

## FOR IMMEDIATE RELEASE

### Stop the RINsanity

#### Small Retailers Coalition Sues EPA for Failure to Meet its Statutory Obligations to Small and Minority-Owned Businesses

On August 28 and 29, 2017, the Small Retailers Coalition (“SRC”), a non-profit trade association dedicated to protecting the interests of small, independent petroleum retailers and convenience stores, filed a lawsuit in the U.S. District Court for the Northern District of Texas and a petition for review of an administrative order in the U.S. Court of Appeals for the District of Columbia. SRC brought both actions against the Environmental Protection Agency (“EPA”), and each seeks to correct the point of obligation provision of the Renewable Fuels Standard (“RFS”).

Under the RFS program, a Renewable Identification Number (“RIN”) is assigned to each batch of renewable fuel produced or imported for use in the United States. It generally remains attached to the renewable fuel until a blender blends the renewable fuel into a transportation fuel. At that point, the RIN separates from the associated volume of renewable fuel and becomes the property of the person who either bought or blended the renewable fuel. Obligated parties turn their RINs in to meet their RFS obligations; unobligated parties are free to sell their RINs to the highest bidder on the open market.

Congress did not intend to create a new commodity, but that is exactly what happened when EPA chose to place the point of obligation on refiners and importers, but not blenders. Unobligated blenders are selling their RINs to obligated refiners and importers, who need them to meet their obligations under the RFS program. The blenders are also retailers, and they use the windfall profits from RIN sales to undercut their competitors’ prices. Moreover, large retailers dominate the rack—the bulk terminal or truck loading terminal where fuels are blended—because they control who may do the blending there. As a result, around fifty extremely large retailers are getting a \$0.10 to \$0.15 per gallon subsidy from the sale of RINs to refiners or importers.

Smaller retailers simply cannot compete under the current regulatory scheme, which we refer to as “RINsanity.” Over 12,000 “mom-and-pop” fueling stations have gone out of business or sold out to large retail chains since 2007, and more will close soon unless EPA corrects the point of obligation. Luckily, Congress passed the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) to give small business a greater voice in the development and enforcement of federal regulation. Under SBREFA, EPA was required to consider the economic impact of the RFS and the point of obligation on small retailers. But it never did so. The analysis isn’t insufficient; it’s non-existent.

SRC therefore brought its two cases asking the courts to order EPA to conduct notice-and-comment rulemaking to change the point of obligation, or to vacate and remand recent revisions to the RFS in which EPA did not perform the required economic analyses. It fully believes that, if EPA takes time to consider the facts, the point of obligation will move to where it has always belonged—with the blenders who obtain the lion’s share of RINs generated in this country.

## FOR IMMEDIATE RELEASE

### Background

Approximately 70% of the fuel sold in this country is sold by small retailers – either branded or unbranded. Many are first-generation immigrants pursuing the American Dream or minority business owners who are trying to make it in a small business.

Because small retailers have to purchase blended fuel at a premium, the base cost of their product will always be higher than the cost to large competitors that can blend fuel. But small businesses can address this market reality through innovation and other marketing incentives. What they cannot overcome is the \$0.10 to \$0.15 per gallon subsidy their largest competitors gain from selling RINs to obligated parties, especially since sixty-four percent of consumers will “take a left turn across a busy street” or “drive 5 miles out of their way” to save \$0.05 a gallon on gas.

The unintended consequences of the current point of obligation go beyond the harm that the scheme loads on small businesses. The fundamental goal of the RFS program is to increase the use of renewable fuels in the U.S. transportation system, which requires private parties to invest in production facilities and infrastructure to accommodate such fuels.

But the current point of obligation does not incent large retailers to invest in infrastructure to support the further penetration of renewables in the market place because the mega-companies who control the rack are content to earn massive profits by purchasing gasoline unobligated, collecting RINs when they blend the gasoline, then selling those RINs to refiners and importers. Worse, because RIN prices increase when RINs are in short supply, large retailers have an incentive to limit biofuel blending and keep E85 out of the market to maintain high RIN prices.

Large trade associations like NACS, SIGMA and NATSO have gone on the record with statements that small retailers may blend. Untrue!

Smaller retailers cannot play the RIN game because they lack capital investment and volumes required to get “up on the rack.” Consequently, they cannot blend fuel and, instead, are forced to buy the finished product directly from blenders at a premium. And their disadvantage is further exacerbated because large retailers with blending capabilities use revenue from the sale of RINs to artificially lower the price of gasoline just enough to undercut small retailers and push them out of the market.

This is RINsanity, and EPA needs to put an end to the madness!

The current point of obligation is also cutting off access to capital to small minority-owned convenience stores and gas stations

The current point of obligation has eliminated much of the low interest financing that once was available for low-income individuals who wanted to open a convenience store. According to the U.S. Census, **42.4% of gasoline station convenience stores are minority owned**. When the RFS jeopardizes the viability of gas stations, it directly impacts minority-owned businesses in this country.

## **FOR IMMEDIATE RELEASE**

Before RIN prices created a market where small fuel stations could not compete, local distributors often offered no-interest loans to help first-generation Americans and minorities open their first gas station or build upon an existing business. Now that the RINsanity has set in, these distributors are being undercut so dramatically on price that they can no longer afford to make such loans.

### Fix the system now

EPA can address the inequities and artificial competitive advantages it created in the fuel market with the RFS. The solution is obvious: EPA must move the point of obligation to the blending rack. This will eliminate the windfall profits and supply chain volatility that plague the current system. Moreover, unless the point of obligation is moved to the rack, small retailers across the country will all be squeezed out of the market through bankruptcy, foreclosure, or acquisitions by larger retailers.

It is time to stop this RINsanity!

Small Retailers Coalition  
PO Box 35537  
Washington, DC 20033  
website: [www.smallretailerscoalition.com](http://www.smallretailerscoalition.com)  
email: [info@smallretailerscoalition.com](mailto:info@smallretailerscoalition.com)  
phone: (214) 651-5015

END

###