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The Honorable John Shimkus
Chairman
Subcommittee on Environment
House Energy and Commerce Committee

Dear Chairman Shimkus:

Thank you for allowing me the opportunity to appear before the Subcommittee on Environment on June 22, 2018, to testify at the hearing entitled, "Advanced Biofuels Under the Renewable Fuel Standard: Current Status and Future Prospects."

Attached please find my responses to the questions for the record. Please do not hesitate to reach out to me if I can provide any assistance.

Sincerely,

Robin Puthusseril

Attachment

Answers to Questions for the Record
Following a Hearing Conducted by the House Energy and Commerce Committee,
Subcommittee on Environment,
“Advanced Biofuels Under the Renewable Fuel Standard:
Current Status and Future Prospects”

The Honorable John Shimkus

Question: *Is there a potential future scenario where Advanced Biofuels could successfully compete and participate in the market without the Renewable Fuel Standard?*

Answer: I can only speak with respect to biodiesel. The short answer is it is very unlikely, in the near-to-medium term, for biodiesel to successfully compete and participate in the market without the Renewable Fuel Standard (RFS).

Whether biodiesel can successfully compete and participate in the market without the RFS will ultimately depend upon whether biodiesel prices become price competitive with diesel prices without the added value that renewable identification numbers (RINs) provide to biodiesel producers and blenders.

The only reason any fuel marketer incorporates biodiesel into his or her diesel supply is to make the end-product less expensive. Under current market conditions (i.e., current biodiesel prices and diesel prices), the RIN is a necessary value component to make these numbers work. In the absence of the RFS, the economics would only work if:

(A) there are dramatic changes in market prices (i.e., biodiesel prices would have to substantially decrease and/or diesel prices would have to substantially increase). Given the price spread between a gallon of diesel fuel and a gallon of biodiesel today, it is very unlikely that such price changes will occur anytime soon; or

(B) there are other government incentives to bridge the gap between biodiesel prices and diesel prices. This can come in the form of the federal \$1.00/gallon biodiesel blenders' tax credit, and/or various state incentives. Even then, however, under current market conditions most of these incentives would have to be increased to incentivize fuel marketers such as myself to blend biodiesel if there is no RFS (and thus no RIN as a value-add).

Question: *What are your views on the EPA's 2016 proposed Renewables Enhancement and Growth Support (REGS) Rule?*

As a diesel fuel retailer that does not sell ethanol blends greater than E10, the REGs proposal would not have a direct effect on my business. That proposal was geared more toward biofuels producers (wherein the rule was designed to enhance and improve the efficiency of biofuel

production), and it also included some provisions allowing for expanded availability of high-ethanol fuel blends for use in flex-fuel vehicles. Regulatory certainty for various biofuels, and for market participants seeking to produce and sell those fuels, is a good thing for fuel marketers such as myself because it provides us with a more diverse array of supply options at our disposal which can lower our costs of goods sold. Beyond these high level issues, however, the proposed rule would not materially change my business.

The Honorable Richard Hudson

Your written testimony points out that blending biofuels into the fuel supply will lower the price of the fuels sold and that this would not happen without the incentives in the RFS program. Your written testimony also notes that the RFS has been implemented properly until recently.

Question: *Can you tell us what has changed with respect to the implementation and why you believe the program is not being implemented properly now?*

Answer: In recent months EPA has begun exempting certain refineries from their RFS obligations in a manner that functions as *de facto* cuts in the RFS renewable volume obligations (RVOs) and thus lowers the incentives to buy, blend, and sell renewable fuels.

Over the past year, EPA has granted exemptions to an unprecedentedly large number of refineries: from 2015 to 2017, the number of requested exemptions more than doubled from 15 to 34. In 2015, EPA only granted 7 of the 15 petitions, while for 2017, EPA has granted 29 of the 34 petitions as of August 7, 2018. Furthermore, the volume obligations waived in 2015 equaled 292.5 million RINs, while the obligations waived so far for 2017 total 1.46 *billion* RINs.¹ This is almost five times the number of RINs waived in 2015, despite EPA processing only twice the number of waiver requests. There have been no market or other policy changes to justify this dramatic increase in waivers. (EPA officials frequently cite a court case (*Sinclair Wyoming Refining Co. v. EPA*, No. 16-9532 (10th Cir. Aug. 15, 2017)) from late 2017 as "tying their hands" and requiring them to grant the waiver requests; this is not true. That case simply stands for the proposition that the waivers cannot be withheld in the absence of a demonstration that a refinery would go bankrupt but-for receiving a waiver.)

Clearly, more refineries—including refineries that may not be truly small or facing disproportionate economic hardship—are applying for and being granted waivers. This is severely undermining the RFS and the RIN market. When these waivers are issued retroactively (i.e., for compliance years for which RVOs have already been finalized), as they have been, they function as *de facto* cuts in the RVO. Refineries that have not received waivers continue to have

¹ See EPA Letter to Representative Dave Loebsack (D-IA) regarding small refinery exemptions, (August 7, 2018) accessed at https://loeb sack.house.gov/uploadedfiles/8.7.18_epa_sres_under_rfs.pdf

their static obligations, while refineries that do receive waivers have their obligations cut by an amount commensurate with the waiver they have received.

This depresses the price of RINs as refineries that have their obligations waived can sell all of their RINs in an open market, and the increased supply of credits diminishes the credits' value. This in turn inhibits fuel marketers' abilities to lower their costs of goods sold by blending biodiesel and separating RINs, thereby diminishing overall demand for biodiesel and other advanced biofuels.

In addition, and of utmost concern, EPA has granted these waivers without providing any basic information to RIN market stakeholders; market participants are not told when waivers are given, the volume quantity that is waived, or the refineries that receive the waivers, which distorts the market. As a practical matter, when waivers are issued in secret, waiver recipients are given an inequitable advantage over other market participants by being permitted to sell RINs based on asymmetrical information with respect to the RINs' value. That is to say, refineries that have been granted waivers do not have to inform anyone and can begin trading on the market at higher RIN values until the market is able to examine activity and adjust RIN values downward accordingly. Clearly EPA's current handling of the waivers is at best patently inequitable; at worst, it comes perilously close to government-sanctioned market manipulation.