



Robert L. Greco, III
Group Director: Downstream and Industry Operations

1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8167
Fax 202-682-8051
Email greco@api.org
www.api.org

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The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Member Waxman,

API appreciates the opportunity to respond to your questions in the Committee on Energy and Commerce white-paper examining impacts of the RFS on the agricultural sector, RFS waiver, and cellulosic biofuels issues.

The Clean Air Act's supposed flexibility to address issues with the implementation of the RFS hinges on EPA's willingness to modify the requirements. In theory, Section 211(o)(7) of the Clean Air Act ("Waivers") provides EPA with flexibility to address the unintended, adverse effects of the RFS on the U.S. economy and consumers. In reality, however, EPA has repeatedly exhibited a reluctance to modify the RFS requirements and use these "waivers" to alleviate the burdens of the RFS, thereby eviscerating any supposed statutory flexibility to address the problems with the RFS.

Pursuant to Section 211(o)(7)(A) of the Clean Air Act, EPA may waive the requirements of the Renewable Fuels Standard (RFS) if (i) "implementation of the [RFS] would severely harm the economy of a State, region, or the United States," or (ii) "there is an inadequate domestic supply." In 2012, the governors of Arkansas, Delaware, Georgia, Maryland, New Mexico, North Carolina, Texas, and Virginia petitioned EPA to waive some portion of the RFS because of the severe economic harm that the RFS caused while the drought of 2012 plagued a significant portion of the country. On November 16, 2012, EPA denied those waiver requests. There are many lessons that can be learned from the waiver denial.

As a threshold point, even though API remained neutral on whether EPA should grant the waiver in 2012, we submit that if EPA did not believe that the most severe drought in the United State since the 1950s failed to merit a suspension of the RFS, then there may never be a situation when impacts on

the food and livestock industries would successfully receive a waiver from EPA. The agency's refusal to grant a waiver can be, at the very least, attributed to its unnecessarily high standard for granting a waiver. If EPA were to follow the letter of the law – instead of self-imposed, nearly insurmountable hurdles – the agency might be more likely to grant a waiver of the RFS requirements.

In its decision to deny the waiver requests, EPA stated that any waiver petition must show – with “a generally high degree of confidence” – that the implementation of the RFS *alone* must cause severe economic harm. In addition, EPA demanded “a high threshold for the nature and degree of harm.” Even if a waiver petition were to satisfy EPA's severe harm test, the agency also stated that it might still decline to issue a waiver. EPA's approach would seem to eliminate any chance of fixing a RFS problem before the damage has begun. These unnecessarily high hurdles and foreshadowing of future denials – even if those hurdles are cleared – demonstrate that the current RFS is flawed and needs to be repealed. API believes that EPA has broader authority to grant waivers. Indeed, Section 211(o)(7)(A) of the Clean Air Act permits EPA to grant a waiver if a petitioner demonstrates that the RFS will likely contribute to severe economic harm. Since EPA's 2012 waiver decision, the facts are significantly different now that the E10 blend wall has been reached. The issuance of a waiver could alleviate some of the harmful effects of the blend wall. A recent study by NERA² shows that continued implementation of the RFS without addressing the blend wall could cause severe economic harm.

EPA's rigidity goes well beyond the refusal to grant waivers for severe economic harm. Indeed, it extends to the approach that EPA has taken with regards to the cellulosic biofuel requirement and reducing the burden of the RFS as a whole. Following decades of research and “technology forcing” legislation (i.e. RFS1, RFS2 and California's Low Carbon Fuel Standard), cellulosic biofuels have failed to become available at a commercial scale that is economically competitive in the existing U.S. transportation fuels market. For the period 2010 to 2013, a total volume of 1.85 billion gallons of cellulosic biofuel has been mandated by RFS2. Production has utterly failed to live up to the mandate.

Because the cellulosic biofuel industry has failed to produce commercial volumes, EPA has needed to lower the statutory cellulosic biofuel volumetric requirements each year. When EPA lowers the cellulosic biofuel requirement from the statutory mandate to the “projected” amount,¹ the agency has the statutory authority to “reduce the applicable volume of renewable fuel and advanced biofuels” by that same quantity as well, pursuant to Section 211(o)(7)(D)(i). EPA does not need to conduct a special rulemaking for this waiver; indeed, the agency may consider this waiver as part of its yearly process in setting the RFS mandates. Despite this basic waiver authority, however, EPA has refused to exercise its discretion and reduce these other RFS requirements.

For example, in its proposed 2013 RFS, EPA reduced the statutory mandate of 1 billion gallons to 14 million ethanol equivalent gallons. Accordingly, EPA can lower the advanced and total renewable fuel RFS requirements each by 986 million gallons. This simple volumetric reduction would lower the ethanol requirement from roughly 10.9% to 10.2% of the 2013 annual gasoline demand anticipated by EIA. While still above the E10 blendwall, this reduction could potentially alleviate much of the current volatility in the secondary RINs market that may be reacting to the anticipated RIN shortage associated

¹ API has successfully challenged EPA's “projected” volumes for cellulosic biofuel in the 2011 and 2012 RFS. It remains to be seen what EPA will require for 2013, even though we are almost through 4 months of the year.

with the blendwall.² To date, however, EPA has failed to take advantage of the flexibility that congress intended the agency to use for these very situations.

Cellulosic biofuels have not only failed to live up to expectations, but they have also failed to succeed in diversifying the RFS. This trend is expected to continue through 2015, as capacity is projected to be only a small fraction of the 2015 mandate of 3 billion gallons.³ Furthermore, EIA in its 2013 Annual Energy Outlook projects less than 500 million gallons of cellulosic biofuels (ethanol and diesel) in 2022 vs. 16 billion gallons mandated by RFS2. To date, the U.S. EPA has waived, or has proposed to waive, over 98% of the cellulosic biofuel mandate, and large waivers will likely continue to be necessary. Based on findings of the National Academy of Sciences report,⁴ cellulosic biofuel volumes mandated by the RFS2 are unlikely to be met, unless there is a major technological innovation or policy change. As noted above, however, EPA has not used its discretionary authority to waive the total renewable fuel mandate. This has the direct negative consequence of increasing the reliance on food-based crops. When the cellulosic biofuel mandate has been waived, the resultant gap has been filled mainly by increased volumes of both sugar-cane based ethanol and biomass-based diesel derived from oil seed (food) because EPA has chosen not to waive the total renewable fuel mandate. If this trend continues as the statutory cellulosic biofuel mandate becomes greater, then greater imports of advanced biofuels – mainly sugar-cane based ethanol – will likely be required to fill the gap, especially in the short term. As EPA has itself observed in the 2013 RFS proposal, there are questions as to whether the production capacity of Brazil, historically the primary supplier of US sugar cane ethanol imports, is sufficient for this purpose. The intent of the “cap” on both corn ethanol and biomass-based diesel was in part to protect the food supply from becoming the sole provider of the 36 billion gallons of biofuel. But, if the total renewable fuel mandate is not waived along with the cellulosic biofuel mandate as the cellulosic biofuel mandate grows, the burden of all of the RFS will be placed on food crops.

In addition to the above mentioned National Academy of Sciences report which highlighted, among other issues, negative environmental impacts of biofuels on water, soil, land, air quality, and wildlife habitat, the Congressional Research Service published a recent study with similar concerns about the RFS⁵. The CRS study states: “the biofuels-driven expansion in feedstocks production has heightened competition for available cropland between biofuels and other field crops...” Data in that report show that ethanol uses an increasing share of US corn production (now accounting for about 40% and growing), while corn for feed use has fallen sharply. “Corn prices have trended steadily upward in direct relation to the added growth in demand from the ethanol sector. USDA projects corn prices to remain in the \$4 to \$5 per bushel range through 2020, compared with an average farm price of \$2.15 per bushel during the 10-year period from 1997 to 2006.” Furthermore, the study concludes that in order to enable new corn acreage, shifts in crop rotation from soybeans to corn will need to occur and “corn-to-soybean price ratio would have to tilt fairly strongly.” Simply put, the RFS contains unfulfilled aspirational goals and numerous unintended consequences including environmental, food and energy

² [NERA Economic Consulting, “Economic Impacts Resulting from Implementation of RFS2 Program”, October, 2012.](#)

³ [E2 Environmental Entrepreneurs, *Advanced Biofuel Market Report 2012*, October 2012.](#)

⁴ [National Academy of Sciences, “Renewable Fuel Standard Potential Economic and Environmental Effects of U.S. Biofuel Policy”, 2011.](#)

⁵ [Congressional Research Service, “Renewable Fuel Standard \(RFS\): Overview and Issues” by R. Schnepf and B. Yacobucci, March 2013.](#)

implications. Again, we appreciate the opportunity to provide these responses. If you have any questions, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Greco" followed by a stylized monogram or initials.

Bob Greco

Group Director: Downstream and Industry Operations

API is a national trade association that represents all segments of America's technology-driven oil and natural gas industry. Its more than 500 members – including large integrated companies, exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms – provide most of the nation's energy. The industry also supports 9.2 million U.S. jobs and 7.7 percent of the U.S. economy, delivers \$86 million a day in revenue to our government, and, since 2000, has invested over \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.