March 22, 2021

The Honorable Michael Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20460

Dear Administrator Regan:

We hope that you're off to a good start in your first few weeks as our Administrator of the Environmental Protection Agency (EPA). Today, we are writing to you regarding the Renewable Fuel Standard (RFS). As you know, the COVID-19 pandemic has had devastating impacts across our economy, including in our nation's fuel markets. Demand for oil and gas plummeted as pandemic measures have resulted in reductions in commuting, as well as business and personal travel. This reduced demand, along with actions taken by the prior administration, have created enormous volatility in the RFS markets and made it difficult for our nation's independent merchant refineries to meet their RFS obligations. The EPA has discretion in implementing this program. We ask that during this difficult period for our nation's independent refineries – which employ tens of thousands of Americans and are struggling to comply with this important program – you and the team at EPA listen to their concerns, work to stabilize the RFS markets and give due consideration to RFS compliance flexibility.

In the Energy Independence and Security Act (EISA) of 2007, Congress took several steps to try to improve our nation's energy future. At the time, the nation's consumption of gasoline and diesel was growing exponentially, draining the pocketbooks of consumers and increasing our country's dependence on imported oil. In EISA, Congress doubled the domestic biofuel mandate to 36 billion gallons by 2022 and included new incentives to spur the production of advanced biofuels that were better for our environment and were not derived from the food we eat or feed our livestock. To date, the RFS has played a critical part in lowering consumer prices at the pump and lowering our nation's dependence on fossil fuels.

Despite the success of the RFS, the implementation of the program has not always been smooth sailing for the refineries or for the biofuel producers. Over the past eight years, the RFS compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market, has fluctuated wildly due to various market forces. The Trump Administration's ill-advised efforts to calm the RIN market only created more uncertainty in the market for all parties and made volatility in the RIN market worse, not better. As a result of the Trump administration's actions, EPA is months overdue on setting the renewable obligation volumes for this year, has lost countless times in court due to actions involving the RFS, and has over five years' worth of advanced biofuel applications sitting on the shelf awaiting action.

All of this uncertainty would be difficult for any market to handle, but the COVID-19 pandemic has compounded the problems for all RFS stakeholders. In the past year, demand for petroleum products fell dramatically due in part to drivers staying home during the pandemic. This led to record level fuel inventories and devastating impacts for our nation's refineries and biofuel producers. Between March and April 2020, the U.S. Energy Information Administration (EIA), which tracks fuel production, refining, blending and demand in this country, found domestic oil refining had experienced its biggest drop since EIA first started tracking it in 1985. EIA also reported biofuel production fell by 43 percent over the same time period.[1] The crash caused biofuel producers and refineries to shutter or idle facilities across the country, including the PBF fuel-refining production in Paulsboro, New Jersey. Refineries and biofuel producers have not yet fully recovered. At the end of 2020, refineries were running only an average 14.7 million barrels per day, which is 2.3 million barrels per day less than 2019 and the lowest levels since the Great Depression.[2] Moreover, biofuel producers are producing an estimated 200,000 barrels per day less today than this time in 2020.[3]

Uncertainty in the RFS program, coupled with lower biofuel production, lower fuel demand, and higher commodity prices due to the COVID-19 pandemic has led to an extremely volatile RIN market. Today, the market prices for a biodiesel RIN or a corn ethanol RIN are surpassing all-time highs.[4] At the beginning of 2020, the corn ethanol RIN was 15.8 cents, and now it is $1.30 and climbing. This price volatility creates great difficulties for independent merchant refineries, like the one located in Delaware City, Delaware, to plan and comply with the RFS, especially while grappling with the market effects of COVID-19.

The EPA has a number of tools in its toolbox that it can use to help provide more certainty and price stability in the RIN market. For example, EPA can do this through various measures, such as allowing refineries more compliance time to meet the 2020 RFS requirements and by quickly issuing volume requirements for 2021 that reflect the COVID-19 challenges. At the same time, EPA should work to finalize volume requirements for 2022 in a timely manner.

EPA should also work more closely with agencies that monitor market behavior, such as the Commodity Futures Trading Commission (CFTC) and Federal Trading Commission (FTC), to prevent RIN market manipulation. Despite having a Memorandum of Understanding with the CFTC, it is our understanding that the conversations between staff have been intermittent at best. CFTC has recommended that EPA collect different data points to prevent RIN market manipulation, which to our knowledge, are still not being collected by the agency. EPA staff should also have ongoing conversations with FTC, which has the authority to regulate manipulative or deceptive conduct in the wholesale petroleum markets. Fully tapping into CFTC and FTC's expertise to prevent market manipulation will likely inject more stability into the volatile RIN market.

EPA must also make decisions on advanced biofuel applications that have languished for years at the agency. Approving new advanced biofuel pathways and allowing new advanced biofuels to

[1] https://www.eia.gov/todayinenergy/detail.php?id=44015
[2] https://www.eia.gov/petroleum/weekly/
[3] https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=W_EPOOXE_YOP_NUS_MBBLD&f=W
[4] https://www.eia.gov/todayinenergy/detail.php?id=46876

quickly come to market will provide additional opportunities for refineries to meet their obligations and provide opportunities for the biofuel industry to grow. Allowing refineries a longer time to comply with the 2020 volume obligations, along with allowing refineries the ability to use newly approved advanced biofuels for compliance for 2020, could stabilize RIN prices, as well.

In closing, let us reiterate that we strongly support the transition of our nation's transportation fuels towards more sustainable fuels. Yet, while our nation continues to use oil-based transportation fuels, we should make it a priority to have those products refined, cleanly and safely in this country – not abroad. The Delaware City, Delaware refinery is one of the last three large refineries that remain in fuel production on the East Coast. It employs over one thousand hardworking Delawareans. By taking prompt action now to right the ship of the RFS, EPA can help both biofuel producers and domestic refineries weather the economic impacts of COVID-19, while we pursue the Administration's goal of net zero by 2050.

We respectfully request that you respond to us in writing at your earliest convenience and outline the steps that your agency plans to take to address our concerns. Should you or your staff have questions of us, please feel free to contact Laura Gillam in Senator Carper's office at laura_gillam@epw.senate.gov. Thank you very much for your time and consideration. We wish you and your team all the best in the days ahead.

With best personal regards, we are,

Sincerely yours,

Tom Carper
Thomas R. Carper
United States Senator

John C. Carney
John Carney
Governor of Delaware

Chris Coons
Christopher A. Coons
United States Senator

Lisa Blunt Rochester
Lisa Blunt Rochester
United States Representative