

Statement Of

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On behalf of the

**Society of Independent Gasoline Marketers of America
(SIGMA)**

and the

**National Association of Convenience Stores
(NACS)**

Before the

**House Energy and Commerce Committee,
Subcommittee on Energy and Power**

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Hearing on

**“Overview of the Renewable Fuel Standard: Stakeholder
Perspectives”**

SUMMARY OF TESTIMONY

1. Neither the Society of Independent Gasoline Marketers of America nor the National Association of Convenience Stores supports the repeal of the Renewable Fuel Standard (“RFS”) at this time. These associations do support the RFS being administered in a manner that reflects the realities of the market as it actually exists today, rather than how Congress in 2007 projected it would.
2. The motor fuels market in the United States is on the cusp of hitting the so-called “blend wall,” when the RFS’s annual volume obligations exceed the volume of renewable fuel the market can reasonably absorb. This could cause gasoline and diesel prices to increase, generating severe economic harm throughout the United States.
3. The Environmental Protection Agency possesses and should exercise its statutory waiver authority to adjust volume obligations to avoid hitting the blend wall.
4. It is incumbent on Congress to determine whether the Agency will use its waiver authority; if it will not, legislation may be necessary.

INTRODUCTION

Chairman Whitfield, Ranking Member Rush, members of the Subcommittee, thank you for the opportunity to present testimony before you today. My name is Joe Petrowski. I am CEO of the Cumberland Gulf Group headquartered in Framingham, Massachusetts.¹

I am testifying today on behalf of both the Society of Independent Gasoline Marketers of America (SIGMA) and the National Association of Convenience Stores (NACS).² Members of these trade associations represent approximately 80% of retail fuel sales in the United States.

¹ Gulf Oil is a premier gasoline brand supplying over 2500 stations in 29 states with a heavy concentration in the Northeast corridor. Lundberg Survey has sited us as one of the fastest growing brands in the United States. The company also supplies fuel to non-Gulf branded sites and premier non-branded marketers such as convenience retailer WAWA and big box retailer BJ’s. We are also a supplier of over the road diesel and home heating oil. Overall we serve a wholesale customer base in excess of 1,000 and a retail base in the millions. Gulf remains a market leader in petroleum distribution as well as in the development of next-generation alternative fuels and other state-of-the-art solutions for our consumer’s engine performance needs. We blend over 1 million gallons of biofuels daily. Our convenience store brand, Cumberland Farms, has almost 600 stores spanning 11 states across the northeast and Florida. All told, we employ approximately 7500 people, and 1.5 million customers transact at a Cumberland Farms convenience store, Gulf Branded station, or a third party branded outlet we supply every day.

In the interests of full disclosure, I am also a Board member of South Jersey Industries (NYSE ticker symbol “SJI”), a natural gas utility and diversified energy services company in Atlantic City, New Jersey. The company supplies natural gas, solar, electricity, and Central Power and Heating systems on a nationwide basis. I have also served in a number of capacities for diverse energy-related companies for the past 22 years including past Chairman of the New England Power Pool Board of Review and President of Consolidated Natural Gas Energy Services prior to its acquisition by Dominion Resources in 2000.

² SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel. Ninety-two percent of SIGMA’s membership are involved in gasoline retailing, 66 percent are involved in wholesaling, 36 percent transport product, 25 percent have bulk plant operations, and 15 percent operate terminals. Member retail outlets come in many forms, including travel plazas, traditional “gas stations,” convenience stores with gas pumps, cardlocks, and unattended public fueling locations. Some members sell gasoline over the Internet, many are involved in fleet cards, and a few are leaders in mobile refueling.

America's love affair with the automobile is not going away. Neither is the need for transportation fuels that underpin the economy and create jobs. In a country as vast as ours with a density of 79 people per square mile (as opposed to the Netherlands with 1300 people per square mile), the cost of transport is central to economic health. Our industry is committed to facilitating this contribution to the American economy, and doing so in a manner that complies with all applicable laws and regulations. We devote vast resources to offering and adapting to new technologies and market opportunities. My company is constantly striving to identify the best new products and services we can bring to our stores and facilities. Consequently, we are not beholden to any specific product. While Gulf Oil has a long and accomplished history beginning in 1901, it is no longer a fully integrated oil company and neither explores nor refines. We are truly fuel agnostic.

Our sole objective is to sell what our customers want to buy. As new fuels enter the market, we want to be able to sell them lawfully and with minimal volatility and risk. While agnostic on fuel we do have a bias: We believe it is best for the American consumer and our industrial position in the world marketplace to have reasonably low and stable priced energy. This can best be accomplished by focusing on developing diverse fuel sources from at the least secure, friendly regions and at best domestic sources for optimal results. It is a fact that when total national energy costs are less than 10% of GDP, economic growth is robust. We look forward to the day when the United States is a net energy exporter. Not only will that be positive to GDP and job growth, but it will position us to revitalize our industrial production, especially in energy-intensive industries with an eye toward value added product exports. And no policy would be more beneficial for the spread of world democracy and social justice than low energy prices driven by North American production. Decreasing the amount of energy the world buys from dictatorial, abhorrent and kleptocratic regimes guarantees the elimination of their importance on the world stage if not the end of these malevolent states.

Today's hearing focuses on the Renewable Fuel Standard ("RFS"). While I support the spirit and intent of the RFS, there are problems in the program that can be remedied without undermining the principles on which the program is premised – diversifying the fuel supply, increasing the overall fuel supply, encouraging domestic fuel production, and lowering fuel costs for American consumers.

Congress last revised the RFS in 2007. Those revisions were premised upon an expectation of (1) a rise in demand for gasoline and (2) widespread availability of cellulosic ethanol by 2013. Neither of those expectations has been met. In 2007, the nation consumed approximately 150 billion gallons of gasoline; demand was expected to increase at an annual rate of approximately 1.3% through 2030. In reality, consumption this year is projected to be less

NACS is an international trade association composed of more than 2,200 retail member companies and more than 1,600 supplier companies doing business in nearly 50 countries. The convenience and petroleum retailing industry has become a fixture in American society and a critical component of the nation's economy. In 2012, the convenience store industry employed more than 1.84 million (1.82mm in 2011) workers and generated \$700.3 billion in total sales, representing approximately 4.5 percent of the United States' GDP – or one of every 22 dollars spent – in 2012.

than 134 billion gallons. Higher CAFE standards combined with a struggling economy have brought gasoline usage to a standstill. We have also not seen the growth in flex fuel vehicles that was anticipated.

Without regard to these unanticipated market realities, the required RFS volume targets continue to increase year after year. As a practical matter, these targets can only be met if more ethanol is blended into gasoline. The market is not able to do this at the present time, largely because (as discussed below) retailers fear that selling gasoline blends greater than 10 percent ethanol (so-called “E10”) will increase their liability exposure. There is simply insufficient consumer demand for such fuels to justify the risk. Once the RFS’s volume obligations exceed the volume of renewable fuel the market can absorb, the market will have hit the so-called “blend wall.”

As I describe in the testimony that follows, the blend wall will undoubtedly lead to a significant increase in the price of fuel, and will inflict substantial harm on the United States economy. What’s more, this damage will not be caused by a shortage of gasoline, diesel, or ethanol (all of which are in plentiful supply), but rather a shortage of Renewable Identification Numbers (“RINs”). RINs – which are used to ensure compliance with the RFS’s volume obligations – are essentially an artificial commodity that has become an integral component of manufacturers’ ability to produce and import fuel. As with any commodity that is in short supply, people have begun hoarding and trading RINs, which accounts for the dramatic increase in RIN prices throughout 2013. As we hit the blend wall, there will not be enough RINs to allow fuel manufacturers and importers to satisfy their volume obligations under the RFS. They will need to recover these additional costs, and will do so by passing the costs down so they are absorbed by consumers.

My testimony today will focus on how Congress and the Administration can help ensure that the market does not hit the blend wall.

COMPOSITION OF THE RETAIL FUELS MARKET

To fully understand how fuels enter the market and are sold to consumers, it is important to know who is making decisions at the retail level of trade.

Our industry is dominated by small businesses. In fact, of the 120,950 convenience stores that sell fuel, almost sixty percent of them are single-store companies – true mom-and-pop operations.

Many of these companies sell fuel under the brand name of their fuel supplier. This has created a common misperception in the minds of many policymakers and consumers that the large integrated oil companies own these stations. The reality is that the majors are leaving the retail marketplace and today own and operate fewer than 2% of the retail locations. Although a store may sell a particular brand of fuel associated with a refiner, the vast majority are independently owned and operated like mine. When people pull into an Exxon or a BP station the odds are good that they are in fact refueling at a small mom-and-pop operation.

We are in the customer service business. We have to make decisions each day regarding what products to sell and which services to offer to our customers, and we often take risks – you cannot be successful without doing so. But taking a chance by offering a new food product is very different from switching my fueling infrastructure to accommodate a new fuel. So when a new fuel product becomes available, our decision to offer it to our customers takes more time. We need to know that our customers want to buy it, that we can generate enough return to justify the investment, and that we can sell the fuel legally.

These are the fundamental issues that face the introduction of new renewable and alternative fuels today.

THE BLEND WALL

Since the enactment of the Energy Independence and Security Act (“EISA”) of 2007, we have heard much about the impending arrival of the so-called “blend wall” – the point at which the market cannot absorb any additional renewable fuels. Most of the fuel sold in the United States today is blended with 10% ethanol. If 10% ethanol were blended into every gallon of gasoline sold in the United States today, there would be an insufficient volume of renewable fuels to satisfy the RFS mandates. In this regard, we have already hit the blend wall, but because obligated parties are permitted to “carry-over” RINs from the previous year, we have not seen the economic fallout the blend wall will eventually cause. RINs can only be carried over for one year, however, so as the volume obligations continue to rise, eventually there will be insufficient RINs to enable obligated parties to satisfy the RFS’s mandates.

EPA Authorizing the Use of E15 Is Insufficient to Avoid the Blend Wall

As you are likely aware, EPA recently authorized the use of E15 in certain vehicles. However, this has so far done very little to expand the use of renewable fuels, due largely to a lack of consumer demand, as well as retailers’ liability and compatibility concerns and state and local restrictions on selling E15. Indeed, EPA’s decision to approve the sale of E15 serves to highlight the *limitations* that directly affect retailers and impede the implementation of the RFS.

OSHA regulations require retailers to use equipment that has been listed by a nationally recognized testing laboratory as compatible with the fuel the equipment is storing and dispensing.³ The primary testing laboratory is Underwriters Laboratories (“UL”). However, prior to 2010 UL had not listed a single dispenser as compatible with any ethanol concentration greater than 10%. Further, given UL’s policy, no device listing can be revised. Consequently, retailers who wish to sell any gasoline containing more than 10% ethanol (such as E15) must acquire a new dispenser that has been listed as compatible with the product. Dispensers can cost upwards of \$20,000 and few retailers are willing to dispose of functional and modern dispensers in order to sell a new fuel for which demand is uncertain.

³ 29 C.F.R. 1926.152(a)(1) (“Only approved containers and portable tanks shall be used for storage and handling of flammable and combustible liquids.” “Approved” is defined at 29 C.F.R. 1910.106(35) (“Approved unless otherwise indicated, approved, or listed by a nationally recognized testing laboratory.”))

Recently, the two primary device manufacturers (Gilbarco and Dresser-Wayne) have obtained UL listing for retrofit kits for some of their units to upgrade their compatibility to accommodate fuels containing up to 25% ethanol. These units are currently available for \$2,000-\$4,000 per kit and may be available for more than 50% of the dispensers in the market. This reduces the costs for many retailers, but the expense still equates to nearly 10% of a store's annual pre-tax income – a significant risk given uncertain consumer demand.

Converting dispensers to ensure their compatibility with higher levels of ethanol blended fuel is feasible because one can determine the compatibility of units at a particular location. More complicated is determining the compatibility of underground equipment. Retail fueling facilities can often change hands several times after a tank system is installed, leaving the current owners uncertain of the listing status of underground equipment. This equipment can include the underground storage tank itself, connecting pipes and fittings, submersible equipment and other ancillary units. It is essential that these units be compatible with these new fuels as well. Replacing them, however, is extraordinarily expensive. When a retailer proceeds to crack open concrete to address underground equipment issues, costs can quickly exceed \$100,000 per location.

Assuming a retailer can confirm or upgrade his equipment to ensure compatibility with these new fuels, there remain other challenges. The rule authorizing the sale of E15 restricts its use to vehicles manufactured after 2001 and prohibits its use in earlier models or small engines. EPA issued a misfueling mitigation rule requiring the placement of dispenser decals near the E15 selector and requiring additional measures, but there are no physical applications available to prevent the consumer from misfueling. Further, it is expected that a sizeable percentage of consumers may not know in what year their vehicles were manufactured.

This puts retailers in a precarious situation. If they offer E15 and a consumer uses that fuel in a non-approved engine, retailers can be held responsible for violating the Clean Air Act and subject to fines of up to \$37,500 per violation. Even if the retailer is fully compliant with EPA's misfueling mitigation requirements he may be subject to civil litigation under the Act's private right of action provision. Further, because many engine manufacturer owner's manuals and warranties do not authorize the use of E15, the retailer may be subject to liability for engine damage or for selling a fuel that voids the consumer's warranty. This exposure could threaten a facility's economic viability.

EPA Can Avoid the Blend Wall by Exercising its Waiver Authority

When Congress enacted the RFS, it included a safety valve for the Administrator to waive provisions of the RFS, after public notice and comment, when the program would lead to severe economic harm in a state, region, or the United States as a whole.⁴ This clearly represents a Congressional acknowledgment that there could be situations when the RFS simply cannot be met. The blend wall represents such a situation. Accordingly, EPA should exercise its waiver authority to lower volume obligations such that they do not exceed the volume of renewable fuel that the market can reasonably absorb. This will not only avoid the severe economic harm that will otherwise damage the economy and consumers, but also enable the RFS to continue down a

⁴ 42 U.S.C. 7545(o)(7)(A).

sustainable path and “bridge the gap” between the current fuels market and the future fuels market.

There is uncertainty, however, as to whether EPA believes it has authority to waive the RFS’s volume obligations to avoid the blend wall. As discussed below, it is quite clear that it does have this authority. Nonetheless, *I urge this Committee to get from EPA a clear, unequivocal answer regarding whether it has the authority under current law to waive volume obligations to avoid hitting the blend wall. If it does, it should exercise this authority promptly. If it does not, Congress should pass a law making clear that the waiver authority extends to this circumstance.*

EPA’s interpretation of its waiver authority is most fully explored in a 2008 decision denying a waiver request submitted by the State of Texas.⁵ This interpretation was reaffirmed in the Agency’s 2012 decision denying waiver requests that were submitted by several states.⁶

EPA has generally interpreted the statutory requirement that “implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States”⁷ as limiting its waiver authority to situations when “implementation of the RFS program itself [causes] the severe harm,”⁸ rather than situations where implementation of the program would significantly *contribute* to severe harm.

The economic harm that would result upon the fuels market reaching the blend wall would be directly caused by the RFS. Unlike previous waiver requests that were predicated upon intervening economic factors (*i.e.*, droughts), the blend wall is an artificial dilemma that emanates solely from the RFS.

EPA’s 2008 denial of Texas’s waiver request also sets forth three additional factors the Agency will consider:

First, it states that its waiver authority is limited to situations where “there is a generally high degree of confidence that there *will* be severe harm as a result of the implementation of the RFS.”⁹ The Agency should certainly have a high degree of confidence that if prices at the pump increase substantially – as they will when the market reaches the blend wall – there will be almost immediate consequences on the American economy. Merrill Lynch, for example estimates that every one cent increase in the retail price of gasoline amounts to \$1 billion in lost consumer spending.¹⁰ Thus, when the market reaches the blend wall, and demand for RINs continues to outpace supply, and fuel producers’ increased operating costs are passed down to consumers through higher prices for fuel, it will substantially detract from consumer spending in

⁵ 73 Federal Register 47168 (August 13, 2008).

⁶ 77 Federal Register 70752 (November 27, 2012).

⁷ *Supra* n.2

⁸ 73 Fed. Reg. 47171.

⁹ 73 Fed. Reg. 47171 – 47172 (emphasis added).

¹⁰ See Jeff Sommer, Numbers That Sway Markets and Voters, N.Y. Times, Mar. 3, 2012, at BU4, available at http://www.nytimes.com/2012/03/04/your-money/rising-gasoline-prices-could-soon-have-economic-effects.html?pagewanted=all&_r=0.

many areas of the economy and cause severe economic harm, particularly if it continues unabated for a prolonged period of time.

Second, the “harm” must be to the *economy as a whole* rather than one specific sector of the economy (*e.g.*, the livestock industry).¹¹ The economic harm that would result upon reaching the blend wall would apply to the entire U.S. economy. The United States is a petroleum-based economy. When the retail price of motor fuel increases, it not only constricts household budgets, but it causes the price of *everything* that is transported or produced using motor fuel to escalate. The harm is not targeted toward a narrow segment of the economy, nor is it offset by those few sectors that benefit financially from higher retail fuel prices. The nation’s trade deficit rises, and often a recession is close at hand.¹²

Third, the Agency asserts broad discretion in determining whether to grant a waiver. EPA cites the provision providing that EPA “may” waive the RFS volume requirements after finding that implementation of the RFS program would severely harm the economy. When Congress intends non-discretionary action, EPA argues, it typically employs a term like “shall.” “Thus, EPA believes Congress intentionally gave EPA discretion in determining whether to grant or deny a waiver request, even in instances where EPA finds that implementation of the program would severely harm the economy”¹³

It is imperative that Congress obtain from the Agency a clear answer as to whether it is prepared to exercise its waiver authority to avoid the blend wall.

Why EPA Should Exercise its Waiver Authority to Lower Future Volume Obligations and Avoid Hitting the Blend Wall

The RVOs set forth in the 2007 law bear absolutely no rational relationship to current market conditions. The market simply cannot absorb the quantity of ethanol required without administrative or statutory changes to existing law.

Consistent with the flexibility that Congress granted the Agency, EPA should use its waiver authority to avoid the economic harm that the blend wall will cause. The economic harm that will result from hitting the blend wall would be *severe* and *directly* caused by the RFS. This will have three salutary effects:

First, it will achieve displacement of foreign fuel with domestic fuel without inflicting excessive costs on consumers.

Second, it would relieve the burden of non-compliance from the refining community without making those entities produce less and/or export more fuel, either of which would increase the price at the pump domestically.

¹¹ 73 Fed. Reg. 47172.

¹² Sitty: Gal Sitty, Bound by the Chains of Oil, Refueling Am. Blog (May 20, 2013, 9:28 AM), <http://www.fuelfreedom.org/blog/bound-by-the-chains-of-oil/>.

¹³ *Id.*

Third, it would preserve the benefits of a diverse fuel supply.

As a policy matter, EPA's waiver authority represents the proper allocation of responsibility, whereby Congress is not charged with designating the appropriate annual volume obligations based on the market. Instead, this task falls to experts at EPA, who are required to consult with their counterparts at the Departments of Agriculture and Energy. In other words, a waiver to avoid the blend wall is how both the RFS, and the government in general, is supposed to work.

CONCLUSION

If Congress is serious about new and alternative fuels entering the marketplace, it must do all it can to avoid the blend wall. I urge you to press EPA officials to confirm that their authority to waive volume obligations under the RFS encompasses efforts to avoid the blend wall.

Again, thank you for the opportunity to testify today. I am of course happy to answer any questions you may have.