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August 17, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
Ariel Rios Building Mail Code: 1101 A
1200 Pennsylvania NW
Washington, DC 20460

Re: Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020; Docket ID No. EPA-HQ-OAR-2018-0167

PBF Holding Company LLC, a subsidiary of PBF Energy Inc. ("PBF"), respectfully submits these comments in response to the Environmental Protection Agency's (EPA's) "Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020," (EPA-HQ-OAR-2018-0167; FRL-9980-37-OAR) (the "proposed RVO"). PBF is a member of and acknowledges the comments submitted by the American Fuel & Petrochemical Manufacturers (AFPM) (the "AFPM Comment Letter"). PBF's comments are intended to complement and emphasize those raised in the AFPM Comment Letter. In addition, this document addresses relevant issues from the unique perspective of PBF's role as a merchant refiner.

PBF is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States. The company currently owns and operates five domestic oil refineries in five states – Delaware, New Jersey, Ohio, Louisiana and California - and related assets with a combined processing capacity of approximately 900,000 barrels per day. PBF employs more than 3,000 people nationally. As one of the largest U.S. merchant refiners - with the most East Coast refining capacity - the Renewable Fuel Standard (RFS) has a significant, negative impact on PBF.

I. The 2019 proposed conventional biofuel volumes should be lowered to avoid severe economic harm. Recent experience indicates setting unreasonable volume targets does result in such harm, but does NOT appreciably do anything to overcome the challenges of the blendwall and advance the RFS program's objectives.

This overly aggressive proposal threatens to increase RIN compliance costs, raise consumer prices, and put highly skilled domestic refining industry jobs at risk. To avoid this, EPA should use its waiver authority to reduce the proposed 15 billion gallon conventional biofuel requirement to a level representing 9.7 percent of projected gasoline demand, based on annual U.S. Energy Information Administration (EIA) demand projections, rather than EPA estimates. This reduction would accurately reflect the ethanol volume all vehicles and infrastructure can safely handle, 10 percent ethanol concentration which is referred to as the "E10 blendwall," while accounting for consumer E0 demand. These reductions are necessary to avoid severe economic harm to merchant and small refiners.

A. EPA has already acknowledged that skyrocketing RIN costs resulted in severe economic harm in accepting the Philadelphia Energy Solutions (PES) bankruptcy settlement agreement.

The government's acceptance of the PES bankruptcy settlement agreement is recognition and proof that a poorly structured RIN market, coupled with an overly aggressive Renewable Volume Obligation (RVO), resulted in skyrocketing compliance costs that caused severe economic harm. PBF's comments on the PES settlement agreement detail the acknowledged harm and are attached.[1] Given this experience, it is arbitrary and capricious for EPA to set a conventional requirement which EPA knows could result in a return to the market conditions that caused the PES bankruptcy in the first place, particularly since the company just recently emerged from bankruptcy. The excessive volumetric targets are even more unreasonable given the fact that several stakeholders, including PBF, predicted the harm to merchant refiners, particularly PES, in comments to the proposed 2018 RVO. When a company is spending twice its annual payroll on RFS compliance credits, without such costs advancing the objectives of the regulation, it is obvious that the system is broken. EPA has a responsibility to recognize these realities and reduce the conventional biofuel requirement to ensure an ample supply of RINs are available to prevent a return to the market conditions that have already proven to cause harm.

B. Market experience over the last several years indicates there is no correlation between RIN price and ethanol blending. Given this fact, it is arbitrary and capricious to set a standard EPA knows could result in exorbitant RIN costs without appreciably advancing the objectives of the RFS.

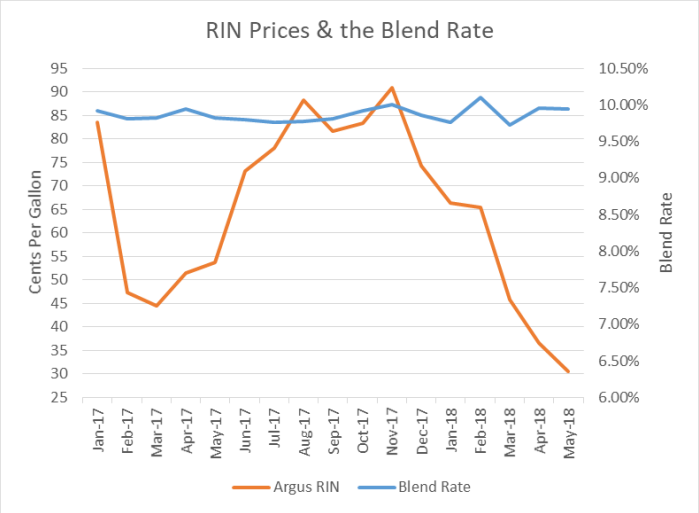
i. <u>Available data continues to show robust biofuel consumption as RIN prices have fallen and numerous retroactive Small Refiner Exemptions (SREs) have been issued.</u>

The AFPM Comment Letter accurately states that in refusing to assess likely RIN generation from E15 and E85, EPA neglects its responsibility to project reasonably attainable volumes of renewable fuel. Furthermore, an honest assessment of market experience over the last several years indicates there is no correlation between RIN price and biofuel blending. As a result, in setting an unreasonable volume standard, EPA is advancing a regulation that history shows will result in almost no benefit, but will likely result in extremely high costs.

PBF's comments to the 2018 proposed RVO highlight the lack of correlation between RIN prices and the blend rate over the history of the program.[2] Nothing has changed in the market since these comments were filed.

[1] Attachment A

[2] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091)



U.S. Energy Information Administration (EIA), Petroleum Supply Monthly; Argus RIN Price

As the chart above highlights, RINs have swung wildly over the last year and a half, but the blend rate has hovered around the blendwall limit. This is consistent with how the RIN market and blending rate have operated over the history of the program. It is important to emphasize that both the blend rate and overall ethanol use have neither appreciably increased when RINs were high, nor has ethanol consumption d*ecreased* when RIN prices drop (even when such drops are significant). In fact, the graph seems to indicate an *inverse* correlation between RINs and blending; meaning blending appears to *decrease* as RIN prices increase.

Market experience this year continues to prove EPA can set a volumetric standard below the blendwall in a manner that avoids severe economic harm, without adversely impacting biofuel blending. In the wake of falling RIN prices and retroactive small refiner exemptions (SREs), the Renewable Fuels Association (RFA) claimed Administrative actions on SREs "effectively lowered the volumetric obligations by at least 1.6 billion gallons"[3] and have continuously lamented alleged "demand destruction" for biofuel use. Reality tells a different story.

During the company's second quarter 2018 earnings call, The Andersons, Inc., President and Chief Executive Officer Pat Bowe stated SREs and weak RIN prices, "have not yet had a significant impact on domestic blending due to high gasoline prices and low corn ethanol prices."[4] Archer Daniels Midland (ADM) also projected increased ethanol demand growth for the rest of the year.[5] The EIA recently raised its estimates for 2018 domestic ethanol consumption to 946,000 barrels per day (b/d), up from its previous projection of 942,000 (b/d). Additionally, EIA recently touted increasing domestic ethanol production.[6] Furthermore, the U.S. Department of Agriculture (UDSA) Grain Crushings and Co-Products

[3] https://ethanolrfa.org/2018/04/epa-data-shows-small-refiner-waivers-have-lowered-2016-2017-rfs-blending-obligations-by-1-6-billion-gallons/

[4] The Andersons, Inc., Q2 2018 Earnings Transcript: https://seekingalpha.com/article/4198345-andersons-inc-ande-ceo-pat-bowe-q2-2018-results-earnings-call-transcript?part=single

[5] Archer-Daniels-Midland Q2 2018 Earnings Transcript: https://seekingalpha.com/article/4192680-archer-daniels-midland-adm-q2-2018-results-earnings-call-transcript?part=single

[6] U.S. Energy Information Administration. "U.S. fuel ethanol production capacity continues to increase." *Today In Energy.* August 1, 2018.

Production report notes that corn consumption for fuel in June of 2018 was 6 percent higher than June 2017.[7]

Testimony from a recent Congressional hearing on RINs provides more independent verification that domestic biofuel consumption and blending remains robust in a relatively low RIN price and SRE environment. Witnesses at this hearing stated the following:

- "Currently, the low RIN prices are the result of ***record domestic ethanol production and consumption***, and this abnormally high RIN bank."[8] (emphasis added)
- "The small refiner waivers are granted retrospectively, so the compliance year has already passed, but every refiner assumes they're going to be an obligated party during that year. They will continue to blend renewable fuels and buy RINs as needed because they don't know that they're going to get the exemption at the twelfth hour when they go to report to the EPA by March 31st of the following year…. Does it destruct the demand of the current year? If you look at the RIN data through June, we're at the same production level that we were in 2017 and we're halfway towards meeting the 2018 compliance RVOs."[9]

EIA Petroleum Supply Monthly data tells a similar story. Based on EIA's data through May (the most recent month with EIA monthly data), ethanol consumption thus far in 2018 is about 5.74 billion gallons, or about 30 million gallons higher than the same period last year.[10]

Such data indicates EPA does not have to set a market forcing standard that will result in high RIN prices to advance domestic ethanol blending, because market experience proves ethanol blending up to the blendwall is economic regardless of the RIN price (and even regardless of SREs). PBF detailed the positive economics of ethanol blending in comments submitted regarding EPA's Notice of Data Availability Concerning Potential Reductions in the Volume Requirements for the 2018 Renewable Fuel and 2019 Biomass-Based Diesel under the Renewable Fuels Standard Program ("the 2017 NODA").[11]

Robust ethanol use not only applies to E10 in the current environment. Significantly lower RIN prices in 2018 compared to last year do not seem to be holding back E15 sales either. EPA estimates there are 1,065 stations selling E15.[12] Minnesota is home to 253 of these stations,[13] representing approximately 24 percent of national outlets offering the fuel, and is one of the only states that regularly reports E15 sales. In June, the Minnesota Bio-Fuels Association reported 23 million gallons of E15 sold to date; a volume already exceeding the state's entire E15 consumption for 2017.[14]

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[7] U.S. Department of Agriculture. *Grain Crushings and Co-Products Production.* August 1, 2018. Available at: http://usda.mannlib.cornell.edu/usda/current/GrnCrush/GrnCrush-08-01-2018.pdf

[8] United States. Cong. House. Committee on Energy and Commerce. Hearing on Background on Renewable Identification Numbers under the Renewable Fuel Standard. July 25, 2018. 115th Cong. 2nd sess. Washington: GPO, 2018 (statement of Corey Lavinsky, Director of Global Biofuels, S&P Global Platts).

[9] Ibid. (statement of Sandra Dunphy, Director, Energy Compliance Services, Weaver and Tidwell, L.L.P.).

[10] U.S. Energy Information Administration. *Petroleum Supply Monthly.* July 31, 2018. Available at: https://www.eia.gov/petroleum/supply/monthly/

[11] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091; FRL-9968-70-OAR)

[12] "Market impacts of biofuels in 2019," June 26, 2018, EPA-HQ-OAR-2018-0167-0025.

[13] http://mnfuels.com/e15locations2.cfm?show=ALL

[14] Minnesota Bio-Fuels Association. "E15 Sales in MN Hit Record 23 Million Gallons." Press Release. June 6, 2018. Available at: https://mnbiofuels.org/media-mba/blog/item/2284-e15-sales-in-mn-hit-record-23-million-gallons

ii. Market experience and comments EPA has received in relation to other RFS related proposals indicate the RIN is NOT a factor that puts pressure on the market to exceed the blendwall.

History proves the RIN does NOT play significant role in impacting the "relative pricing of E15 and E85 versus E10"[15] or result in any noticeable ability to affect such pricing. The primary reasons for the ineffectiveness of the RIN to advance the program objectives are the misaligned point of obligation, which incentivizes blenders capturing RIN profits rather than investing in infrastructure to advance fuel with higher level ethanol blends, coupled with significant vehicle and infrastructure barriers noted in the AFPM Comment Letter and EPA memos in the docket. Without addressing these core issues, EPA has a responsibility to set a standard that will avoid the economic harm associated with skyrocketing RIN costs, particularly since EPA has received comments indicating that a high cost RIN market not only fails to advance the goals of the RFS program, but actually *disincentivizes* greater domestic biofuel blending.

EPA has long recognized the inability of E85 to appreciably close the gap between the blendwall and the 15 billion de facto conventional mandate implicit in statute. The focus more recently has been on whether E15 can do any better. Biofuel interests have long indicated the belief that simply allowing the one pound Reid vapor pressure (RVP) waiver to apply to E15 would help advance the objectives of the RFS and lower RIN prices, under the claim that "more E15 means more RINs" and, thus, lower RIN prices. However, one of the primary reasons that the current RIN program fails to advance the objectives of the program is that in a flat motor fuel demand environment, it is nearly impossible for E15 to make up the gap between the blendwall and an RVO requiring 15 billion gallons of conventional biofuel.

The previously mentioned E15 sales data provides insight into the inability of E15 to appreciably close the blendwall gap anytime in the next several years. EIA projects relatively flat, if not declining, gasoline demand for the foreseeable future.[16] With flat fuel demand, each gallon of E15 replaces an E10 gallon. Thus, each gallon of E15 only generates another 0.05 incremental RIN per gallon sold for compliance. As a result, if one were to assume Minnesota were able to double E15 sales to date for an annual total of 46 million gallons, it would only generate an additional 2.3 million RINs over the status quo. EIA's gasoline consumption estimates for next year indicates an E10 blendwall of 14.3-14.4 billion gallons[17]; which is 600-700 million gallons short of the proposed 15 billion gallon de facto conventional requirement in the proposed RVO. It would take approximately 14 billion gallons of E15 sales to generate enough RINs to overcome the blendwall, which represents 10 percent of all fuel demand. In May, ethanol producer Green Plains estimated only 175 million gallons of E15 would be sold in 2018[18], which based on the previous math, would only result in an incremental 8.75 million RINs. E15 sales would need to double each year for several years before the fuel could appreciably make any progress towards overcoming the blendwall.

The sheer magnitude of E15 that would need to be sold to make up the blendwall gap, coupled with the enormous infrastructure hurdles detailed in the AFPM Comment Letter and empirical data showing no correlation between RIN prices and ethanol blending – even in relation to E15 – proves that

[15] "Market impacts of biofuels in 2019," June 26, 2018, EPA-HQ-OAR-2018-0167-0025.
[16] U.S. Energy Information Administration. *Annual Energy Outlook.* February 6, 2018; *Short Term Energy Outlook.* August 7, 2018.
[17] U.S. Energy Information Administration. *Short Term Energy Outlook.* August 7, 2018.
[18] Becker, Todd. Green Plains Presentation at BMO Farm to Market Conference. May 16, 2018. Available at: http://investor.gpreinc.com/static-files/3a76fb4e-5e66-45b6-82a6-526f4028cdb3

changes in RIN price will result in neither the "small increases in ethanol volume above 10%" nor, "pressure on the market to exceed the E10 blendwall,"[19] as EPA states in the 2014-2016 final RVO (which is referenced in EPA's memo on "Market Impacts of Biofuels in 2019.").

In comments to EPA's "Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation," PBF energy detailed how the misaligned point of obligation prevents merchant refiners from recovering RIN costs to the financial benefit of integrated refiners and non-obligated blenders.[20] Without rehashing the mountain of evidence in the record affirming this fact, and regardless of EPA's point of obligation petitions denial, it is worth emphasizing that neutral parties have long noted how the misaligned obligation creates a disincentive to advance greater biofuel blends. As Magellan Midstream Partners – which controls one of the largest midstream refined products networks and whose customers include all entities in the fuel supply chain, from refiners to ethanol producers and marketers – stated in comments on the 2017 RVO:

> "The current definition of obligated party and the RIN compliance scheme can act as a deterrent for renewable fuel demand and infrastructure investment which works against the policy objectives of the Renewable Fuels Standard…. The current definition of an obligated party does not provide the right party with the motivation to increase renewable fuel demand at the retail location."[21]

The facts are clear: there is no correlation between RINs and ethanol blending, even in relation to mid-level ethanol blends like E15. Therefore, an overly aggressive conventional biofuel requirement does nothing except raise compliance costs in a manner that fails to achieve the RFS' objectives and has already resulted in severe economic harm. Given this reality, EPA has a responsibility to use its waiver authority to lower the conventional biofuel requirement to a level below the blendwall. Doing so will prevent further losses of American manufacturing jobs without adversely impacting biofuel consumption or production.

II. The proposed cellulosic, biomass-based diesel (BBD) and advanced volumetric requirements for 2019 and 2020 are overly aggressive. They will result in higher RIN costs and a de facto foreign biofuel mandate. As a result, EPA should lower the requirements to better reflect accurate domestic production.

A. The proposed cellulosic volumes are unrealistic.

PBF agrees with the AFPM Comment Letter's assertion that the proposed increase in the "cellulosic" biofuel requirement is aspirational and should be lowered to reflect actual production. EPA has continuously overestimated cellulosic production and, despite using a modified methodology from years past in the 2019 proposal, still relies on what have historically proven to be extremely uncertain future growth projections. In light of such history, EPA should set the cellulosic requirement by annualizing the most recent three months of actual production. In addition to proposing questionable volume increases for "cellulosic" biofuel – which still does not actually exist in commercial quantities, resulting in biogas being the predominant source of "cellulosic" RINs – EPA should also err on the side of caution given the fact that the cellulosic RIN market is not very competitive. As PBF noted in previous

[19] 80 Fed. Reg. at 77,457

[20] See comments from PBF Holding Company LLC (PBF)(Docket Item No. EPA-HQ-OAR-2016-0544)

[21] See comments from Magellan Midstream Partners, L.P. (Docket ID No. EPA-HQ-OAR-2016-0004)

comments, there are never more than two or three entities offering D3 RINs for sale in the market at any given time. A history of missed projections, along with a non-competitive D3 RIN market, justifies EPA lowering proposed cellulosic volumes for 2019.

B. *Since the advanced and BBD requirements are essentially one and the same, and since this portion of the mandate is also the primary cost driver in relation to the conventional requirement, EPA must reduce the proposed volumes for advanced and BBD. Such an action is necessary to meet EPA's statutory requirement to assess the cost of the biodiesel mandate, as well as its impact on energy security, and to avoid severe economic harm.*

The proposed RVO recognizes that due to significantly reduced imports of sugarcane ethanol, imprecise estimates of potential future sugarcane ethanol imports and the lack of any significant volumes of other advanced biofuel, which EPA acknowledges "exhibited no consistent trend during 2013-2017," the vast majority of advanced biofuel mandate will be met via BBD.[22] Given these facts and the weighted nature of the BBD RIN (e.g. each gallon of BBD results in 1.5 RINs for the advanced and overall biofuel requirement), EPA's proposed RVO equates to a de facto 3.25 billion gallon BBD mandate associated with the advanced and BBD specific categories alone.

The requirement is much bigger when taking into account the fact that refiners need to over-comply with BBD to make up for the blendwall. As previously discussed, the gap between the 15 billion gallon proposed conventional biofuel requirement and the blendwall is 600-700 million RINs, which cannot feasibly be bridged using conventional biofuel RINs associated with E15 and E85. As a result, the overly aggressive conventional requirement creates a de facto BBD mandate of approximately 400-500 million gallons *in addition to the advanced and BBD biofuel proposed standards*. In other words, the combined impact of EPA's proposal is a 3.6-3.7 billion gallon biodiesel mandate. This volume necessitates foreign biodiesel, contrary to the energy security goals of the RFS statute.

Despite three years of specific and de facto (due to lack of other advanced biofuel) biodiesel RVOs in excess of 2 billion gallons, domestic biodiesel producers have failed to produce greater than 1.6 billion gallons annually, despite ample production capacity to do so.[23] Failure of domestic producers to make adequate volumes resulted in the use of as much as one billion gallons of foreign biodiesel last year. As PBF stated in comments to the 2017 NODA, relying on costly, tariff-laden, questionable foreign biodiesel supplies to meet the RFS is in direct contrast to Congress' original intent to bolster domestic biofuel supplies when passing the Energy Independence and Security Act of 2007 (EISA).[24]

The trend of reliance on foreign BBD to meet the RFS continues this year, despite the December 2017 tariffs the U.S. International Trade commission levied on Argentinian and Indonesian BBD imports (which represented the largest source of foreign BBD supplied to the U.S. market prior to this action). EIA notes that U.S. domestic biodiesel production is up every month this year compared to the two years

[22] 83 Fed. Reg. at 32,041-32,043

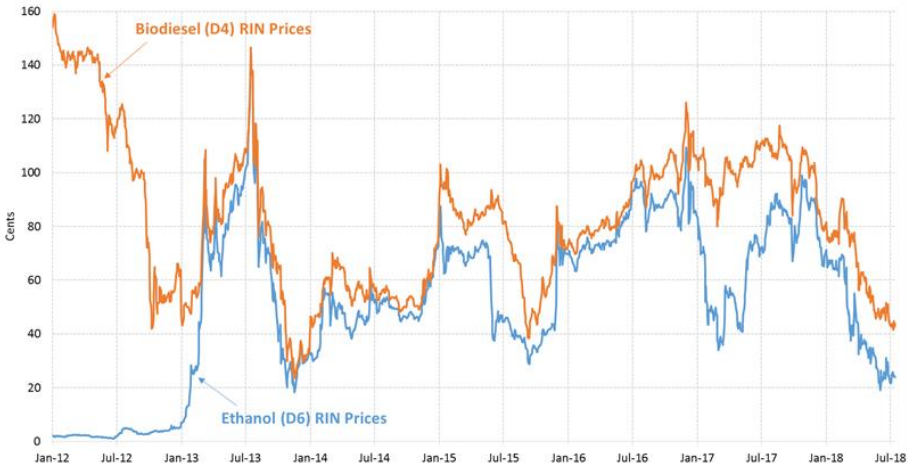
[23] U.S. Energy Information Administration. *Short Term Energy Outlook.* August 7, 2018; *Monthly Biodiesel Production Report.* July 31, 2018.

[24] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091; FRL-9968-70-OAR)

prior.[25] However, EIA still projects annual domestic biodiesel production will fall just short of 2 billion gallons.[26]

EPA EMTS data tells a similar story. It indicates through the first half of this year, domestic biomass-based diesel RIN generation totals approximately 1.5 billion RINs, or 971 million gallons; putting domestic biodiesel producers on course to make only 1.9 billion gallons in 2018.[27] This volume falls 200 million gallons short of the biodiesel requirement, let alone the de facto biodiesel mandate attributable to an unachievable conventional and excessive advanced proposal. Furthermore, foreign biofuel represents nearly 20 percent of all 2018 RIN generation to date. PBF agrees with the AFPM Comment Letter's conclusion that a de facto foreign biodiesel requirement runs contrary to the energy security goals of the RFS. As such, EPA should set the advanced requirement for next year and the BBD standard for 2020 at a level that better reflects likely actual domestic production.

The effects of the de facto foreign biodiesel proposed mandate are exacerbated when both the cost of biodiesel on consumers and to the rest of the RFS requirements are taken into account. Since the D4 RIN becomes the marginal gallon required to meet the D6 portion of the mandate (due to the previously mentioned constraints in generating 15 billion D6 RINs), the price of D6 RINs becomes tied to the higher priced D4 RIN, greatly increasing the costs of RFS compliance.



Source: Oil Price Information Service (OPIS)

In other words, the D6 price essentially becomes the D4 price due to the necessity to use biodiesel to meet overly aggressive BBD, advanced AND conventional requirements. We have seen a disconnect between the D6 and D4 price in recent months due to market perceptions surrounding SREs and talks within the Administration about controlling RIN costs. However, small shifts in perception would easily result in BBD raising the D6 price to the D4 level once again. The excessive advanced requirement could lead to such changing expectations. This risk of reverting back to a high cost RIN market is heightened when one considers that the brunt of the conventional requirement should essentially cost nothing, since ethanol is economic to blend up to E10 in the absence of the mandate. As previously discussed, market

[25] EIA. *Monthly Biodiesel Production Report.* July 31, 2018. Available at: https://www.eia.gov/biofuels/biodiesel/production/

[26] EIA. *STEO*. August 7, 2018.

[27] EPA EMTS Data for 2018. Available at: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard

experience this year reaffirms this fact and PBF's NODA comments from last year detail biofuel industry recognition of ethanol's economic viability in the absence of a mandate.[28] Recognizing this circumstance, the individual previously responsible for analyzing petroleum markets and biofuel technology for EIA highlighted the truly excessive cost of overly aggressive RFS targets:

> "Because it can be argued that ethanol would be blended at 10% even without the RFS, the cost of the program can be considered to be associated solely with pushing the blend level from 10.0% to 10.1%. Put another way, the $10 billion expenditure during 2017 served to increase ethanol blending by 0.15 billion gallons; a cost of over $65 per gallon. Even if the ethanol blend percentage would have been only 9% without the RFS, the incremental ethanol gallons pushed into the gasoline pool would have been only about 1.6 billion gallons, which represents a cost of about $6 per incremental gallon of ethanol demand."[29]

The market has already experienced severe economic harm associated with excessive biofuel requirements in relation to the PES bankruptcy. If the high RIN price environment were to materialize due to EPA's proposed RVO, PES and possibly other refiners would once again be put at risk, threatening both jobs, energy security and higher consumer costs associated with domestic fuel supplies that may not be available if a refinery closes down. Additionally, the higher cost of biodiesel itself is already hitting consumers. As noted in a National Public Radio story from earlier this year:

> "'This is an easy one, economically. Biodiesel is very expensive, relative to petroleum diesel,' says Scott Irwin, an economist at the University of Illinois, who follows biofuel markets closely. He calculates that the extra cost for biodiesel comes to about $1.80 per gallon right now, meaning that the biofuel law is costing Americans about $5.4 billion a year."[30]

EPA has a responsibility to recognize the potential of an overly aspirational RVO to raise compliance and consumer costs, risking severe economic harm and adversely impacting American energy security. In order to fulfill this responsibility, the Agency needs to lower the advanced biofuel requirement for 2019 and the BBD requirement for 2020 to a level that better reflects likely actual domestic production.

III. EPA correctly recognizes the importance of a robust RIN bank and PBF supports the Agency's proposal NOT to intentionally draw it down. However, EPA must also reduce the volumetric requirement to avoid a RIN bank drawdown. Additionally, PBF supports the Agency's decision to reject calls from the biofuel industry to illegally "reallocate" volumes associated with SREs.

PBF agrees with both the AFPM Comment Letter and EPA's own comments on the necessity of a robust RIN bank to enhance liquidity and act as an insurance policy against potential market disruptions.[31] However, PBF also agrees with the AFPM Comment Letter on the point that high volume proposals contradict EPA's stated intentions regarding the RIN bank:

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[28] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091; FRL-9968-70-OAR)

[29] See comments from A. Michael Schaal, Energy Ventures Analysis (PES Holdings, LLC., et al., D.J. Ref. No. 90-5-2-1-10993/1)

[30] Charles, Dan. "Turning Soybeans Into Diesel Fuel Is Costing Us Billions." National Public Radio. January 16, 2018. Available at: https://www.npr.org/sections/thesalt/2018/01/16/577649838/turning-soybeans-into-diesel-fuel-is-costing-us-billions

[31] 83 Fed. Reg. at 32,029

"EPA admits that 2.8 billion gallons in 2019 is risky bet, but the backstop are carryover RINs ("Alternatively, obligated parties could rely on the significant volume of carryover advanced RINs projected to be available in 2019.")."[32]

Additionally, it is important to emphasize that the RIN bank is not a communal pot of RINs available to all market participants. The public and market participants do not know exactly which entities hold what quantities of RINs. General market knowledge infers RIN-long obligated parties control the RIN bank and there is no requirement that such entities ever need to offer these RINs for sale in any market situation. This circumstance further warrants the RIN bank remain as robust as possible to ensure it is liquid enough to act as needed in the event of a market disruption.

Finally, we applaud EPA for rejecting calls from the biofuel industry to "reallocate" volumes associated with SREs. First, as previously discussed, there is nothing to "reallocate," because retroactive waivers have had zero impact on biofuel blending. Additionally, it would be arbitrary and capricious to assume future volume exemptions that may or may not occur in the context of the RVO formula. Biofuel industry calls for "reallocation" are simply attempts to try and force EPA into promulgating an RVO that exceeds the de facto statutory cap of 15 billion conventional biofuel gallons and EPA was wise to recognize and reject such proposals.

More importantly, EPA lacks authority to "reallocate" *any* waived volumes in *any* circumstance. This fact holds true whether EPA grants SREs retroactively or before setting a final RVO. The entire statutory construct of the RFS is crafted in a manner that *only* allows for downward adjustments. The language is clear in expressing Congress' recognition that the targets in the statute may be overly aggressive and, as a result, instituted a series of waiver authorities expressly intended to allow EPA to *reduce* the RFS requirement.

The various waiver authorities are all geared towards downward adjustment; including waivers for "inadequate domestic supply,"[33] severe economic harm,[34] reduction of the cellulosic requirement,[35] reduction of the biodiesel requirement,[36] and even a reduction in the requirement associated with SREs.[37] On this specific front, the statute exempts small refiners until 2011 and then allows for their exemption for an indeterminate amount of time thereafter. It also directly addresses renewable fuel that will be blended with small refiner production in spite of the exemption. Specifically, the statute says the Administrator shall make adjustments, "to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt."[38] In other words, the statute recognizes that small refiners may still blend renewable fuel regardless of the exemption in a manner that equates to over-compliance with the federal statute.

[32] See comments from the American Fuel & Petrochemical Manufacturer (AFPM) (EPA-HQ-OAR-2018-0167)
[33] 42 U.S.C. § 7545(o)(7)(A)(ii)
[34] *Id.* § 7545(o)(7)(A)(i)
[35] *Id.* § 7545(o)(7)(D)(i)
[36] *Id.* § 7545(o)(7)(E)(ii)
[37] *Id.* § 7545(o)(3)(C)(ii)
[38] *Ibid.*

Given the statutory text and overall construct, EPA must *only act to reduce the overall requirement*: "to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt."[39] The law does not say EPA shall make up a deficit for renewable fuel NOT used due to the small refiner exemptions, nor does it state small refiner exemptions should be addressed through an increase in the obligation for non-exempt refiners. Congress said that any use of renewable fuel by exempted refineries should be accounted for in reducing the percentage obligations for non-exempt refineries. With this provision, Congress had a chance to address exempted volumes in another way but did not. As a result, EPA has no authority other than to adjust the RFS requirement downward to take into account what is essentially over-compliance when small refiner produced fuel is blended with renewable fuel, which the data suggests has been occurring over the last several years.

IV. EPA should include RIN trading reforms in the RVO. EPA took comment on such reforms last year and there is clear evidence that the RIN market is not functioning. These facts warrant EPA advancing RIN trading reforms sooner rather than later.

PBF's 2018 RFS RVO comments highlighted the need for RIN market reform. As stated last year, the RIN market is broken. There are many examples, starting with the fact that only up to three companies control all of the cellulosic RINs for sale in a given year - usually at take it or leave it prices. Extensive volatility across most RIN categories – often resulting in hundreds of percent swings over very short intervals - that occurs in periods of time when there is no significant impending regulatory action or market event provides even more proof of uneconomic, manipulative trading. Even biofuel interests have noted the need to address potential market manipulation. PBF believes EPA should advance reforms that eliminate the ability of entities to use RIN trading exclusively as a profit center, while ensuring both liquidity and that the primary obligated parties, refiners, have more RIN market flexibility than non-obligated parties. PBF recommends the following reforms in pursuit of this principle:

A. Only allow obligated parties to purchase RINs.

The lack of any RIN market controls or regulation, coupled with the lack of a central clearinghouse that provides transparency, allows multiple actors to participate in the RIN market in a manipulative manner without repercussion. RIN trading occurs mostly on web based messaging platforms and practices regulated or banned in other markets are not prohibited in the RINs market. One such practice is "spoofing," where traders place bids or orders with the intention of canceling before orders are filled. This is meant to generate high frequency trades that can manipulate the price. Congress made this illegal with other commodities in Dodd-Frank, but it is allowed in the RIN market. There have also been reports of "wash sales" in the RIN market, like money pass, where a transaction gives the appearance of a certain volume sold, but where the transaction does not result in actual change of ownership.

Additionally, public comments submitted to EPA indicate that traders often offer to sell RINs at a certain price, only to refuse to sell when the buyer takes the offer, which also serves to manipulate the price. These practices are exacerbated due to the fact that non-obligated parties can participate in such activities knowing that 1) refiners HAVE to buy RINs and prefer to do so on a ratable basis and 2) there is no regulation of or prohibition against manipulative activity. Given the lack of other regulation, efficient market structure or a central clearing house, limiting purchase of RINs to obligated parties will eliminate the ability of non-regulated entities to engage in manipulative behavior. It will also ensure RINs are made exclusively available to obligated parties that must purchase them for RFS compliance.

[39] *Ibid.*

B. Institute a 120 percent position limit for obligated parties, enforced on a quarterly basis.

The structure of both the RFS and refining industry at large results in segments of the industry that have marketing and distribution businesses with throughput greater than their refining capacity acquiring significantly more RINs than they need for compliance through blending. Other segments of the refining industry that both lack the capital or face other market barriers to entry into large scale marketing and distribution businesses (which would allow for greater RIN acquisition from blending) end up "RIN short." They rely on purchasing RINs for compliance, often from their "RIN long" competitors. This structure, coupled with the previously mentioned lack of regulation or a central clearinghouse, allows "RIN-long" obligated parties to use large excesses of RINs as an unnatural competitive advantage against "RIN-short" competitors. It also creates opportunity for market manipulation.

Public comments submitted to EPA indicated obligated parties with more RINs than they need for compliance often set artificial floors by posting blanket offers to buy RINs below a certain target price. The intent is to signal all other known potential RIN sellers not to sell below that price. Additionally, the market for certain RIN categories is often illiquid and in some cases dominated by RIN long obligated parties. As discussed earlier, EPA has received public comments in the past indicating that there have historically been only two to three parties selling D3 RINs at any time.

The EPA currently allows obligated parties to comply with the RFS in a current year with RINs from a previous year at an amount no greater than 20 percent of their obligation. In light of this existing structure, it would be fairly simple for EPA to establish a 120 percent position limit for obligated parties. Such a requirement would allow obligated parties to bank RINs in accordance with the existing structure of the regulation, while also preventing hoarding or creating the opportunity to use RIN excesses in an unnatural, anti-competitive manner. Such a limit is specifically needed to ensure liquidity in a structure where only obligated parties are allowed to purchase RINs. Enforcing this limit quarterly will provide obligated parties enough flexibility to address any unanticipated operational issue that may arise or other market disruptions, without allowing for too long an enforcement horizon, which could serve to negate the intent of the limit in the first place.

C. Enhance transparency of the RIN Bank

The RIN bank lacks transparency. As mentioned above, the public and market participants do not know exactly which entities hold what quantities of RINs. Making the RIN bank perfectly transparent to all obligated parties - and requiring those that are hoarding RINS to make those RINS readily available to all obligated parties within a specific time frame – would reduce price volatility and mitigate the potential for RIN price spikes.

D. *Require non-obligated RIN holders to sell RINs within 30 days. Require RIN-long entities to sell positions greater than their position limit within 30 days of the end of a quarter.*

A significant portion of RIN separation, approximately 24 percent in 2017 according to EPA data,[40] is done by non-obligated parties; primarily large, independent marketers that control blending and

[40] EPA EMTS 2017 RIN Separation Data: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2017-renewable-fuel-standard-data

distribution to retail in various markets throughout the country. These entities have no RFS obligation, but by nature of their business, control a sizeable portion of the RIN market. Limiting the RIN holding period for non-obligated parties to 30 days will ensure marketers have ample flexibility to attract a market rate, while also limiting their ability to hoard RINs in a manner that unnaturally drives up the price for merchant and small refiners dependent on purchasing RINs, often ratably, for RFS compliance. As previously mentioned, requiring obligated parties that are holding RINs above their position limit to make those RINs readily available to all obligated parties within 30 days after the end of a quarter would advance this objective.

E. Establish a regulation dictating that RINs may only be transferred among parties twice before them must be used for compliance.

Several other environmental credit programs, such as those governing benzene and sulfur, contain such a restriction. Applying it to the RIN market can help limit the ability of entities to participate in volume driven price manipulation, such as the previously mentioned "wash trades."

F. EPA and the CFTC should explore requiring whether RINs should be traded on an exchange.

As previously mentioned, there is little transparency in the RIN market, because there is no central clearing house. In order to advance a more functioning and efficient market, EPA and the CFTC should explore the potential benefits of requiring RINs to be traded on an exchange, along with how such a system could be put in place if it is determined it would be beneficial.

V. EPA should also advance other changes to ensure RIN market liquidity and limit compliance costs.

Echoing its 2018 RVO comments, PBF believes EPA should allow RINs currently retired when biofuel is exported to be made available for RFS compliance. As detailed in last year's comments,[41] EPA has the authority do advance this policy. Allowing RINs from exported fuel to be used for compliance would add liquidity, while increasing the production of renewable fuels and enhancing energy security by furthering both the RFS's and Administration's stated policy objectives of American energy security and dominance respectively. Ensuring that both denatured and undenatured ethanol gallons can generate RINs for RFS compliance is also important to advance this objective, since much of the ethanol the U.S. exports travels to markets that require undenatured gallons due to differing fuel specifications and other considerations.

Such a policy change would greatly increase RINs available for compliance, partially alleviating the adverse impact of excessive RIN costs on the refining sector while simultaneously incentivizing biofuel production pursuant to the RFS. It would also remove a self-imposed non-tariff barrier to ethanol trade. We urge EPA to make such a change in the final 2019 RVO.

PBF also supports measures to directly control the cost of a D6 RIN through the use of a price fixed government RIN, much as is done with the cellulosic waiver credit (CWC). As previously discussed, ethanol blending is economic regardless of RIN price. Both history and 2018 market experience shows there is no correlation between ethanol blending and RIN price. Give these realities and to avoid the potential for severe economic harm, the government should generate and sell RINs to obligated parties at a low, fixed

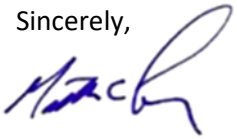
[41] See comments from PBF Holding Company LLC (PBF)(Docket No. EPA-HQ-OAR-2017-0091)

price that they could use for D6 compliance if they are unable to obtain RINs cost effectively in the marketplace. Refiners would have the option of obtaining a RIN through blending, buying it off the market, or buying the RIN from the government. The government RIN should be made available at all times with no restriction on the number of credits.

Biofuel advocates have noted that such a proposal will not adversely impact ethanol blending up to E10.[42] Previously referenced available data on E15 shows that mid-level ethanol blends will also grow in a price fixed government RIN environment. Additionally, experience with the CWC indicates such mechanisms control costs without inhibiting biofuel growth. Despite the existence of the CWC, physical D3 RIN generation still occurs and has increased each of the prior three years.[43]

Finally, PBF echoes comments from last year and the AFPM Comment Letter in support of EPA revising its treatment of the CWC so that it can be used for advanced biofuel and total renewable fuel compliance. There is no basis in the Clean Air Act for preventing CWCs to be used in the nested nature as D3 RINs generated from physical biofuel. The purpose of the credit was to allow a compliance mechanism during times when statutory cellulosic volumes are unavailable, not to serve as a tax that is additive to the advanced biofuel requirement. Allowing CWCs to be used for compliance across all categories will help mitigate the cost of the cellulosic requirement, which is particularly relevant given the fact that the cellulosic RIN market is not competitive.

Sincerely,



Matthew Lucey
President

[42] Irwin, Scott. "The Grand Bargain? Trading an E15 RVP Waiver for a RINs Price Cap." farmdocDAILY blog. February 28, 2018. Available at: https://farmdocdaily.illinois.edu/2018/02/the-grand-bargain-trading-an-e15-rvp-waiver.html

[43] EPA EMTS Data on D3 RIN Generation: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2015-renewable-fuel-standard-data

ATTACHMENT A

PBF Energy Inc.
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March 26, 2018

The Honorable Jeffrey H. Wood
Acting Assistant Attorney General,
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: PES Holdings, LLC, et al., D.J. Ref. No. 90–5–2–1–10993/1

Dear Acting Assistant Attorney General Wood:

PBF Holding Company LLC ("PBF") respectfully submits these comments in response to the U.S. Department of Justice, Environment and Natural Resources Division's ("ENRD") "Notice of Lodging of Proposed Consent Decree and Environmental Settlement Agreement Under The Clean Air Act," in relation to *PES HOLDINGS LLC., et al.* (collectively, "PES"), Civil Action No. 18–10122 (Bankr. D. Del.), published in the Federal Register on March 16, 2018 ("the proposed settlement agreement").[1]

PBF is one of the largest independent, merchant petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States. The company currently has affiliates that own and operate five domestic oil refineries in five states: Delaware, New Jersey, Ohio, Louisiana and California - and related logistics assets with combined processing capacity of approximately 900,000 barrels per day. PBF employs more than 3,200 people nationally. As one of the largest U.S. merchant refiners and having the most refining capacity on the East Coast, Renewable Identification Number (RIN) costs associated with the Renewable Fuel Standard (RFS) have a well-documented, significant, negative impact on PBF. ENRD's proposed settlement agreement recognizes the significant, negative impact of RIN costs under the RFS on PES and therefore, notwithstanding the assertions to the contrary therein, the proposed settlement agreement will establish a precedent that is directly relevant to PBF.

As the following information summarizes, in order for PES to successfully operate post-bankruptcy, the RFS requires revision. A one-time forgiveness of RIN obligations fails to remedy the root cause for the bankruptcy and provides the wrong incentives to the RIN market, which can now allow some participants to continue to prey on similarly situated merchant refiners, potentially creating more bankruptcies knowing the government will simply forgive the obligations. Rather than only pursuing the proposed settlement agreement that provides temporary relief for just one market participant, the Environmental Protection Agency (EPA) can resolve PES' issues and prevent future bankruptcies from occurring by changing the RFS in a manner that provides immediate relief to PES ***and*** allows them to operate successfully going forward while at the same time addressing similar issues faced by other independent, merchant refiners burdened by the broken RFS and its manipulated RIN market. The survival of this vital market segment, crucial to energy independence, national security and a strong economy is dependent upon a full reform of the RFS.

[1] 83 Fed. Reg. 11,792

The proposed settlement agreement is acknowledgement by the Department of Justice (DOJ) and EPA that the RIN market is broken, causing severe economic harm to domestic refiners.

The government's acceptance of the PES bankruptcy plan is proof that escalating RIN costs are causing domestic refiners severe economic harm. The proposed settlement agreement means the government directly acknowledges the following factors identified in the PES bankruptcy filing:

- "As a result (of being a merchant refiner), PESRM (Philadelphia Energy Solutions Refining and Marketing) must purchase RINs for compliance from market participants that blend biofuels (typically large integrated oil companies and companies that own retail gasoline stations) or from companies that trade in RINs for profit."[2]
- "Unlike a tax, the amount paid by PESRM for RINs is not remitted to the government but generates profits for the sellers of the RINs. This unpredictable, escalating, and unintended compliance burden has cost the Debtors $832 million since their commencement of operations in September 2012 and, on an annual basis, the Debtors' expense associated with complying with the RFS Program is twice their annual payroll, nearly one and one-half times their annual average capital expenditures, four times their interest expense, and now represents their single largest expense after crude oil. *The effect of the RFS Program on the Debtors' business is the primary driver behind the Debtors' decision to seek relief under the Bankruptcy Code*."[3]
- "PESRM's ability to blend biofuels is very limited because it does not own sufficient blending infrastructure and its position in the fuel distribution chain limits its ability to sell blended gasoline and diesel fuel and capture the RINs needed for compliance with the RFS Program."[4]
- "Those without an RVO, such as large fuels retailers, can generate RINs and then sell them for a windfall profit to Obligated Parties like PESRM or other third parties for profit."[5]
- "Prior to 2013, ethanol RINs typically cost less than $0.05 per RIN, representing the cost of administering the RFS Program. In fact, from the Debtors' commencement of operations in September 2012 to the end of 2013, ethanol RINs cost just $0.04 per RIN on average and represented a manageable cost of compliance. But in 2017 ethanol RINs averaged $0.70 per RIN, representing a 17.5 fold average increase from these 2012 levels, and have sold for as much as $1.50 per RIN at their peak. This price increase has been fueled by a combination of escalating RVO requirements promulgated by the EPA through annual rule-making processes, practical limitations of existing downstream infrastructure and vehicle engines to handle the increased volume of biofuels, as well as market speculation. All of these factors create a real or perceived scarcity of RINs, which has had the effect of driving up prices and threatening the existence of independent merchant refiners such as the Debtors."[6]

Failure to address the problem of runaway RIN costs prospectively could result in PES and other refiners facing bankruptcy in the future.

Since the government now acknowledges the severe economic harm excessive RIN costs impose on merchant refiners, EPA must take action to address the crushing burden of RIN costs on all such refiners to save other facilities from bankruptcy. In fact, as PES itself has acknowledged in relation to the

[2] In re PES Holdings LLC, Case No. 18-10122 (KG), Declaration of Gregory Gatta, Chief Executive Officer of PES Holdings LLC, in Support of Chapter 11 Petitions and First Day Motions [Docket 16, page3]
[3] Ibid. p. 4.
[4] Ibid. p. 13.
[5] Ibid. p. 29.
[6] Ibid.

proposed settlement, "This is only a partial and temporary reprieve, and we are hopeful that policymakers will substantively address the flawed RINs compliance mechanism so that a restructured PES and other independent merchant refiners can finally compete on a level playing field."[78]

As one recent article notes, "Under the proposed deal, the EPA would allow PES to use the roughly 210 million RINs it already has to cover its 467 million RINs deficit. The company said the average RIN price in 2017 was 70 cents, so it would save about $180 million under the EPA's deal, if it is approved."[9] Failing to address the RINs issue prospectively could result in PES facing the same financial stress it experienced prior to filing for bankruptcy. However, taking action that would appreciably lower RIN costs for all market participants immediately and over the long run will help both reduce PES' retrospective liability, while ensuring its future viability. Government should act expeditiously to advance prospective RIN relief, because evidence is clear that sky-high RIN costs are not a PES only problem.

Over 25 small refiners filed for economic hardship exemptions from the RFS this year; the most EPA has received at once and certainly among the highest number of filings historically.[10] Small refiners would not have to keep filing for such waivers if they were able to recover RIN costs. These facilities and companies are shutting down or being acquired by larger refiners because they can't compete with the unnatural advantage the RFS provides integrated oil companies. Antelope Refining in Wyoming shutdown in 2016. The Dakota Prairie refinery in North Dakota was acquired by Tesoro (now Andeavor) and Calumet's Shreveport refinery was acquired by Husky Energy. The competitive distortion in favor of integrated oil companies and large retail chain owners was predicted by the Department of Energy in its 2011 study for Congress.[11]

Additionally, even biofuel interests have recognized the RIN market is not operating as intended and have called on the U.S. Commodity Futures Trading Commission (CFTC) to investigate RIN market manipulation.[12] A flawed market structure, coupled with overly aggressive volume requirements have resulted in a nearly $20 billion RIN market that severely harms the merchants that must buy RINs for compliance without being able to recover costs, as EPA acknowledges by accepting the PES bankruptcy plan in the settlement agreement.

The proposed settlement agreement is a waiver of RFS program requirements and EPA has an obligation to maintain a level playing field with respect to enforcement of the RFS requirements.

EPA is charged with enforcing the RFS program requirements. On EPA's website, it states "[i]n order to protect the program's integrity ***and maintain a level playing field for regulated companies***, EPA is pursuing enforcement actions against renewable fuel producers and importers that generated invalid

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[7] Renshaw, Jarrett. "U.S. biofuels sector blasts EPA settlement with bankrupt Philadelphia refinery." Reuters. March 13, 2018. Available at: https://www.reuters.com/article/us-usa-biofuels-rins/u-s-biofuels-sector-blasts-epa-settlement-with-bankrupt-philadelphia-refinery-idUSKCN1GP1RC

[8] The fact that the proposed settlement provides PES with only a "temporary reprieve" of its obligations runs counter to the Bankruptcy Code requirement for plan confirmation that "Confirmation of a plan is not likely to be followed by the liquidation or need for further financial reorganization of the debtor…" See 11 U.S.C. § 1129(a)(11)

[9] Rodriguez, Juan Carlos. "EPA Lets Bankrupt Pa. Refiner Slide on Biofuel Payments." Law360. March 13, 2018. Available at: https://www.law360.com/articles/1021369/epa-lets-bankrupt-pa-refiner-slide-on-biofuel-payments

[10] Renshaw, Jarrett. "U.S. small refiners make surge of biofuel waiver requests." Reuters. January 25, 2018. Available at: https://www.reuters.com/article/us-usa-epa-biofuels-exclusive/exclusive-u-s-small-refiners-make-surge-of-biofuel-waiver-requests-sources-idUSKBN1FE1KA

[11] Comments from Small Refiners Coalition on EPA's Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019 (EPA-HQ-OAR-2017-0091- 3105)

[12] http://www.ethanolrfa.org/wp-content/uploads/2016/08/RFA-Letter-to-CFTC-and-EPA_re_RIN-volatility.pdf

RINs."[13] In furtherance of its mandate, EPA has implemented enforcement response policies relating to obligated parties or renewable fuel exporters that have broadly applied to obligated parties, without affording individual companies special treatment, and has issued notices of violation (NOVs) to parties who have violated the RFS program requirements. In the proposed settlement agreement with PES, EPA has not issued any NOV nor alleged any violation of RFS program requirements. Historically, EPA's practice has been to enter into administrative settlement agreements to ***resolve*** NOVs that it has issued. As no violation has occurred or even been alleged by EPA, the proposed settlement agreement is not actually a settlement but rather a waiver of RFS program requirements. As such, this waiver should be available to all independent refiners negatively impacted by the RFS program requirements and not limited to PES.

Thank you for considering our comments.

Sincerely,

Matthew Lucey
President

[13] https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program