and therefore fraud deterrence.

Market Distortions: EPA should also consider how the current point of obligation causes other RFS market distortions. For example, because there are currently limited incentives to blend renewable fuels at the rack, another distortion that results is the increased RIN revenue generation from blending biodiesel at retail levels. Entities controlling biodiesel retail blending have increased blending and benefited from RIN sales. This has promoted biodiesel production and consumption. However, it might actually benefit biodiesel importers more than domestic production. In addition, since it also resulted in a new revenue stream, those benefiting from RIN revenue now oppose any changes that might increase biodiesel blending overall out of concern that it might potentially decrease RIN revenue opportunities at the retail level. Just as the retail-level blenders would see any rack level blending as directly competing for RIN revenue under the current PO, any regulatory obligation that might increase rack level blending is a threat to the RIN revenue enjoyed by blenders at the retail level. If any biofuel blending is more efficiently performed at the retail level, a less encumbered market should continue to see benefits for those who blend at the retail level. To artificially preserve high blending margins at the retail level prevents the system from maximizing renewable fuel blending and thus, limits the outlets for biofuel production. The opportunity is artificially preserved at the retail level because as just described, parties at the rack are not motivated to blend at the rack. Biofuel producers may not be getting the best prices now and will not be ensured a market for increased production if the system impedes blending at any point. This distortion might disadvantage smaller biodiesel producers even more than larger producers who may have a retail presence and more control over distribution. This market distortion may impede the continued growth and distribution of renewable hydrocarbon diesel as well.

In your NOPR, you state that you are proposing to use both your cellulosic and general waiver authority granted under the statute when there is “inadequate domestic supply” or where “severe economic harm” would occur if you did not use the waiver authority. Yet you emphasize that you are only using those waiver authorities “to the extent necessary to derive the volume of total renewable fuel that reflects the maximum supply that can reasonably expected to be produced and consumed... (“hereafter referred to as reasonably expected supply”)”. You specifically use your cellulosic waiver authority to reduce the statutory volumes down to the reasonably expected supply of the total advanced category. Considering

the amount of biomass-based diesel that is and can be available to meet the total advanced category, it appears you have overused your waiver authority on the total advanced category based on your stated criteria. I would urge you to carefully examine the data in this area during the review period and to increase both the BBD and total advanced category to a more meaningful volume in the final rule. Biomass-based diesel stands more than ready to responsibly and sustainably help the program meet more of its goals for advanced biofuels if the industry is simply given the market signals to do so by this final RVO rule. And it can meet those goals while bringing more biofuel over to the diesel side of the ledger in a way that alleviates rather than exacerbates the ethanol blend wall. Further, it does so by making fuel less expensive to diesel consumers. Diesel consumers move the heavy-duty freight throughout the economy, so a cost savings to diesel consumers has a positive economic multiplier effect for all products at every level of production and distribution.

Changing the PO would even further empower biomass-based diesel to meet the advanced biofuel goals in future years. The EPA has proposed to use its waiver authority in virtually all fuel categories in 2016, and has detailed the reasons why EPA believes that is necessary. Most of the reasons detailed for using the waiver authority could possibly be partially or totally addressed by moving the PO to the point of compliance, and realigning the incentives. Since EPA will be using its waiver authority, it is EPA's responsibility to determine whether some of the issues identified as reasons for using it could be addressed by a regulatory solution. I believe moving the PO could be one of those regulatory solutions.

Therefore, I respectfully request that EPA initiate a rulemaking to evaluate the impact and implications that moving the Point of Obligation would have on the RFS2 program.

Thank you for your attention to this timely and important issue. Should you have any questions, please do not hesitate to contact me at 573.680.1948 or jjobe@rockhouseadvisorsllc.com.

Sincerely,



Joe Jobe, President
Rock House Advisors