



J. Douglas Sparkman

COO Fuels, North America

April 16, 2018

Honorable William Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 6101A
Washington, DC 20460

Re: Renewable Fuel Standard (RFS) small refinery exemptions

Dear Mr. Wehrum,

BP is a major producer, refiner, and marketer of oil and natural gas in the U.S. BP has invested over \$100 Billion in the U.S. since 2005 and employs approximately 14,000 people in the U.S. BP's business activities support more than 120,000 American jobs and contribute \$67 billion to the national economy. BP invests every dollar of profit it earns in America back into America.

BP is writing today with concerns about the EPA's reported use of the Renewable Fuel Standard (RFS) hardship exemptions for 25 refineries. We appreciate the opportunity to provide our perspective on why these exemptions violate the Clean Air Act and run counter to the purpose of the RFS and its limited exemption provisions.

BP has actively participated in efforts to ensure a robust RFS program through the RIN market and in a range of significant investments in new biofuels technologies. Under the RFS, BP is an obligated party, as well as a developer of advanced renewable diesel (D5) fuels, and a material D3 RIN generator and marketer through ownership of landfill gas production facilities and contractual partnerships with multiple biogas producers. We support the growth of advanced biofuels within the constraints of the blendwall. This broad-based participation in the RFS program provides BP with a balanced perspective on how best to achieve the RFS goals. BP believes it is essential for the Administration to continue to ensure a robust, liquid and efficient RIN market to facilitate compliance among obligated parties, consistent with the overall goals of the RFS program.

BP is concerned, however, that EPA's recent unprecedented expansion of the small refinery exemption undermines the integrity, stability, and fairness of this program. Selectively forgiving the RFS obligation for certain refining entities leads to unfair

competition between refiners, because refiners no longer subject to their RFS obligations would not need to reflect the cost of their renewable volume obligations in the price of the fuel they supply. In addition, exempted refineries can sell any RINs they have on hand into the open market. Moreover, these exemptions discourage investments in this market and in new technology.

These refinery exemptions do not address the flaws in the RFS. Only comprehensive legislative reform will address the challenges in the program created by lower-than-expected cellulosic biofuels generation, declining demand, and blendwall challenges. Thus, we encourage EPA to work with Congress on meaningful legislative RFS reform.

EPA's Grant of Small Refinery Exemptions Is Unlawful and has Adverse Market Consequences

It has been reported that EPA has granted exemptions for up to 25 refineries, including three owned by Andeavor, one of the largest refiners in the U.S. BP is concerned about EPA's liberal granting of these exemptions in a manner that contravenes the intent of the statute. The exemption provisions, part of the original RFS statute enacted in 2005, were explicitly designed to provide "[t]emporary" relief to refineries that suffered "disproportionate economic hardship." 42 U.S.C. § 7545(o)(9). Indeed, courts have recognized that the Clean Air Act contemplates only a "[t]emporary exemption for small refineries with an eye towards eventual compliance with the renewable fuels program for all refineries." *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 578 (D.C. Cir. 2015). Likewise, from the outset of the RFS program in 2007, EPA has required small refineries requesting an exemption to explain the "date the refiner anticipates that compliance with the requirements can reasonably be achieved." 40 C.F.R. § 80.1441(e).

Instead, it appears these exemptions are being used to provide numerous small refineries an unjustified windfall and competitive advantage in the marketplace. Further, the continued use of the exemption provisions without transparency has created chaos in the RIN market and depressed biofuel demand. As a result, RIN prices have fallen precipitously, non-exempted refineries have become less competitive, and the value of BP's existing investments has steadily eroded. Due to EPA's actions, BP cannot currently rely on a stable market to make further investments, thereby harming the goals of the RFS program.

EPA's recent exemptions violate the Clean Air Act because no "disproportionate economic hardship" exists for those refiners. It appears EPA has arbitrarily applied a different methodology to assessing refiner impacts in making determinations of economic hardship. These recent EPA actions contradict previous EPA analysis and conclusions. For example, EPA concluded only six months ago that obligated parties, including small refineries, face no negative economic impact from RFS compliance, much less a disproportionate economic hardship, as they "are charging more for

domestic gasoline and diesel to ensure that they recoup the costs associated” with compliance.¹ EPA recently noted that even (wrongly) assuming small refineries are unable to recoup their compliance costs, the estimated maximum compliance cost-to-sales percentage was at most “.006%,” a negligible amount.² EPA thus concluded that “there is no net cost to small refiners resulting from the RFS program.”³ This is not a new finding. EPA reached the same conclusion in 2015⁴ and explained this analysis to the GAO in 2014.⁵ Far from suffering “disproportionate economic hardship,” these small refineries are being handed an unjustified windfall by EPA’s recent exemptions – resulting in an unlevel playing field.

Even in the context of the bankruptcy filing for Philadelphia Energy Solutions (PES) others have come to similar conclusions that RIN prices do not cause economic hardship, reflected in a series of scholarly articles published by Christina Simeone, the Director of Policy and External Affairs with the University of Pennsylvania Kleinman Center for Energy Policy.⁶

The situation is made worse – and market unpredictability is exacerbated – by EPA’s practice of keeping secret its decision-making regarding these exemption petitions. Currently, EPA does not publish even basic information relating to small refinery exemption petitions. In 2016, EPA recognized that this information “may not be claimed as confidential,” and EPA must provide “basic facts related to government decisions,” including on these petitions, but it has failed to do so. 81 Fed. Reg. 80,828, 80,909 (Nov. 16, 2016). While there is little transparency to the number and scope of the small refinery exemptions that EPA has granted, any exemption decision likely impacts the volume of carryover RINs into 2018, which in turn could negatively impact the market signal obligated parties should have for RIN generation to meet their RVO requirements.

Finally, we are aware that some obligated parties and RIN market players have alleged that BP’s participation in the marketplace exceeds our need and drives up their RIN costs. This narrative is troubling and wrong. Our retail footprint significantly exceeds our refinery production, thus creating a RIN surplus. Blending and selling more biofuels than required is the very behavior the RFS is meant to encourage. We utilize our trading business to bring these excess RINs to market, thereby providing liquidity and a

¹ EPA, Denial of Petitions for Rulemaking to Change the RFS Point of Obligation, No. EPA-420-R-17-008, at 23 (Nov. 2017).

² EPA, Renewable Fuel Standard Program – Standards for 2018 and Biomass-based Diesel Volume for 2019: Response to Comments, No. EPA-420-R-17-007, at 221 (Dec. 2017).

³ EPA Screening Analysis, No. EPA-HQ-OAR-2017-0091, at 11 (Nov. 30, 2017)

⁴ 80 Fed. Reg. 77,420, 77,516 (Dec. 14, 2015) (“[O]bligated parties, including small entities, are generally able to recover the purchase cost of the RINs necessary for compliance through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.”).

⁵ Letter from EPA to GAO (Mar 5., 2014), GAO Report No. 14-249.

⁶ <https://kleinmanenergy.upenn.edu/blog/2018/02/22/assessing-competitiveness-philadelphia-energy-solutions>

compliance pathway for other companies that need to purchase those RINs. These activities enhance the liquidity of the renewable fuels market, allowing market participants to hedge risk, lower their compliance costs, and reduce market price volatility. They help to ensure the most efficient means for meeting Congress's goals for the promotion of renewable fuels.

I welcome the opportunity to discuss BP's perspectives on the RFS and the functioning of the RIN market. We look to EPA to consider carefully how its actions will impact all RFS participants and will accomplish the overall goals Congress established for the RFS program. Thank you for the opportunity to comment on this important matter.

Best regards,

A handwritten signature in black ink, appearing to read "Douglas Sparkman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Douglas Sparkman
Chief Operating Officer
BP Fuels North America