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From: Zelermyer, Salo
Sent: Mon 4/3/2017 1:20:48 PM
Subject: Minsk Testimony on history of POO

Think this may be helpful as well. This is Ron Minsk's testimony from Feb. 2016 before EPW. Ron was the NEC energy advisor in the last White House and dealt extensively with RFS issues. The full testimony (link below) contains his view that EPA should change the POO. The portion I've copied below begins on Page 10 of his testimony and gives you the regulatory history on POO which shows the "administrative ease" issue that underlined the decisions made by EPA on this issue and their acknowledgment that merchant refiners with no access to RINs could be harmed.

https://www.epw.senate.gov/public/_cache/files/a4545f2f-52df-4f3f-8a08-e5802950d8e5/rem-rfs-written-testimony.pdf

The issue of the appropriate point of obligation has been understood as a critical choice in the structure of the RFS since the inception of the program. Where the compliance obligation falls within the fuel supply chain has a tremendous impact on the RFS' ability to allocate costs, award benefits, incentivize changes in the market, and achieve the goals set out by Congress in the statute. Before discussing why this issue is critically important moving forward, it is important to review the history of EPA's deliberations on this subject and understand how EPA arrived at placing the point of obligation on refiners and importers (*i.e.*, the parties who produce and supply fuel to the rack at fuel terminals) versus blenders (*i.e.*, those parties actually blending the renewable fuel into gasoline and diesel).

In the initial phase of the RFS—from 2005-2007—EPA largely based its decision on point of obligation on ease of administration. As EPA explained, "[w]hen the RFS1 regulations were drafted, the obligations were placed on the relatively small number of refiners and importers rather than on the relatively large number of downstream blenders and terminals in order to minimize the number of regulated parties and keep the program simple."

In 2009, with the amended program placing increased renewable mandates onto the system, EPA once again considered the issue of whether to place the point of obligation on refiners who provide fuels to the market for further distribution at the rack or on the blenders who actually put the renewable fuel into the system. In doing so, EPA considered a new issue—the disparity in compliance burden between major integrated refiners who possess blending operations (which generate RINs) and refiners who are primarily focused on refining and do not generate their own RINs. EPA framed the issue in its 2009 proposed rule as follows:

The result is that in some cases there are significant disparities between obligated parties in terms of opportunities to acquire RINs. If those that have excess RINs are reluctant to sell them, those who are seeking RINs may be forced to market a disproportionate share of E85 in order to gain access to the RINs they need for compliance. If obligated parties seeking RINs cannot acquire a sufficient number, they can only carry a deficit into the following year, after which they would be in noncompliance if they could not acquire sufficient RINs. The result might be a much higher price for RINs (and fuel) in the marketplace than would be expected under a more liquid market. Given the change in circumstances brought about through EISA, it may be appropriate to consider a change in the way that obligated parties are defined to more evenly align a party's access to RINs with that party's obligations under the RFS2 program.

In addition to describing the problem, EPA also considered a potential solution—moving the point of obligation from refiners to blenders—specifically recognizing the impact of the blend wall on the viability of the RFS. EPA described the issue as follows:

Given the change in circumstances brought about through EISA, it may be appropriate to consider a change in the way that obligated parties are defined to more evenly align a party's access to RINs with that party's obligations under the RFS2 program. The most straightforward approach would be to eliminate [unfinished gasoline] from the list of fuels that are subject to the standard, such that a party's RVO would be based only on the non-renewable volume of finished gasoline or diesel that he produces or imports. Parties that blend ethanol into [unfinished gasoline] to make finished gasoline would thus be obligated parties, and their RVOs would be based upon the volume of [unfinished gasoline] prior to ethanol blending. Traditional refiners that convert crude oil into transportation fuels would only have an RVO to the degree that they produced finished gasoline or diesel[.] Since essentially all gasoline is expected to be E10 within the next few years...this approach would effectively shift the obligation for all gasoline from refiners and importers to ethanol blenders (who in many cases are still the refiners)....a

variation of this approach would be to move the obligations for all gasoline and diesel downstream to parties who supply finished transportation fuels to retail outlets or to wholesale purchaser-consumer facilities. This variation would have the additional effect of more closely aligning obligations and access to RINs for parties that blend biodiesel and renewable diesel into petroleum-based diesel...it would have certain advantages. Currently, blenders that are not obligated parties are profiting from the sale of RINs they acquire through splash blending of ethanol. By eliminating [unfinished gasoline] from the list of obligated fuels, these blenders would become directly responsible for ensuring that the volume requirements of the RFS program are met, and the cost of meeting the standard would be more evenly

distributed among parties that blend renewable fuel into gasoline. With obligations placed more closely to the points in the distribution system where RINs are made

available, the overall market prices for RINs may be lowered and consequently the cost of the program to consumers may be reduced.

Despite its recognition of this issue, in the 2010 final rule, EPA elected not to change the point of obligation. Once again, EPA cited administrative considerations (“a change in the designation of obligated parties would result in a significant change in the number of obligated parties and the movement of RINs, changes that could disrupt the operation of the RFS program during the transition from RFS1 to RFS2.”) but the Agency did acknowledge that it remained concerned about this issue and that it would revisit the issue of point of obligation if necessary. As EPA stated, “[w]e will continue to evaluate the functionality of the RIN market. Should we determine

that the RIN market is not operating as intended, driving up prices for obligated parties and fuel prices for consumers, we will consider revisiting this provision in future regulatory efforts.”