

COMMANDER KIRK S. LIPPOLD, USN (RET)

Lippold Strategies, LLC
1208 Huntly Place
Alexandria, VA 22307
Tel 775-684-9197

February 8, 2017

Ms. Catherine McCabe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation, EPA-420-D-16-004, November 2016

Dear Acting Administrator McCabe:

My name is Commander Kirk S. Lippold, USN (Ret) and I am currently the President of Lippold Strategies, LLC, a consulting firm that specializes in leadership, crisis management, and national security policy. I previously spent 26 years in the Navy, where I was a Surface Warfare Officer serving on five different ships, including guided missile cruisers and destroyers to protect U.S. national security interests across the globe. Foremost among those missions was to safeguard the sea-lanes of communications, or SLOCs, that facilitate the global economy, including the flow of oil to and from the United States. I have experienced firsthand – particularly during my command of the USS *Cole* when it was attacked by Al Qaeda terrorists – the real-world implications of the term “energy security” when our nation’s forward-deployed assets are placed in harm’s way to safeguard a reliable and affordable supply of energy for U.S. consumers and our economy.

Enhancing security is one of the primary statutory justifications for the RFS program. During my time in service and in my subsequent national security work, I have taken note of the Environmental Protection Agency’s (EPA) frequent and liberal use of the term “energy security” and the subsequent national security justifications in its rulemakings. In particular, I have noticed these justifications at play in the promulgation and administration of the Renewable Fuel Standard (RFS). Previously, I provided comment after taking substantial time to review and analyze the current Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Docket ID No. EPA-HQ-OAR-2016-0004; FRL-9946-90-OAR; RIN 2060-AS72 (May 31, 2016) (hereafter the “Proposed Rule”). As a follow-on to my previous letter, I thoroughly reviewed your document, The Proposed Denial for Rulemaking to Change the RFS Point of Obligation, EPA-420-D-16-004 of November 2016. I appreciate the opportunity to provide the following comments on the energy security implications of the proposed decision to not change the Point of Obligation in the RFS program. I believe proper consideration of security interests should lead EPA to the conclusion that moving the Point of Obligation is an immediate imperative to avoid national security threats related to current RFS implementation.

A) RFS Point of Obligation Rule Fails to Address Any National Security Impacts

In the Proposed Denial of petitions to move the Point of Obligation, the EPA fails to mention or take into consideration any national security implications or energy security impacts in maintaining the current approach to RFS implementation and the burden imposed by the current Point of Obligation. While on record opposing any changes to the program, EPA makes the statement,

“EPA’s primary consideration here is whether or not the requested change would improve the effectiveness of the program to achieve Congress’s goals, which are to increase energy security and reduce emissions of air pollutants contributing to climate change by requiring increasing percentages of the nation’s transportation fuel be made from renewable fuels.”

Given the rote frequency with which the EPA makes claims related to national security - and its statutory obligation to take energy security into account, it is troubling to see that EPA has failed to provide any specific or credible analysis to confirm or validate the impact of maintaining the status quo with respect to the Point of Obligation on national security or energy independence as required by the RFS program. EPA conceded the difficulty it has in quantifying national security benefits but makes no attempt to try.

Additionally, as justification for keeping the Point of Obligation located with refiners, the EPA contends that placing the Point of Obligation is a matter of administrative convenience in reference to other parties that may become obligated. First, EPA does not substantiate this claim, particularly since most of the additional parties its describes already have some obligation to register under the program. Second, and most troubling from my perspective, is that harming the marginal refiner in favor of protecting certain entities speculating in tradeable credits constitutes an unfavorable national security tradeoff. Every Presidential Administration dating back to FDR has found that domestic refining capacity is a critical element to national security preparedness and planning. See below. To knowingly trade off the health of the marginal refiner in favor of the Wall Street speculator is contrary to the security mission of the law. Further, because structurally “long” parties have a demonstrated weaker incentive to invest in additional blending infrastructure, there is no countervailing improvement in security gained by the current Point of Obligation.

A comprehensive assessment of the impact of the current RFS implementation structure on security is long overdue. The last time that the EPA attempted a substantive analysis of the data to justify the RFS was in 2010. Americans should rightly question whether those 2010 benefits still exist (assuming they ever did). The national security situation of the world we live in today is significantly different than it was in 2010.

B) Failing to Move The Point of Obligation Harms Domestic Refining

The United States still has the largest and most well-developed refining sector in the world. Our refining capability is a national asset without peer and must be rigorously safeguarded. Conversely, however, the current implementation structure of the RFS poses a significant threat to

the continued viability of these strategic resources. This portends dire consequences for our national security because a strong and competitive refining sector provides the United States with significant and under-appreciated national security benefits.¹ For over 150 years, refiners have transformed crude oil into myriad civilian and military products, provided low cost energy for Americans, and diminished the United States' reliance on energy imports.

The current structure of RFS implementation puts pressure on the refining sector by the inequitable distribution of costs associated with demonstrating compliance through sufficient renewable identification numbers ("RINs"). RINs costs can create a significant threat to the viability of particular refiners. It is worth noting that as "small- and medium-sized refiners process half the nation's transportation fuels,"² the diminishment of even marginal refineries can result in substantial fuel price spikes. The Joint Economic Committee of the US Congress warned that "large price spikes" can occur from "unanticipated refinery shutdowns."³ The effects of such price spikes have the clear adverse effect of increasing fuel costs to the Department of Defense and other entities across the full spectrum of US government operations. Increased fuel costs are not borne by the petroleum or refining industries; they are passed onto the consumers, in this case the Department of Defense.

Robust domestic refining is necessary to effectively and cost competitively process crude oil into gasoline, diesel, jet fuel, and other refined products and petrochemicals, which are central parts of our national security. Military assets mobilize on petroleum products, such as gasoline, diesel, and jet fuel. They do not run on crude. Notably, the United States refining industry supplies over 50 percent of the 145 million barrels of jet fuel consumed by the Department of Defense.⁴ Therefore, a change in policy that could undermine our robust refining base directly constrains the operational flexibility necessary for the modern projection of force.

The industry's various economic contributions also meaningfully bolster U.S. national security. Without affordable access to refined products, domestic manufacturing projects that bring billions of dollars to our shores would be increasingly placed in jeopardy. The true size and scope of the refining industry provides some much-needed perspective. A 2012 report⁵ explains that the refining sectors employ about 108,000 workers nationwide and also employs four times that many workers in secondary industries. According to a recent report, the jobs supported by America's refiners are "a strategic asset for the United States." In fact, the authors establish that "maintaining a viable domestic refining industry is critical to the nation's economic security." This is true

¹ National Defense Council Foundation Issue Alert. 2005. Available at: <http://www.ndcf.org/energy/MeetingDefenseFuelNeeds.pdf>

² Clifford Krauss, High-price ethanol credits add to refiners' woes, *New York Times*, Aug. 22, 2016.

³ Joint Economic Committee (minority report), *Gasoline Price Spikes and their Impact on the Economy* (May 2014) at 4.

⁴ Anthony Andrews, "Department of Defense Fuel Spending, Supply, Acquisition, and Policy," Washington, D.C., 2009.

⁵ American Petroleum Industry. Fact Sheet: Importance of a Strong Refining Industry. February 24, 2012. [http:// 12 www.api.org/~media/Files/Oil-and-Natural-Gas/Refining/Domestic-Refining-Study-Facts-Key-Points.pdf](http://www.api.org/~media/Files/Oil-and-Natural-Gas/Refining/Domestic-Refining-Study-Facts-Key-Points.pdf)

because a “failure to maintain refining capacity and secure access to this strategic resource will increase dependence on imports of refined products and further risk energy security.”⁶

The dynamics of energy supply and markets continue to pose deleterious consequences for U.S. national security by placing the United States at the whims of unstable, hostile, or unfriendly nations. For the first time in 60 years the U.S. is now a net exporter of refined petroleum products, although as explained above, current RFS implementation structure does not help.⁷ This newly developed economic strength effectively bolsters the status of the United States as a strong competitor in the global economy. The strength of the industry also contributes substantially to the broader resiliency of the U.S. economy. Brandon Wales, Director of the National Protection and Programs Directorate (NPPD) Office of Infrastructure Protection Homeland Infrastructure Threat and Risk Analysis Center, explains that a strong domestic refining industry “significantly affects the resilience of the regional or national petroleum supply system”⁸ Throughout the entire oil and gas fuel cycle, a refinery is the most important asset because its continued operation is vital to guarantee that the entire system functions. Clearly, maintaining the resiliency of a system that provides the input for almost every economic activity is clearly of the utmost importance to the United States and the rest of the world.

In short, the current policy establishing who must purchase and account for RINs is not driven by the market, but is yet another clear example of government making a business decision on who will be a “winner” and a “loser” through the imposition of regulations on the fuels marketplace and RINs. Most refiners and other obligated parties simply cannot meet their obligations to blend additional volumes of biofuels into the fuel supply.

In consideration of these facts, there can be little doubt that the volatility created by implementation of the RFS, including its frequent delays and attendant spikes in the RIN marketplace, constrains the domestic refining base of the United States. This is a strategic threat to the security of the United States and the detrimental effects on the economy merits careful analysis and consideration by the EPA.

C) The Proposed Denial Increases Risks to the Military

By creating the basis for market concentration and potential price spikes, the current Point of Obligation essentially makes the military more subject to unanticipated budget shortfalls for fuel costs. As noted above, constraining the marginal refiner sets the stage for price spikes. As EPA may be aware, this is not the time to force the security apparatus of the nation to address such unanticipated fuel price increases. Under the terms of recent budgetary actions, defense spending continues under sequestration making it even more difficult for rebuild capacity and preparedness. We face a zero-sum game in which potential fuel price spikes attributable to an uncontrolled RINs

⁶ Wood Mackenzie. “Outsourcing US Refining? The Case for a Strong Domestic Refining Industry.” June 2011. Available at: http://www.api.org/~media/Files/Oil-and-Natural-Gas/Refining/API_Case_for_US_Refining_WoodMackenzieReport.pdf

⁷ See: http://www.cnas.org/sites/default/files/publications-pdf/CNAS_EnergyBoom_Rosenberg_0.pdf

⁸ See: <https://www.dhs.gov/news/2012/03/19/written-testimony-national-protection-and-programs-directorate-house-homeland>

market could have real and lasting impacts on US national security. Accordingly, the EPA should consider the effects on the Department of Defense of the Point of Obligation's current placement under the RFS program.

Alleged security benefits to the program do not offset the negative consequences to the implementation structure. While renewable fuels may be readily available for forces training and operating within or near the continental United States, there are no substantive processing facilities for alternative fuel production available for deployment to forward operating bases or within any foreign theater of operations.⁹ This self-imposed vulnerability heightens the operational risk to our forward deployed assets by diverting attention away from completing mission-critical functions.

The additional cost is also deleterious to our military forces. For example, an analysis by the Heritage Foundation finds that fuel price increases can "cause fiscal instability in an already unstable Department of Defense budget." These effects are compounded by the adverse material properties that alternative fuels inflict on military assets. The Heritage study explains why any security benefits to biofuels must be offset by handling issues because, "... biofuels are more corrosive than regular diesel and can therefore increase maintenance costs within the Navy's fleet. This would only worsen the current fleet's dire situation, since inspection failures are already occurring at an alarming rate within the fleet. The increasing average age of the U.S. fleet; delayed, deferred, and underfunded modernization; and use of fuels with potentially harmful consequences is a recipe for a fleet readiness crisis."¹⁰ Already, in 2016, the Department of the Navy is experiencing close to a \$1 billion shortfall in maintenance and training funding needed to ensure the fleet can execute its core missions. This shortfall is only complicated by the self-imposed mandate of biofuel consumption that undermines maintenance and readiness.

D) The Proposed Rule Stimulates Dependence on Foreign Ethanol

One of the core arguments proffered in support of the RFS is its contribution to a vibrant domestic ethanol industry. In clear contravention of this goal, failure to move the Point of Obligation results in the unintended consequence of incentivizing additional Brazilian sugarcane ethanol imports. This directly undermines U.S. national security interests and energy independence since it raises costs for refineries, directly disadvantages domestic ethanol producers, and places U.S. compliance at the whim of an often-unstable international actor.

The proposed denial in part references an increased use of "advanced" biofuels in domestic fuel markets. The current structure has created a substantial market premium for "advanced" biofuel RIN credits instead of those linked to corn-based ethanol. This price premium is best explained because the "advanced" mandate is fixed and does not take price into account. Uncertainties concerning the production of cellulosic ethanol could force other fuels to fill the gap.

⁹ Bartis, et al. "Alternative Fuels for Military Applications." 2011, p. xiv. Available at: <http://www.rand.org/pubs/monographs/MG969.html>

¹⁰ Slattery, et al. "Biofuel Blunder: Navy Should Prioritize Fleet Modernization over Political Initiatives" Sept. 24, 2013. Available at: <http://www.heritage.org/research/reports/2013/09/navy-s-green-fleet-a-biofuel-blunder>

Therefore, if cellulosic ethanol production is unable to advance rapidly enough to meet the “advanced” category, it will be increasingly filled by “imports of Brazilian sugar-cane ethanol.”¹¹

Accordingly, the current RINs market structure actually benefits Brazilian ethanol producers such as Raizen, instead of American companies. The Energy Information Administration (EIA) reports, “Brazil exported significant volumes to the United States, largely due to *growing* U.S. Renewable Fuel Standard (RFS) targets [emphasis added].”¹² EIA further explains, “U.S. ethanol import volumes” are contingent on “final advanced biofuels RFS targets, and imported volumes of competing advanced biofuels,” among other factors. The effect of rising Renewable Volume Obligations (RVOs) was also borne out by statistical data. For example, data from the Brazilian Trade Ministry shows that “Brazil’s ethanol exports for 2013 through September totaled 605 million gallons, up 27 percent from 476 million gallons exported over the same period last year ...”¹³ Therefore, as long as the EPA continues to ratchet up increasing volumes of imported energy product, this sizeable and unintended consequence will persist.

Such an uptick in Brazilian imports is clearly not the intention of the RFS. U.S. regulatory policy should not subsidize international industries that diminish the resiliency of the U.S. energy market and our refinery base, which consequently jeopardizes and undermines U.S. energy, erodes national security, and contravenes the legislative intent of the RFS program.

In addition to Brazil, exports from Argentina have undermined the primary RFS goal of U.S. energy independence when the EPA approved a streamlined process for imports of Argentinian biodiesel. According to the Environmental and Energy Study Institute, it is estimated that the move could bring 600 million gallons of Argentinian biodiesel into the U.S. market a year, approximately 34 percent of total U.S. production in 2014 (at 1.75 billion gallons).

While EPA’s approval of a streamlined process for biodiesel imports may be legal under the 2007 Energy Independence and Security Act, it flouts the spirit and intent of a law intended to foster a domestic renewable fuels industry. The pain felt by the U.S. biodiesel and refining industries is especially acute, since unlike ethanol and other gasoline replacements, biodiesel has few export markets. In fact, in 2009 the European Union levied duties on biodiesel in an anti-dumping measure. Therefore, the layoffs and plant closures in the biodiesel industry may have been more acute than other sectors of the renewable fuels industry.

At the same time the current RFS structure encourages reliance on foreign sources of biofuel, it also forces the export of more refined products away from US markets including military uses. As a means of reducing its obligation, a refiner may decide to reduce its production of fuel or simply export fuel. By ensuring greater reliance on oil imports, domestic crude exports threaten American energy independence and national security.

¹¹ See: <https://www.fas.org/sgp/crs/misc/R40155.pdf>

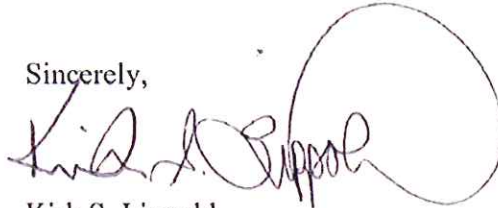
¹² See: <http://www.cia.gov/todayinenergy/detail.cfm?id=16131>

¹³ See <http://www.reuters.com/article/us-epa-rfs-brazil-idUSBRE99A10M20131011>

The current location of the Point of Obligation is adversely affecting the refining industry – a vital component of our national economy, and energy and national security. At this point in our history, with our national security requirements becoming even more imperative, the nation can ill afford bureaucratic programs that adversely affect the economy and our military forces and even stimulate import reliance. For this reason, EPA should grant the petitions as soon as possible to rectify the security threats imposed by the current structure of RINs compliance. Currently, no strategic analysis exists that examines the national security threat of the current regulatory structure. If the EPA undertakes a comprehensive and rigorous assessment of the benefits and costs of the RFS – both quantitatively and qualitatively – it will undoubtedly realize that changes to the implementation structure of the RFS program are warranted on national security grounds.

I appreciate the opportunity to submit public comments on the Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation. Should you or anyone else at the EPA have any questions please do not hesitate to contact me at 775-684-9197 or at kirk@kirklippold.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk S. Lippold", with a large, circular flourish at the end.

Kirk S. Lippold
Commander
U.S. Navy (Ret)