Testimony of Scott Segal, Bracewell, LLP on behalf of Valero Energy Corporation
EPA Public Hearing for the Proposed 2018 Renewable Fuel Standards
August 1, 2017

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"My name is Scott Segal, and I head the policy group at Bracewell LLP. I have worked on refining issues for over 25 years here in Washington and today I am representing Valero Energy Corporation. Valero is the world's largest independent petroleum refiner, and a leading marketer, and one of the nation's largest ethanol producers. With about 10,000 employees, Valero is in a unique position to reflect on the RVO and the implementation of the renewable fuel standard.

First, the RFS is based on laudable goals, but its implementation gets in the way of achieving those goals. The RFS of today was established in the 2007 energy bill, which called for greater energy independence and security, and increased production of renewable fuels. However, the current implementation of the RFS – with its tight market for renewable implementation numbers or RINs – actually encourages ethanol imports and fails to encourage ethanol exports. National security experts have pointed out that high RINs prices also undermine our merchant refining sector to the detriment of readiness and the economy. And with the point of obligation placed on refiners as opposed to a point closer to the rack, the program even fails to encourage further blending of renewable fuels. Blending infrastructure is largely controlled by parties long on RINs, meaning there is no financial incentive to blend more particularly when RINs prices are high. So, the current program as implemented fails to achieve its legislative objectives.

Second, EPA must retain the ability to calibrate the RVO in order to avoid severe economic harm. In the proposed RVO, the EPA relies on general waiver authority as well as the adjustment of the cellulosic numbers in order to arrive at its proposed obligation. While some may suggest that the recent DC Circuit case decided last Friday clips the wings of the EPA general waiver authority, we do not agree. Both at oral argument and in the opinion, the court reminds the Agency that there are two sources of authority under the Act – "inadequate domestic supply" and avoidance of severe economic or environmental harm in the country,

a region or even a state. While the court was dismissive of the former, it seemed to suggest that the latter was still available. Severe harm can be established on a number of fronts – from the effect of certain blends on on- and off-road vehicles to externalities imposed by going through the blend wall. Even high RINs prices themselves would suffice.

There is certainly no problem with the Agency's use of the so-called cellulosic waiver provision. As you know, the statutory renewable-fuel categories are nested, so the failure to meet cellulosic targets is properly reflected in the advanced and total numbers as well.

Last, greater transparency in the RINs market, even if welcome, does NOT address the structural problems that bedevil RFS implementation. We were heartened to see that EPA understands there is a problem with the RINs market and asked about transparency. Under current statutory authorization, it is not clear that EPA can create greater transparency, but even if they could, the failure to adjust the point of obligation would still ensure that the program's goals aren't going to be met. The current point of obligation creates misalignments between major integrated oil companies and most US domestic refiners; and between largescale retailers and mom-and-pop service stations and convenience stores. Even now, those with structural advantages conferred by regulation discuss their windfalls openly, making disclosure all the less relevant to fixing the problem.

Adjusting the point of obligation is relatively easily done and can be accomplished under existing Clean Air Act authority available to the Administrator. **Indeed, in the recent DC Circuit decision, the court told EPA to reach a conclusion addressing the point of obligation in the remand of the RVO rule, in considering petitions, or in both places. But act EPA must.**

Placing compliance and enforcement at the same point – as in the acid rain program – also **reduces the opportunities for fraud and excessive speculation**. The move does not add appreciably more parties than the current construct. Holding the line on runaway RINs prices avoids the potential for gasoline price spikes and shortages by treating smaller refiners in certain regions of the United States more fairly, allowing them to continue to serve their

communities. And rationalizing RINs frees up capital for major expansion projects, creating new jobs while preserving others.

And last, **a more rational implementation program for the RFS is actually better for the ethanol producer**. It removes opportunities for speculation and fraud. It removes disincentives for blending infrastructure. The ultimate proof is in the pudding: the data clearly demonstrates that when RINs prices are high, corn prices are not.

In conclusion, EPA's current approach to implementing the RFS fails to achieve the programs goals. The Agency retains sufficient flexibility to adjust the RVO, avoiding substantial difficulties with the blend wall. And simple adjustments to the program through moving the point of obligation better align the program, avoiding the worst angels of its nature.

Thanks for the opportunity to share our views."