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GrowthEnergy.org

February 22, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
Docket ID: EPA-HQ-OAR-2016-0544

Dear Administrator Pruitt:

Growth Energy thanks the United States Environmental Protection Agency (“EPA”) for the opportunity to comment on the Proposed Denial of Petitions for Rulemaking to Change the Renewable Fuel Standard (“RFS”) Point of Obligation (“POO”).¹ Growth Energy is the leading association of domestic ethanol producers, with 85 plant members and 82 associate members that serve our Nation’s need for renewable fuel. Collectively, our members produce approximately 40 percent of the ethanol made in the United States and are committed to achieving America’s goals under the RFS, as envisioned by lawmakers when the statute was first enacted in 2005 and revised in 2007.

As producers and promoters of renewable fuels, we strongly support EPA’s Proposed Denial of petitions to alter this obligation. It has always been the intent of the RFS to encourage greater blending of biofuels in the marketplace as obligated parties make the necessary investments to blend more biofuels. Consistent with EPA’s reasoning and our own experience and analysis, a shift in the point of obligation would be detrimental rather than beneficial to the use of renewable fuels.² We believe that a change in the point of obligation would undermine an energy policy that has cut oil imports and reduced transportation-related emissions. Furthermore, it would reward those who have sought to circumvent the law for more than eleven years – preventing higher biofuel blends from reaching the marketplace -- and it could limit options and potentially increase costs for consumers by stifling competition among market participants.

¹ 81 Fed. Reg. 83,776 (Nov. 22, 2016); EPA, Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation, EPA-420-D-16-004 (Nov. 10, 2016) (“Proposed Denial”). *See also* 81 Fed. Reg. 95,551 (December 28, 2016) (extending comment deadline to February 22, 2017).

² As Growth Energy argues in *Americans for Clean Energy vs. EPA*, No. 16-1005 (D.C. Cir.), we believe that considerations of renewable fuel use are outside of the scope of EPA’s general waiver authority. It is appropriate, however, for EPA to keep the point of obligation at the refiner and importer level because such point of obligation promotes renewable fuel use in a manner consistent with the statute.

The renewable fuel industry is not alone in its concern that a change in the point of obligation would eviscerate America's progress under the RFS. Our objections mirror those of the vast majority of market participants up and down the fuel supply chain, including major oil companies represented by the American Petroleum Institute; retailers represented by the National Association of Truck Stop Operators, the Society of Independent Gasoline Marketers of America, and the National Association of Convenience Stores; and consumers represented by Association of American Railroads, the American Short Line and Regional Railroad Association, the American Trucking Associations, and the Owner-Operator Independent Drivers Association. In support of EPA's position, we submit the attached expert analysis by economist Dr. Jesse David, as well as the points below.

I. Shifting the point of obligation would significantly disrupt the fuels market and, therefore, the market for cellulosic ethanol.

Parties involved with fuel production, distribution, and sales have had over a decade to plan for compliance with increasing RFS requirements. Many entities, such as certain independent fuel retailers, have made significant business decisions based on the RFS as currently structured. Independent retailers have assembled complex supply chains involving commercial arrangements above the rack, at blending terminals, and downstream. A change in the point of obligation would threaten to undercut these complex relationships and jeopardize the growing market for renewable fuels. Many retailers do not have experience as heavily regulated entities, and they would terminate above-the-rack positions before being designated as obligated parties under the RFS. Such a choice – to either abandon years of planning and investment or face new compliance burdens – is an unfair one, and would reward those parties who chose not to appropriately plan for RFS compliance over the last decade.

This added burden would not only impact fuel retailers. If the point of obligation were changed, it would also impose new requirements on entities such as railroads, truck stops, and trucking companies. In fact, EPA's and our analyses suggest that hundreds or even thousands of additional entities would become obligated parties, threatening the stability and workability of the RFS compliance system.

In addition, such a transition would inevitably cause further delays in the RFS program, which only recently got back on track after being sidelined by the delayed in issuance of 2014, 2015, and 2016 RVOs. EPA has expressed interest in the impact of changing the point of obligation on cellulosic ethanol. There is no question that shifting the point of obligation would impede opportunities for the expansion of cellulosic fuels. By destabilizing the fuels market and punishing the biggest promoters of renewable fuels, changing the point of obligation would impede the renewable fuel market growth necessary to drive the cellulosic ethanol investments that Congress intended.

II. Un-obligated blenders do not receive windfall benefits, and independent refiners are not disadvantaged by unrecoverable RIN costs.

As correctly highlighted by EPA, and as explained further in the attached expert report by Dr. Jesse David, un-obligated blenders such as independent retailers do not receive "windfall" benefits as a result of the RFS. To the contrary, RIN values are largely passed on in the form of elevated blendstock or renewable fuel prices or discounts to finished fuel. For the same reasons, merchant refiners do not uniquely face RIN costs they cannot recover. All obligated parties pay for RINs directly or indirectly

through higher component costs or discounts to finished fuel. A recent Iowa State analysis confirms this finding.³

III. Changing the point of obligation will not lead to the increased offering of higher renewable fuel blends.

Certain petitioners argue that changing the point of obligation will actually increase the flow of renewable fuels in the marketplace, because parties that allegedly control downstream infrastructure will become obligated and therefore have an incentive to promote higher blends. This argument is flawed, as evidenced by current behavior of market participants. As EPA points out, non-obligated retailers are much more likely to offer higher biofuel blends than obligated parties who are also retailers.⁴ The petitioners seek to pull the rug out from under the very parties who are supporting the RFS's goal of higher blending levels. Additionally, as discussed above, independent retailers that are position holders have indicated that they may abandon their above-the-rack positions rather than become obligated parties. This would further concentrate power at the rack in the hands of integrated refiners, the entities which are most likely to view renewable fuels as competition. We are already seeing hundreds of retail sites expanding their offering of higher biofuel blends like E15 with high-volume retailers piercing through any so-called "blend wall," achieving ethanol blend rates well above 10 percent. To change the point of obligation would be turning the government's back on these retail investments – including investments made by the government itself – only to reward recalcitrant refiners who have demonstrated no willingness to allow the sale of blends such as E15.

In 2009, Growth Energy filed a waiver to allow the sale of E15, which EPA approved for use in all 2001 and newer light-duty vehicles. Since that time, we have worked extensively with many high-volume retail partners through the Prime the Pump program as well as with USDA's Biofuels Infrastructure Partnership Program to expand the retail market for E15 and other ethanol blends. The biofuels industry, fuel marketers, and federal and state governments have and are continuing to make significant investments along with these retailers to increase consumers' ability to purchase gasoline blends above 10 percent ethanol. Today, there are nearly 650 retailers in 28 states offering E15 – a 500 percent increase over the retail availability one year ago – and we expect that number to grow significantly over the next two years. In other words, the point of obligation is not an impediment to increased biofuels blends. In contrast, our retailer partners have responded to the incentives created by the current point of obligation exactly as Congress had hoped – by investing in and promoting the sale of higher blends.

The petitioners, rather than seeking to comply with the intent of the RFS, chose not to invest in more biofuel blending capacity. In addition, they have made little effort to increase consumers' ability to access and purchase higher biofuel blends such as E15. Ironically, one of the petitioners, Valero, produces ethanol and controls fuel supply at more than 1,000 gas stations nationwide yet has not made a single investment in offering E15 to consumers, all the while claiming hardship on their RIN costs as a justification for changing the RFS program. They now seek to escape the consequences of their recalcitrance, and undermine the efforts of parties that acted consistently with Congressional intent.

³ Bruce Babcock *et al.*, Impact on Merchant Refiners and Blenders from Changing the RFS Point of Obligation, CARD Policy Brief 16-PB 20 (Dec. 2016).

⁴ Proposed Denial at 34-36.

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In the end, the petitioners have failed to demonstrate and support with evidence why markets would behave more efficiently if the point of obligation were to be shifted. However, a shift would certainly destabilize fuel markets and undercut the efforts of those promoting renewable fuels as Congress intended. As a result, Growth Energy supports EPA's decision to promote the growth of conventional and advanced renewable fuels by denying the petitions to change the RFS point of obligation. Please do not hesitate to reach out to us with any questions.

Sincerely,



Emily Skor, CEO