

Message

From: Lyons, Troy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15E4881C95044AB49C6C35A0F5EEF67E-LYONS, TROY]
Sent: 8/6/2018 3:35:02 PM
To: Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]; Kathy Bishop -MDE- [kathy.bishop@maryland.gov]
CC: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]; Servidio, Cosmo [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f11f91d53e9a4cdaa8281be07e9034aa-Servidio, C]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]
Subject: Meeting with Administrator Wheeler and Sec. Ben Grumbles

The Administrator and MD Secretary of the Environment would like to have an in-person meeting to discuss the state's petition regarding cross border pollution. I just spoke with Sec. Grumbles and he too would like for this meeting to take place.

Kathy and Aaron—Could you two find a time that fits both of their schedules?

Troy M. Lyons

Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

Ex. 6 (cell)

Message

From: Gonzales, Gilbert [Gilbert.Gonzales@haynesboone.com]
Sent: 7/9/2018 2:12:55 PM
To: Janet Anderson [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9e4bb58ac0554d9c89a02056f811dae8-Janet Ander]; 'dbaker@bakerwotring.com' [dbaker@bakerwotring.com]; 'megan.berge@bakerbotts.com' [megan.berge@bakerbotts.com]; jbb@blackburncarter.com [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1da63f5c448f4d00bdc3a9eabd88c9c7-jbb@blackburncarter.com]; 'anthony.cavender@pillsburylaw.com' [anthony.cavender@pillsburylaw.com]; Cook, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=394f5dede6184bc083cf9390e49a192c-Cook, Steve]; 'ken.cross@oag.state.tx.us' [ken.cross@oag.state.tx.us]; 'jdelafuente@lglawfirm.com' [jdelafuente@lglawfirm.com]; 'ldyar@winstead.com' [ldyar@winstead.com]; 'JCruden@bdlaw.com' [JCruden@bdlaw.com]; 'ramiro.garcia@tceq.texas.gov' [ramiro.garcia@tceq.texas.gov]; sarah@pocca.com [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=690d6aa0e7e740aca7aad58c340be9e8-sarah@pocca.com]; Pam.Giblin@bakerbotts.com [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3820fc6aafd744aca022a05379c52288-Pam.Giblin@bakerbotts.com]; 'kg@kgstrategies.com' [kg@kgstrategies.com]; 'booker.harrison@tceq.texas.gov' [booker.harrison@tceq.texas.gov]; 'tholcomb@velaw.com' [tholcomb@velaw.com]; ldsal, Anne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1beca8121fb47a08e82b6bf2247a79b-ldsal, Anne]; 'kelly.keellinden@tceq.texas.gov' [kelly.keellinden@tceq.texas.gov]; 'mlawless@mcguirewoods.com' [mlawless@mcguirewoods.com]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; 'David.Lear@dell.com' [David.Lear@dell.com]; 'ilevin@environmentalintegrity.org' [ilevin@environmentalintegrity.org]; 'jeff.lindner@hcfcd.org' [jeff.lindner@hcfcd.org]; 'debbra.mamula@ltgov.texas.gov' [debbra.mamula@ltgov.texas.gov]; Mendoza, Mary S. [Mary.Mendoza@haynesboone.com]; 'kim.mickelson@houstontx.gov' [kim.mickelson@houstontx.gov]; 'dmiller@kempsmith.com' [dmiller@kempsmith.com]; 'matthew.morrison@pillsburylaw.com' [matthew.morrison@pillsburylaw.com]; 'tsalem@tceq.texas.gov' [tsalem@tceq.texas.gov]; 'jsroseman@jonesday.com' [jsroseman@jonesday.com]; 'seals@guidaslavichflores.com' [seals@guidaslavichflores.com]; 'bryan.shaw@tceq.texas.gov' [bryan.shaw@tceq.texas.gov]; 'Tobias.Smith@clarkhillstrasburger.com' [Tobias.Smith@clarkhillstrasburger.com]; 'sue@envirowaterminerals.com' [sue@envirowaterminerals.com]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; 'Connie.Westfall@clarkhillstrasburger.com' [Connie.Westfall@clarkhillstrasburger.com]; 'swightman@martenlaw.com' [swightman@martenlaw.com]; 'timothy.wilkins@bracewelllaw.com' [timothy.wilkins@bracewelllaw.com]; 'awood@HuntonAK.com' [awood@HuntonAK.com]
CC: Lozano, Marti [Marti.Lozano@haynesboone.com]
Subject: Reminder: Paper submission DEADLINE for Superconference 2018 is approaching.

This is a friendly reminder that bios, papers and PowerPoints are due by July 13, 2018. Your cooperation in meeting the deadline is greatly appreciated. If you have already done so please disregard this reminder.
Thank you and have a good day.

haynesboone

Gilbert Gonzales

Administrative Services Clerk
gilbert.gonzales@haynesboone.com

Haynes and Boone, LLP

600 Congress Avenue
Suite 1300
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(t) Ex. 6
(f)

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Message

From: Freeman, Paul [PFreeman@crowell.com]
Sent: 6/29/2018 7:42:47 PM
To: Manners, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebdb1392504a4b71894970b1a7bb186c-Manners, Mary]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]
CC: Meyers, Robert [RMeyers@crowell.com]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfd6b0fea4b998-Traylor, Pa]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Chakrabarti, Preetha [PChakrabarti@crowell.com]
Subject: RE: Follow-up Questions for Genscape
Attachments: 2018-06-29 - Genscape Response to Questions 6, 14-17.pdf

Byron and Mary—

Attached please find Genscape's responses to the remaining questions flowing from our February 6 meeting, and in furtherance of our more recent meeting on May 31. Please let me know if you have any questions or would like to discuss any aspect of the attached in greater detail.

Have a great weekend, and a Happy 4th of July!

Regards,
Paul

Paul C. Freeman
pfreeman@crowell.com

Direct: **Ex. 6**
Mobile:

Crowell & Moring LLP | www.crowell.com
590 Madison Avenue, 20th fl.
New York, NY 10022

From: Manners, Mary [<mailto:manners.mary@epa.gov>]
Sent: Friday, March 9, 2018 10:55 AM
To: Freeman, Paul <PaulFreeman@eversheds-sutherland.us>
Cc: Bunker, Byron <bunker.byron@epa.gov>
Subject: Follow-up Questions for Genscape

Paul—

Please see the attached additional questions for Genscape following our February 6, 2018 meeting. Responses to the questions are requested by March 30, 2018.

Regards,
Mary

Mary T. Manners, Deputy Director
US EPA Office of Transportation and Air Quality
Compliance Division
2000 Traverwood
Ann Arbor, MI 48105

Ex. 6

Message

From: Gergana Vasileva [GVasileva@thecwcgroup.com]
Sent: 6/13/2018 1:59:41 PM
To: DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: GLowe@aga.org; LTraweek@aga.org; Sarah Sandison [ssandison@thecwcgroup.com]
Subject: 27th World Gas Conference – On-Site Guidelines for Workshop
Attachments: ATT00001.txt; VIP Entrance Map.pdf; WGC 2018 VIP Entrance Access - Car Signage.pdf; WGC 2018 Security Form for VIP Speakers.docx

Dear Isabel,

I am pleased to say that Mr Wehrum has been given **VIP Speaker Status** at the Conference.

He will be able to use the VIP Entrance to enter the Convention Center. The VIP Entrance is located on the corner of L Street & 9th and should be accessed via 7th Street. Please find a map of the VIP Entrance attached. The AGA will arrange to have her badge delivered to him for VIP Entrance Access. Should he wish to access the building by vehicle, please find attached our Car Signage which we ask is affixed to the car.

On request, we will also reserve a seat for him in the **Closing Ceremony** place on **Friday June 29, 2108** between **3:55 PM – 4:55 PM**. Please can you confirm if he would like to attend this?

Please also find attached a document with the details we require from you with regards to security if you need this. Our security team - City Security - will then liaise with the relevant contact to finalise all security arrangements for Mr Wehrum.

If you have any questions on these arrangements please do let me know.

Best wishes
Gergana

Gergana Vasileva
Speaker and Program Assistant, WGC 2018
CWC Solutions, part of CWC Group Limited
Direct Line: +1 [redacted] **Ex. 6** |w: www.cwc-solutions.com

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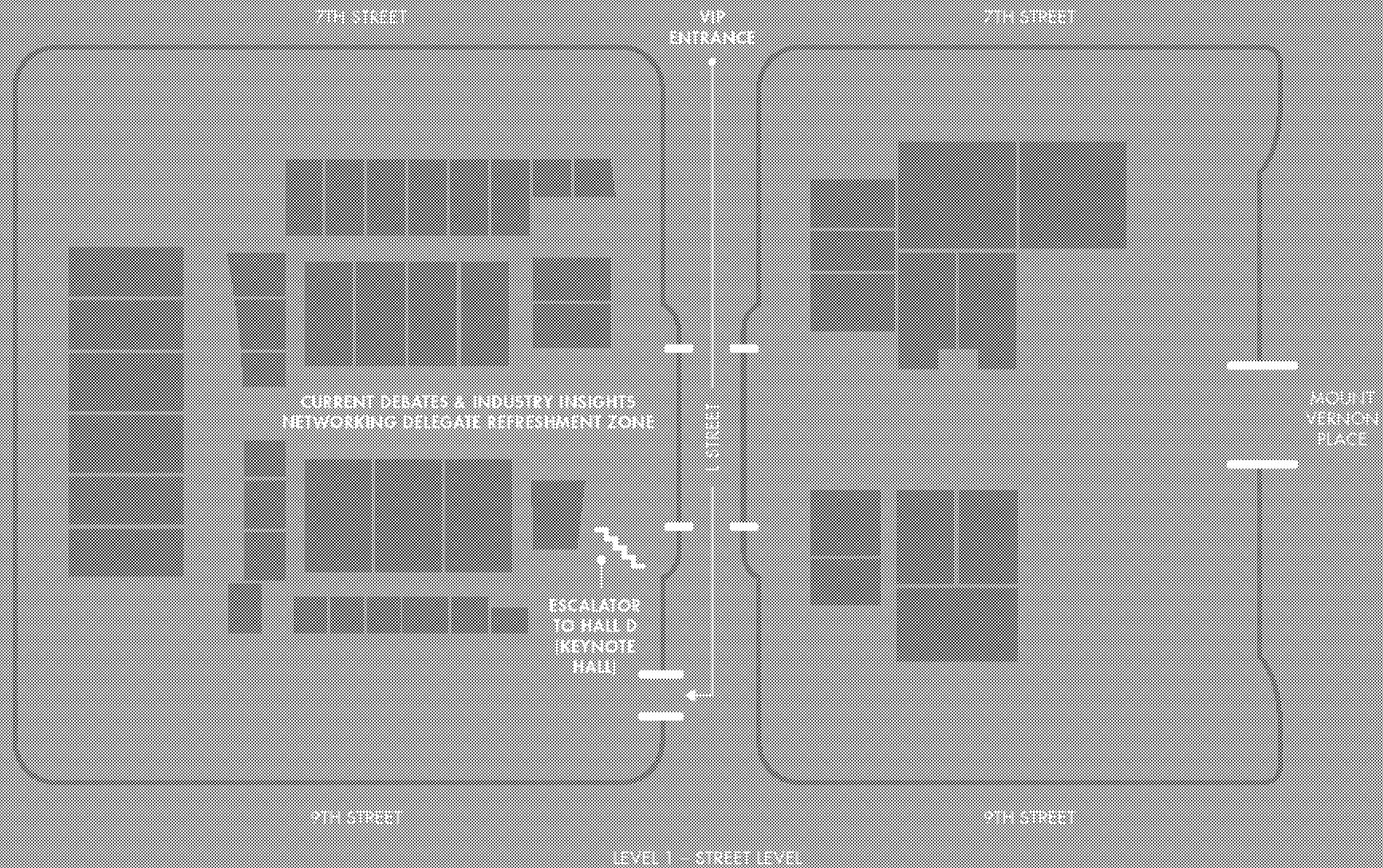
16-18 Lombard Road / Regent House / Oyster Wharf / London SW11 3RB
Tel 020 79780000 / Fax 020 79780099

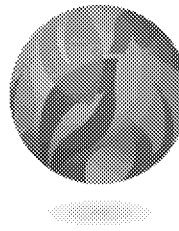
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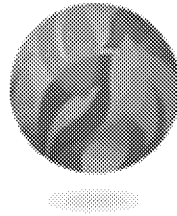
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WGC 2018 SECURITY FORM

| | | |
|---|---|--|
| NAME OF ORGANIZATION | | |
| NAME OF PROTECTEE | | |
| NUMBER OF SECURITY PROFESSIONALS WORKING | | |
| NAMES OF SECURITY PROFESSIONALS WORKING | | |
| LEAD SECURITY CONTACT | | |
| NAME OF ORGANIZATION | | |
| NAME OF PROTECTEE | | |
| NUMBER OF SECURITY PROFESSIONALS WORKING | | |
| CONTACT INFORMATION | NAME | |
| | MOBILE PHONE | |
| | EMAIL ADDRESS | |
| ARRIVAL DATE AND TIME | | |
| DEPARTURE DATE AND TIME | | |
| HOTEL WHERE THE TEAM AND PROTECTEE WILL BE STAYING | | |
| VEHICLE REGISTRATION (IF APPLICABLE) | | |
| DOES THE PROTECTEE PLAN TO ATTENDING FUNCTIONS AT: | UNION STATION | |
| | NATIONAL ARCHIVES | |
| | CONVENTION CENTER | |
| | AIR AND SPACE MUSEUM | |
| DOES THE SECURITY TEAM PLAN TO BE ARMED OR UNARMED? | IF ARMED DOES THE TEAM HAVE AUTHORIZATION TO BE ARMED IN THE UNITED STATES AND OR WASHINGTON DC | |
| ARE THERE ANY PARTICULAR SECURITY THREATS OR CONCERNS FOR THE PROTECTEE? | | |



27th WORLD GAS CONFERENCE
WASHINGTON DC

JUNE 25-29
2018

IGU

VIP ENTRANCE ACCESS

Message

From: Whitfield, Peter [pwhitfield@sidley.com]
Sent: 6/1/2018 7:18:22 PM
To: Master, Barbora [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2c813860457b42019078b33089aaeee5-bjemelko]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RE: Meeting follow up
Attachments: Wehrum meeting final materials.pdf

Bill and Barbora,

I think the set of pdf materials we sent yesterday had the wrong version of Tab 4, so I fixed it and have re-attached it here. This set should be the same as that in the notebooks. Thanks again for meeting with us.

PETER WHITFIELD

Counsel

SIDLEY AUSTIN LLP

Direct
Mobile
pwhitfield@sidley.com

Ex. 6

From: Master, Barbora <Master.Barbora@epa.gov>
Sent: Friday, June 1, 2018 9:08 AM
To: Whitfield, Peter <pwhitfield@sidley.com>
Cc: Alonso, Richard <ralonso@sidley.com>
Subject: RE: Meeting follow up

Wonderful, Peter. Thank you, I will distribute this to my colleagues.

Best, Barbora

Barbora Master
U.S. Environmental Protection Agency
202-343-9899

From: Whitfield, Peter [<mailto:pwhitfield@sidley.com>]
Sent: Thursday, May 31, 2018 5:40 PM
To: Master, Barbora <Master.Barbora@epa.gov>
Cc: Alonso, Richard <ralonso@sidley.com>
Subject: Meeting follow up

Barbora,

Thank you for meeting with us today. We appreciate your time. Please find attached an electronic version of the materials we presented today. Please let us know if you have any questions. We look forward to working with you and your team.

PETER WHITFIELD

Counsel

SIDLEY AUSTIN LLP

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Ex. 6

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RFS Reforms

EPA Meeting

May 30, 2018

Agenda

1. RFS reform
 - Tab 1: Reform Options Chart
 - Tab 2: Exporting Biofuels White Paper
 - Tab 3: 1 psi Waiver White Paper
 - Tab 4: Small Refinery Exemption White Paper
2. RIN trading
3. RFS transparency
 - Tab 5: Transparency Options Chart
4. RFA lawsuit
5. Other

RFS Reform Options

1. Remove export RIN retirement obligation
2. Extend 1-psi RVP waiver to E15
3. Reallocation of exempt small refinery RVOs
4. 10% blending floor

Please See Tab 1

RFS Reform

- Remove exporter obligation
- Repeal 40 C.F.R. § 80.1430
- 1+ billion gallons of renewable fuel exported annually, 600+ million gallons generate RINs that must be retired
- Potentially more RINs from undenatured ethanol

Please See Tab 2

RFS Reform

- Extend the 1-psi RVP waiver to E15
- *Substantial litigation risk!*
- Amend regulations to allow year round sales of E15 with an RVP of 10 psi
- Could increase the supply of D6 RINs

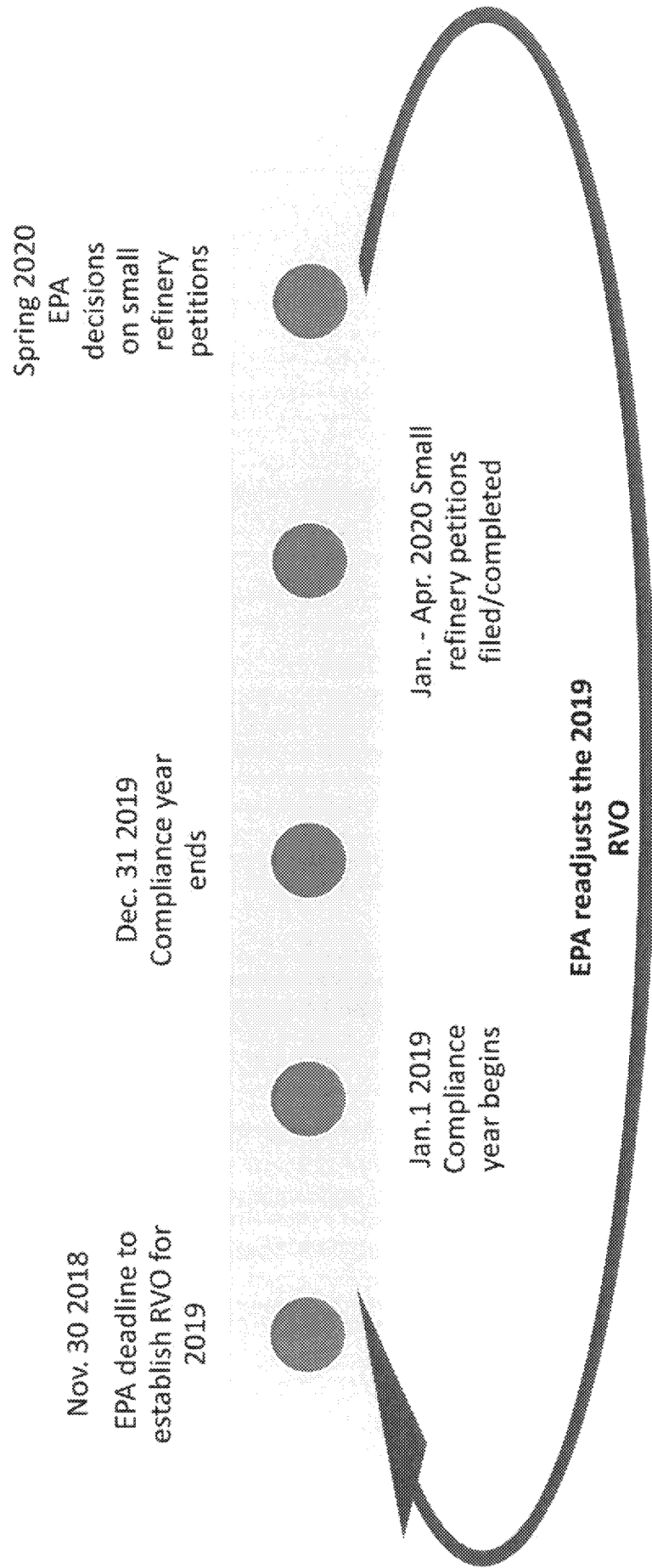
Please See Tab 3

RFS Reform

- Reallocation of small refinery RVOs
 - *Substantial litigation risk!*
 - *Impractical/unfair!*
 - Increase RVO to impose small refinery RVOs on other obligated parties

Please See Tab 4

SRE Volume Reallocation Is Not Practical



Small Refinery Exemption

- EPA should maintain its current approach to the small refinery exemption program
- Hardship exemption provides much needed relief to small refineries

Small Refinery Exemption

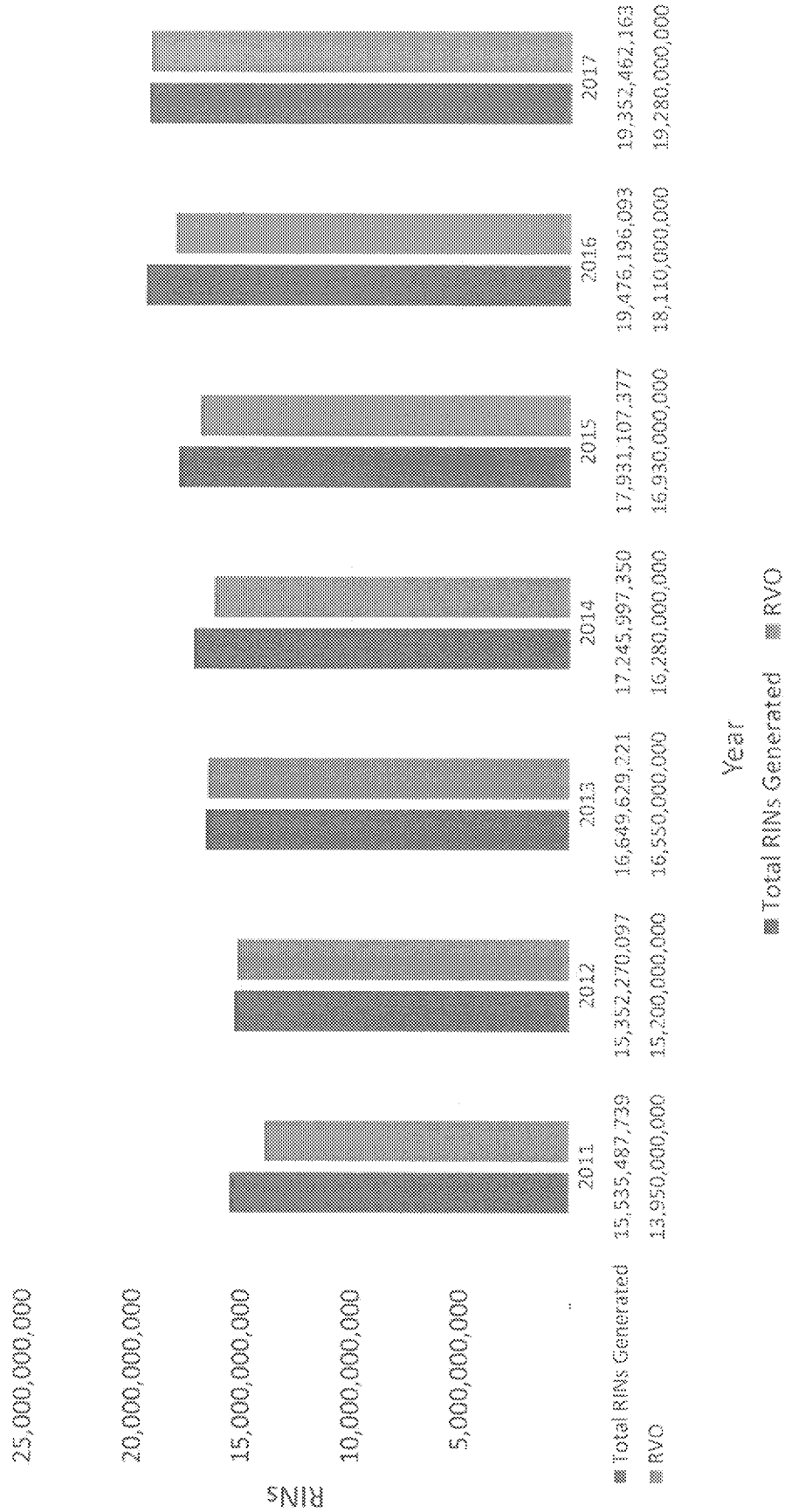
- Practical barriers to reallocation of SRE RVOs:
 - EPA sets RVO well before it grants SREs, thus reallocation would need to occur at end of or after close of compliance year
 - Reallocation would impose uncertainty for regulated parties, including small refineries who are on cusp of hardship status
 - Could impose \$1 to \$2 billion in additional compliance costs on obligated parties

Small Refinery Exemption

- Legal barriers to reallocation of SRE RVOs:
 - EPA cannot increase RVO over that provided in the statute. CAA § 211(o)(B)(i)(I) (“the applicable volume of renewable fuel . . . shall be determined in accordance with the following table”)
 - Resetting RVO after Nov. 30th of previous year is not permitted by statute. CAA § 211(o)(3)(B)(i)
 - The adjustment provision exists to allow EPA to downwardly adjust RVO, not increase it. CAA § 211(o)(3)(C)(ii); 72 Fed. Reg. 23,900, 23,911 (May 1, 2007).

SREs Do Not Impact Blending Rate

RINs Generated v. RVO



For 2018, renewable fuel production is 102% of 2017 volumes through April.

RFS Reform

- 10% blending floor
- Impose requirement to blend gasoline to minimum of 10% ethanol
- Provides certainty to ethanol/corn interests
- EPA has authority to implement this via regulation

RIN Trading

- Trades via brokers can occur over messenger-type exchanges
 - Intercontinental Exchange (“ICE”)
- Largest RIN brokers in the marketplace
 - ICAP
 - SCB
 - Blue Ocean
 - INTL/FC Stone
- Brokers take 1/10 cent per RIN commission on both buyer and seller side

RIN Trading Demonstration

RIN Market Regulation

- The lack of regulatory oversight in the RIN market contributes to high RIN prices
- RIN trading is not centralized
- RIN hoarding is prevalent
- RIN pricing is not transparent

RIN Market Manipulation

- Lack of RIN market regulation leads to market manipulation.

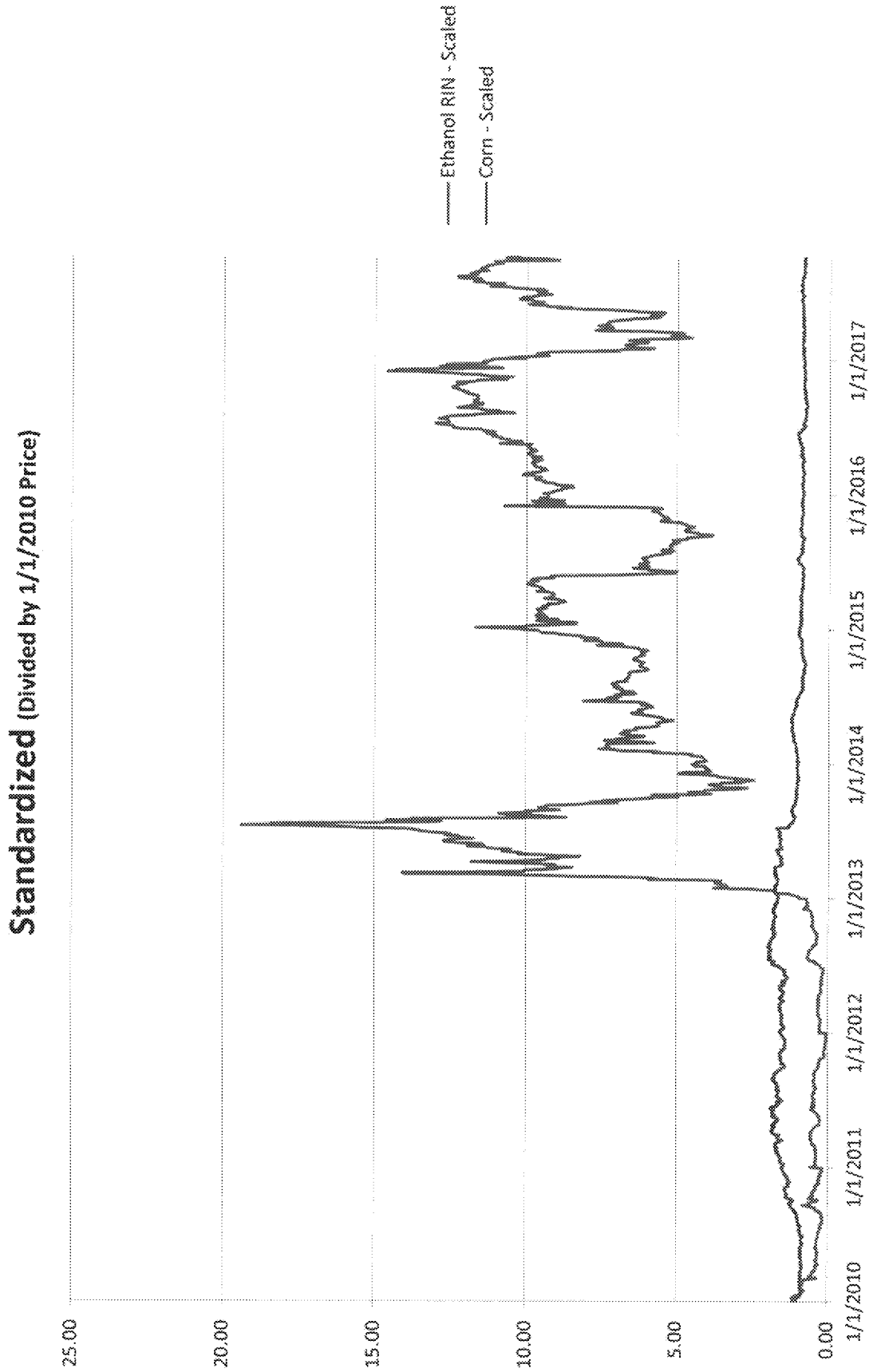
For example:

- Parties may hold RINs to limit supply and put upward pressure on price
- RIN-long party may purchase RINs if prices begin to fall to stabilize price

RIN Price Volatility

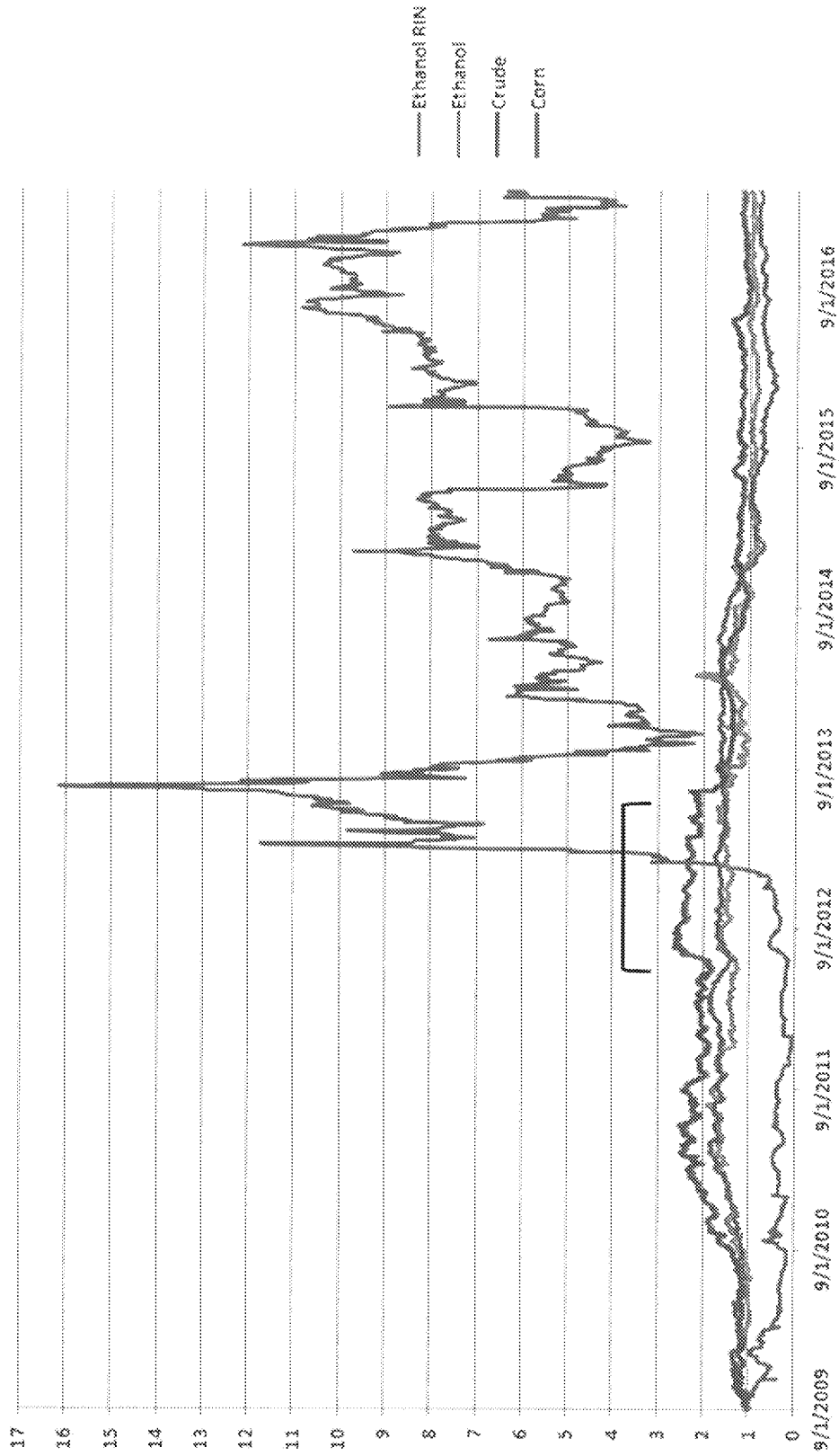
- Ethanol blending is highly profitable because it is 50-70 cents per gallon cheaper – RIN production cost is negative
- RIN prices unrelated to price of ethanol or corn
- RIN prices unrelated to blending costs
 - The cost of blending is an order of magnitude below the cost of RINs
- RIN prices fluctuate significantly based on regulatory and political decisions
- New RIN hedging programs are being introduced; none have succeeded in the past

D6 RIN Price vs. Corn Spot Prices



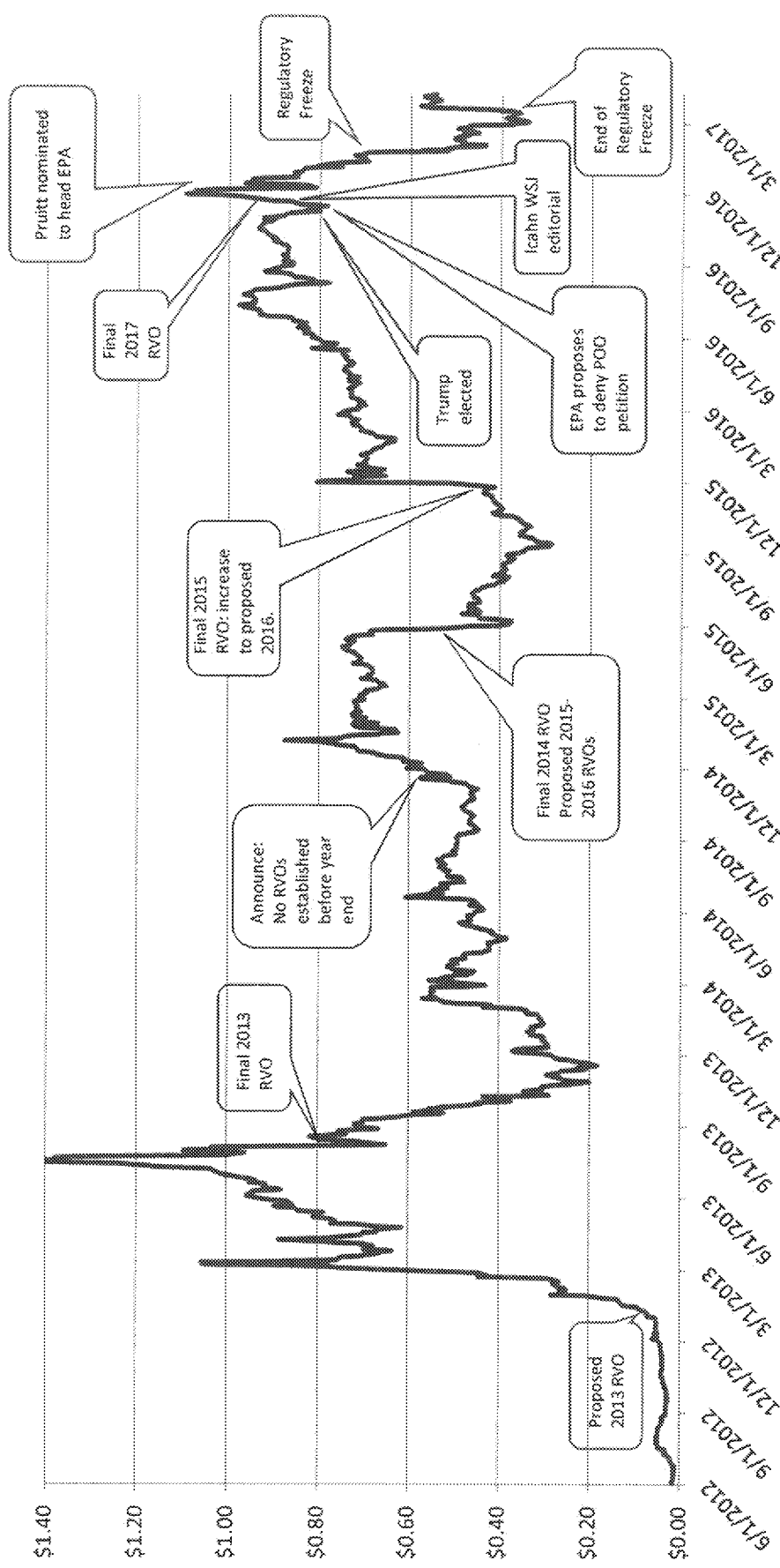
Ethanol, Corn, and Crude Prices

Spot Prices
Scaled to 9/1/2009 Prices



To facilitate comparison, all prices have been divided by 9/1/2009 prices to normalize to 1. A value of 2, for example, means the price was twice as high that day as on 9/1/2009. $S(t) = P(t) / P(9/1/2009)$

EPA and Political Impacts on RIN Prices



Relevant Dates: EPA Announcements

- 2/7/13: Proposed 2013 RVO, D6 RINS price *quadruples* the next 4-weeks
- 8/15/13: Final 2013 RVO, RINS trade down 33% in the next 4-weeks
- 11/21/14: Statement that 2014 Final Rule will not be set before year-end
- 5/29/15: Final 2014 RVO and Proposed 2015 & 2016 RVO
- 11/30/15: Final 2015 RVO, raised 2016 Proposed RVO
- 5/18/16: Proposed 2017 RVO
- 8/8/16: Icahn Letter to EPA about RIN market
- 11/8/16: Trump elected President
- 11/23/16: Final 2017 RVO
- 12/8/16: Scott Pruitt nominated to head EPA
- 1/20/17: Administration Announces Regulatory Freeze
- 3/20/17: Expiration of Regulatory Freeze

EPA/Political Impacts in the Last 2 Years



Transparency Ideas

1. Anti-hoarding provision
2. Trade restrictions
3. Purchase restrictions
4. Price and volume transparency

Please See Tab 5

Transparency Ideas

- Anti-hoarding provision
- Non-obligated parties must sell all separated RINs acquired during a calendar quarter in the following quarter.
- Obligated parties cannot hold more RINs than 120% of their obligation at the end of a calendar quarter.
- Keeps the RIN moving from producer to obligated party

Transparency Ideas

- Trading restriction
- Two-trade limit per RIN
- Similar to sulfur and benzene credit trading restrictions

Transparency Ideas

- Purchase restriction
- Only obligated parties can purchase separated RINS

Transparency Ideas

- Price and volume transparency
- Require parties to report the actual purchase/sale price and corresponding volume of a RIN transaction in EMTS (price should be a “matching criteria”)
- Prices should be subject to attestation like all other criteria of the transaction

SRE Litigation

- RFA and others are suing EPA over grant of HollyFrontier's Cheyenne and Woods Cross refineries, and CVR Energy's Wynnewood refinery
- ABFA brought suit in DC Circuit challenging SRE policy
- Industry intervention in pending lawsuits

Other Issues

Reset Provision

- CAA § 211(o)(7)(F) – Requires EPA to modify statutory volumes if:
 - (1) at least 20% of statutory volume waived in 2 consecutive years or,
 - (2) 50% of statutory volume waived in one year
- Each category likely subject to reset at the end of this year

RFS Reset Triggered

| Volume Requirement | Cellulosic Biofuel | Advanced Biofuel | Total Renewable Fuel | Biomass-Based Diesel |
|--------------------|--------------------|------------------|----------------------|----------------------|
| 2014 Statute | 1.75 | 3.75 | 22.25 | > 1.0 |
| 2014 Final | 0.33 | 2.67 | 16.25 | 1.65 |
| Percent Reduction | 96.11% | 28.80% | 26.83% | |
| 2015 Statute | 3.0 | 5.5 | 20.5 | > 1.0 |
| 2015 Final | 1.25 | 3.88 | 16.95 | 1.78 |
| Percent Reduction | 95.90% | 47.64% | 17.41% | |
| 2016 Statute | 4.25 | 7.25 | 22.25 | > 1.0 |
| 2016 Final | 2.30 | 4.61 | 18.11 | 1.9 |
| Percent Reduction | 94.59% | 50.21% | 18.61% | |
| 2017 Statute | 5.5 | 9.0 | 34.0 | > 1.0 |
| 2017 Final | 3.11 | 4.28 | 19.28 | 2.0 |
| Percent Reduction | 94.35% | 52.44% | 19.67% | |
| 2018 Statute | 7.0 | 11.0 | 26.0 | > 1.0 |
| 2018 Final | 2.88 | 4.29 | 19.29 | 2.1 |
| Percent Reduction | 95.89% | 61.00% | 25.87% | |
| 2019 Statute | 8.5 | 13.0 | 28.0 | > 1.0 |
| 2019 Final** | 3.93 | 4.88 | 19.55 | 2.1 |
| Percent Reduction | 95.53% | 62.46% | 29.00% | |

TAB 1

RFS REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|----------------------------|---|---|---|--|
| 1 | Remove Exporter Obligation | <p>EPA would rescind 40 C.F.R. § 80.1430 and remove the requirement to retire RINS for exported volumes of renewable fuel.</p> <p>The plain language of the statute requires only that transportation fuel "sold or introduced into commerce in the United States" contain the statutory amounts of renewable fuel. Domestically manufactured renewable fuel is introduced into commerce in the United States before it is exported.</p> <p>This provision is focused on the introduction into commerce of transportation fuel, not the location of where the fuel is consumed. In 42 U.S.C. § 7545(o)(2)(A), Congress explicitly prohibited EPA from restricting the geographic areas in which renewable fuel may be used.</p> | <p>Administrative solution. EPA would withdraw 40 C.F.R. § 80.1430 and clarify that renewable fuel exporters no longer have an obligation to retire RINs. This is not a complicated process and theoretically, EPA could accomplish the amendment before the end of 2018.</p> <p>To increase the defensibility of the rule, EPA may require that the exporter certify that the ethanol will be used for transportation fuel. Denatured ethanol can only be used for transportation fuel.</p> <p>If EPA amends the definition of ethanol to include denatured and un-denatured ethanol exported for use in transportation fuel, then more renewable fuel would qualify. This rulemaking may be complex and may involve the IRS and state taxing authorities.</p> | <p>Removing the exporter obligation would increase the supply of RINs and put downward pressure on RIN prices.</p> <p>In 2017, EMTS shows 341 million RINs retired for exports.</p> | <p>Increases quantity of RINs and decreases RIN prices. (+)</p> <p>Encourages domestic production. (+)</p> <p>Likely to have farmer support. (+)</p> <p>Decreases enforcement burden. (+)</p> <p>There is litigation risk to the extent the RFS was only intended to address domestic supply or transportation fuel to be solely used in the U.S. (-)</p> <p>Another litigation risk is that the term "transportation fuel" may refer only to blended fuel, in which case only the RINs from blended fuel that is exported could be exempt from the exporter obligation. (-)</p> |

RFS REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|------------------------------------|--|---|--|---|
| 2 | Extend the 1-psi RVP waiver to E15 | <p>High litigation risk because it is inconsistent with plain language of Clean Air Act.</p> <p>Amend EPA regulations to permit the sale of E15 with an RVP of 10 psi during the ozone season (summer months).</p> <p>Congress directed EPA to "promulgate regulations making it unlawful for any person during the high ozone season to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi)." Clean Air Act § 211(h)(1), 42 U.S.C. § 7545(h)(1).</p> <p>E10 can have a RVP as high as 10.0 psi. Pursuant to CAA § 211(h), which allows a 1 psi waiver for "fuel blends containing gasoline and 10 percent denatured anhydrous ethanol [which is E10]", EPA granted E10 a waiver that allows for the sale of E10 with a RVP of 10 psi.</p> | <p>Administrative solution. EPA could amend its regulations to extend the 1 psi waiver to ethanol blends greater than 10%, such as E15.</p> <p>EPA would need to explain in detail the basis for changing its interpretation of the statute because the agency historically interpreted CAA § 211(h) to apply only to E10 and not E15.</p> <p>This change may require a legislative fix, however, because the statute authorizes a 1 psi RVP waiver only for fuel blends containing 10% ethanol. E15 has more than 10% ethanol.</p> | <p>Extending the 1 psi RVP waiver to E15 could increase the supply of D6 RINs. However, sales of E15 in the United States are low and we do not expect a substantial amount of RINs to be introduced into the market as a result of this proposal.</p> <p>The impact on RIN prices from this proposal is expected to be minimal.</p> | <p>High legal risks given plain language of Clean Air Act (-)</p> <p>Minimal change in RIN process (-)</p> <p>Environmental groups will likely oppose given the increase in ground level ozone (-)</p> <p>State air permitting authorities will likely oppose because proposal will make it more difficult for States to show attainment with National Ambient Air Quality Standards for ozone (-)</p> <p>Allows ethanol sales to increase in summer months (+)</p> |

RFS REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|---|--|---|--|--|
| 3 | <p>Reallocating Small Refinery Exemption Volumes</p> | <p>EPA would increase the annual RVO to account for the expected granting of Small Refinery Exemptions (SREs) later in the compliance year.</p> <p>There is no legal authority available to EPA to increase the RVO or amend it after the Nov. 30 deadline. The provision in CAA § 211(o)(3)(C) only provides authority to discount the annual RVO to account for exempt small refineries use of renewable fuel.</p> <p>One of the main purposes of the RFS is to ensure that small refineries do not suffer economic harm as a result of the RFS. Congress recognized that small refineries are instrumental to rural America by providing high paying jobs and a substantial tax base. Congress never envisioned that the RINs associated with the Small Refinery Exemptions would be reallocated.</p> | <p>Administrative solution: EPA may try to address this issue as part of the annual RVO rulemaking procedure. To do so, EPA would need to anticipate the volume of conventional fuel produced by small refineries that are likely to receive SREs. Neither the CAA nor the RFS regulations permit EPA to guess which parties may be exempt, instead EPA must apply the RVO based on the formula set forth in 40 C.F.R. § 80.1405.</p> <p>Additionally, EPA must set the RVO by Nov. 30 of the previous calendar year – it cannot adjust the RVO after that date.</p> <p>Implementation is further complicated by the fact that EPA grants SREs after the end of the compliance year. Thus, this approach is impractical and EPA should not prejudice decisions on SREs.</p> <p>Proposal would be inequitable to other refineries, which in compliance with the RVO throughout the year.</p> | <p>The proposal will likely increase RIN prices by increasing the RVO on obligated parties beyond what is required by the RFS.</p> | <p>Proposal has high legal risk (-)</p> <p>Proposal will increase RIN prices and increase pressure from the blendwall (-)</p> <p>Proposal will not change blending practices and RVO will continue to meet (-)</p> |

RFS REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|--------------------------------------|---|--|-------------------------------|--|
| 4 | E10 and Biodiesel Fuel Specification | <p>Minimum fuel standard of 10% ethanol in gasoline and [2%] biodiesel in diesel</p> <p>Replaces biofuel ceiling with free market approach</p> <p>Lays foundation for future octane solutions and RFS reforms</p> <p>Solves phantom RIN problem from clear gas sales (E0)</p> | EPA to require a minimum of E10 to be sold in the United States for transportation fuel. | Should not impact RIN prices. | <p>Lays foundation for future octane solutions and RFS reforms (+)</p> <p>Solves phantom RIN problem from clear gas sales (E0) (+)</p> <p>Protects biofuel from loss of current market share (+)</p> <p>Increases biofuel consumption (+)</p> <p>Provides certainty to renewable fuel industry (+)</p> |

TAB 2

EXPORTING BIOFUELS UNDER THE RFS

EPA's current regulatory framework addressing exports of biofuels

A renewable fuel producer generates a RIN for each gallon it produces. The RIN remains "connected" to the biofuel until it is blended with gasoline or diesel, or if it is exported. When a RIN is separated from renewable fuel via blending, the blender is free to sell the RIN to another party. When a RIN becomes separated from renewable fuel via export, however, it must be retired and cannot be sold to another party. This restriction exists as a result of EPA's current regulatory framework, which imposes upon an exporter an export renewable volume obligation ("ERVO"). The ERVO prevents the RIN from being used by an obligated party to comply with the annual RVO. See 40 CFR §§ 80.1427(c), 80.1430.

Eliminating the EPA-created ERVO is consistent with the RFS statutory language

The RFS does not in any way mandate that EPA impose an ERVO, and one could go as far as saying that the ERVO is illegal. The ERVO appears to be based on EPA's erroneous interpretation of the RFS that only domestically-consumed fuel can satisfy Congress' mandate to increase renewable fuel use. However, EPA's interpretation is inconsistent with the plain language of the RFS. Section 211(o)(2)(A)(i) is the general authority for imposing the annual RVOs and states:

[RFS1] Not later than 1 year after August 8, 2005, the Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B). [RFS2] Not later than 1 year after December 19, 2007, the Administrator shall revise the regulations under this paragraph to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel, determined in accordance with subparagraph (B) [the Congressionally mandated volumes]

In RFS1, the annual RVO only applied to *gasoline* sold or introduced into commerce in the United States. In RFS2, however, Congress broadened the statute to apply to *transportation fuel* sold or introduced into commerce in the United States. In RFS1, there could have been a plausible interpretation that only blended fuel (gasoline) could be used to meet the annual RVO. However, in RFS2, that interpretation is no longer viable because transportation fuel must be read to include more than just gasoline. Transportation fuel is defined as "a fuel for use in motor vehicles, motorvehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels)." Section 211(o)(1)(L). Pure ethanol and 100 percent biodiesel can be used as fuel in vehicle engines and are squarely within the definition of transportation fuels.

The second term to consider is "*introduced into commerce in the United States.*" This is a term of art in the legal world stemming from the U.S. Constitution and has been defined extremely broad by courts. See *United States v. Potomac Navigation, Inc.* No. WMN-08-717, 2008 WL 11363374 at *2 (D. Md. July 3, 2008). When a product is created domestically and

then transferred to a facility to be exported, the product has been introduced into commerce in the United States. Restricting the definition of the phrase “introduced into commerce” to only the sale of fuel domestically would render it superfluous, as it would have the same meaning as the term “sold.”

A broad interpretation of the term “*introduced into commerce in the United States*,” also is warranted given the statutory provision prohibiting EPA from restricting the geographical scope of the RFS. Section 211(o)(2)(A)(iii)(II)(aa) states that “ [r]egardless of the date of promulgation, the regulations promulgated under clause (i) [the annual RVO rule] . . . shall not restrict geographic areas in which renewable fuel may be used.” Once again, the plain language of the RFS program does not restrict biofuels to only domestic use, thus exports should be on equal footing with domestic ethanol.

Impact of Removing ERVO

By rescinding the regulatory requirement to retire RINs for exported renewable fuel, EPA would increase the supply of RINs available in the market. Approximately 1 billion gallons of renewable fuel is exported annually. Not all of this renewable fuel generates RINs, however. Some renewable fuel producers chose not to register their fuel and generate RINs if they know their fuel is destined for export. A portion of this total, approximately 400 million gallons, does generate RINs that are retired upon export. Thus, at least 400 million RINs could enter the marketplace if EPA amends its regulations.

The remaining amount of renewable fuel could also generate RINs if the producers determine it is economical to do so. A portion of this volume is undenatured ethanol. Currently, undenatured ethanol is not eligible to participate in the RFS program. Accordingly, producers will either need to add denaturant to ethanol in order to generate a RIN or EPA will need to work with other agencies, such as the IRS, to amend regulations to permit exports of undenatured ethanol to generate RINs.

Conclusion

We have not found a legal basis to prevent exported biofuels from full participation in the RFS program. In fact, the statutory language could be read to prohibit the current regulatory structure that imposes a separate and independent RVO on exports of biofuels.

TAB 3

EXTENSION OF 1-PSI WAIVER TO E15

This memorandum addresses the Environmental Protection Agency's (EPA) authority to extend the 1-psi Reid vapor pressure (RVP) waiver to gasoline containing 15% ethanol (E15). The plain language of the Clean Air Act and EPA's regulations currently limits the 1-psi RVP waiver to gasoline containing 10% ethanol (E10). Though proponents of increased ethanol use suggest that the Clean Air Act grants EPA authority to extend the RVP waiver to any fuel blend containing at least 10% ethanol, EPA has previously rejected such an interpretation. Accordingly, EPA would face significant litigation risk in adopting a contrary position.

Legal Risk of Extending the 1-psi RVP Waiver to E15

The plain language of the Clean Air Act, which prohibits the extension of the 1-psi RVP waiver to E15, poses the biggest legal obstacle to EPA revising its regulations to extend the a 1-psi waiver for E15.

In the 1990 Clean Air Act amendments, Congress directed EPA to "promulgate regulations making it unlawful for any person during the high ozone season . . . to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi)." Clean Air Act § 211(h)(i), 42 U.S.C. § 7545(h)(1). The statute contains an "ethanol waiver," however, that increases the RVP limit "one pound per square inch (psi) greater than the [9.0 psi] Reid vapor pressure limitation" for "fuel blends containing gasoline and 10 percent denatured anhydrous ethanol." *Id.* § 211(h)(4). Under the statute, parties are "deemed to comply" with the RVP limits if they can demonstrate that "(A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection; (B) *the ethanol portion of the blend does not exceed its waiver condition under subsection (j)(4); and (C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of the blend.*" *Id.* § 211(h)(4)(A) – (C)(emphasis added). **Section 211(h)(4) of the Clean Air Act clearly limits the RVP waiver to E10. The proponents of biofuels are seeking for EPA to go beyond this Congressional wavier and allow for E15 during the high ozone season.**

EPA promulgated regulations limiting gasoline RVP during the high ozone season (generally May 1 to September 15) based on the state/region where the gasoline is sold, dispensed, or transported. *See* 40 C.F.R. § 80.27(a). The regulations also contain a waiver provision allowing gasoline containing "denatured, anhydrous ethanol" at a concentration of "at least 9% and no more than 10% (by volume) of the gasoline" to exceed the RVP limits by up to 1 psi. 40 C.F.R. § 80.27(d)(2). EPA's regulatory waiver for "gasohol," or gasoline that contains 9-10% ethanol actually existed before Congress amended Section 211 of the Clean Air Act in 1990. *See* 54 Fed. Reg. 11,868, 11,879 (March 22, 1989). Thus, EPA views the 1-psi RVP waiver provision as a codification of its original regulations.

In 2011, EPA considered extending the waiver to E15 but concluded that it lacked the statutory authority to extend the RVP waiver to gasoline blends greater than 10% ethanol because "the text of section 211(h)(4) and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9-10 vol%

ethanol.” 76 Fed. Reg. 44,406, 44,433 (July 25, 2011). EPA reached this conclusion primarily because Congress had codified EPA’s previous RVP regulations into Clean Air Act § 211(h) as part of the 1990 amendments. *Id.* According to EPA, Congressional intent is apparent on the face of the statutory provision given that Congress specified the waiver applied to fuel blends containing 10% ethanol. *Id.*¹

EPA could face substantial litigation risk by issuing regulations that extend the 1-psi RVP waiver to E15. As EPA acknowledged, the plain language of section 211(h) likely restricts the 1-psi RVP waiver to fuel blends containing 10% ethanol. While ethanol interests interpret the statute to allow the RVP waiver to apply to any fuel blend containing a minimum floor of 10% ethanol (which E15 satisfies), such an interpretation may not square with the plain language of the statute. As noted above, Congress modeled the RVP waiver on EPA’s former regulations, which limited the 1-psi RVP waiver to gasoline blends of 9-10% ethanol. Though Congress had the opportunity to expand the waiver to ethanol blends greater than 10%, it did not do so.

The legislative history of this provision also supports this interpretation. In codifying the RVP waiver, Congress wanted “to facilitate the participation of ethanol in the transportation fuel industry while also limiting gasoline volatility resulting from ethanol blending.” 76 Fed. Reg. at 43,434. Congress supported the statutory provision by relying on technical data showing that gasoline blended with 9-10% ethanol results in an approximate 1-psi RVP increase over conventional gasoline. *Id.* Congress did not look at other blends as part of its law making effort. *Id.* This history supports the position that E10 is a ceiling not a floor.

Conclusion

EPA would need to provide a solid basis for revising its interpretation of Clean Air Act § 211(h) to permit the RVP waiver to apply to fuel blends containing more than 10% ethanol. Any such new justification will be legally suspect given the plain language of the Clean Air Act.

¹ EPA also clarified that the “deemed to comply” provision of section 211(h) should not be read to authorize extension of a 1-psi RVP waiver to blends of ethanol above 10%. The agency stated that this provision serves as a defense to liability to those who blend gasoline to achieve a 10% ethanol concentration. 76 Fed. Reg. at 43,434 (stating that the provision “is not written as a free standing RVP limit that acts separate and apart from the 1 psi waiver for 9-10% blends of ethanol”).

TAB 4

SMALL REFINERY VOLUME REALLOCATION

The Environmental Protection Agency (EPA) would face significant legal and practical issues if it decides to reallocate the renewable volume obligation (RVO) for small refineries that received an economic hardship waiver to other obligated parties in future Renewable Fuel Standard (RFS) rulemakings. The Clean Air Act (CAA) does not authorize EPA to adjust upwardly the RVO after setting it on November 30 of the previous year. Additionally, reallocation of the RVO in a future year is impractical because it would require obligated parties to blend renewable fuel that would not necessarily exist.

The Small Refinery Exemption

In passing the RFS, Congress acknowledged that small refineries were likely to suffer disproportionate economic harm if required to comply with the renewable fuel blending obligations. To prevent such harm, Congress exempted small refineries from compliance obligations through 2010. CAA § 211(o)(9), 42 U.S.C. § 7545(o)(9); *see Hermes Consol., LLC v. EPA*, 787 F.3d 568, 572 (D.C. Cir. 2015). This exemption provided small refineries time to develop compliance strategies and increase renewable fuel blending capacity. *See Hermes*, 787 F.3d at 572–73. Congress included within the RFS a mechanism to extend the initial small refinery exemption by directing the Department of Energy (DOE) to conduct a study to determine whether RFS compliance “would impose disproportionate economic hardship on small refineries.” *See* CAA 211(o)(9)(A)(ii)(I). If the DOE concluded that the RFS would impose a disproportionate economic hardship on small refineries, then the CAA authorized EPA to exempt those small refineries. CAA § 211(o)(9)(A)(ii)(II).

In addition to exempting all small refineries, Congress authorized EPA to extend the exemption for individual small refineries on a case-by-case basis. To avail itself of this option, a small refinery can petition EPA at any time for an extension of its exemption. CAA § 211(o)(9)(B)(i). There are two basic prerequisites for an extension. First, a refinery must be a “small refinery,” for any year in which it is seeking an exemption, meaning that it cannot have an average aggregate daily crude throughput greater than 75,000 bpd. Second, the refinery must demonstrate that compliance with the RFS imposes a “disproportionate economic hardship.” 40 C.F.R. 80.1441(e)(2)(i).¹

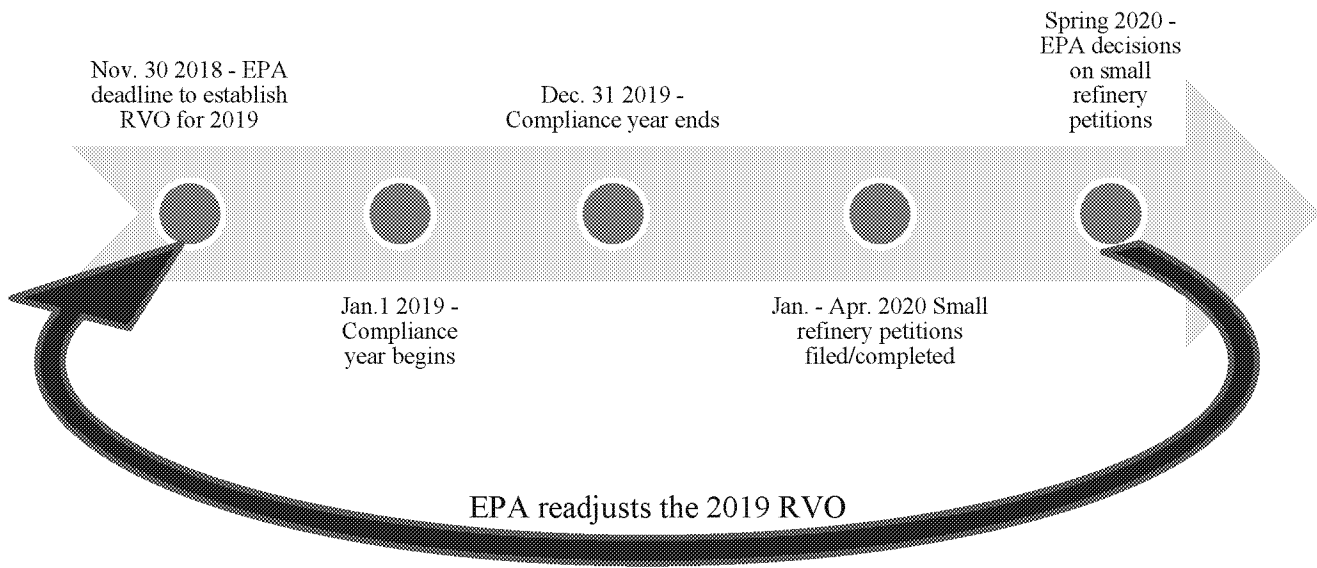
Currently, EPA grants extensions of the small refinery exemption in 1-year increments. EPA generally issues an exemption decision at the end of the compliance year (December 31), or even after the compliance year because a petitioning refinery must provide financial information for the whole year to substantiate a claim of disproportionate economic hardship. The exemption,

¹ The RFS does not define “disproportionate economic hardship.” Recently, the Tenth Circuit found EPA’s standard for disproportionate economic harm to be overly rigorous, and directed EPA to evaluate hardship by considering reduced profitability, temporary negative events, as well as risk of closure, and that EPA must compare the effect of RFS compliance costs on a petitioning refinery against the economic state of other refineries. *Sinclair Wyo. Refining Co. v. EPA*, 887 F.3d 986, 996-98 (10th Cir. 2017).

therefore, primarily operates retroactively and will result in EPA refunding to the small refinery the RINs it retired for compliance.

Legal Issues with Reallocating Small Refinery RVOs

The CAA prohibits EPA from reallocating volumes from exempt small refineries to other obligated parties.²



EPA also would be unable to adjust the current year RVO based on the granting of small refinery exemptions. As noted above, EPA generally grants exemptions towards the end of or after the compliance year. Thus, EPA would have to adjust the current-year RVO after the November 30 deadline imposed by the statute. There is no provision in the RFS that permits adjusting the RVO after November 30th.

EPA also lacks legal authority to increase the RVO in a future year based on the renewable fuel volumes associated with small refineries exempt in the previous compliance year. EPA may not increase the RVO by using a volume of renewable fuel greater than that provided in the statute. *See, e.g.,* CAA § 211(o)(B)(i)(I) (“the applicable volume of renewable fuel for the calendar years

² The RFS requires EPA to convert the statutorily mandated numeric renewable fuel volumes (in gallons) into a percentage standard each year that can be applied equally to all obligated parties to establish each party’s RVO. CAA § 211(o)(3). In calculating the percentage standard, the CAA directs EPA to divide the estimated volume of transportation fuel projected to be used in the following year by either the statutorily specified volume of renewable fuel (set forth in CAA § 211(o)(2)(B)) or a lower volume set by EPA following the use of its waiver authority. EPA has until November 30 of the previous calendar year to complete this process. CAA § 211(o)(3)(B)(i).

2006 through 2022 *shall* be determined in accordance with the following table” setting forth specific volumes in gallons (emphasis added)). Instead, EPA’s authority is limited to downward adjustments based on its waiver authority set forth in CAA § 211(o)(7). Given these restrictions, EPA would be hard-pressed to justify increasing the RVO in a future year in order to reallocate exempt small refinery RVOs from a previous year.

The “adjustment” provision in the statute, which states that EPA “shall make adjustments . . . to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt” likely does not authorize an upward adjustment in the RVO. CAA § 211(o)(3)(C)(ii). Instead, this provision operates as a safety valve to ensure that obligated parties’ ability to satisfy their blending obligations would not be prejudiced from exempt small refineries use of renewable fuel, which would reduce the available supply to non-exempt parties. EPA clarified the meaning of this provision in promulgating its interpretative regulations, concluding that accounting for the volume of renewable fuel used by exempt small refineries “would reduce the total volume of renewable fuel use required of others, and thus directionally would reduce the percentage standard.” 72 Fed. Reg. 23,900, 23,911 (May 1, 2007).

This interpretation is also logical considering that the concept of RINs did not exist when Congress enacted the statute. In the RFS, Congress directed obligated parties to blend renewable fuel to comply with the statute. If, however, exempt small refineries blended renewable fuel into their transportation fuel, then they would deplete the total volume available to obligated parties for compliance with the RVO. This is so because Congress had not created a credit program that would allow exempt small refineries to sell the credits generated from blending to other obligated parties. Accordingly, Congress permitted EPA to downwardly adjust the RVO to prevent potential compliance obstacles resulting from exempt small refineries using renewable fuel. EPA would face substantial litigation risk justifying a decision to increase the RVO to reallocate volumes from exempt small refineries.

Practical Issues with Reallocating Small Refinery RVOs

Reallocating exempt small refinery RVOs is also impractical and would unfairly burden obligated parties because it would change compliance burdens well into a compliance year.

One of the major obstacles to reallocating exempt small refinery RVOs is the fact that EPA issues exemptions a year or more after issuing the final RVO for the same compliance year. Once EPA sets the RVO, obligated parties develop compliance strategies based upon their anticipated obligation. During the compliance year, obligated parties generally purchase RINs in proportion to their obligation. If EPA were to adjust the RVO at the end of the compliance year to reflect the granting of small refinery exemptions, then obligated parties would have very little time to purchase sufficient RINs to meet their obligation. Moreover, if such an adjustment became common practice, it would induce obligated parties to hoard RINs throughout the year in anticipation of an increased obligation. This would likely lead to high RIN prices and RIN shortages.

Reallocation of the exempt small refinery RVOs also could impose economic hardships on obligated parties. According to EIA data, small refineries are responsible for approximately 10% of domestic refining capacity, and thus would be expected to satisfy approximately 10% of the

annual renewable fuel requirements. Using the 2018 RVO, this means small refiners would account for approximately 1.9 billion gallons of the 19.29 billion gallon requirement. If EPA reallocated this volume, then the remaining obligated parties would need to retire approximately 1.9 billion more RINs. Assuming RIN prices fall between \$0.50 and \$1.00, the burden of shifting an additional 1.9 billion gallons will be somewhere between \$1 billion and \$2 billion.

Conclusion

The plain language of the RFS statute and EPA's regulations prohibits EPA from retroactively increasing the RVO for obligated parties to account for the volumes from exempt small refineries. Moreover, the operation of the RFS makes reallocating volumes from exempt small refineries to other obligated parties impractical.

TAB 5

RIN TRANSPARENCY REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|-----------------------------------|---|---|--|---|
| 1 | Anti-RIN Hoarding Provisions | EPA would require non-obligated parties to sell all separated RINs acquired during a calendar quarter in the following quarter. Additionally, EPA would prohibit obligated parties from holding more RINs than 120% of their obligation at the end of a calendar quarter. The Clean Air Act grants EPA broad authority to establish a credit program. CAA § 211(o)(5). | <u>Administrative solution.</u> EPA would need to promulgate new regulations and would need to update EMITS to include compliance provisions. | This solution likely would reduce the cost of RINs by discouraging arbitrage opportunities and market manipulation. | Likely to reduce RIN prices. (+) Compliance with the anti-hoarding provision would be determined on a quarterly bases, thus reducing the administrative burden on EPA and providing flexibility to RIN market participants. (+) Reduces price speculation (+) |
| 2 | RIN Trade Restrictions | EPA would impose a two-trade restriction on RIN transactions. The Clean Air Act grants EPA broad authority to establish a credit program. CAA § 211(o)(5). | <u>Administrative solution.</u> EPA would promulgate regulations similar to those governing sulfur credit trades. | This solution likely would reduce the cost of RINs by discouraging arbitrage opportunities and market manipulation. | Likely to reduce RIN prices. (+) Lowers RIN transactions and administrative costs of RFS program. (+) Reduced RIN liquidity. (-) |
| 3 | RIN Purchase Restrictions | EPA would allow only obligated parties to purchase separated RINs. The Clean Air Act grants EPA broad authority to establish a credit program. CAA § 211(o)(5). | <u>Administrative solution.</u> EPA would promulgate regulations similar to those governing sulfur credit trades. This would not impact RIN generators as they transfer assigned RINs with their fuel. | This solution likely would reduce RIN costs because it would prevent non-obligated parties from entering the RIN market to take advantage of arbitrage opportunities or to engage in RIN market speculation. | Does not restrict the party that can generate or separate RINs. (+) Would reduce some market manipulation and RIN speculation. (+) Potential to reduce RIN liquidity. (-) |
| 4 | RIN Price and Volume Transparency | EPA would require RIN purchases and sale prices to match and be subject to annual attestation. EOA should publish daily RIN trading activity information each day such as (1) volume of separated RINs transacted by vintage and D code and (2) average separated RINs trading price by vintage and D code. | <u>Administrative solution.</u> EPA would promulgate regulations requiring price and volumes of RINs to be reported accurately and be subject to attestation. EPA would modify EMITS data gathering system to publish timely RIN transactional data. | This solution likely would reduce the cost of RINs by discouraging arbitrage opportunities and market manipulation. | Likely to reduce RIN prices. (+) Provides transparency to market participants and reduces manipulation. (+) |

Message

From: Stewart, Andrew R. [astewart@sidley.com]
Sent: 4/3/2018 9:32:44 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Request for Short Meeting on RFS - April 6th or 9th

Bill,

I hope this note finds you well.

Denise McWatters, GC of HollyFrontier, was hoping to meet for 30 minutes this Friday after 2 PM, or Monday morning, on RFS.

If this might work, should I coordinate with your scheduler?

Thanks in advance,

-Andrew

ANDREW R. STEWART
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To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Re: Phone Number

Cell
Work

Ex. 6

Ex. 6

Sent from my iPhone

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On Mar 16, 2018, at 7:04 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

Hi Jeff. Will you please send me Lynn's number? Thanks.

Bill Wehrum

Assistant Administrator

Office of Air and Radiation

U.S. Environmental Protection Agency

(202) 564-7404

Message

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
Sent: 6/15/2018 12:29:21 PM
To: Gergana Vasileva [GVasileva@thecwcgroup.com]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: GLowe@aga.org; LTraweek@aga.org; Sarah Sandison [ssandison@thecwcgroup.com]
Subject: RE: 27th World Gas Conference – On-Site Guidelines for Workshop

Hi Gergana,

I have just now submitted Bill's one day waiver registration. Let us know if you need anything else.

Emily Atkinson
Management Analyst/Office Manager
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5412B, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

From: Gergana Vasileva [mailto:GVasileva@thecwcgroup.com]
Sent: Friday, June 15, 2018 3:26 AM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: GLowe@aga.org; LTraweek@aga.org; Sarah Sandison <ssandison@thecwcgroup.com>
Subject: RE: 27th World Gas Conference – On-Site Guidelines for Workshop

Dear Isabel,

We are sending our VIP badges to print today and in order to include Mr Wehrum in this ask that you please register him on for a one day waiver on Friday 29 using the following link?:

<https://cwc.eventsair.com/wgc-2018/speaker-one-day-reg>

Many thanks,
Gergana

From: DeLuca, Isabel [mailto:DeLuca.Isabel@epa.gov]
Sent: 13 June 2018 15:07
To: Gergana Vasileva; Wehrum, Bill; Atkinson, Emily
Cc: GLowe@aga.org; LTraweek@aga.org; Sarah Sandison
Subject: RE: 27th World Gas Conference – On-Site Guidelines for Workshop

Dear Gergana,

Thank you for the information, and for the invitation to Bill to attend the closing ceremony. We will check Bill's calendar and get back to you regarding his availability.

Best regards,
Isabel

From: Gergana Vasileva [<mailto:GVasileva@thecwcgroup.com>]
Sent: Wednesday, June 13, 2018 10:00 AM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: GLowe@aga.org; LTraweek@aga.org; Sarah Sandison <ssandison@thecwcgroup.com>
Subject: 27th World Gas Conference – On-Site Guidelines for Workshop

Dear Isabel,

I am pleased to say that Mr Wehrum has been given **VIP Speaker Status** at the Conference.

He will be able to use the VIP Entrance to enter the Convention Center. The VIP Entrance is located on the corner of L Street & 9th and should be accessed via 7th Street. Please find a map of the VIP Entrance attached. The AGA will arrange to have her badge delivered to him for VIP Entrance Access. Should he wish to access the building by vehicle, please find attached our Car Signage which we ask is affixed to the car.

On request, we will also reserve a seat for him in the **Closing Ceremony** place on **Friday June 29, 2108** between **3:55 PM – 4:55 PM**. Please can you confirm if he would like to attend this?

Please also find attached a document with the details we require from you with regards to security if you need this. Our security team - City Security - will then liaise with the relevant contact to finalise all security arrangements for Mr Wehrum.

If you have any questions on these arrangements please do let me know.

Best wishes
Gergana

Gergana Vasileva
Speaker and Program Assistant, WGC 2018
CWC Solutions, part of CWC Group Limited
Direct Line: [Ex. 6] w: www.cwc-solutions.com

Professional Conference Organiser for:



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Message

From: Alonso, Richard [ralonso@sidley.com]
Sent: 2/14/2018 11:53:01 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Email address test

Hi Bill – I hope all is well. Thanks for the meeting this week. The client would like to send you a thank you note for the meeting but I wanted to make sure I have your correct email. Please let me know if you received this email. I am not sure if your email is Wehrum.bill@epa.gov or Wehrum.william@epa.gov. If there is another general office email they should use, please let me know.

I know this is a strange request. Hope to see you again soon.

RICHARD ALONSO

SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Ex. 6
ralonso@sidley.com
www.sidley.com



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Message

From: Holmstead, Jeff [jeff.holmstead@bracewell.com]
Sent: 4/5/2018 1:24:44 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Quick Note on Air Liquide Meeting

Air Liquide is a long-time client of the firm, and we do a lot of work for them in a lot of areas, including environmental. I will say that they are committed to doing things the right way and have worked cooperatively with OTAQ staff for quite a while on the issue they want to raise with you. I don't want you to think that they are just walzing in and asking you to solve their problem.

As they will explain, because of the RFS program,

CBI / Ex. 4

CBI / Ex. 4

For some reason, however, they have not been able to get this pathway approved. They have provided everything that OTAQ has requested, and OTAQ has not raised any issues about their petition. I told them that they might just be caught up in the politics of the RFS program.

Anyway, this is a big issue for Air Liquide, as evidenced by the fact that Mike Graff is going in to meet with you. He's the CEO of Air Liquide North America and the number 2 guy in the international parent company. I think the GC, Kevin Feeney, may also be attending the meeting. They're both very solid guys.

I would liked to have joined the meeting, but the only time that worked for Mike was when I was going to be in Utah. That said, you'll be in good hands with my colleagues Dee Martin and Anna Burhop. They are terrific, and I think you'll enjoy meeting them.

If you have any questions after the meeting, please let me know, and I will make sure we get you the answers.

Thanks for taking the time to meet with them.

Jeff

JEFF HOLMSTEAD

Partner

jeff.holmstead@bracewell.com

T: **Ex. 6** | F: +1.800.404.3970

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Message

From: David Darling [ddarling@paint.org]
Sent: 4/19/2018 4:22:08 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; John.M.Mulvaney [Ex. 6] Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Caparoso, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78412d4056534ef288fb8ce390b4bf17-Caparoso, J]; Barnett, Keith [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=539d3cb498494c49a400212adc19d839-Barnett, Keith]
Subject: American Coatings Association (ACA) SSM concerns
Attachments: 2018.04.19 ACA SSM Concern.pdf

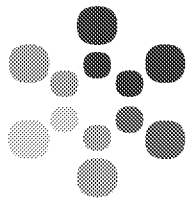
Good afternoon, please find attached an American Coatings Association (ACA) letter of concern with regard to removal of the Start-up, Shutdown and Malfunction (SSM) provisions of the Paper and Other Web Surface Coating MACT, Miscellaneous Coatings Manufacturing (MCM) and the Miscellaneous Organic Chemical Manufacturing (MON) MACT rules. ACA is concerned that removing these provisions will make it difficult, or in some cases impossible, for some facilities to meet the rules' emission limitations during SSM periods, and especially during periods of malfunction of an emission control device. ACA therefore requests that, if the SSM provisions are removed, EPA add work practice standards for periods of malfunctions (see attached Malfunction Work Practice Standard). Alternatively, ACA requests that EPA identify the issue clearly and request public comment in the preamble of each RTR-related rule revision, thereby providing EPA an opportunity to "pivot" on the issue without re-proposing the rules. Given the relatively short rulemaking schedule for these rules, ACA requests that EPA's Office of Policy and the Office of Management and Budget (OMB) review the agency's development of this RTR rulemaking to ensure that our concerns are considered, and that the rule is technically sound and fair.

Please let me know if you have any questions.

Best regards,

David Darling, P.E.
VP, Health, Safety and Environmental Affairs
American Coatings Association
901 New York Ave., NW Suite 300 West
Washington, DC 20001

[Ex. 6]



AmericanCoatings
ASSOCIATIONSM

April 19, 2018

Bill Wehrum
Environmental Protection Agency
Mail Code 6101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Brittany Bolen
Office of Policy (1803A)
US Environmental Protection Agency
WJC North Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mick Mulvaney
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

**Re: Start-up, Shut-down and Malfunction; American Coatings Association
(ACA) Concerns**

Dear Mr. Wehrum, Ms. Bolen and Mr. Mulvaney:

The U.S. Environmental Protection Agency (EPA) is currently conducting its Residual Risk and Technology Review (RTR) of the Paper and Other Web Surface Coating MACT in addition to the Miscellaneous Coatings Manufacturing (MCM) and the Miscellaneous Organic Chemical Manufacturing (MON) MACT rules. ACA¹ is concerned that EPA will remove the startup, shutdown, and malfunction (“SSM”) provisions from each of these rules, making it difficult, or in some cases impossible, for some facilities to meet the rules’ emission limitations during SSM periods, and especially during periods of malfunction of an emission control device. ACA therefore requests that, if the SSM provisions are

¹ The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

removed, EPA add work practice standards for periods of malfunctions (see attached Malfunction Work Practice Standard). Alternatively, ACA requests that EPA identify the issue clearly and request public comment in the preamble to each proposal of an RTR-related rule revisions, thereby providing EPA an opportunity to “pivot” on the issue without re-proposing the rule. Because EPA is under a compressed, court-ordered schedule for completing the RTRs, ACA requests that both EPA’s Office of Policy and the Office of Management and Budget (OMB) review EPA's development of RTR-related rule revisions to ensure that our concerns are considered, and ensure that each rule is technically sound and fair.

The work practice standards that we are requesting in this letter are specifically provided for in Section 112(h) of the Clean Air Act. Section 112(h) specifically authorizes EPA to establish “a design, equipment, work practice, or operational standard” when it is not feasible to prescribe or enforce a numeric emissions standard. EPA has recognized, and the courts have agreed, that malfunctions of emissions control, process, and manufacturing equipment are inherently unpredictable and non-routine events that are not feasible to include in calculating MACT emissions standards.²

In addition, it’s important to note that while we are requesting a work practice standard for malfunctions, the numerical emission standards of most MACT rules involve some sort of averaging period, typically hourly, daily, or monthly. As a consequence, any additional emissions that might occur during a malfunction do not automatically exceed the allowable emission average if the facility is able to shutdown the corresponding source quickly. But even immediate shutdown of a source when it malfunctions is not able to guarantee in all cases that the emission limits will be met during these periods.

In summary, a malfunction workpractice is needed in each of the MACT rules identified in this letter in the event that EPA removes the existing startup, shutdown, and malfunction provisions from these rules. EPA’s authority to create a malfunction workpractice is clear, and failure to do so will place multiple ACA member facilities in needless compliance jeopardy, result in generation of excess solid and hazardous waste, or result in potentially unsafe operating conditions.

Thank you for your consideration of our concerns. Please do not hesitate to contact me if you have any questions.

Sincerely,



David Darling,
VP, Health, Safety and Environmental Affairs
American Coatings Association

² National Emission Standards for Hazardous Air Pollutants: Nutritional Yeast Manufacturing Residual Risk and Technology Review, Final Rule, 82 Fed. Reg. 48156, 48159-160 (Oct. 16, 2017) (citing U.S. v. Sugar Corp. v. EPA, 830 F.3d 579, 606-610 (D.C. Cir. 2016))

Malfunction Work Practice Standard

The following work practice standard assures that all malfunctions of process equipment, control devices, and monitoring equipment are identified and corrected as soon as practicable in order to minimize excess HAP emissions, while assuring safe operating conditions, limiting the generation of excess solid and hazardous waste, and minimizing burden on industry.

Malfunction is defined in 40 C.F.R. § 63.2 of the NESHAP General Provisions as “any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.”

Malfunctions Will be Identified and Production Suspended — To the extent practicable, control device operating systems shall be designed to provide an audio and/or visual identification of malfunctions. In the event of an alarm, the facility’s most appropriate responsible official will be notified. If it is determined that repair or restoring malfunctioning equipment to normal operation will take longer than the time needed to discontinue operation of the process equipment consistent with safe operating procedures, the responsible official will initiate procedures to minimize HAP emissions from the process equipment tied to the control equipment.

Paper and Other Web Surface Coating MACT— In the event of a malfunction of a control device or capture system for a coating line subject to a surface coating MACT, the facility may continue operation without the control device during the malfunction so long as the facility continues to meet the rule’s corresponding emission limits for the current compliance period. If compliance with the emission limits cannot be maintained, the facility shall expeditiously shutdown the coating line that is serviced by the malfunctioning control device or capture system. Expeditious shutdown means that each workstation of the line stops applying coating materials, and the line completes drying any coating materials that had already been applied onto the substrate as of the start of the malfunction. Draining coating materials from the line’s applicators, or from piping, pans, or related equipment that deliver coating materials to the applicator, is not required. Operations associated with the control device that do not produce HAP emissions may continue.

MCM/MON MACTs — In the event of a malfunction of a control device or a capture system used to meet the emission limits of the MCM/MON rules, the facility may continue to operate without the control device during the malfunction so long as the facility continues to meet the rule’s corresponding emission limits for the current compliance period. If compliance with the emission limits cannot be maintained, the facility shall expeditiously shutdown all process equipment subject to the MCM/MON rules that are serviced by the malfunctioning control device or capture system. The expeditious

shutdown shall minimize emissions of hazardous air pollutants while assuring worker safety and minimizing the production of hazardous and solid wastes, including suspending operation of each process vessel or reactor that vents to the control system as soon as its batch cycle has been completed. New production or other uses of that equipment subject to the MCM/MON will not resume until the control system is restored to its normal operation. Operations associated with the control device that do not produce HAP emissions may continue.

Malfunction Event Documentation and Reporting — Each malfunction will be documented, and each malfunction will be reported to the permitting authority.

Message

From: Alonso, Richard [ralonso@sidley.com]
Sent: 5/31/2018 9:28:46 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Whitfield, Peter [pwhitfield@sidley.com]
Subject: HollyFrontier materials from EPA meeting on 5 31 18
Attachments: Wehrum meeting 5 31 18.pdf

Bill – Thank you for meeting with us today. We appreciate your time. Please find attached an electronic version of the materials we presented today. Please let us know if you have any questions. We look forward to working with you and your team.

RICHARD ALONSO

SIDLEY AUSTIN LLP

Ex. 6
ralonso@sidley.com

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RFS Reforms

EPA Meeting

May 30, 2018

Agenda

1. RFS reform
 - Tab 1: Reform Options Chart
 - Tab 2: Exporting Biofuels White Paper
 - Tab 3: 1 psi Waiver White Paper
 - Tab 4: Small Refinery Exemption White Paper
2. RIN trading
3. RFS transparency
 - Tab 5: Transparency Options Chart
4. RFA lawsuit
5. Other

RFS Reform Options

1. Remove export RIN retirement obligation
2. Extend 1-psi RVP waiver to E15
3. Reallocation of exempt small refinery RVOs
4. 10% blending floor

Please See Tab 1

RFS Reform

- Remove exporter obligation
- Repeal 40 C.F.R. § 80.1430
- 1+ billion gallons of renewable fuel exported annually, 600+ million gallons generate RINs that must be retired
- Potentially more RINs from undenatured ethanol

Please See Tab 2

RFS Reform

- Extend the 1-psi RVP waiver to E15
- *Substantial litigation risk!*
- Amend regulations to allow year round sales of E15 with an RVP of 10 psi
- Could increase the supply of D6 RINs

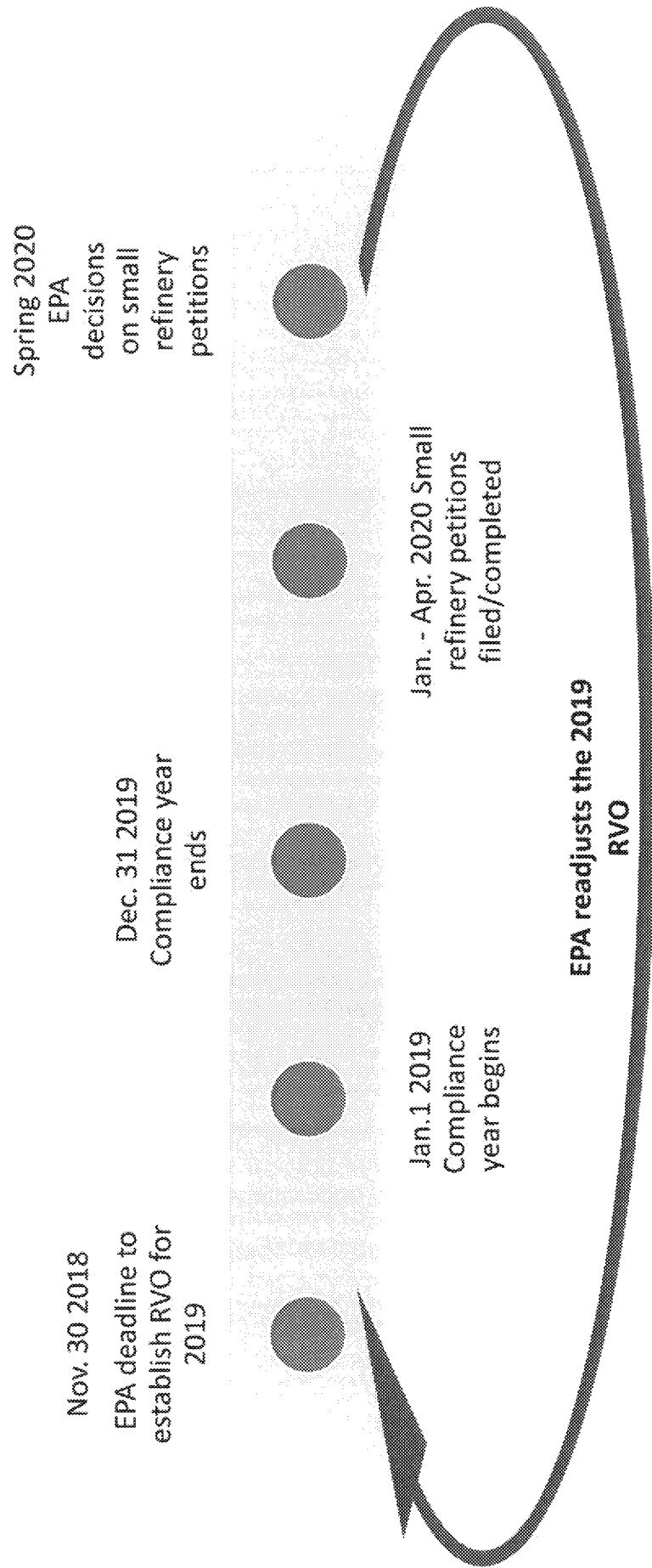
Please See Tab 3

RFS Reform

- Reallocation of small refinery RVOs
 - *Substantial litigation risk!*
 - *Impractical/unfair!*
 - Increase RVO to impose small refinery RVOs on other obligated parties

Please See Tab 4

SRE Volume Reallocation Is Not Practical



Small Refinery Exemption

- EPA should maintain its current approach to the small refinery exemption program
- Hardship exemption provides much needed relief to small refineries

Small Refinery Exemption

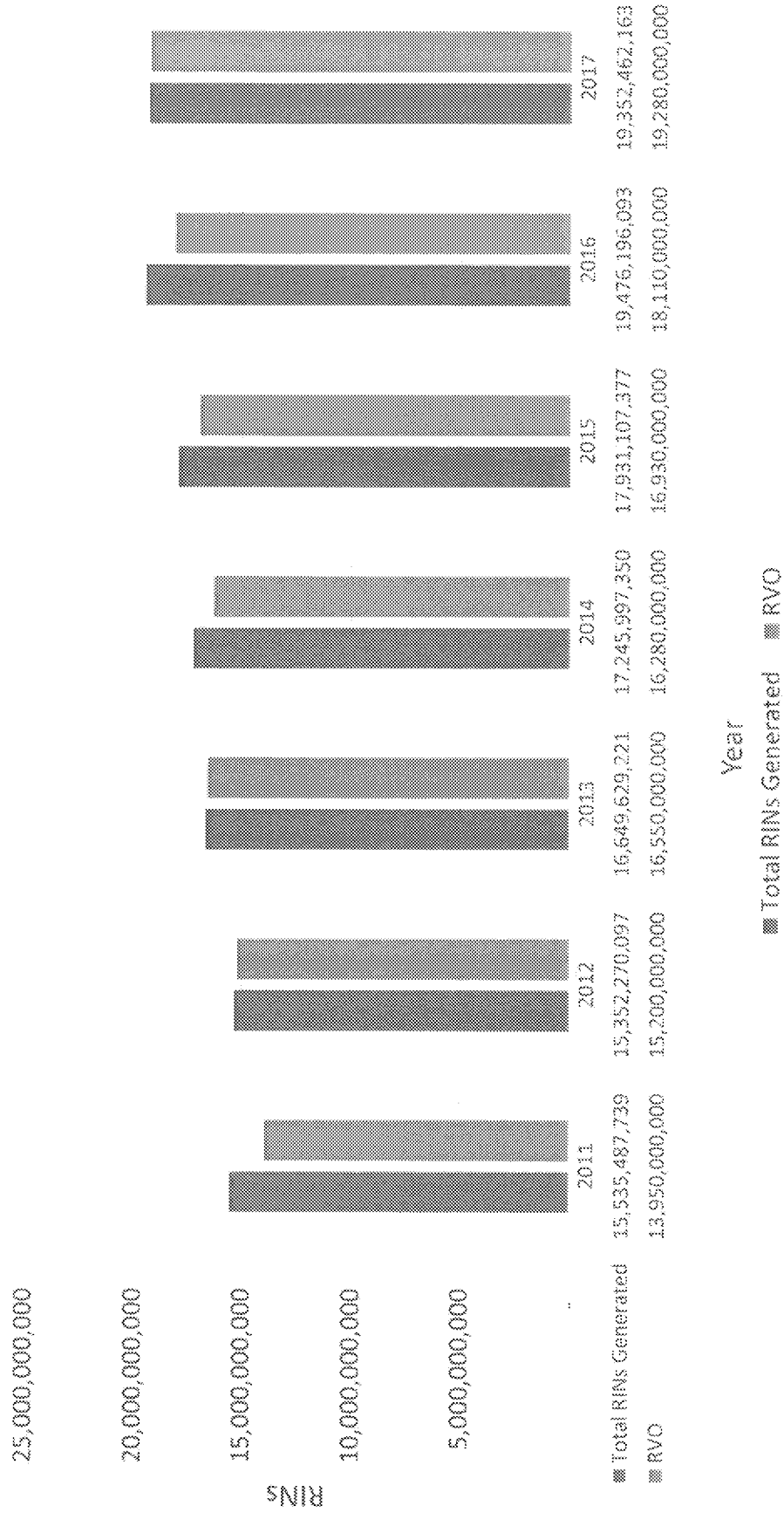
- Practical barriers to reallocation of SRE RVOs:
 - EPA sets RVO well before it grants SREs, thus reallocation would need to occur at end of or after close of compliance year
 - Reallocation would impose uncertainty for regulated parties, including small refineries who are on cusp of hardship status
 - Could impose \$1 to \$2 billion in additional compliance costs on obligated parties

Small Refinery Exemption

- Legal barriers to reallocation of SRE RVOs:
 - EPA cannot increase RVO over that provided in the statute. CAA § 211(o)(B)(i)(I) (“the applicable volume of renewable fuel . . . shall be determined in accordance with the following table”)
 - Resetting RVO after Nov. 30th of previous year is not permitted by statute. CAA § 211(o)(3)(B)(i)
 - The adjustment provision exists to allow EPA to downwardly adjust RVO, not increase it. CAA § 211(o)(3)(C)(ii); 72 Fed. Reg. 23,900, 23,911 (May 1, 2007).

SREs Do Not Impact Blending Rate

RINs Generated v. RVO



For 2018, renewable fuel production is 102% of 2017 volumes through April.

RFS Reform

- 10% blending floor
- Impose requirement to blend gasoline to minimum of 10% ethanol
- Provides certainty to ethanol/corn interests
- EPA has authority to implement this via regulation

RIN Trading

- Trades via brokers can occur over messenger-type exchanges
 - Intercontinental Exchange (“ICE”)
- Largest RIN brokers in the marketplace
 - ICAP
 - SCB
 - Blue Ocean
 - INTL/FC Stone
- Brokers take 1/10 cent per RIN commission on both buyer and seller side

RIN Trading Demonstration

RIN Market Regulation

- The lack of regulatory oversight in the RIN market contributes to high RIN prices
 - RIN trading is not centralized
 - RIN hoarding is prevalent
 - RIN pricing is not transparent

RIN Market Manipulation

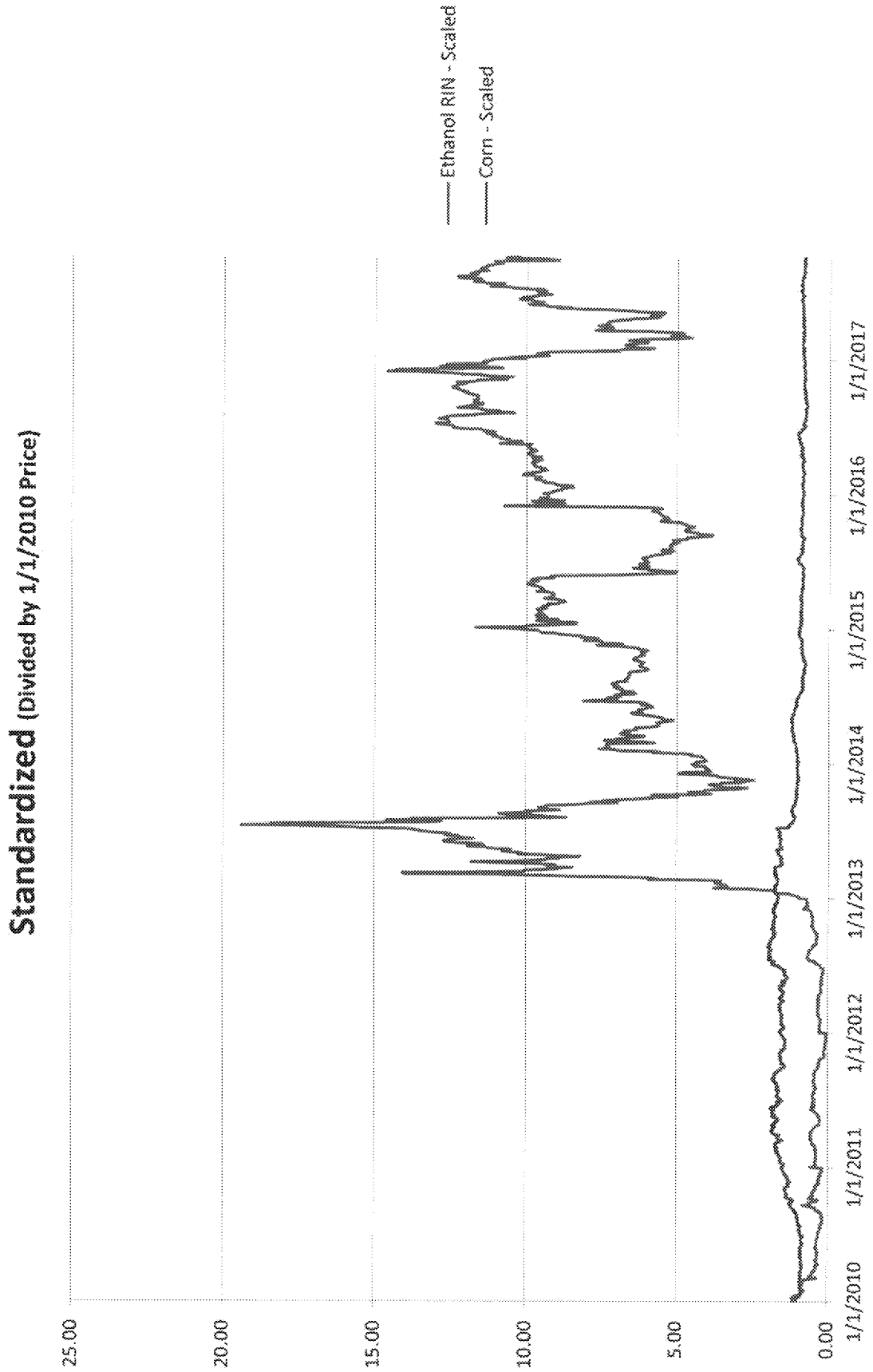
- Lack of RIN market regulation leads to market manipulation.
For example:

- Parties may hold RINs to limit supply and put upward pressure on price
- RIN-long party may purchase RINs if prices begin to fall to stabilize price

RIN Price Volatility

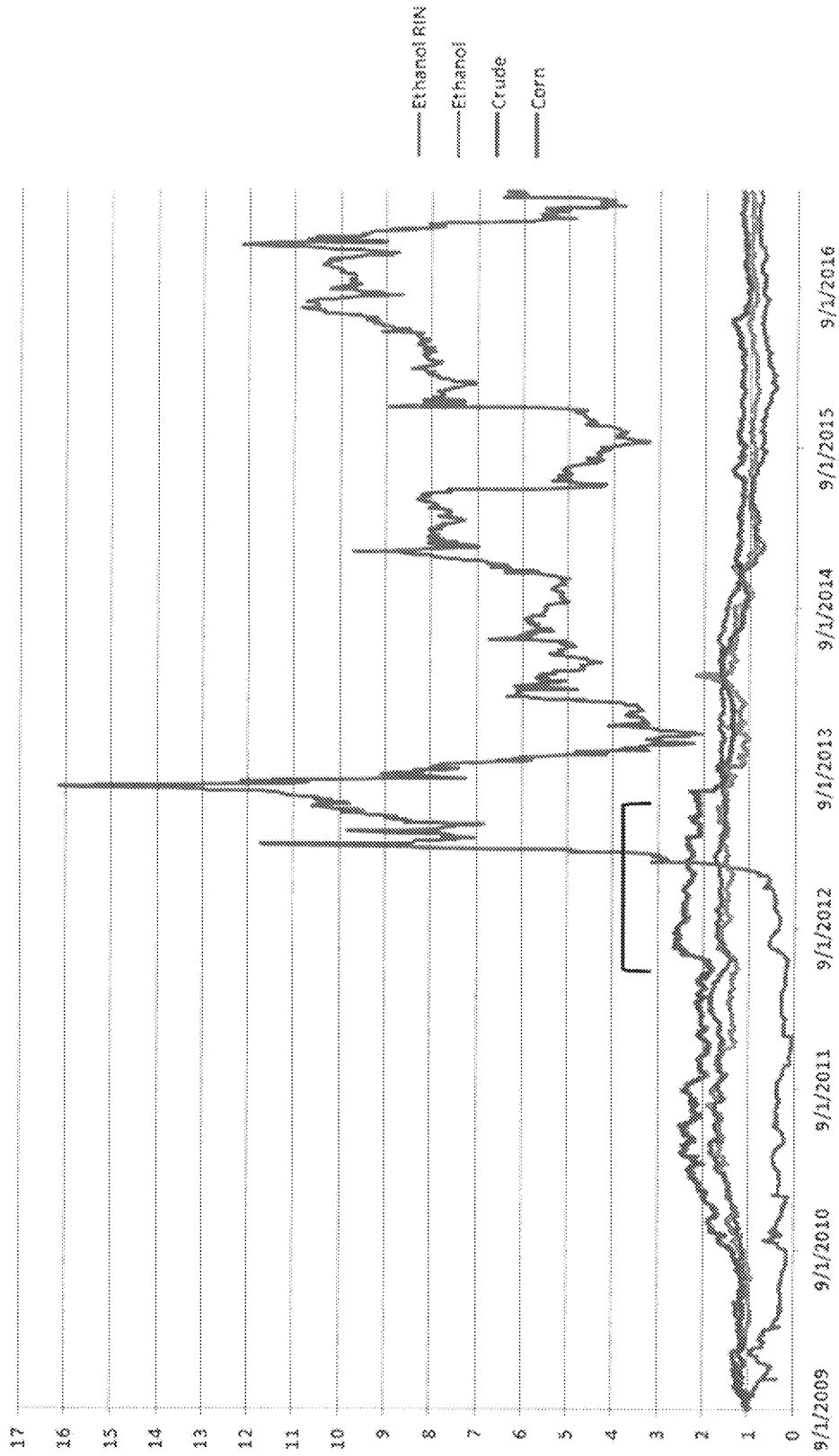
- Ethanol blending is highly profitable because it is 50-70 cents per gallon cheaper – RIN production cost is negative
- RIN prices unrelated to price of ethanol or corn
- RIN prices unrelated to blending costs
 - The cost of blending is an order of magnitude below the cost of RINs
- RIN prices fluctuate significantly based on regulatory and political decisions
- New RIN hedging programs are being introduced; none have succeeded in the past

D6 RIN Price vs. Corn Spot Prices



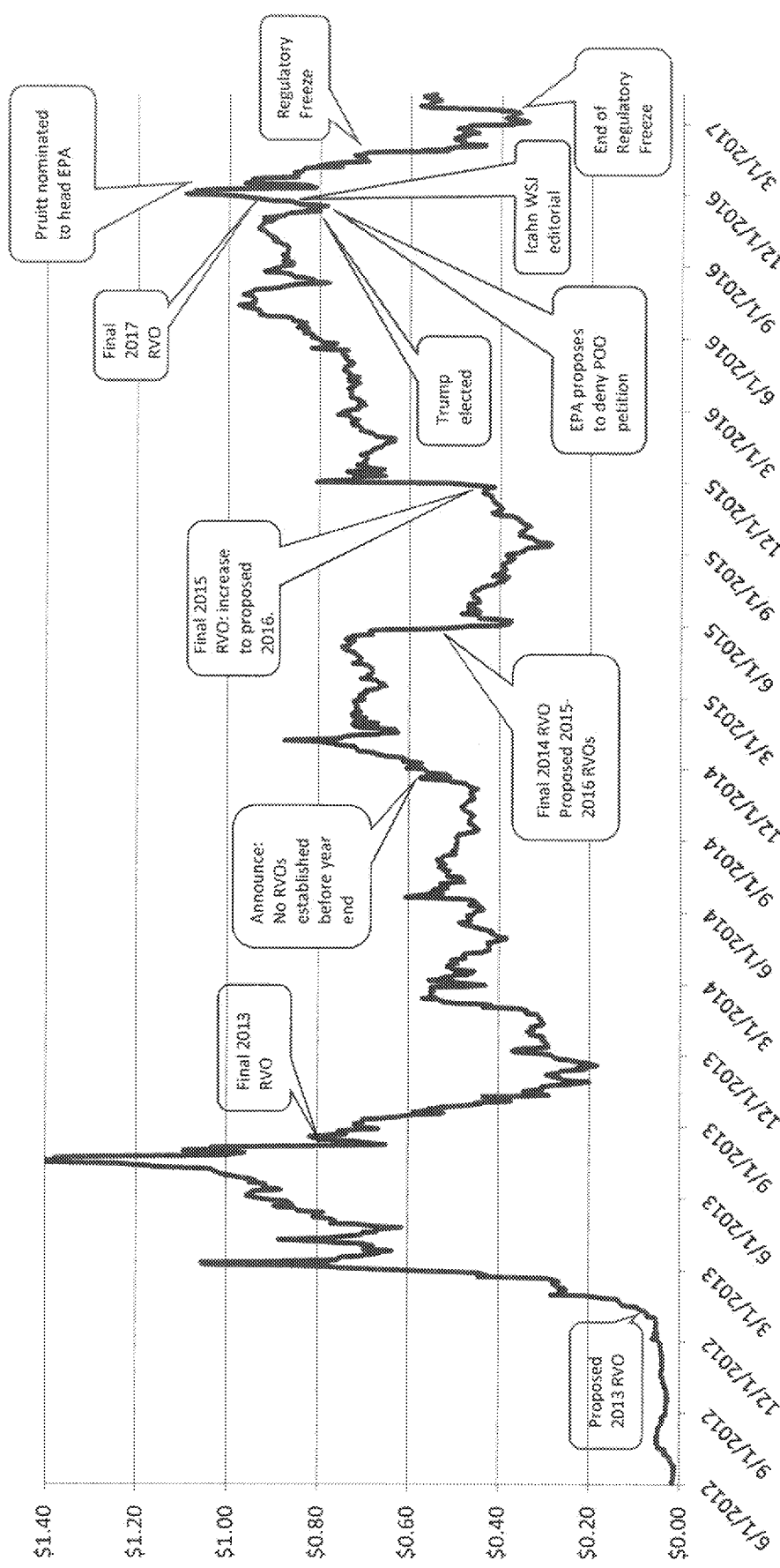
Ethanol, Corn, and Crude Prices

Spot Prices
Scaled to 9/1/2009 Prices



To facilitate comparison, all prices have been divided by 9/1/2009 prices to normalize to 1. A value of 2, for example, means the price was twice as high that day as on 9/1/2009. $S(t) = P(t) / P(9/1/2009)$

EPA and Political Impacts on RIN Prices



Relevant Dates: EPA Announcements

- 2/7/13: Proposed 2013 RVO, D6 RINS price quadruples the next 4-weeks
- 8/15/13: Final 2013 RVO, RINS trade down 33% in the next 4-weeks
- 11/21/14: Statement that 2014 Final Rule will not be set before year-end
- 5/29/15: Final 2014 RVO and Proposed 2015 & 2016 RVO
- 11/30/15: Final 2015 RVO, raised 2016 Proposed RVO
- 5/18/16: Proposed 2016 RVO
- 8/8/16: Icahn Letter to EPA about RIN market
- 11/8/16: Trump elected President
- 11/23/16: Final 2017 RVO
- 12/8/16: Scott Pruitt nominated to head EPA
- 1/20/17: Administration Announces Regulatory Freeze
- 3/20/17: Expiration of Regulatory Freeze

EPA/Political Impacts in the Last 2 Years



Transparency Ideas

1. Anti-hoarding provision
2. Trade restrictions
3. Purchase restrictions
4. Price and volume transparency

Please See Tab 5

Transparency Ideas

- Anti-hoarding provision
- Non-obligated parties must sell all separated RINs acquired during a calendar quarter in the following quarter.
- Obligated parties cannot hold more RINs than 120% of their obligation at the end of a calendar quarter.
- Keeps the RIN moving from producer to obligated party

Transparency Ideas

- Trading restriction
- Two-trade limit per RIN
- Similar to sulfur and benzene credit trading restrictions

Transparency Ideas

- Purchase restriction
- Only obligated parties can purchase separated RINS

Transparency Ideas

- Price and volume transparency
- Require parties to report the actual purchase/sale price and corresponding volume of a RIN transaction in EMTS (price should be a “matching criteria”)
- Prices should be subject to attestation like all other criteria of the transaction

SRE Litigation

- RFA and others are suing EPA over grant of HollyFrontier's
Cheyenne and Woods Cross refineries, and CVR Energy's
Wynnewood refinery
- ABFA brought suit in DC Circuit challenging SRE policy
- Industry intervention in pending lawsuits

Other Issues

Reset Provision

- CAA § 211(o)(7)(F) – Requires EPA to modify statutory volumes if:
 - (1) at least 20% of statutory volume waived in 2 consecutive years or,
 - (2) 50% of statutory volume waived in one year
- Each category likely subject to reset at the end of this year

RFS Reset Triggered

| Volume Requirement | Cellulosic Biofuel | Advanced Biofuel | Total Renewable Fuel | Biomass-Based Diesel |
|--------------------|--------------------|------------------|----------------------|----------------------|
| 2014 Statute | 1.75 | 3.75 | 22.25 | > 1.0 |
| 2014 Final | 0.33 | 2.67 | 16.25 | 1.65 |
| Percent Reduction | 96.11% | 58.67% | 26.83% | |
| 2015 Statute | 3.0 | 5.5 | 20.5 | > 1.0 |
| 2015 Final | 1.25 | 3.88 | 16.95 | 1.78 |
| Percent Reduction | 95.90% | 47.64% | 17.41% | |
| 2016 Statute | 4.25 | 7.25 | 22.25 | > 1.0 |
| 2016 Final | 2.30 | 4.61 | 18.11 | 1.9 |
| Percent Reduction | 94.59% | 50.21% | 18.61% | |
| 2017 Statute | 5.5 | 9.0 | 34.0 | > 1.0 |
| 2017 Final | 3.11 | 4.28 | 19.28 | 2.0 |
| Percent Reduction | 94.35% | 52.44% | 19.67% | |
| 2018 Statute | 7.0 | 11.0 | 26.0 | > 1.0 |
| 2018 Final | 2.88 | 4.29 | 19.29 | 2.1 |
| Percent Reduction | 95.89% | 61.00% | 25.87% | |
| 2019 Statute | 8.5 | 13.0 | 28.0 | > 1.0 |
| 2019 Final** | 3.93 | 4.88 | 19.65 | 2.1 |
| Percent Reduction | 95.53% | 62.46% | 29.00% | |

TAB 1

RFS REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|----------------------------|---|---|---|--|
| 1 | Remove Exporter Obligation | <p>EPA would rescind 40 C.F.R. § 80.1430 and remove the requirement to retire RINS for exported volumes of renewable fuel.</p> <p>The plain language of the statute requires only that transportation fuel "sold or introduced into commerce in the United States" contain the statutory amounts of renewable fuel. Domestically manufactured renewable fuel is introduced into commerce in the United States before it is exported.</p> <p>This provision is focused on the introduction into commerce of transportation fuel, not the location of where the fuel is consumed. In 42 U.S.C. § 7545(o)(2)(A), Congress explicitly prohibited EPA from restricting the geographic areas in which renewable fuel may be used.</p> | <p>Administrative solution. EPA would withdraw 40 C.F.R. § 80.1430 and clarify that renewable fuel exporters no longer have an obligation to retire RINs. This is not a complicated process and theoretically, EPA could accomplish the amendment before the end of 2018.</p> <p>To increase the defensibility of the rule, EPA may require that the exporter certify that the ethanol will be used for transportation fuel. Denatured ethanol can only be used for transportation fuel.</p> <p>If EPA amends the definition of ethanol to include denatured and un-denatured ethanol exported for use in transportation fuel, then more renewable fuel would qualify. This rulemaking may be complex and may involve the IRS and state taxing authorities.</p> | <p>Removing the exporter obligation would increase the supply of RINs and put downward pressure on RIN prices.</p> <p>In 2017, EMTS shows 341 million RINs retired for exports.</p> | <p>Increases quantity of RINs and decreases RIN prices. (+)</p> <p>Encourages domestic production. (+)</p> <p>Likely to have farmer support. (+)</p> <p>Decreases enforcement burden. (+)</p> <p>There is litigation risk to the extent the RFS was only intended to address domestic supply or transportation fuel to be solely used in the U.S. (-)</p> <p>Another litigation risk is that the term "transportation fuel" may refer only to blended fuel, in which case only the RINs from blended fuel that is exported could be exempt from the exporter obligation. (-)</p> |

RFS REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|------------------------------------|--|---|--|---|
| 2 | Extend the 1-psi RVP waiver to E15 | <p>High litigation risk because it is inconsistent with plain language of Clean Air Act.</p> <p>Amend EPA regulations to permit the sale of E15 with an RVP of 10 psi during the ozone season (summer months).</p> <p>Congress directed EPA to "promulgate regulations making it unlawful for any person during the high ozone season to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi)." Clean Air Act § 211(h)(1), 42 U.S.C. § 7545(h)(1).</p> <p>E10 can have a RVP as high as 10.0 psi. Pursuant to CAA § 211(h), which allows a 1 psi waiver for "fuel blends containing gasoline and 10 percent denatured anhydrous ethanol [which is E10]", EPA granted E10 a waiver that allows for the sale of E10 with a RVP of 10 psi.</p> | <p>Administrative solution. EPA could amend its regulations to extend the 1 psi waiver to ethanol blends greater than 10%, such as E15.</p> <p>EPA would need to explain in detail the basis for changing its interpretation of the statute because the agency historically interpreted CAA § 211(h) to apply only to E10 and not E15.</p> <p>This change may require a legislative fix, however, because the statute authorizes a 1 psi RVP waiver only for fuel blends containing 10% ethanol. E15 has more than 10% ethanol.</p> | <p>Extending the 1 psi RVP waiver to E15 could increase the supply of D6 RINs. However, sales of E15 in the United States are low and we do not expect a substantial amount of RINs to be introduced into the market as a result of this proposal.</p> <p>The impact on RIN prices from this proposal is expected to be minimal.</p> | <p>High legal risks given plain language of Clean Air Act (-)</p> <p>Minimal change in RIN process (-)</p> <p>Environmental groups will likely oppose given the increase in ground level ozone (-)</p> <p>State air permitting authorities will likely oppose because proposal will make it more difficult for States to show attainment with National Ambient Air Quality Standards for ozone (-)</p> <p>Allows ethanol sales to increase in summer months (+)</p> |

RFS REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|---|--|---|--|--|
| 3 | <p>Reallocating Small Refinery Exemption Volumes</p> | <p>EPA would increase the annual RVO to account for the expected granting of Small Refinery Exemptions (SREs) later in the compliance year.</p> <p>There is no legal authority available to EPA to increase the RVO or amend it after the Nov. 30 deadline. The provision in CAA § 211(o)(3)(C) only provides authority to discount the annual RVO to account for exempt small refineries use of renewable fuel.</p> <p>One of the main purposes of the RFS is to ensure that small refineries do not suffer economic harm as a result of the RFS. Congress recognized that small refineries are instrumental to rural America by providing high paying jobs and a substantial tax base. Congress never envisioned that the RINs associated with the Small Refinery Exemptions would be reallocated.</p> | <p>Administrative solution: EPA may try to address this issue as part of the annual RVO rulemaking procedure. To do so, EPA would need to anticipate the volume of conventional fuel produced by small refineries that are likely to receive SREs. Neither the CAA nor the RFS regulations permit EPA to guess which parties may be exempt, instead EPA must apply the RVO based on the formula set forth in 40 C.F.R. § 80.1405.</p> <p>Additionally, EPA must set the RVO by Nov. 30 of the previous calendar year – it cannot adjust the RVO after that date.</p> <p>Implementation is further complicated by the fact that EPA grants SREs after the end of the compliance year. Thus, this approach is impractical and EPA should not prejudice decisions on SREs.</p> <p>Proposal would be inequitable to other refineries, which in compliance with the RVO throughout the year.</p> | <p>The proposal will likely increase RIN prices by increasing the RVO on obligated parties beyond what is required by the RFS.</p> | <p>Proposal has high legal risk (-)</p> <p>Proposal will increase RIN prices and increase pressure from the blendwall (-)</p> <p>Proposal will not change blending practices and RVO will continue to meet (-)</p> |

RFS REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Pros/Cons |
|---|--------------------------------------|---|--|-------------------------------|--|
| 4 | E10 and Biodiesel Fuel Specification | <p>Minimum fuel standard of 10% ethanol in gasoline and [2%] biodiesel in diesel</p> <p>Replaces biofuel ceiling with free market approach</p> <p>Lays foundation for future octane solutions and RFS reforms</p> <p>Solves phantom RIN problem from clear gas sales (E0)</p> | EPA to require a minimum of E10 to be sold in the United States for transportation fuel. | Should not impact RIN prices. | <p>Lays foundation for future octane solutions and RFS reforms (+)</p> <p>Solves phantom RIN problem from clear gas sales (E0) (+)</p> <p>Protects biofuel from loss of current market share (+)</p> <p>Increases biofuel consumption (+)</p> <p>Provides certainty to renewable fuel industry (+)</p> |

TAB 2

EXPORTING BIOFUELS UNDER THE RFS

EPA's current regulatory framework addressing exports of biofuels

A renewable fuel producer generates a RIN for each gallon it produces. The RIN remains "connected" to the biofuel until it is blended with gasoline or diesel, or if it is exported. When a RIN is separated from renewable fuel via blending, the blender is free to sell the RIN to another party. When a RIN becomes separated from renewable fuel via export, however, it must be retired and cannot be sold to another party. This restriction exists as a result of EPA's current regulatory framework, which imposes upon an exporter an export renewable volume obligation ("ERVO"). The ERVO prevents the RIN from being used by an obligated party to comply with the annual RVO. See 40 CFR §§ 80.1427(c), 80.1430.

Eliminating the EPA-created ERVO is consistent with the RFS statutory language

The RFS does not in any way mandate that EPA impose an ERVO, and one could go as far as saying that the ERVO is illegal. The ERVO appears to be based on EPA's erroneous interpretation of the RFS that only domestically-consumed fuel can satisfy Congress' mandate to increase renewable fuel use. However, EPA's interpretation is inconsistent with the plain language of the RFS. Section 211(o)(2)(A)(i) is the general authority for imposing the annual RVOs and states:

[RFS1] Not later than 1 year after August 8, 2005, the Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B). [RFS2] Not later than 1 year after December 19, 2007, the Administrator shall revise the regulations under this paragraph to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel, determined in accordance with subparagraph (B) [the Congressionally mandated volumes]

In RFS1, the annual RVO only applied to *gasoline* sold or introduced into commerce in the United States. In RFS2, however, Congress broadened the statute to apply to *transportation fuel* sold or introduced into commerce in the United States. In RFS1, there could have been a plausible interpretation that only blended fuel (gasoline) could be used to meet the annual RVO. However, in RFS2, that interpretation is no longer viable because transportation fuel must be read to include more than just gasoline. Transportation fuel is defined as "a fuel for use in motor vehicles, motorvehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels)." Section 211(o)(1)(L). Pure ethanol and 100 percent biodiesel can be used as fuel in vehicle engines and are squarely within the definition of transportation fuels.

The second term to consider is "*introduced into commerce in the United States.*" This is a term of art in the legal world stemming from the U.S. Constitution and has been defined extremely broad by courts. See *United States v. Potomac Navigation, Inc.* No. WMN-08-717, 2008 WL 11363374 at *2 (D. Md. July 3, 2008). When a product is created domestically and

then transferred to a facility to be exported, the product has been introduced into commerce in the United States. Restricting the definition of the phrase “introduced into commerce” to only the sale of fuel domestically would render it superfluous, as it would have the same meaning as the term “sold.”

A broad interpretation of the term “*introduced into commerce in the United States*,” also is warranted given the statutory provision prohibiting EPA from restricting the geographical scope of the RFS. Section 211(o)(2)(A)(iii)(II)(aa) states that “ [r]egardless of the date of promulgation, the regulations promulgated under clause (i) [the annual RVO rule] . . . shall not restrict geographic areas in which renewable fuel may be used.” Once again, the plain language of the RFS program does not restrict biofuels to only domestic use, thus exports should be on equal footing with domestic ethanol.

Impact of Removing ERVO

By rescinding the regulatory requirement to retire RINs for exported renewable fuel, EPA would increase the supply of RINs available in the market. Approximately 1 billion gallons of renewable fuel is exported annually. Not all of this renewable fuel generates RINs, however. Some renewable fuel producers chose not to register their fuel and generate RINs if they know their fuel is destined for export. A portion of this total, approximately 400 million gallons, does generate RINs that are retired upon export. Thus, at least 400 million RINs could enter the marketplace if EPA amends its regulations.

The remaining amount of renewable fuel could also generate RINs if the producers determine it is economical to do so. A portion of this volume is undenatured ethanol. Currently, undenatured ethanol is not eligible to participate in the RFS program. Accordingly, producers will either need to add denaturant to ethanol in order to generate a RIN or EPA will need to work with other agencies, such as the IRS, to amend regulations to permit exports of undenatured ethanol to generate RINs.

Conclusion

We have not found a legal basis to prevent exported biofuels from full participation in the RFS program. In fact, the statutory language could be read to prohibit the current regulatory structure that imposes a separate and independent RVO on exports of biofuels.

TAB 3

EXTENSION OF 1-PSI WAIVER TO E15

This memorandum addresses the Environmental Protection Agency's (EPA) authority to extend the 1-psi Reid vapor pressure (RVP) waiver to gasoline containing 15% ethanol (E15). The plain language of the Clean Air Act and EPA's regulations currently limits the 1-psi RVP waiver to gasoline containing 10% ethanol (E10). Though proponents of increased ethanol use suggest that the Clean Air Act grants EPA authority to extend the RVP waiver to any fuel blend containing at least 10% ethanol, EPA has previously rejected such an interpretation. Accordingly, EPA would face significant litigation risk in adopting a contrary position.

Legal Risk of Extending the 1-psi RVP Waiver to E15

The plain language of the Clean Air Act, which prohibits the extension of the 1-psi RVP waiver to E15, poses the biggest legal obstacle to EPA revising its regulations to extend the a 1-psi waiver for E15.

In the 1990 Clean Air Act amendments, Congress directed EPA to "promulgate regulations making it unlawful for any person during the high ozone season . . . to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi)." Clean Air Act § 211(h)(i), 42 U.S.C. § 7545(h)(1). The statute contains an "ethanol waiver," however, that increases the RVP limit "one pound per square inch (psi) greater than the [9.0 psi] Reid vapor pressure limitation" for "fuel blends containing gasoline and 10 percent denatured anhydrous ethanol." *Id.* § 211(h)(4). Under the statute, parties are "deemed to comply" with the RVP limits if they can demonstrate that "(A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection; (B) *the ethanol portion of the blend does not exceed its waiver condition under subsection (j)(4); and* (C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of the blend." *Id.* § 211(h)(4)(A) – (C)(emphasis added). **Section 211(h)(4) of the Clean Air Act clearly limits the RVP waiver to E10. The proponents of biofuels are seeking for EPA to go beyond this Congressional wavier and allow for E15 during the high ozone season.**

EPA promulgated regulations limiting gasoline RVP during the high ozone season (generally May 1 to September 15) based on the state/region where the gasoline is sold, dispensed, or transported. *See* 40 C.F.R. § 80.27(a). The regulations also contain a waiver provision allowing gasoline containing "denatured, anhydrous ethanol" at a concentration of "at least 9% and no more than 10% (by volume) of the gasoline" to exceed the RVP limits by up to 1 psi. 40 C.F.R. § 80.27(d)(2). EPA's regulatory waiver for "gasohol," or gasoline that contains 9-10% ethanol actually existed before Congress amended Section 211 of the Clean Air Act in 1990. *See* 54 Fed. Reg. 11,868, 11,879 (March 22, 1989). Thus, EPA views the 1-psi RVP waiver provision as a codification of its original regulations.

In 2011, EPA considered extending the waiver to E15 but concluded that it lacked the statutory authority to extend the RVP waiver to gasoline blends greater than 10% ethanol because "the text of section 211(h)(4) and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9-10 vol%

ethanol.” 76 Fed. Reg. 44,406, 44,433 (July 25, 2011). EPA reached this conclusion primarily because Congress had codified EPA’s previous RVP regulations into Clean Air Act § 211(h) as part of the 1990 amendments. *Id.* According to EPA, Congressional intent is apparent on the face of the statutory provision given that Congress specified the waiver applied to fuel blends containing 10% ethanol. *Id.*¹

EPA could face substantial litigation risk by issuing regulations that extend the 1-psi RVP waiver to E15. As EPA acknowledged, the plain language of section 211(h) likely restricts the 1-psi RVP waiver to fuel blends containing 10% ethanol. While ethanol interests interpret the statute to allow the RVP waiver to apply to any fuel blend containing a minimum floor of 10% ethanol (which E15 satisfies), such an interpretation may not square with the plain language of the statute. As noted above, Congress modeled the RVP waiver on EPA’s former regulations, which limited the 1-psi RVP waiver to gasoline blends of 9-10% ethanol. Though Congress had the opportunity to expand the waiver to ethanol blends greater than 10%, it did not do so.

The legislative history of this provision also supports this interpretation. In codifying the RVP waiver, Congress wanted “to facilitate the participation of ethanol in the transportation fuel industry while also limiting gasoline volatility resulting from ethanol blending.” 76 Fed. Reg. at 43,434. Congress supported the statutory provision by relying on technical data showing that gasoline blended with 9-10% ethanol results in an approximate 1-psi RVP increase over conventional gasoline. *Id.* Congress did not look at other blends as part of its law making effort. *Id.* This history supports the position that E10 is a ceiling not a floor.

Conclusion

EPA would need to provide a solid basis for revising its interpretation of Clean Air Act § 211(h) to permit the RVP waiver to apply to fuel blends containing more than 10% ethanol. Any such new justification will be legally suspect given the plain language of the Clean Air Act.

¹ EPA also clarified that the “deemed to comply” provision of section 211(h) should not be read to authorize extension of a 1-psi RVP waiver to blends of ethanol above 10%. The agency stated that this provision serves as a defense to liability to those who blend gasoline to achieve a 10% ethanol concentration. 76 Fed. Reg. at 43,434 (stating that the provision “is not written as a free standing RVP limit that acts separate and apart from the 1 psi waiver for 9-10% blends of ethanol”).

TAB 4

SMALL REFINERY VOLUME REALLOCATION

The Environmental Protection Agency (EPA) would face significant legal and practical issues if it decides to reallocate the renewable volume obligation (RVO) for small refineries that received an economic hardship waiver to other obligated parties in future Renewable Fuel Standard (RFS) rulemakings. The Clean Air Act (CAA) does not authorize EPA to adjust upwardly the RVO after setting it on November 30 of the previous year. Additionally, reallocation of the RVO in a future year is impractical because it would require obligated parties to blend renewable fuel that would not necessarily exist.

The Small Refinery Exemption

In passing the RFS, Congress acknowledged that small refineries were likely to suffer disproportionate economic harm if required to comply with the renewable fuel blending obligations. To prevent such harm, Congress exempted small refineries from compliance obligations through 2010. CAA § 211(o)(9), 42 U.S.C. § 7545(o)(9); see *Hermes Consol., LLC v. EPA*, 787 F.3d 568, 572 (D.C. Cir. 2015). This exemption provided small refineries time to develop compliance strategies and increase renewable fuel blending capacity. See *Hermes*, 787 F.3d at 572–73. Congress included within the RFS a mechanism to extend the initial small refinery exemption by directing the Department of Energy (DOE) to conduct a study to determine whether RFS compliance “would impose disproportionate economic hardship on small refineries.” See CAA 211(o)(9)(A)(ii)(I). If the DOE concluded that the RFS would impose a disproportionate economic hardship on small refineries, then the CAA authorized EPA to exempt those small refineries. CAA § 211(o)(9)(A)(ii)(II).

In addition to exempting all small refineries, Congress authorized EPA to extend the exemption for individual small refineries on a case-by-case basis. To avail itself of this option, a small refinery can petition EPA at any time for an extension of its exemption. CAA § 211(o)(9)(B)(i). There are two basic prerequisites for an extension. First, a refinery must be a “small refinery,” for any year in which it is seeking an exemption, meaning that it cannot have an average aggregate daily crude throughput greater than 75,000 bpd. Second, the refinery must demonstrate that compliance with the RFS imposes a “disproportionate economic hardship.” 40 C.F.R. 80.1441(e)(2)(i).

Currently, EPA grants extensions of the small refinery exemption in 1-year increments. EPA generally issues an exemption decision at the end of the compliance year (December 31), or even after the compliance year because a petitioning refinery must provide financial information for the whole year to substantiate a claim of disproportionate economic hardship. The exemption, therefore, primarily operates retroactively and will result in EPA refunding to the small refinery the RINs it retired for compliance.

Legal Issues with Reallocating Small Refinery RVOs

The CAA prohibits EPA from reallocating volumes from exempt small refineries to other obligated parties either in the existing compliance year or future years.

The RFS requires EPA to convert the statutorily mandated numeric renewable fuel volumes (in gallons) into a percentage standard each year that can be applied equally to all obligated parties to establish each party's RVO. CAA § 211(o)(3). In calculating the percentage standard, the CAA directs EPA to divide the estimated volume of transportation fuel projected to be used in the following year¹ by either the statutorily specified volume of renewable fuel (set forth in CAA § 211(o)(2)(B)) or a lower volume set by EPA following the use of its waiver authority. EPA has until November 30 of the previous calendar year to "determine . . . , with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements [for blending the specified annual renewable fuel volumes] are met." CAA § 211(o)(3)(B)(i).

EPA likely lacks legal authority to increase the RVO in a future year based on the renewable fuel volumes associated with small refineries exempt in the previous compliance year. As indicated above, EPA may not increase the RVO by using a volume of renewable fuel greater than that provided in the statute. *See, e.g.*, CAA § 211(o)(B)(i)(I) ("the applicable volume of renewable fuel for the calendar years 2006 through 2022 *shall* be determined in accordance with the following table" setting forth specific volumes in gallons (emphasis added)). Instead, EPA's authority is limited to downward adjustments based on its waiver authority set forth in CAA § 211(o)(7). Given these restrictions, EPA would be hard-pressed to justify increasing the RVO in a future year in order to reallocate exempt small refinery RVOs from a previous year.

The "adjustment" provision in the statute, which states that EPA "shall make adjustments . . . to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt" likely does not authorize an upward adjustment in the RVO. CAA § 211(o)(3)(C)(ii). Instead, this provision operates as a safety valve to ensure that obligated parties' ability to satisfy their blending obligations would not be prejudiced from exempt small refineries use of renewable fuel, which would reduce the available supply to non-exempt parties. EPA clarified the meaning of this provision in promulgating its interpretative regulations, concluding that accounting for the volume of renewable fuel used by exempt small refineries "would reduce the total volume of renewable fuel use required of others, and thus directionally would reduce the percentage standard." 72 Fed. Reg. 23,900, 23,911 (May 1, 2007).

This interpretation is also logical considering that the concept of RINs did not exist when Congress enacted the statute. In the RFS, Congress directed obligated parties to blend renewable fuel to comply with the statute. If, however, exempt small refineries blended renewable fuel into their transportation fuel, then they would deplete the total volume available to obligated parties for compliance with the RVO. This is so because Congress had not created a credit program that would allow exempt small refineries to sell the credits generated from blending to other obligated parties. Accordingly, Congress permitted EPA to downwardly adjust the RVO to prevent potential compliance obstacles resulting from exempt small refineries using renewable fuel.

EPA also would be unable to adjust the current year RVO based on the granting of small refinery exemptions. As noted above, EPA generally grants exemptions towards the end of or after the compliance year. Thus, EPA would have to adjustment the current-year RVO after the

¹ EPA obtains this projection from the US Energy Information Administration, CAA § 211(o)(3)(A).

November 30 deadline imposed by the statute. There is no provision in the RFS that permits adjusting the RVO after November 30th. Accordingly, EPA would face substantial litigation risk justifying such a decision.

Practical Issues with Reallocating Small Refinery RVOs

Reallocating exempt small refinery RVOs is also impractical and would unfairly burden obligated parties because it would change compliance burdens well into a compliance year.

One of the major obstacles to reallocating exempt small refinery RVOs is the fact that EPA issues exemptions a year or more after issuing the final RVO for the same compliance year. Once EPA sets the RVO, obligated parties develop compliance strategies based upon their anticipated obligation. During the compliance year, obligated parties generally purchase RINs in proportion to their obligation. If EPA were to adjust the RVO at the end of the compliance year to reflect the granting of small refinery exemptions, then obligated parties would have very little time to purchase sufficient RINs to meet their obligation. Moreover, if such an adjustment became common practice, it would induce obligated parties to hoard RINs throughout the year in anticipation of an increased obligation. This would likely lead to high RIN prices and RIN shortages.

Reallocation of the exempt small refinery RVOs also could impose economic hardships on obligated parties. According to EIA data, small refineries are responsible for approximately 10% of domestic refining capacity, and thus would be expected to satisfy approximately 10% of the annual renewable fuel requirements. Using the 2018 RVO, this means small refiners would account for approximately 1.9 billion gallons of the 19.29 billion gallon requirement. If EPA reallocated this volume, then the remaining obligated parties would need to retire approximately 1.9 billion more RINs. Assuming RIN prices fall between \$0.50 and \$1.00, the burden of shifting an additional 1.9 billion gallons will be somewhere between \$1 billion and \$2 billion.

Conclusion

Reallocation of hardship volumes impractical and illegal

TAB 5

RIN TRANSPARENCY REFORM OPTIONS

| # | Option | Description/Legal Authority | Implementation | RIN Price Impact | Prosi/Cons |
|---|--|---|---|--|---|
| 1 | Anti-RIN Hoarding Provisions | EPA would require non-obligated parties to sell all separated RINs acquired during a calendar quarter in the following quarter. Additionally, EPA would prohibit obligated parties from holding more RINs than 120% of their obligation at the end of a calendar quarter. The Clean Air Act grants EPA broad authority to establish a credit program. CAA § 211(o)(5). | <u>Administrative solution.</u> EPA would need to promulgate new regulations and would need to update EMITS to include compliance provisions. | This solution likely would reduce the cost of RINs by discouraging arbitrage opportunities and market manipulation. | Likely to reduce RIN prices. (+) Compliance with the anti-hoarding provision would be determined on a quarterly bases, thus reducing the administrative burden on EPA and providing flexibility to RIN market participants. (+) Reduces price speculation (+) |
| 2 | RIN Trade Restrictions | EPA would impose a two-trade restriction on RIN transactions. The Clean Air Act grants EPA broad authority to establish a credit program. CAA § 211(o)(5). | <u>Administrative solution.</u> EPA would promulgate regulations similar to those governing sulfur credit trades. | This solution likely would reduce the cost of RINs by discouraging arbitrage opportunities and market manipulation. | Likely to reduce RIN prices. (+) Lowers RIN transactions and administrative costs of RFS program. (+) Reduced RIN liquidity. (-) |
| 3 | RIN Purchase Restrictions | EPA would allow only obligated parties to purchase separated RINs. The Clean Air Act grants EPA broad authority to establish a credit program. CAA § 211(o)(5). | <u>Administrative solution.</u> EPA would promulgate regulations similar to those governing sulfur credit trades. This would not impact RIN generators as they transfer assigned RINs with their fuel. | This solution likely would reduce RIN costs because it would prevent non-obligated parties from entering the RIN market to take advantage of arbitrage opportunities or to engage in RIN market speculation. | Does not restrict the party that can generate or separate RINs. (+) Would reduce some market manipulation and RIN speculation. (+) Potential to reduce RIN liquidity. (-) |
| 4 | RIN Price and Volume Transparency | EPA would require RIN purchases and sale prices to match and be subject to annual attestation. EOA should publish daily RIN trading activity information each day such as (1) volume of separated RINs transacted by vintage and D code and (2) average separated RINs trading price by vintage and D code. | <u>Administrative solution.</u> EPA would promulgate regulations requiring price and volumes of RINs to be reported accurately and be subject to attestation. EPA would modify EMITS data gathering system to publish timely RIN transactional data. | This solution likely would reduce the cost of RINs by discouraging arbitrage opportunities and market manipulation. | Likely to reduce RIN prices. (+) Provides transparency to market participants and reduces manipulation. (+) |

Message

From: Alonso, Richard [ralonso@sidley.com]
Sent: 4/21/2018 1:04:37 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Whitfield, Peter [pwhitfield@sidley.com]
Subject: RE: HollyFrontier

Thank you. Have a great weekend.

Sent with BlackBerry Work
(www.blackberry.com)

From: Wehrum, Bill <Wehrum.Bill@epa.gov>
Date: Friday, Apr 20, 2018, 7:34 PM
To: Alonso, Richard <ralonso@sidley.com>
Cc: Whitfield, Peter <pwhitfield@sidley.com>
Subject: Re: HollyFrontier

Hi Rich. We would like to discuss the company's requests for small refinery waivers for past years and for current vintage RINs for the waivers that have been granted.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Apr 20, 2018, at 5:46 PM, Alonso, Richard <ralonso@sidley.com> wrote:

Bill — We received a request from your office for you and Mandy to have a call with Denise McWatters, General Counsel of HollyFrontier. Peter and I work closely with Denise on RFS issues. So that we can properly prepare, can you give me a sense of which RFS issue you would like to discuss.

Happy to discuss over the phone. My cell is Ex. 6 and available this weekend.

Rich

Sent with BlackBerry Work
(www.blackberry.com)

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

Message

From: Whitfield, Peter [pwhitfield@sidley.com]
Sent: 4/20/2018 11:34:22 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Automatic reply: HollyFrontier

I am out of office today. If you need to contact me please call my mobile number at: Ex. 6

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

Message

From: Chip Murray [cmurray@nafoalliance.org]
Sent: 2/16/2018 11:11:58 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Dave Tenny [dtenny@nafoalliance.org]; Rich Alonso [ralonso@sidley.com]; Annabeth.Reitter@domtar.com; neil.naraine@ipaper.com; gcoffee@glenncoffee.com
Subject: Thank you

Dear Bill,

Thanks for meeting with us on Monday and discussing paths forward on implementation of the carbon neutrality provision in the Consolidated Appropriations Act of 2017. We believe the Administrator's letter of February 13 to Governor Sununu of New Hampshire provides further impetus to achieving full implementation of this congressional directive. We look forward to completion of the process.

Regards,
Chip Murray
National Alliance of Forest Owners

Ex. 6

Sent from my iPhone

Message

From: Alonso, Richard [ralonso@sidley.com]
Sent: 3/12/2018 5:35:06 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: National Alliance of Forest Owners

Hi Bill – Do you have 5 or 10 mins for a short call to follow-up from our NAFO meeting about three weeks ago. After our meeting, [Ex. 6] It was an awesome trip, but I am back to work now.

Plus – I would like to see when you will be arriving in Orlando for the ABA SEER Conference on April 19th. I am planning on hosting a speakers’ dinner on April 18th (the day before our presentations) and was hoping you can join.

My office number is [Ex. 6] and my cell is [Ex. 6] Thanks

RICHARD ALONSO

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Message

From: Dave Flannery [Dave.Flannery@Steptoe-Johnson.com]
Sent: 5/31/2018 2:44:07 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Dunn, Alexandra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=426d0177eaab4001a5c85f051565997e-Dunn, Alexa]; Lopez, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7b64b3b2f984708840a5f342309d460-Lopez, Pete]; R3 RA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=55a16252afcf44c6978bc81127b4e1c7-R3 RA]; Glenn, Trey [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c1f10fec3149420597e6581c2586e25e-Glenn, Onis]; Stepp, Cathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=befdafc0fa1a425eae232f60ad9bda1d-Stepp, Cath]; Wayland, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69f0a870909402ebd66847003aa6437-Wayland, Chet]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; basil.seggos@dec.ny.gov; steven.flint@dec.ny.gov
Subject: Midwest Ozone Group Initial Comments on New York 126 Petition
Attachments: Midwest Ozone Group Initial Comments on NY 126 Petition 5.31.18.pdf

Dear Administrator Pruitt

Please find attached the initial comments of the Midwest Ozone Group with respect to the petition filed by the New York Department of Environmental Conservation on March 12, 2018, pursuant to Section 126 of the Clean Air Act.

For all of the reasons stated in this initial set of comments, the Midwest Ozone Group urges that this petition be denied.

Dave Flannery

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Writer's Contact Information

May 31, 2018

Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: New York CAA Section 126 Petition.

Dear Administrator Pruitt,

On March 12, 2018, the New York Department of Environmental Conservation filed a petition pursuant to Section 126 of the federal Clean Air Act (CAA) directed at some 123 electric generating units (EGUs), 166 “non-electric generating units” and 59 oil and gas sector facilities in the states of Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia. By final rule effective on May 11, 2018 (83 Federal Register 21909) EPA extended the deadline for acting on the petition to no later than November 9, 2018. Even though the Environmental Protection Agency (EPA) has not yet opened a formal comment period related to this petition, the defects in the petition are significant enough to compel the submission of comments at this time on behalf of the Midwest Ozone Group¹.

MOG’s concerns regarding the New York petition go to the fundamental premise of CAA §126 – to provide a carefully crafted mechanism by which states can resolve disputes of interstate transport of air pollutants as they relate to significant contribution to a nonattainment or maintenance problem. The basic premise of CAA §126 as applied in this case is that New York must first demonstrate that it has an ozone non-attainment or maintenance problem before it can assert a claim against an upwind source. See CAA §§126(b) and 110(a)(2)(D)(ii).

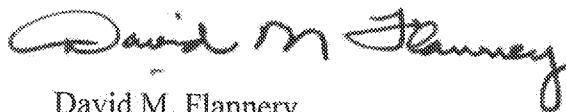
¹ The members of and participants in the Midwest Ozone Group include: American Coalition for Clean Coal Electricity, American Electric Power, American Forest & Paper Association, American Wood Council, Ameren, Alcoa, Appalachian Region Independent Power Producers Association (ARIPPA), ArcelorMittal, Associated Electric Cooperative, Citizens Energy Group, Council of Industrial Boiler Owners, Duke Energy, East Kentucky Power Cooperative, FirstEnergy, Indiana Energy Association, Indiana Utility Group, LGE / KU, National Lime Association, Ohio Utility Group, Olympus Power, and City Water, Light and Power (Springfield IL).

In these comments MOG has identified many deficiencies with the New York petition including the fact that EPA has established other processes to address interstate transport through the approval of Good Neighbor implementation plans submitted by the upwind states targeted by the petition and the use of outdated emission data for the sources that are targeted by the petition. Significantly, the following three deficiencies go to the fundamental question of whether New York has an air quality problem that justifies the filing of the petition:

1. The petition fails to address exceptional events. Consideration of exceptional events by EPA will show that all New York monitors currently attain the 2008 ozone NAAQS when monitoring data influenced by these exceptional events are excluded.
2. The petition fails to address international transport. Consideration of international emissions by EPA will show that "but for" international transport from Canada and Mexico every monitor in New York would attain both the 2008 and 2015 ozone NAAQS.
3. The petition fails to consider EPA's most recent 12 km Good Neighbor modeling which demonstrates that all of the New York monitors will attain the 2008 ozone NAAQS. MOG's application of the EPA modeling to a 4km grid goes further and demonstrates that all New York monitors will also attain the 2015 ozone NAAQS.

MOG submits that the New York petition is fatally flawed on both legal and technical grounds and urges EPA to reject the petition.

Very truly yours,



David M. Flannery
Legal Counsel
Midwest Ozone Group

cc: William L. Wehrum
Assistant Administrator
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Commissioner
New York State Department of Environmental Conservation

**COMMENTS OF THE
MIDWEST OZONE GROUP
REGARDING STATE OF NEW YORK
CLEAN AIR ACT §126 PETITION**

MAY 31, 2018

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COMMENTS OF THE MIDWEST OZONE GROUP REGARDING STATE OF NEW YORK, CLEAN AIR ACT §126 PETITION¹

MAY 31, 2018

On March 12, 2018, the State of New York filed a petition pursuant to Section 126 of the federal Clean Air Act (CAA) directed at some 123 electric generating units (EGUs), 166 “non-electric generating units” and 59 oil and gas sector facilities in the states of Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia. By final rule effective on May 11, 2018 (83 Federal Register 21909) EPA extended the deadline for acting on the petition to no later than November 9, 2018. The petition not only directly affects numerous facilities owned and operated by the members of and participants in the Midwest Ozone Group (MOG) but also raises several significant policy matters that are of significant concern to MOG. While MOG will defer to the owners of the individual sources on matters specific to those facilities, these comments are being offered to address more general concerns about the legal and technical deficiencies of the petition.

MOG is an affiliation of companies, trade organizations, and associations that draw upon their collective resources to seek solutions to the development of legally and technically sound national ambient air quality management programs.² MOG's primary efforts are to work with policy makers in evaluating air quality policies by encouraging the use of sound science. MOG has been actively engaged in a variety of EPA issues and initiatives related to the development and implementation of air quality policy, including the development of transport rules, NAAQS standards, nonattainment designations, petitions under 176A and 126 of the Clean Air Act, NAAQS implementation guidance, the development of Good Neighbor state implementation plans and related regional haze issues. MOG members and participants operate a variety of emission sources including more than 75,000 MW of coal-fired and coal-refuse fired electric power generation in more than ten states. They are concerned about the development of technically unsubstantiated interstate air pollution rules and the impacts on their facilities, their employees, their contractors, and the consumers of their products.

¹ Questions or inquiries about these comments should be directed to David M. Flannery, Kathy G. Beckett, or Edward L. Kropp, Legal Counsel, Midwest Ozone Group, Steptoe & Johnson PLLC, 707 Virginia Street East, Charleston West Virginia 25301; 304-353-8000; dave.flannery@steptoe-johnson.com and kathy.beckett@steptoe-johnson.com and skipp.kropp@steptoe-johnson.com respectively. These comments were prepared with the technical assistance of Alpine Geophysics, LLC.

² The members of and participants in the Midwest Ozone Group include: American Coalition for Clean Coal Electricity, American Electric Power, American Forest & Paper Association, American Wood Council, Ameren, Alcoa, Appalachian Region Independent Power Producers Association (ARIPPA), ArcelorMittal, Associated Electric Cooperative, Citizens Energy Group, Council of Industrial Boiler Owners, Duke Energy, East Kentucky Power Cooperative, FirstEnergy, Indiana Energy Association, Indiana Utility Group, LGE / KU, National Lime Association, Ohio Utility Group, Olympus Power, and City Water, Light and Power (Springfield IL).

MOG's concerns regarding the New York petition go to the fundamental premise of CAA §126 – to provide a carefully crafted mechanism by which states can resolve disputes of interstate transport of air pollutants as they relate to significant contribution to a nonattainment or maintenance problem. The basic premise of CAA §126 as applied in this case is that New York must first demonstrate that it has an ozone non-attainment or maintenance problem before it can assert a claim against an upwind source. See CAA §§126(b) and 110(a)(2)(D)(ii).

In conjunction with the denial of the Connecticut §126 petition involving the Brunner Island facility, EPA itself described the process of evaluating a §126 petition as follows:

The EPA's basis for this final action denying the petition has not fundamentally changed from the proposal. We continue to believe that Connecticut has not demonstrated that Brunner Island emits or would emit in violation of the good neighbor provision such that it will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in Connecticut. Moreover, the EPA's own analysis provides no basis to conclude that the Brunner Island facility either currently emits or would emit pollution in violation of the good neighbor provision for the 2008 ozone NAAQS. In section III of this notice, and in the RTC document included in the docket for this action, the agency explains the rationale supporting its conclusion in light of the public comments.

As an initial matter, the EPA's historical approach to evaluating CAA section 126(b) petitions looks first to see whether a petition identifies or establishes a sufficient basis for the requested section 126(b) finding. The EPA first evaluates the technical analysis in the petition to see if that analysis, standing alone, is sufficient to support a section 126(b) finding. The EPA focuses on the analysis in the petition because the statute does not require the EPA to conduct an independent technical analysis to evaluate claims made in section 126(b) petitions. The petitioner thus bears the burden of establishing, as an initial matter, a technical basis for the specific finding requested. The EPA has no obligation to prepare an analysis to supplement a petition that fails, on its face, to include an initial technical demonstration. Such a petition, or a petition that fails to identify the specific finding requested, could be found insufficient.³

In these comments, MOG has identified many deficiencies with the New York petition. These deficiencies include the use of outdated upwind source emission data and the likelihood that the petition will be mooted when states and EPA act later this year to submit and approve Good Neighbor implementation plans specifically directed at satisfying Clean Air Act requirements with respect to interstate transport consistent with EPA's recently issued guidance on Good Neighbor

³ <https://www.gpo.gov/fdsys/pkg/FR-2018-04-13/pdf/2018-07752.pdf>

SIPs⁴. In addition, there are three deficiencies that go to the fundamental question of whether New York has an air quality problem that justifies the filing of the petition:

- The petition fails to address exceptional events. Consideration of exceptional events by EPA will show that all New York monitors currently attain the 2008 ozone NAAQS when monitoring data influenced by these exceptional events are excluded.
- The petition fails to address international transport. Consideration of international emissions by EPA will show that “but for” international transport from Canada and Mexico every monitor in New York would attain both the 2008 and 2015 ozone NAAQS.
- The petition fails to consider EPA’s most recent 12 km Good Neighbor modeling which demonstrates that all of the New York monitors will attain the 2008 ozone NAAQS. MOG’s application of the EPA modeling to a 4km grid goes further and demonstrates that all New York monitors will also attain the 2015 ozone NAAQS.

For reasons based upon these deficiencies and others set forth below, the Midwest Ozone Group strongly believes that EPA must deny the New York 126 petition.

1. New York’s petition should be rejected because it incorrectly characterizes the emissions of targeted states and sources.

The beginning point for the New York petition is its reliance on some EPA modeling data that was developed in support of the 2016 CSAPR Update Rule. From this data New York selected 10 states that it asserts should be considered today to be “significantly contributing states” in violation of the good neighbor provision of CAA Section 110(a)(2)(D)(i). The 10 states initially identified as “significantly contributing” include: Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia.

Beyond the fact that the petition did not otherwise rely on any EPA generated data in support of its petition, the data selected to identify these target states are extremely outdated and not representative of emissions that occurred in 2017 – the year selected by New York for review. The following chart compares the data that is used by New York to characterize 2017 EGU emissions compared with the actual EGU NOx emissions in 2017 as measured by Continuous Emission Monitors (CEM) and reported to EPA’s CAMD office:

⁴ See EPA’s Stephen Page memorandum, dated October 27, 2017 (https://www.epa.gov/sites/production/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf) and EPA’s Peter Tsirigotis memorandum dated March 27, 2018 (<https://www.epa.gov/airmarkets/march-2018-memo-and-supplemental-information-regarding-interstate-transport-sips-2015>).

| 2017 Ozone Season NOx Tons from All EGUs | | | | |
|--|------------------------------------|--------------------------------------|--------------------|-------------------------|
| State / Region | Modeled CSAPR Base; IPM 5.14 | Actual as Reported to CAMD/CEM | CSAPR-CEM Delta | Delta from CSAPR (%) |
| IL | 15,706 | 14,531 | 1,175 | -7% |
| IN | 43,842 | 22,419 | 21,423 | -49% |
| KY | 38,968 | 20,053 | 18,915 | -49% |
| MD | 4,348 | 2,939 | 1,409 | -32% |
| MI | 32,167 | 16,958 | 15,209 | -47% |
| NJ | 4,001 | 1,684 | 2,317 | -58% |
| OH | 29,599 | 21,005 | 8,595 | -29% |
| PA | 50,870 | 14,435 | 36,435 | -72% |
| VA/DC | 10,438 | 8,069 | 2,369 | -23% |
| WV | 25,582 | 18,463 | 7,119 | -28% |
| Sec 126 Subtotal | 255,522 | 140,556 | 114,966 | -45% |
| CT | 493 | 430 | 63 | -13% |
| DE | 362 | 459 | (97) | 27% |
| NY | 7,396 | 5,614 | 1,782 | -24% |
| North East | 2,730 | 1,611 | 1,119 | -41% |
| WI | 8,690 | 8,103 | 586 | -7% |
| NC | 21,929 | 16,474 | 5,456 | -25% |
| TN | 6,383 | 10,135 | (3,752) | 59% |
| South | 80,999 | 54,262 | 26,737 | -33% |
| AR | 11,888 | 12,811 | (923) | 8% |
| MO | 20,572 | 15,400 | 5,172 | -25% |
| OK | 24,329 | 11,043 | 13,286 | -55% |
| TX | 66,585 | 54,375 | 12,210 | -18% |
| West | 180,994 | 148,488 | 32,506 | -18% |
| US Total | 688,872 | 479,761 | 209,111 | -30% |

The New York petition also states (p.10 of 17) that it relied upon 2014 National Emissions Inventory (NEI) data to identify 400 tons sources. Even though New York concedes that in doing so it included emissions that were overstated, it nevertheless conducts its analysis based upon these incorrect and outdated emissions. In the case of 14 forest products industry sources included in the analysis and listed in Appendix B of the petition, the projected 2017 emissions are overstated by almost 7,500 tons. This error is not only significant in making a determination of 2017 emissions, it results in a much greater error in assessing those sources in 2023 – the attainment year applicable to both the 2008 and 2015 ozone NAAQS. Several large coal-fired industrial boilers in various sectors were shutdown, replaced with new natural gas boilers, or retrofitted with new natural gas burners

that emit less NO_x as a result of the Boiler MACT rule that was implemented after 2014. These lower emissions will be reflected in the actual emissions inventories for 2017 and beyond.

Reliance on such outdated data obfuscates the effect of on-going emission reduction programs. New York's reliance on this outdated information dramatically overstates the impact of these sources on its monitors and requires EPA to deny the New York petition as it did, in part, for the same reason as EPA did in issuing the proposed denial of the Connecticut petition related to the Brunner Island Plant⁵.

2. Emission trends for states targeted by the petition have been decreasing for many years and will continue to do so for the foreseeable future.

The New York petition is directed at sources in nine upwind states that have in fact experienced a significant reduction in NO_x emissions over recent years. These reductions not only reflect the good faith of these upwind states in regulating their own sources but also the effectiveness of EPA programs adopted to meet the Good Neighbor provisions of the Clean Air Act and to reduce emissions from industrial source categories.

Set forth below is a table developed from EPA modeling platform summaries⁶ illustrating total anthropogenic emission reduction and EGU-only emission reduction in the states targeted by the New York petition.

⁵ 83 Fed. Reg. 7716 (February 22, 2018).

| State | Annual Anthropogenic NOx Emissions (Tons) | | | Emissions Delta (2017-2011) | | Emissions Delta (2023-2011) | |
|----------------------|---|------------------|------------------|-----------------------------|-------------|-----------------------------|-------------|
| | 2011 | 2017 | 2023 | Tons | % | Tons | % |
| Illinois | 506,607 | 354,086 | 293,450 | 152,521 | -30% | 213,156 | -42% |
| Indiana | 444,421 | 317,558 | 243,954 | 126,863 | -29% | 200,467 | -45% |
| Kentucky | 327,403 | 224,098 | 171,194 | 103,305 | -32% | 156,209 | -48% |
| Maryland | 165,550 | 108,186 | 88,383 | 57,364 | -35% | 77,167 | -47% |
| Michigan | 443,936 | 296,009 | 228,242 | 147,927 | -33% | 215,694 | -49% |
| New Jersey | 191,035 | 127,246 | 101,659 | 63,789 | -33% | 89,376 | -47% |
| Ohio | 546,547 | 358,107 | 252,828 | 188,439 | -34% | 293,719 | -54% |
| Pennsylvania | 562,366 | 405,312 | 293,048 | 157,054 | -28% | 269,318 | -48% |
| Virginia | 313,848 | 199,696 | 161,677 | 114,152 | -36% | 152,171 | -48% |
| West Virginia | 174,219 | 160,102 | 136,333 | 14,117 | -8% | 37,886 | -22% |
| Sec 126 Total | 3,675,930 | 2,550,399 | 1,970,766 | 1,125,531 | -31% | 1,705,164 | -46% |
| New York | 388,350 | 264,653 | 230,001 | 123,696 | -32% | 158,349 | -41% |
| State | Annual EGU NOx Emissions (Tons) | | | Emissions Delta (2017-2011) | | Emissions Delta (2023-2011) | |
| | 2011 | 2017 | 2023 | Tons | % | Tons | % |
| Illinois | 73,689 | 31,132 | 30,764 | 42,557 | -58% | 42,926 | -58% |
| Indiana | 119,388 | 89,739 | 63,397 | 29,649 | -25% | 55,991 | -47% |
| Kentucky | 92,279 | 57,520 | 42,236 | 34,759 | -38% | 50,043 | -54% |
| Maryland | 19,774 | 6,001 | 9,720 | 13,773 | -70% | 10,054 | -51% |
| Michigan | 77,893 | 52,829 | 33,708 | 25,064 | -32% | 44,186 | -57% |
| New Jersey | 7,241 | 2,918 | 5,222 | 4,323 | -60% | 2,019 | -28% |
| Ohio | 104,203 | 68,477 | 37,573 | 35,727 | -34% | 66,630 | -64% |
| Pennsylvania | 153,563 | 95,828 | 49,131 | 57,735 | -38% | 104,432 | -68% |
| Virginia | 40,141 | 7,589 | 20,150 | 32,553 | -81% | 19,992 | -50% |
| West Virginia | 56,620 | 63,485 | 46,324 | (6,865) | 12% | 10,296 | -18% |
| Sec 126 Total | 744,792 | 475,518 | 338,225 | 269,274 | -36% | 406,568 | -55% |
| New York | 27,379 | 10,191 | 16,256 | 17,188 | -63% | 11,123 | -41% |

As can be seen from this table, the states being targeted by the New York petition are projected to reduce their annual anthropogenic NOx emissions by 31% (1.125 million tons) through 2017 and 46% from 3.68 million tons to 1.97 million tons between 2011 and 2023. Comparatively, these targeted states are projected to reduce EGU-only annual NOx emissions by 36% (269 thousand tons) through 2017. The 2017 actual NOx emissions reductions are even greater than the predicted reductions as shown by the CEM-reported emissions presented in earlier sections of this document as compared to the modeled 2017 EGU emissions. Furthermore, a 55% reduction in annual EGU NOx emissions from the NY petition targeted states, or 406 thousand tons, is projected by EPA between 2011 and 2023. Emission trends for these states have been decreasing for many and will continue to decrease for the foreseeable future as the result of nothing more than on-the-books controls.

3. EPA projects that in 2023 all New York monitors will attain or are already in attainment of the 2008 75 ppb ozone NAAQS.

On October 27, 2017, EPA issued guidance and supporting data on how states should develop approvable Good Neighbor SIPs related to the 2008 ozone NAAQS.⁷ The following is the opening paragraphs of that memorandum:

The purpose of this memorandum is to provide supplemental information to states and the Environmental Protection Agency Regional offices as they develop or review state implementation plans (SIPs) that address section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA), also called the “good neighbor” provision, as it pertains to the 2008 ozone National Ambient Air Quality Standards (NAAQS) of 75 parts per billion (ppb). Specifically, we are providing future year ozone design values and contribution modeling outputs for monitors in the United States based on updated air quality modeling (for 2023) and monitoring data. The EPA’s updated modeling indicates that there are no monitoring sites, outside of California, that are projected to have nonattainment or maintenance problems with respect to the 2008 ozone NAAQS of 75 ppb in 2023.

EPA’s modeling data has been confirmed by modeling performed for MOG by Alpine Geophysics.⁸

⁶ Stephen Page memorandum, October 27, 2017: https://www.epa.gov/sites/production/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf.

⁷ ““Good Neighbor” Modeling for the 2008 8-Hour Ozone State Implementation Plans, Final Modeling Report”, prepared by Alpine Geophysics, December 2017
http://midwestozonogroup.com/files/Ozone_Modeling_Results_Supporting_GN_SIP_Obligations_Final_Dec_2017.pdf

The data taken from the EPA 12km grid modeling are displayed in the following table:

| Monitor | State | County | DVb (2011) | DVf (2023) Ave | DVf (2023) Max |
|-----------|----------|-------------|------------|-------------------|-------------------|
| 360010012 | New York | Albany | 68.0 | 55.4 | 57.0 |
| 360050133 | New York | Bronx | 74.0 | 68.0 | 69.9 |
| 360150003 | New York | Chemung | 66.5 | 54.9 | 55.3 |
| 360270007 | New York | Dutchess | 72.0 | 58.6 | 60.2 |
| 360530006 | New York | Madison | 67.0 | 55.0 | 55.0 |
| 360610135 | New York | New York | 73.3 | 65.3 | 67.8 |
| 360671015 | New York | Onondaga | 69.3 | 57.8 | 60.1 |
| 360715001 | New York | Orange | 67.0 | 55.3 | 56.9 |
| 360750003 | New York | Oswego | 68.0 | 55.7 | 57.3 |
| 360790005 | New York | Putnam | 70.0 | 58.4 | 59.2 |
| 360810124 | New York | Queens | 78.0 | 70.1 | 71.9 |
| 360850067 | New York | Richmond | 81.3 | 71.9 | 73.4 |
| 360870005 | New York | Rockland | 75.0 | 62.0 | 62.8 |
| 361030002 | New York | Suffolk | 83.3 | 72.5 | 74.0 |
| 361030004 | New York | Suffolk | 78.0 | 66.3 | 68.0 |
| 361030009 | New York | Suffolk | 78.7 | 68.5 | 69.7 |
| 361111005 | New York | Ulster | 69.0 | 57.4 | 57.4 |
| 361192004 | New York | Westchester | 75.3 | 68.1 | 68.8 |

It is thus apparent that current emission control programs are more than adequate to satisfy Good Neighbor obligations of states such as New York even without consideration of a more refined grid modeling platform.

4. State-of-the-art modeling by the Midwest Ozone Group shows that all of New York’s monitors will attain the 2015 ozone NAAQS.

To address its own concerns about whether modeling with a 12 km grid is sufficiently refined to address the land/water interface issues, MOG undertook to run EPA’s model at a finer 4km grid.

As is shown in the following chart, when EPA’s air quality modeling platform is run with a 4 km grid (rather than a 12 km grid) predicted ozone concentration at all monitors in New York are in attainment with respect to both the 2008 ozone NAAQS as well as the more stringent 2015 ozone NAAQS.

| Monitor | NY County | DVb (2011) | 12km Modeling | | 4km Modeling | |
|-----------|-------------|------------|----------------|----------------|----------------|----------------|
| | | | DVf (2023) Ave | DVf (2023) Max | DVf (2023) Ave | DVf (2023) Max |
| 360010012 | Albany | 68.0 | 55.4 | 57.0 | 56.5 | 58.2 |
| 360050133 | Bronx | 74.0 | 68.0 | 69.9 | 64.7 | 66.4 |
| 360150003 | Chemung | 66.5 | 54.9 | 55.3 | 55.1 | 55.5 |
| 360270007 | Dutchess | 72.0 | 58.6 | 60.2 | 56.8 | 58.4 |
| 360530006 | Madison | 67.0 | 55.0 | 55.0 | 54.8 | 54.8 |
| 360610135 | New York | 73.3 | 65.3 | 67.8 | 61.5 | 63.7 |
| 360671015 | Onondaga | 69.3 | 57.8 | 60.1 | 57.6 | 59.8 |
| 360715001 | Orange | 67.0 | 55.3 | 56.9 | 54.9 | 57.0 |
| 360750003 | Oswego | 68.0 | 55.7 | 57.3 | 55.9 | 57.5 |
| 360790005 | Putnam | 70.0 | 58.4 | 59.2 | 56.7 | 57.5 |
| 360810124 | Queens | 78.0 | 70.1 | 71.9 | 68.0 | 69.8 |
| 360850067 | Richmond | 81.3 | 71.9 | 73.4 | 69.6 | 71.0 |
| 360870005 | Rockland | 75.0 | 62.0 | 62.8 | 61.1 | 63.1 |
| 361030002 | Suffolk | 83.3 | 72.5 | 74.0 | 70.7 | 72.1 |
| 361030004 | Suffolk | 78.0 | 66.3 | 68.0 | 64.5 | 66.2 |
| 361030009 | Suffolk | 78.7 | 68.5 | 69.7 | 66.8 | 67.9 |
| 361111005 | Ulster | 69.0 | 57.4 | 57.4 | 55.4 | 55.4 |
| 361192004 | Westchester | 75.3 | 68.1 | 68.8 | 64.4 | 64.9 |

Modeling of this type using a finer grid is specifically recommended under existing EPA guidance which states:

The use of grid resolution finer than 12 km would generally be more appropriate for areas with a combination of complex meteorology, strong gradients in emissions sources, and/or land-water interfaces in or near the nonattainment area(s).⁹ Emphasis added.

Accordingly, when state of the art modeling is used to assess air quality in New York at the appropriate attainment date, all receptors – without exception- are in attainment with the 2015 ozone NAAQS compelling the denial of the New York petition.

⁹http://www3.epa.gov/scram001/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf

5. The CSAPR Update Rule and the 2008 and 2015 “Good Neighbor” plans resolve (both legally and technically) the issues that have been raised by the New York petition.

While the petition acknowledges (p.6 of 17) the near-term deadlines for action by EPA on the Good Neighbor plans of the targeted states related to the 2008 ozone NAAQS, the petition fails to address the fact that action on these plans addresses exactly the same provision of the Clean Air Act as does their petition (CAA §110(a)(2)(D)(i) and would effectively satisfy their petition as it relates to the 2008 ozone NAAQS. This close relationship was addressed by EPA in its proposed denial of the Connecticut 126 petition involving the Brunner Island Plant when EPA stated¹⁰:

Put another way, requiring additional reductions would result in eliminating emissions that do not contribute significantly to nonattainment or interfere with maintenance of the NAAQS, an action beyond the scope of the prohibition in CAA section 110(a)(2)(D)(i)(I) and therefore beyond the scope of EPA's authority to make the requested finding under CAA section 126(b). See EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584, 1604 n.18, 1608-09 (2014) (holding the EPA may not require sources in upwind states to reduce emissions by more than necessary to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS in downwind states under the good neighbor provision).

The petition also fails to acknowledge the October 1, 2018 deadline that is applicable to all target states for the submittal of Good Neighbor plans related to the 2015 ozone NAAQS. These Good Neighbor plans would also address CAA §110(a)(2)(D)(i) and effectively eliminates any need for the relief requested in the petition.

In addition to the 2008 and 2015 ozone NAAQS Good Neighbor State Implementation Plans (SIPs), EPA’s CSAPR Update Rule was also adopted to implement and satisfy CAA Section 110(a)(2)(D)(i) obligations. The combination of these actions has already has or ultimately will resolve the responsibility of the states and sources named in the New York petition (filed pursuant to CAA Section 126) because both sections of the CAA call for the application of the same legal standard.

CAA §126(b) provides –

*Any state or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emit or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) ...*¹¹

CAA §110(a)(2)(D)(i) provides –

⁹83 Fed. Reg. 7712 (February 22, 2018).

¹⁰ *Appalachian Power Co. v. EPA*, 249 F.3d 1032 (D.C. Cir.) held this to be a scrivener's error and that the reference here was intended to be to section 110(a)(2)(D)(i) rather than to section 110(a)(2)(D)(ii) as written.

Each plan shall ... contain adequate provisions ... prohibiting ... any source ... from emitting any air pollutant in amounts which will ... contribute significantly to non-attainment in, or interfere with maintenance by, any other state

Thus, resolution of the question of interstate transport under CAA §110(a)(2)(D)(i) effectively and legally resolves any issues that might be the bases for a petition filed under CAA §126(b).

- 6. The petition's request to have emission control limits set on a daily basis is a consideration that EPA previously addressed and rejected and daily limits should also be rejected here.**

One of the requests advanced in the New York petition (see page 17 of 17.) is to have emission limits imposed on a daily – rather than ozone season - basis. Such a proposal has previously been considered and rejected by EPA in connection with the CSAPR Update Rule. MOG urges that it also be rejected here.

During proceeding on the CSAPR Update rulemaking, EPA carefully considered requests from Northeast states urging that the CSAPR budget be applied on a short term basis. EPA made the final decision to establish a program for the regulation of NO_x emissions from EGUs on an ozone season average basis rather than on any shorter time frame.¹²

- 7. The New York monitors that are currently measuring the highest ozone concentrations are already nearly attaining the 2008 ozone NAAQS without consideration of any other mitigating factors.**

While the petition mentions three monitors in the state with 2017 design values in excess of the 2008 ozone NAAQS level of 75 ppb, the design values for each of those monitors is only 76 ppb – 1 ppb above the 2008 ozone NAAQS. Elsewhere in these comments, MOG will note several factors which when taken into account are likely to reduce these concentrations significantly. However, even without the consideration of those factors, it is critical that the petition fails altogether to take this 1 ppb increment into account in offering its proposed remedy. Failure to do so is a failure to avoid over-control that would result from the imposition of emission reductions on upwind states and sources that are more than necessary to bring downwind state monitors into attainment. The following are the preliminary 2017 design values for those three monitors that exceed the 2008 (75 ppb) ozone NAAQS:

¹¹ 81 Fed Reg. 74523, October 26, 2016.

| | | Prelim 2017 DV |
|-----------|-----------------|-----------------------|
| 360850067 | Susan Wagner HS | 76 |
| 361030002 | Babylon | 76 |
| 361030004 | Riverhead | 76 |

Failure to address whether the proposed remedy results in over-control is a failure that requires denial of any Section 126 petition. Upwind states are not required to achieve a higher level of control than that which is necessary to achieve attainment in a downwind area.

8. Consideration of Exceptional Events that occurred in 2016 would bring all New York monitors into attainment with the 2008 Ozone NAAQS.

The Clean Air Act and EPA recognize that Exceptional Events can result in higher design values for many monitors in both the upwind and downwind states. If Exceptional Events are not accounted for, use of the resulting higher design values will not only result in inaccurate nonattainment designations, but also in ultimately higher future year predictions of ozone concentrations and the inaccurate representation that additional control measures are necessary.

The importance of the need to exclude data influenced by Exceptional Events is recognized by Congress in the provisions of Clean Air Act §319(b)(3)(B) which provides as follows:

Regulations promulgated under this section shall, at a minimum, provide that

- (i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;*
- (ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;*
- (iii) there is a public process for determining whether an event is exceptional; and*
- (iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.*

EPA's regulations on Exceptional Events appear at 40 CFR 50.14 (81 Fed. Reg. 68216, October 3, 2016) and provide the framework for addressing Exceptional Events. The regulations include requirements related to demonstrating (a) that a clear, causal relationship exists between the event and monitored exceedance(s) (b) the event was of human origin and not likely to recur or was natural in origins and (c) the occurrence was not reasonably controllable or preventable.

In addition, EPA has also offered guidance related to Exceptional Events¹³ that, among other things, requires that demonstrations include:

- A narrative conceptual model that describes the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance or violation at the affected monitor(s);
- A demonstration that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation;
- Analyses comparing the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times. The Administrator shall not require a State to prove a specific percentile point in the distribution of data;
- A demonstration that the event was both not reasonably controllable and not reasonably preventable;
- A demonstration that the event was caused by human activity that is unlikely to recur at a particular location or was a natural event; and
- Documentation that the submitting air agency followed the public comment process.

A number of states have already made requests to have the air masses caused by the Canadian wildfires that occurred in 2016 be declared Exception Events – thus allowing monitored data influenced by those events to be excluded from the calculation of the design value for the affected monitor. Among the states submitting these requests are several of New York’s neighboring states including:

Connecticut - The Connecticut demonstration related to the May 2016 event was submitted on May 23, 2017.¹⁴ In addition to showing that Canadian wildfire caused the event, the demonstration noted that “. . . the exceedances of May 25-26th cannot be attributed to EGUs operating on high electric demand days as is more typically the case later in the ozone season.” EPA concurred in that demonstration on July 31, 2017.

New Jersey - The New Jersey demonstration related to the May 2016 was submitted on May 31, 2017.¹⁵ In addition to showing that Canadian wildfire caused the event in New Jersey, the demonstration also noted that the event had had a similar impact on many other states including Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania and New York. EPA concurred in that demonstration on October 24, 2017.

¹² Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations, Final, EPA, September 2016: https://www.epa.gov/sites/production/files/2016-09/documents/exceptional_events_guidance_9-16-16_final.pdf

¹³ <https://www.epa.gov/air-quality-analysis/exceptional-events-documents-ozone-connecticut>

¹⁴ <https://www.epa.gov/air-quality-analysis/exceptional-events-documents-ozone-new-jersey>

Massachusetts - The Massachusetts demonstration related to the May 2016 event was submitted on May 25, 2017.¹⁶ EPA concurred in that demonstration on September 19, 2017.

Maryland – While the Maryland demonstration dated May 26, 2017, nominally addresses July 2016 event, the demonstration report itself includes data which assesses how the design values for Maryland’s monitors are affected by both the May and July 2016 events.¹⁷ MOG is not aware that EPA has yet addressed the merit of the Maryland demonstration.

Pennsylvania – Pennsylvania has also made a demonstration related to the May 2016 event dated November 2017.¹⁸ We are not aware that EPA has yet addressed the merit of the Pennsylvania demonstration.

MOG has analyzed the 2016 design values of all of the monitors in New York to determine the impact on design values after data collected during these 2016 Exceptional Events are excluded.

To illustrate the process used to assess these monitors, MOG offers the following graphics related to the Suffolk (361030002) and Richmond (360850067) monitors in New York. In the case of each monitor MOG has graphically identified the 10 highest ozone concentrations that occurred in 2016 and have highlighted in red those readings that occurred on dates related to the May 2016 and July 2016 Canadian wildfire events. These graphics demonstrate the significance of the exclusion of those data points affected by the two Exceptional Events identified.

¹⁵ <https://www.epa.gov/air-quality-analysis/exceptional-events-documents-ozone-massachusetts>

¹⁶ http://www.mde.state.md.us/programs/Air/AirQualityMonitoring/Documents/MDE_JUL_21_22_2016_EE_demo.pdf

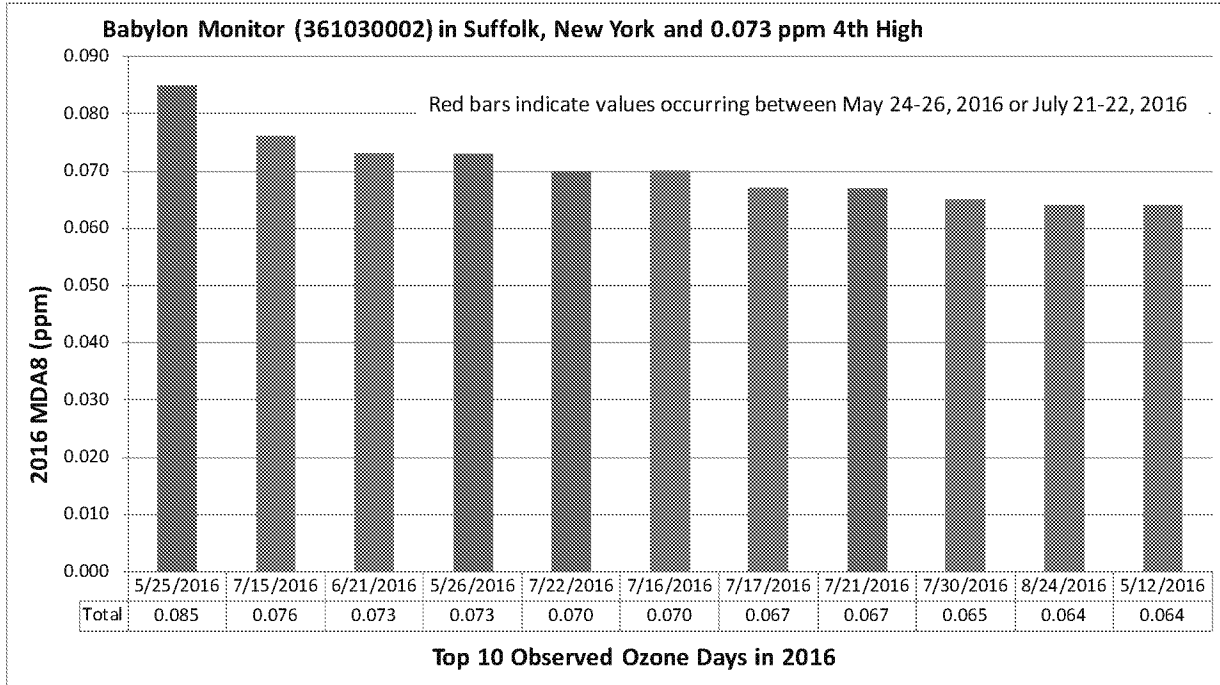
¹⁷ <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-117484/Ozone%20EE%20Analysis%20May%2024-26-2017.pdf>

AQS_SITE_ID 361030002

Suffolk, New York

| Row Labels | Sum of Daily MDA8 |
|------------|-------------------|
| 5/25/2016 | 0.085 |
| 7/15/2016 | 0.076 |
| 6/21/2016 | 0.073 |
| 5/26/2016 | 0.073 |
| 7/22/2016 | 0.070 |
| 7/16/2016 | 0.070 |
| 7/17/2016 | 0.067 |
| 7/21/2016 | 0.067 |
| 7/30/2016 | 0.065 |
| 8/24/2016 | 0.064 |
| 5/12/2016 | 0.064 |

| Value | Ozone MDA8 (ppb) |
|----------------------|------------------|
| 2016 4th (fire) | 73 |
| 2016 4th (no fire) | 67 |
| 2014-16 DV (fire) | 72 |
| 2014-16 DV (no fire) | 70 |

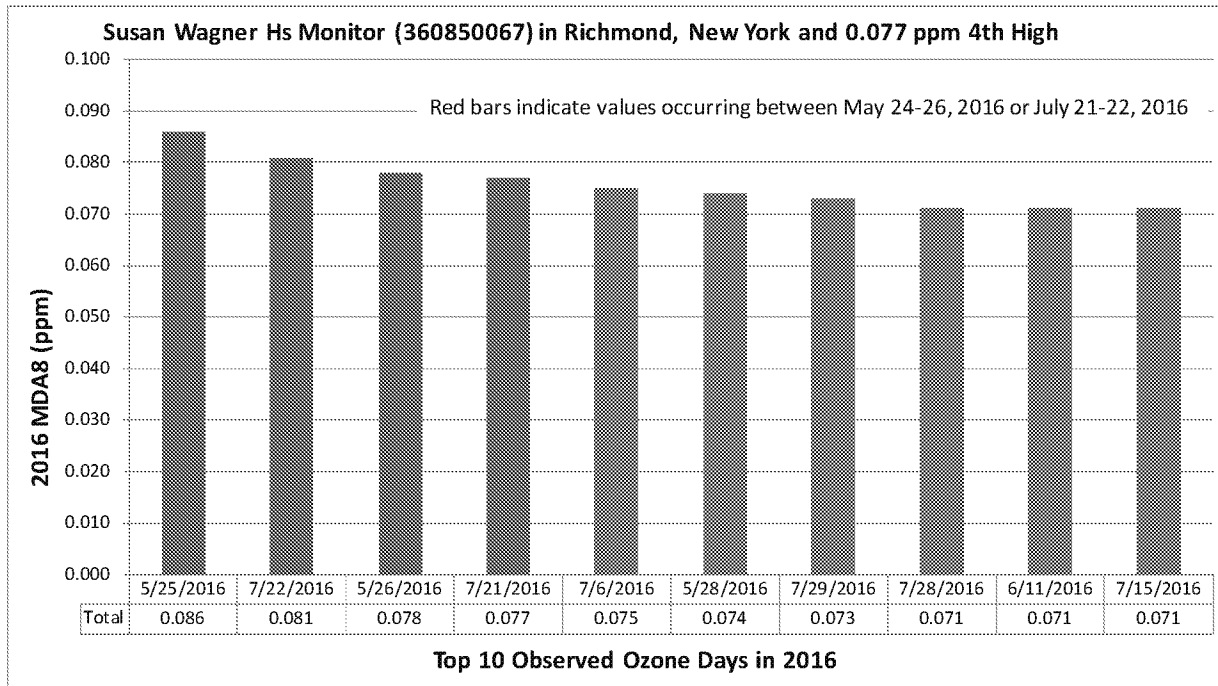


AQS_SITE_ID 360850067

Richmond, New York

| Row Labels | Sum of Daily MDAB |
|------------|-------------------|
| 5/25/2016 | 0.086 |
| 7/22/2016 | 0.081 |
| 5/26/2016 | 0.078 |
| 7/21/2016 | 0.077 |
| 7/6/2016 | 0.075 |
| 5/28/2016 | 0.074 |
| 7/29/2016 | 0.073 |
| 7/28/2016 | 0.071 |
| 6/11/2016 | 0.071 |
| 7/15/2016 | 0.071 |

| Ozone | |
|----------------------|------------|
| Value | MDAB (ppb) |
| 2016 4th (fire) | 77 |
| 2016 4th (no fire) | 71 |
| 2014-16 DV (fire) | 76 |
| 2014-16 DV (no fire) | 74 |



While Connecticut, Massachusetts, New Jersey, Pennsylvania, Maryland and several other states have requested consideration of Exceptional Events for 2016 Canadian wildfire event, New York has made no such request. However, as can be seen in the following data, had the May and July events been excluded, the design values for 25 of New York’s monitors (highlighted in green) would be significantly lower¹⁹. In the case of each monitor, the measurements collected during on the days in May and July 2016 impacted by the Canadian wildfire for which Exceptional Events analysis should have been filed, resulted in new 4th high values and new 3 year design values for each monitor for comparison to the 2008 and 2015 ozone NAAQS.

¹⁸ https://www.epa.gov/sites/production/files/2017-12/documents/ny_nj_ct_new_york-northern_new_jersey-long_island_120d_tsd_final.pdf

| AQS Site ID | State Name | County Name | 2014-2016 Design Value (ppm) | Fire Excluded 2014-2016 Design Value (ppm) |
|--------------------|-------------------|--------------------|---|---|
| 360010012 | New York | Albany | 0.064 | 0.063 |
| 360050110 | New York | Bronx | 0.067 | 0.066 |
| 360050133 | New York | Bronx | 0.070 | 0.070 |
| 360130006 | New York | Chautauqua | 0.068 | 0.067 |
| 360270007 | New York | Dutchess | 0.068 | 0.067 |
| 360290002 | New York | Erie | 0.069 | 0.068 |
| 360310002 | New York | Essex | 0.062 | 0.061 |
| 360310003 | New York | Essex | 0.065 | 0.063 |
| 360319991 | New York | Essex | 0.058 | 0.058 |
| 360337003 | New York | Franklin | 0.058 | 0.057 |
| 360410005 | New York | Hamilton | 0.060 | 0.059 |
| 360430005 | New York | Herkimer | 0.063 | 0.058 |
| 360450002 | New York | Jefferson | 0.063 | 0.062 |
| 360551007 | New York | Monroe | 0.063 | 0.063 |
| 360610135 | New York | New York | 0.069 | 0.068 |
| 360631006 | New York | Niagara | 0.066 | 0.065 |
| 360671015 | New York | Onondaga | 0.064 | 0.062 |
| 360715001 | New York | Orange | 0.066 | 0.065 |
| 360750003 | New York | Oswego | 0.060 | 0.060 |
| 360790005 | New York | Putnam | 0.068 | 0.068 |
| 360810124 | New York | Queens | 0.069 | 0.067 |
| 360850067 | New York | Richmond | 0.076 | 0.074 |
| 360870005 | New York | Rockland | 0.072 | 0.071 |
| 360910004 | New York | Saratoga | 0.063 | 0.062 |
| 361010003 | New York | Steuben | 0.059 | 0.059 |
| 361030002 | New York | Suffolk | 0.072 | 0.070 |
| 361030004 | New York | Suffolk | 0.072 | 0.070 |
| 361030009 | New York | Suffolk | 0.066 | 0.065 |
| 361099991 | New York | Tompkins | 0.063 | 0.061 |
| 361173001 | New York | Wayne | 0.064 | 0.063 |
| 361192004 | New York | Westchester | 0.074 | 0.072 |

With respect to the three monitors highlighted in the New York petition, MOG has also recalculated what the preliminary 2017 design value for each monitor would be if the Exceptional Events are considered. Significantly, all three of the New York monitors with preliminary design values above the 2008 ozone NAAQS, would be below the 2008 standard if only the 2016 Canadian wildfire related exceptional events were addressed.

| AQS Site ID | Local Site Name | 2017 DV With wildfire | 2017 DV Without wildfire |
|--------------------|------------------------|------------------------------|---------------------------------|
| 360850067 | Susan Wagner HS | 76 | 74 |
| 361030002 | Babylon | 76 | 74 |
| 361030004 | Riverhead | 76 | 74 |

In the absence of a request by New York to exclude data related to these wildfire affected time periods, MOG requests that EPA do so as it evaluates the merit of this petition. Because consideration of only the 2016 Canadian Exceptional Events is adequate to bring the design values of all New York into attainment with the 2008 ozone NAAQS, the relief requested by New York would necessarily result in prohibited over-control.

In the alternative, we note that EPA’s March 27, 2018, Good Neighbor SIP guidance memorandum specifically calls into question whether “downwind areas have considered and/or used available mechanisms for regulatory relief.”²⁰ The fact that New York has not requested relief from the impact of these exceptional events does indeed become an independent basis for the denial of its petition.

9. New York’s basis for ignoring the EPA’s Good Neighbor SIP modeling data has no merit.

The New York petition complains that EPA’s CSAPR Update Rule was designed by EPA to be a “partial remedy” to address interstate transport in 2017 (p. 6 of 17). The petition, however, dismisses EPA’s Good Neighbor SIP data²¹ discussed above that clearly demonstrates that the CSAPR Update becomes a full remedy when it is extended to applicable compliance date determined by EPA to be appropriate for the 2008 ozone NAAQS.

A review of the three reasons offered by New York for dismissing the EPA Good Neighbor SIP data illustrates that New York’s rejection of the EPA data has no merit.

¹⁹ EPA Peter Tsirigotis memorandum of March 27, 2018 (<https://www.epa.gov/airmarkets/march-2018-memo-and-supplemental-information-regarding-interstate-transport-sips-2015> at p. A-2.

²⁰ Stephen Page memorandum, October 27, 2017: https://www.epa.gov/sites/production/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf

- a. The initial reason stated by New York for ignoring EPA’s most recent Good Neighbor modeling data is New York’s belief that enforceable limits are needed before the modeling could be considered. This concern ignores that EPA’s projection of emissions in 2023 is based upon “on-the-book” regulations and control requirements that are self-implementing and do not require any further regulatory actions. EPA’s modeling relied only upon control programs currently in place and in effect. As such, nothing more is needed to evaluate these control programs in 2023.
- b. New York also offers a concern about the ability of EPA’s modeling to address monitors located at a land/water interface.²² EPA’s Good Neighbor modeling was, of course, conducted using a 12 km modeling grid. EPA’s March 27, 2018 Good Neighbor SIP guidance memorandum addressed this very issue by selecting from its 12km modeling data only those values that were modeled over land. This approach showed that all receptors in New York did indeed attain the 2015 ozone NAAQS with the exception of the Suffolk (361030002) monitor which has a 3 year “No Water” 2023en design value of 74.0 ppb. As will be discussed in the next section of these comments, moving to 4 km modeling in accordance with EPA modeling guidance demonstrates that even the Suffolk monitor is in attainment.
- c. New York also declined to consider the EPA Good Neighbor modeling because it was based on 2023 whereas New York asserts that relief under a 126 petition must be implemented in no more than 3 years. Given that 2023 is the likely attainment year for the 2015 ozone NAAQS and given the time that would be needed for EPA to approve the New York petition and to apply a three year compliance schedule to any such determination, EPA’s selection of 2023 for its modeling is very reasonable.

10. The exclusion of New Jersey from list of states targeted by the petition ignores the impact of New Jersey and its mobile source emissions on New York’s monitors.

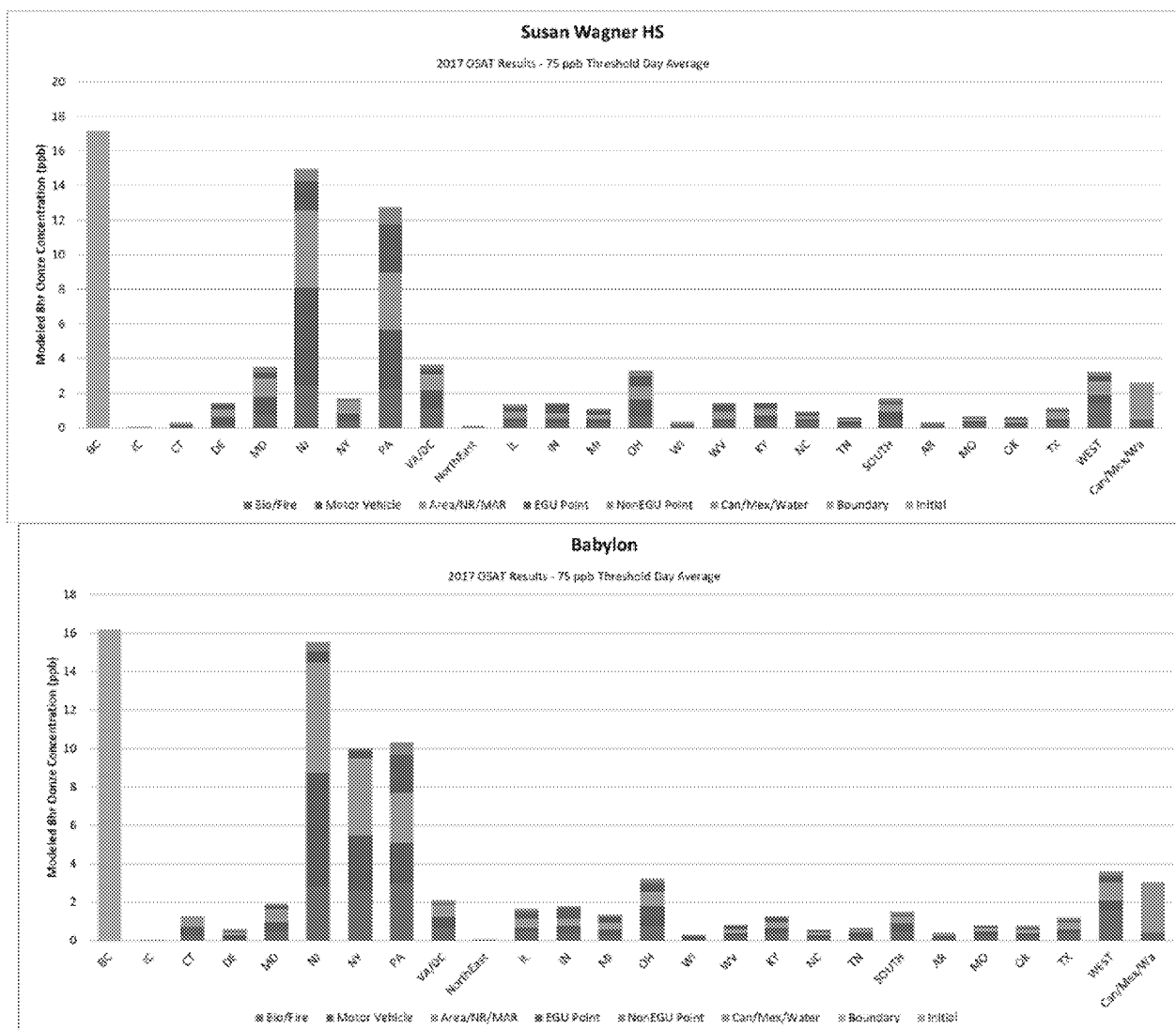
Even though New Jersey was identified by New York as a “significantly contributing” state based on EPA’s 2016 CSAPR Update Rule modeling, the petition excludes New Jersey from the states targeted by New York’s request for new controls. (See March 12, 2018 cover letter) This exclusion is remarkable because New Jersey’s contribution to New York’s air quality is greater than that of any other of the 10 “significantly contributing” states

In excluding New Jersey, the New York petition states (page 14 of 17):

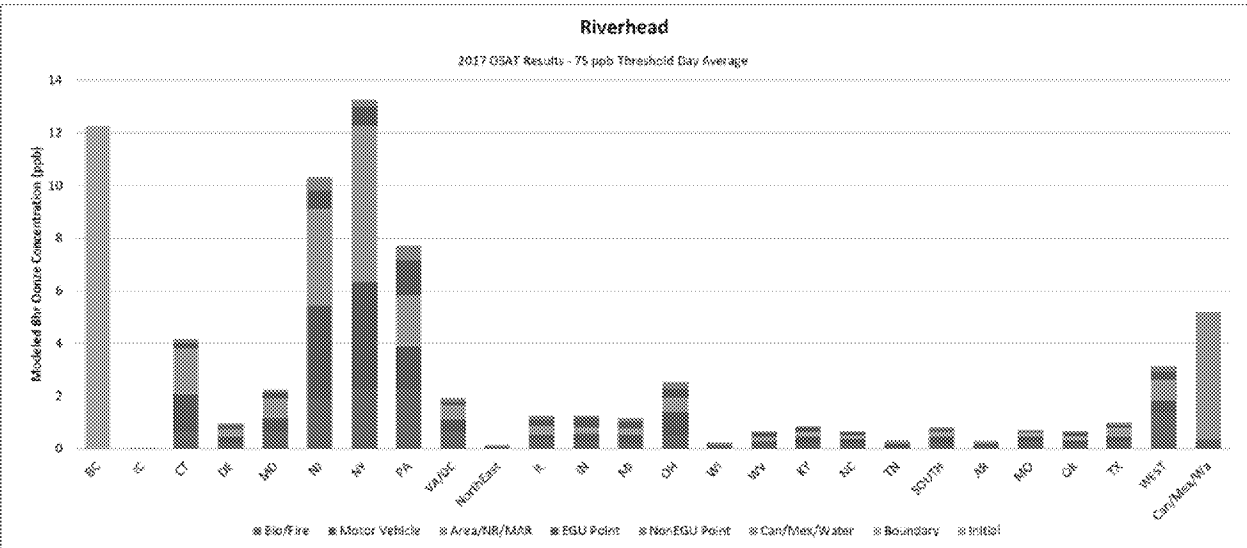
²¹ As pointed out in EPA’s Stephen Page memorandum, October 27, 2017 (https://www.epa.gov/sites/production/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf) and again in the Peter Tsirigotis memorandum of March 27, 2018 (<https://www.epa.gov/airmarkets/march-2018-memo-and-supplemental-information-regarding-interstate-transport-sips-2015> at p. B-3), when EPA’s methodology to account for the land/water interface was applied to the New York monitors, all of the New York monitors were modeled to be attainment with the 2015 ozone NAAQS except for the Suffolk monitor (361030002) which had a “no water’ design value of 74.0 ppb.

New Jersey is excluded from this appendix since it did not contribute to any non-attainment or maintenance monitors.

However, as can be seen in the following graphics based on an ozone source apportionment data associated with CSAPR Update modeling relied upon by New York²³, New Jersey contributes more to the ozone concentrations in New York than any of the states targeted by the petition. Equally significant is that New Jersey's impacts are overwhelmingly from motor vehicles and area and non-road sources. The EGU contributions shown in the following graphics are based upon the grossly overstated emissions from that source category in the 10 states that New York identified in the petition.



²² http://www.midwestozonegroup.com/files/Relative_Contribution_of_Upwind_Sources_on_Key_Monitors.pdf



11. The New York petition cannot be sustained based only on the possibility of two maintenance monitors.

As MOG data has demonstrated, even without addressing Exceptional Events, international emissions or additional local controls, New York will not have any nonattainment monitors in 2023 with respect to either the 2008 or 2015 ozone NAAQS. In 2023, only the Suffolk monitor (361030002) and the Richmond monitor (360850067) are predicted to have a maximum single year design value above the 2015 ozone NAAQS which under EPA’s CSAPR Update definition would be enough to make them maintenance monitors and be given the same amount of weight as nonattainment monitors in developing Good Neighbor requirements. However, as EPA has recently explained, it is not necessary to address maintenance as it was addressed in the CSAPR Update.

EPA’s January 17, 2018, brief in the CSAPR Update litigation (*Wisconsin et al. v EPA*, Case No. 16-1406) offers the following statement on pages 77 and 78 which recognizes that alternatives measures for addressing maintenance receptors are appropriate in circumstances not constrained by the time limits imposed on the CSAPR Update Rule:

Ultimately, Petitioners’ complaint that maintenance-linked states are unreasonably subject to the “same degree of emission reductions” as nonattainment linked states must fail. Indus. Br. 25. There is no legal or practical prohibition on the Rule’s use of a single level of control stringency for both kinds of receptors, provided that the level of control is demonstrated to result in meaningful air quality improvements without triggering either facet of the Supreme Court’s test for over-control. So while concerns at maintenance receptors can potentially be eliminated at a lesser level of control in some cases given the smaller problem being addressed, this is a practical possibility, not a legal requirement. See 81 Fed. Reg. at 74,520. Here, EPA’s use of

the same level of control for both maintenance-linked states and nonattainment-linked states is attributable to the fact that the Rule considered only emission reduction measures available in time for the 2017 ozone season. Id. at 74,520. Under this constraint, both sets of states reduced significant emissions, without over-control, at the same level of control. Id. at 74,551-52. Accordingly, EPA's selection of a uniform level of control for both types of receptors was reasonable. (Emphasis added.)

It is clear therefore, that in other circumstances where the remedy is not constrained by the same time limitations as were imposed on the CSAPR Update, an alternative mechanism should be developed to recognize the smaller nature of the problem being addressed.²⁴

Section 175A of the Clean Air Act addresses the circumstance in which a state requests redesignation from nonattainment to attainment in which case maintenance is addressed by requiring a demonstration that attainment will be maintained for at least 10 years. CAA Section 175A(a) states as follows:

Each State which submits a request under section 7407 (d) of this title for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance.

In addition, EPA long-time policy for addressing maintenance is set forth in the Calcagni memorandum²⁵ which contains the following statement on page⁹:

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of source and emission rates will not cause a violation of the NAAQS. Under the Clean Air Act, many areas are required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level

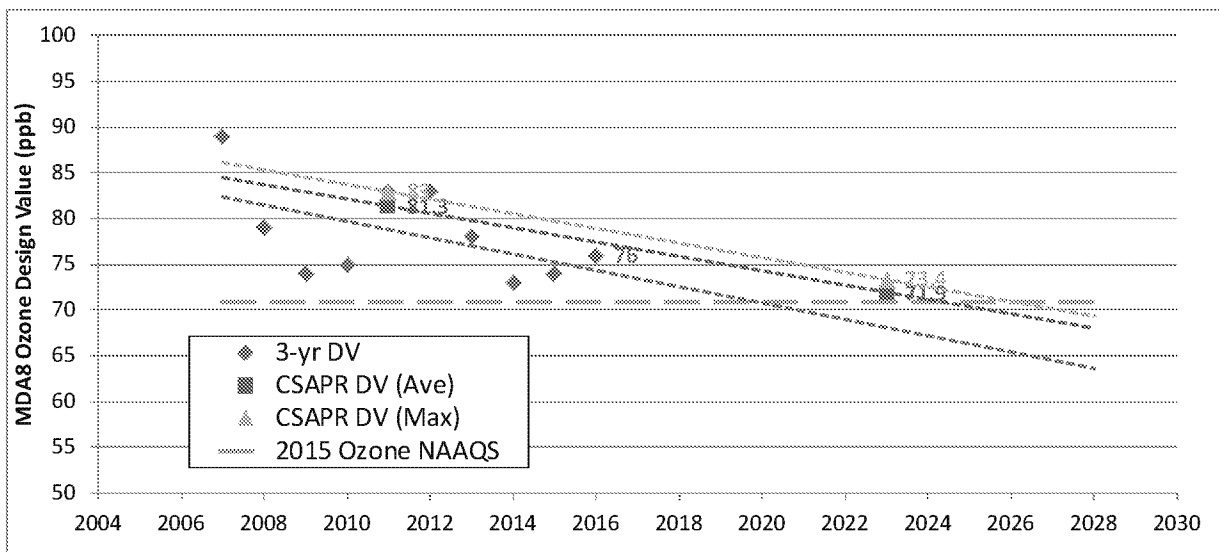
²³ Consideration of alternative approaches to address maintenance areas is central theme of EPA's Peter Tsirigotis memorandum dated March 27, 2018 (<https://www.epa.gov/airmarkets/march-2018-memo-and-supplemental-information-regarding-interstate-transport-sips-2015>), where on pages A-2 and A-3, EPA sets forth a series of options that are being considered for allowing greater flexibility in addressing the question of whether an upwind state is interfering with a downwind maintenance area.

²⁴ Procedures for Processing Requests to Redesignate Areas to Attainment, John Calcagni memorandum, 4 September 1992.

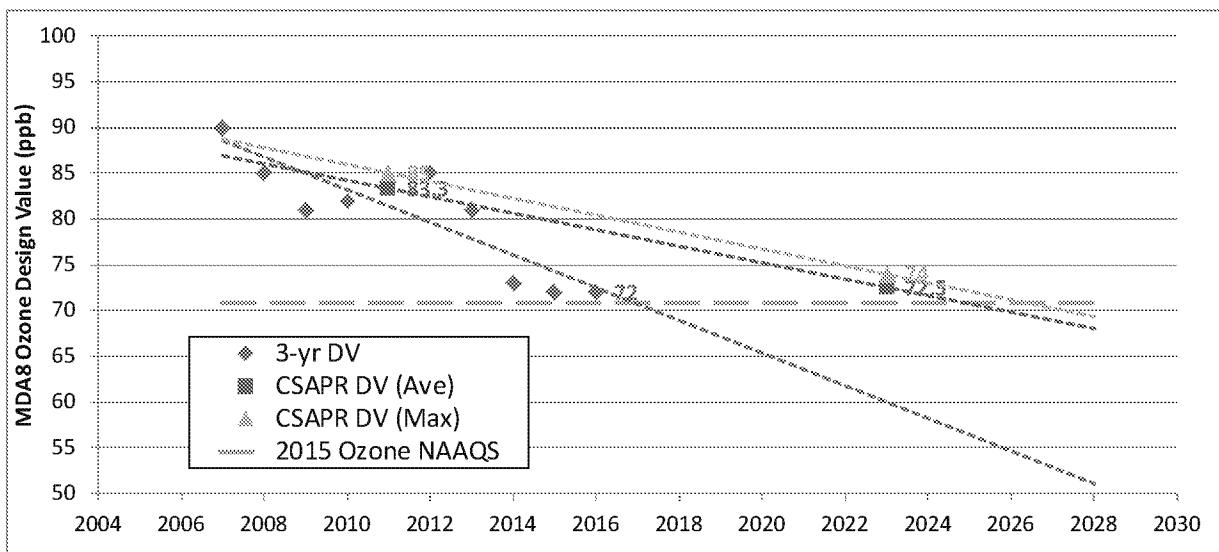
of modeling. In areas where no such modeling was required, the State should be able to rely on the attainment inventory approach. In both instances, the demonstration should be for a period of 10 years following the redesignation.

As demonstrated below, it is clear that the only two possible maintenance monitors in New York remain in attainment for 10 years and thus CAA requirements to address maintenance are satisfied.

Monitor 360850067 Richmond, NY



Monitor 361030002 Suffolk, NY



It is clear therefore that The New York petition cannot be sustained based only on the possibility of two maintenance monitors.

12. International emissions must be addressed as an integral part of the consideration of this petition.

International emission must be considered as an integral part of any assessment of interstate transport such as New York would have EPA consider in acting on its petition.²⁶

The CAA addresses international emissions directly in Section 179(B)(a) which states:

(a) Implementation plans and revisions

Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if—

(1) such plan or revision meets all the requirements applicable to it under the chapter other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and

(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States. (Emphasis added.)

Addressing international emissions in the context of the New York petition is critically important because the petition seeks to implement the Good Neighbor provisions of CAA Section 110(a)(2)(D). In connection with such matters, the U.S. Supreme Court has ruled that it is essential that Good Neighbor states be required to eliminate only those amounts of pollutants that contribute to the nonattainment of NAAQS in downwind States. Specifically, the Supreme Court stated: “EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State. . . .”²⁷ In addition, the D.C. Circuit has commented that “. . . the good neighbor provision requires upwind States to bear responsibility for their fair share of the mess in downwind States.” Slip op at 11.

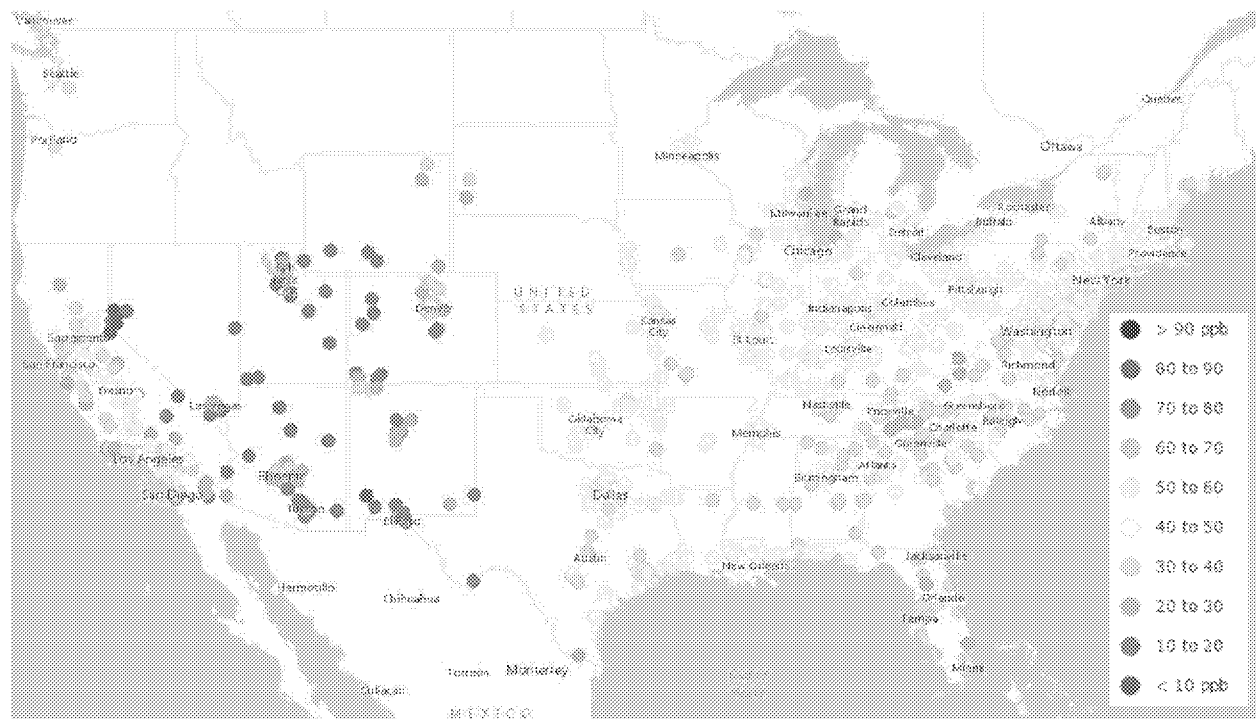
²⁵ Consideration of alternative approaches to address international emissions is also a central theme of EPA’s Peter Tsirigotis memorandum dated March 27, 2018 on page A-3 (<https://www.epa.gov/airmarkets/march-2018-memo-and-supplemental-information-regarding-interstate-transport-sips-2015>).

²⁶ *EPA v. EME Homer City Generation*, 134 S. Ct. 1584, 1608 (2014).

In addressing CAA Section 110(a)(2)(D)(i)(I) the DC Circuit has ruled that this section “gives EPA no authority to force an upwind state to share the burden of reducing other upwind states’ emissions.” *North Carolina v. EPA*, 531 F 2d at 921.

At the request of MOG, Alpine Geophysics employed EPA’s modeling data for 2017 to prepare the following graphic which depicts the projected 2017 8-hour ozone Design Values across the US excluding boundary condition contributions and the international emissions sector. Note that this projection shows all monitors in the continental US with a design value equal to or less than 66 ppb when these categories are excluded.

Projected 2017 ozone design values (ppb) excluding the contribution from boundary condition, initial condition, Canadian and Mexican emission sources



Focusing only on the three worst monitors in New York and applying EPA modeling data for 2017 and 2013, the following chart shows that accounting for boundary conditions and Canada/Mexico emissions brings the worst of the New York monitors to a level of 52.55 ppb. If only the Canada/Mexico portion of international transport were considered, EPA’s 2023 modeling shows that all of New York’s monitors would attain both the 2008 and 2015 ozone NAAQS in 2023.

| Monitor ID | Local Site Name | 2009-2013 Average Design Value | 2017 Average MDA8 Ozone Design Value (ppb) | | | | |
|------------|-----------------|--------------------------------|--|------------------------------|----------------------------|---|-----------------------------------|
| | | | 2017 Average Base Case | Canada & Mexico Contribution | 2017 Base Case w/o Can/Mex | Initial & Boundary Condition Contribution | 2017 Base Case w/o BC and Can/Mex |
| 360850067 | Susan Wagner HS | 81.3 | 75.8 | 1.40 | 74.40 | 17.14 | 57.26 |
| 361030002 | Babylon | 83.3 | 76.8 | 1.25 | 75.55 | 15.67 | 59.88 |
| 361030004 | Riverhead | 78.0 | 70.6 | 0.99 | 69.61 | 12.69 | 56.92 |

| Monitor ID | Local Site Name | 2009-2013 Average Design Value | 2023 Average MDA8 Ozone Design Value (ppb) | | | | |
|------------|-----------------|--------------------------------|--|------------------------------|----------------------------|---|-----------------------------------|
| | | | 2023 Average Base Case | Canada & Mexico Contribution | 2023 Base Case w/o Can/Mex | Initial & Boundary Condition Contribution | 2023 Base Case w/o BC and Can/Mex |
| 360850067 | Susan Wagner HS | 81.3 | 71.2 | 1.82 | 69.38 | 16.83 | 52.55 |
| 361030002 | Babylon | 83.3 | 71.3 | 1.78 | 69.52 | 17.17 | 52.35 |
| 361030004 | Riverhead | 78.0 | 64.9 | 0.97 | 63.93 | 12.56 | 51.37 |

These data demonstrate that but for Canadian and Mexican international emissions, all of New York’s monitors would be in attainment with the 2008 and 2015 ozone NAAQS. These facts are made all the more important because New York has made no attempt to avail itself of this available mechanism for regulatory relief – a clear factor to be considered in evaluating a request of this kind.²⁸ We also note that in its response to comments associated with its April 30, 2018 final rule establishing initial air quality designations for the 2015 ozone NAAQS, EPA offers the following comment on international transport:

The EPA encourages affected air agencies to coordinate with their EPA Regional office to identify approaches to evaluate the potential impacts of international transport and to determine the most appropriate information and analytical methods for each area’s unique situation. The EPA will also work with states that are developing attainment plans for which section 179B is relevant, and ensure the states have the benefit of the EPA’s understanding of international transport of ozone and ozone precursors. To assist in this effort, EPA is currently developing or has developed the following implementation tools to stratospheric ozone intrusion exceptional events implementation guidance, and technical guidance on preparing approvable demonstrations under CAA section 179B.²⁹

The failure of New York to pursue this available mechanism for relief provides an additional basis for the denial of its §126 petition.

²⁷ EPA Peter Tsirigotis memorandum of March 27, 2018 (<https://www.epa.gov/airmarkets/march-2018-memo-and-supplemental-information-regarding-interstate-transport-sips-2015> at p. A-2.

²⁸ https://www.epa.gov/sites/production/files/2018-04/documents/placeholder_2.pdf

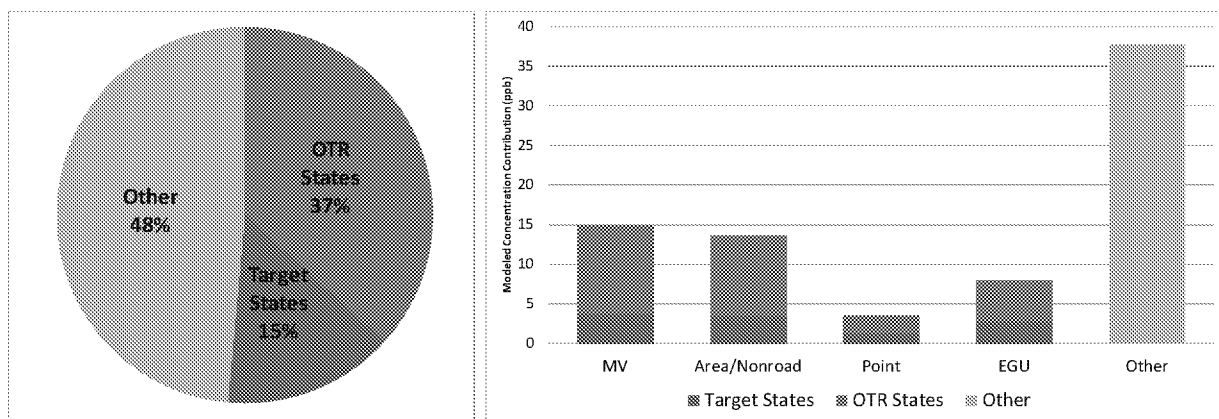
13. Mobile sources – not point sources - have the largest impact on New York monitors.

The petition erroneously concludes that major stationary sources in other states are causing their ozone air quality concerns. Specifically, the petition offers the following statement on page 5 of 17 of the petition:

The high concentrations of ozone that are transported to New York State are largely the result of emission from major stationary sources of NOx located out-of-state.

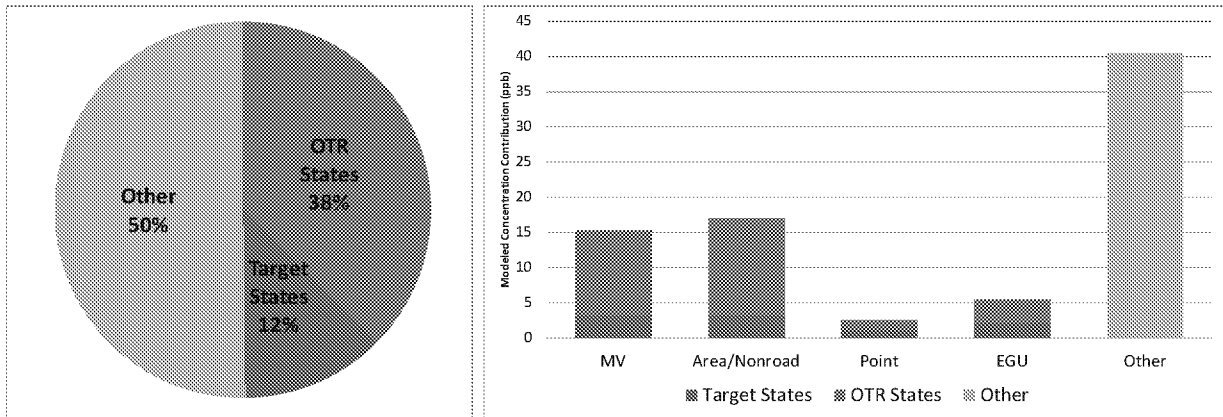
Contrary to this statement and as demonstrated in the ozone source apportionment run of the 2017 EPA CSAPR platform³⁰, it is clear that even with considerably overestimated emissions levels for EGUs, ozone impacts on New York’s problem monitors are overwhelmingly from motor vehicles and area and non-road sources.

360850067 - Susan Wagner HS - 2017 OSAT Results

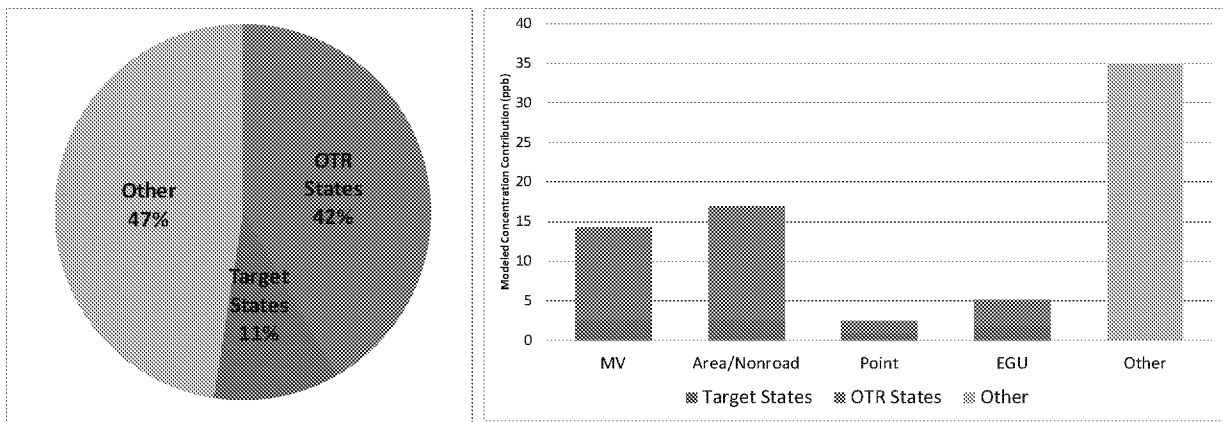


²⁹ http://www.midwestozonegroup.com/files/Relative_Contribution_of_Upwind_Sources_on_Key_Monitors.pdf

361030002 - Babylon - 2017 OSAT Results



361030004 - Riverhead - 2017 OSAT Results



14. New York’s reliance on the Dunkirk Monitor is inappropriate since that monitor attains both the 2008 and 2015 Ozone NAAQS.

The Dunkirk monitor (360130006) is cited in the petition (p. 12 of 17) as a monitor that has “the potential to exceed the NAAQS – particularly, the updated 2015 standards – due to transported ozone pollution.” Putting aside the question of the origination of the ozone measured at that monitor, it is obvious that the petition is incorrect in this conclusion inasmuch as this monitor has consistently measured design values below the 2015 ozone NAAQS and would experience even lower levels if measurements related to the 2016 Canadian wildfire exceptional events are excluded – all as shown in the following table:

| AQS Site ID | State | County | Local Site Name | |
|--|----------------------------------|------------|-----------------------------------|-------|
| 360130006 | New York | Chautauqua | Dunkirk | |
| 4th High Daily Max Design Value (ppb) | | | | |
| 2014 | 2015 | 2016 | 2016 (Excl Fire Dates) | 2017* |
| 66 | 71 | 69 | 66 | 66 |
| 3-yr MDA8 Design Value (ppb) | | | | |
| 2014-2016 | 2014-2016 (Excl 2016 Fire Dates) | 2015-2017* | 2015-2017 (Excl 2016 Fire Dates)* | |
| 68 | 67 | 68 | 67 | |
| * Preliminary based on 21 March 2018 download from https://www.epa.gov/outdoor-air-quality-data/monitor-values-report | | | | |

15. New York has failed to provide any data addressing the cost effectiveness of the controls that it has proposed.

The New York petition fails to offer any assessment of the potential costs and air quality benefits of the control strategy that it is urging. Failure to do so, creates an additional fatal flaw in their petition. This very point was addressed directly by EPA in its denial of the Connecticut petition against Brunner Island. In its final determination, EPA offered the following comment:

As discussed in further detail in section III, the state’s analysis of Brunner Island’s impact on air quality in Connecticut provides insufficient information regarding the source’s impact on Connecticut air quality on high ozone days and it does not reflect the facility’s current operations. Moreover, the petition does not evaluate the potential costs and air quality benefits that would inform the EPA’s evaluation of whether additional emission reductions are cost effective, consistent with the EPA’s interpretation of the good neighbor provision.... Accordingly, the EPA denies Connecticut’s CAA section 126(b) petition.³¹

Failure to provide these same data in the case of the New York petition requires EPA to deny it as well.

³⁰ <https://www.gpo.gov/fdsys/pkg/FR-2018-04-13/pdf/2018-07752.pdf>

16. New York admits that some targeted sources are already achieving their requested control levels.

The petition concedes (p. 17 of 17) that some sources already achieve the emission rate it requests, a clear admission that these sources are not the cause of the problem being complained of by New York.

17. The zero-out modeling performed by New York is not valid for source contribution calculations.

To assess the impact of the 400 ton sources, the petition states that New York “zeroed out” all such sources. Such an approach is considered inappropriate for this purpose as “zero out” modeling perturbs the emissions in the air quality model, highlighting the nonlinearity in the system and failing to account for the sum of contributions from every category in predicted ozone concentrations. Where zero out modeling is adequate for source sensitivity analyses, the petition does not seek to eliminate the 400 ton sources but rather to impose an incremental level of control on them. Beyond the obvious overstatement of the emission change involved, the scenario modeled by New York is so radical as to alter the ability of the computer model to accurately predict ozone concentrations, let alone determine the relative contribution of the identified sources.

18. New York fails to offer any analysis of air quality or interstate transport for any time period after 2017 even though 2023 is the critical assessment date.

Although the attainment data for the 2015 ozone NAAQS is 2023 or later and although EPA has selected 2023 as the compliance date for Good Neighbor plans related to the 2008 ozone NAAQS, the New York petition offers no data or analyses after 2017. The petition therefore, fails to address the substantive technical issue involved and cannot be used to demonstrate the need for additional controls on sources in the target states.

19. New York did not apply an EPA approved modeling technique to perform its analysis.

New York concedes (p.11 of 17) that it did not apply EPA approved modeling techniques to its analysis. Specifically, New York has identified two changes that it made in EPA’s methodology.

Significantly one such change made by New York was to base its modeling on days where the model predicted concentrations as low as 60 ppb – far below even the 2015 (70 ppb) ozone NAAQS. By permitting a maximum impact value to be calculated on modeled low concentration days, New York has potentially overstated the impact of identified sources on days when

nonattainment or maintenance concentrations are observed. For example, on low concentration days (when the model demonstrates attainment), the transport patterns may come from the identified upwind states region. Comparatively, on high concentration days (when the model demonstrates nonattainment), the transport patterns may be stagnant or indicate flow from regions within the state or directionally different from low concentration days. Because the modeling data supporting the analysis is not readily available (see issue 14 above), thorough review of New York's method cannot be conducted. This "adjustment" inappropriately includes emission and meteorological conditions that are potentially unrelated to the issues to be addressed in a 126 petition.

New York also notes that one of the "adjustments" to EPA's approved modeling was to examine only a portion of the ozone season rather than the entire season (p. 11 of 17). This was done because of "resource constraints"; however, in performing its analysis on this limited basis, New York has failed to determine if other factors could be influencing its monitors during the remainder of the ozone season.

20. Controls on local sources must be addressed first by New York before EPA can approve emission reductions on sources in the target states.

When an area is measuring nonattainment of a NAAQS, the Clean Air Act (CAA) requires that the effects and benefits of local controls on all source sectors be considered first, prior to pursuing controls of sources in upwind states. CAA §107(a) states that "[e]ach State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State." In addition, CAA §110(a)(1) requires that a state SIP "provides for implementation, maintenance, and enforcement" of the NAAQS "in each air quality control region . . . within such State." Moreover, by operation of law, additional planning and control requirements are applicable to areas that are designated to be in nonattainment.

This issue is important not only to assessing the merit of the New York petition but also because upwind states must be confident this has occurred as they prepare to submit approvable Good Neighbor state implementation plans to address the 2008 and 2015 ozone NAAQS this year. EPA's current interstate transport modeling platforms fail to incorporate local emission reductions programs that are required to improve ambient ozone concentration in 2023. Only through a full assessment of these local emissions reductions can EPA determine whether there are any bases for the imposition of additional emissions controls in upwind states. This is because additional control requirements in upwind states can only be legally imposed if, after consideration of local controls, there is a continuing nonattainment issue in downwind areas.³²

³¹ *EME Homer et.al. v EPA*, 134 S. Ct. at 1608.

The CAA addresses the affirmative obligations of the states to meet the deadlines for submittal and implementation of state implementation plans designed to specifically address their degree of nonattainment designation. Review of Section 172(c)(1) of the CAA provides that State Implementation Plans (SIPs) for nonattainment areas shall include “reasonably available control measures”, including “reasonably available control technology” (RACT), for existing sources of emissions. Section 182(a)(2)(A) requires that for Marginal Ozone nonattainment areas, states shall revise their SIPs to include RACT. Section 182(b)(2)(A) of the CAA requires that for Moderate Ozone nonattainment areas, states must revise their SIPs to include RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. CAA section 182(c) through (e) applies this requirement to States with ozone nonattainment areas classified as Serious, Severe and Extreme.

The CAA also imposes the same requirement on States in ozone transport regions (OTR). Specifically, CAA Section 184(b) provides that a state in the Ozone Transport Region (OTR) must revise their SIPs to implement RACT with respect to all sources of VOCs in the state covered by a CTG issues before or after November 15, 1990. CAA Section 184(a) establishes a single OTR comprised of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the Consolidated Metropolitan Statistical Area (CMSA) that includes the District of Columbia.

Given the significance of the need for local controls to address concern about the NY-NJ-CT nonattainment area, MOG urges EPA to confirm that all appropriate local controls are adequately accounted for by New York as its addresses the merit of the New York petition.

Conclusion

The action requested by New York in its Section 126 petition is not justified on either legal or technical basis. Ozone precursor emissions have been and will continue to be reduced absent the New York petition due to the CSAPR Update Rule, PA RACT 2 and other on-the-books controls, including controls in New York. This year, upwind states will be submitting Good Neighbor SIP plans that are likely to demonstrate that the existing programs will be adequate to satisfy Good Neighbor SIP obligations. Additionally, appropriately accounting for Exceptional Events, international emissions and local controls also serve to demonstrate compliance with Clean Air Act requirements.

Accordingly, the Midwest Ozone Group urges that EPA deny the Clean Air Act Section 126 petition filed by New York on March 12, 2018.

Message

From: David Darling [ddarling@paint.org]
Sent: 3/2/2018 12:54:35 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; John.M.Mulvaney [Ex. 6]
CC: Caparoso, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78412d4056534ef288fb8ce390b4bf17-Caparoso, J]
Subject: American Coatings Association (ACA) MCM concerns
Attachments: ACA MCM Concern letter 22018 final version .pdf

Good morning, please find attached an American Coatings Association (ACA) letter of concern with regard to the Miscellaneous Coatings Manufacturing (MCM) Residual Risk and Technology Review. As this rulemaking is moving rather quickly, the reason for this letter is to articulate our concerns as early as possible. This letter documents our concerns with inaccurate assumptions that EPA used in original MCM promulgation, we hope that EPA does not employ these assumptions to justify more stringent requirements. Consequently, given the relatively short rulemaking schedule, ACA requests that EPA's Office of Policy and the Office of Management and Budget (OMB) review the agency's development of this RTR rulemaking to ensure that our concerns are considered, and that the rule is technically sound and fair.

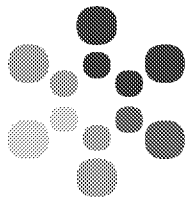
Please note that we will be following up later with suggestions on a possible work practice standard for start-up, shut-down and malfunction and a suggested exclusion from the rule applicability for operations that process or use organic HAP substances present only at incidental concentrations.

Please let me know if you have any questions.

Best regards,

David Darling, P.E.
VP, Health, Safety and Environmental Affairs
American Coatings Association
901 New York Ave., NW Suite 300 West
Washington, DC 20001

Ex. 6



AmericanCoatings
ASSOCIATIONSM

March 1, 2018

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Samantha Dravis
Office of Policy (1803A)
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Mick Mulvaney
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

**Re: Miscellaneous Coatings Manufacturing MACT (MCM) Residual Risk and
Technology Review (RTR); American Coatings Association (ACA) Concerns**

Dear Mr. Wehrum, Ms. Dravis and Mr. Mulvaney:

The U.S. Environmental Protection Agency (EPA) is currently conducting a Residual Risk and Technology Review (RTR) of the maximum achievable control technology standard (MACT) for Miscellaneous Coatings Manufacturing (MCM) at 40 C.F.R. Part 63, Subpart HHHHH. The MCM rule promulgated on December 11, 2003 imposed unnecessarily burdensome requirements on coatings, adhesives, and ink manufacturing operations. Now that the rule is under consideration in the RTR rulemaking process, The American Coatings Association (ACA¹) is concerned that EPA will increase the burden on the coatings industry without commensurate environmental benefits. Many of the current requirements for process tanks

¹ The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

and leak detection and repair were developed by EPA using several assumptions that were not valid then (in 2003) and continue to be invalid today. ACA is very concerned that EPA will again employ these assumptions to justify more stringent requirements. Consequently, given the relatively short rulemaking schedule, ACA requests that EPA's Office of Policy and the Office of Management and Budget (OMB) review the agency's development of this RTR rulemaking to ensure that our concerns are considered, and that the rule is technically sound and fair.

EPA Must Account for the Unique Characteristics of Coatings, Adhesive, and Ink Manufacturing Operations, Especially With Regard to Leak Detection and Repair

To speed its RTR rule-making, EPA is reviewing the MCM, Miscellaneous Organic Chemical Manufacturing² (MOCM, or "MON"), and Organic Liquid Distribution³ (OLD) MACTs simultaneously. ACA is concerned that the unique characteristics of coatings, adhesives and ink manufacturing operations will be lost in a combined Residual Risk and Technology Review of these three rules.

Formulating and blending operations for manufacturing coatings, adhesives and inks are very different than batch/continuous chemical manufacturing operations, especially regarding emissions from equipment leaks. EPA clearly recognized this difference in its "Notice of available information and solicitation of additional information" for the MON MACT⁴ as follows:

"...data also indicate that, for purposes of characterizing and controlling process emissions, distinctions based on whether the production of these organic chemicals are a formulation operation or a chemical reaction, and whether the process vessel is a batch or continuous reactor are more significant than differences among the final chemical products themselves. The Agency envisions a set of standards establishing separate control requirements for chemical production processes and formulation/blending operations. Separate control requirements may also be established for emission points associated with continuous reactors, batch reactors, and formulation/blending."⁵

As a consequence, EPA developed two different sets of standards – one for manufacturing coatings, adhesives and ink by blending and formulation operations (the MCM rule) and the other for manufacturing miscellaneous chemical (the MON).

EPA should consider these differences once again during its RTR review of the MCM rule, and especially in connection with the rule's leak detection and repair (LDAR) provisions. Compared with chemical manufacturing operations, coatings, adhesives and ink

² 40 C.F.R. Part 63, Subpart FFFF

³ 40 C.F.R. Part 63, Subpart EEEE

⁴ 61 Fed. Reg. 57602 (November 7, 1996).

⁵ Id at 57604.

manufacturing operations have very low leak rates for a number of reasons, including the following:

- The coatings industry strives to minimize leaks because these are a serious worker safety and environmental concern, and directly impact the profitability of a facility;
- MCM facilities typically utilize liquid raw materials having low vapor pressures that are less prone to evaporation;
- Unlike many of the operations in chemical manufacturing, most MCM components operate intermittently and under atmospheric or only a slight pressure head, such as developed by transfer pumps;
- Seal-less magnetic-drive pumps, air-operated diaphragm pumps, dual seal and gear pumps, which are designed specifically to have negligible potential for emissions, are commonly used by our industry for transferring materials;
- Most MCM equipment components are located inside production buildings where equipment leaks are readily detectable by employees working in the vicinity of the equipment; and
- Other programs provide redundant monitoring including storage tank spill prevention control and countermeasure; industrial hygiene, and process safety management requirements.

Because of the coating industry's low emissions from equipment leaks, the MCM rule's current option to check leaks by visual, auditory, and olfactory cues in lieu of instrument methods is appropriate and important to the coatings industry. See Table 3 to 40 C.F.R. Part 63, Subpart HHHHH, referencing 40 C.F.R. §§ 63.424(a)(d) & 63.428(e), (f) & (h)(4). This option, however, is provided in the current rule only for facilities that are existing affected sources under the MCM rule--the same option is warranted for new MCM affected sources as well.

Please note additionally that in the original MCM rulemaking, EPA utilized LDAR component emissions information provided by ACA to revise its cost effectiveness assessment for above-the-floor instrument LDAR. EPA decided that it could not justify instrument methods as the sole option for LDAR based on its 2003 estimated cost of \$15,800/Mg (\$21,181 in 2018 dollars). ACA estimates that the current costs of imposing instrument LDAR would be closer to \$269,208/Mg HAP controlled. Surely there is no reason to impose this burden since the current requirement of sensory LDAR is effective.

Impact - ACA is concerned that EPA will significantly increase burden by requiring "Instrument" LDAR for MCM facilities. ACA estimates that the impact on the industry would be a significant increase in the costs to implement instrument LDAR -- to over \$269,208/Mg HAP.

Recommended Solution - ACA suggests EPA retain the current and effective “Sensory” LDAR requirement for existing and new affected sources.

Process Tank Controls

EPA Process Vent Stream Flow Assumptions

ACA commented in the proposed MCM that EPA’s model plants and assumptions for process tanks were not accurate. In the 2003 rulemaking, EPA had assumed that closed vent systems on five process tanks would involve an exhaust air flow totaling only 100 scfm. ACA advised EPA that air flows through collection hoods typically range from 500 to 1000 scfm per tank; collection systems range from 5,000 to 35,000 scfm or more; and general room ventilation air flows are typically in the 1,000s of scfm. Actual data gathered by ACA from 10 facilities indicated air flows ranging from 300 scfm to more than 25,000 scfm. High exhaust air flows are typically utilized in our industry to protect workers when opening and closing vessels when sampling or adding raw materials. The necessarily high air flow rates dramatically impact economically viable methods for controlling emissions from a typical plant subject to the MCM rule.

EPA Process Vent Stream Concentration Assumptions

In the MCM MACT floor analysis, EPA assumed 40,000 ppm as the VOC concentration in exhaust vents for process vessels. At that time, ACA commented that that the highest VOC process vent concentration within the plants surveyed was only 1,235 ppm.

Even disregarding data from ACA’s survey, EPA’s 40,000 ppm gas stream concentration has no technical basis. The 40,000 ppm concentration assumed that the displaced vapor from the head space of the vessel is in equilibrium with pure toluene solvent, which (in accordance with physical chemistry principles of partial pressures) could occur only if the process vessel were filled with toluene only. A process vessel at a facility subject to the MCM rule would never contain pure solvent because the products of our industry always contain multiple materials in emulsion, suspension, and colloidal forms, not pure organic solvent. EPA should therefore consider that large air flows at generally low concentrations are characteristic of this industry when conducting its technology review.

Cost of Thermal Oxidation

In 2003, ACA advised EPA that it had underestimated its assumptions about the air flows from stationary process tanks and overestimated the VOC concentrations in vent stream. Reflecting the air flows VOC concentrations that truly characterize our industry, ACA estimated the true cost of installing thermal oxidation in 2003 to be greater than \$16,000/Mg (\$21,449 in 2018 dollars). It is important that EPA utilize more accurate flow rate and vent stream concentration assumptions in any technology review estimates, especially considering that

thermal oxidation units cost in the range of 1-3 million in capital costs (does not include additional expenses including ductwork, process modifications and fire controls) and well over \$500K in annual operation and maintenance costs, as well as increased greenhouse gas emissions.

Portable Process Tanks

EPA correctly concluded in 2003 that installing controls on portable tanks is costly (\$21,000/Mg - \$28,152 in 2018 dollars) and operationally difficult, and therefore required control of portable tanks by covers. ACA believes that the actual cost to install controls on portable tanks is even greater than what EPA previously estimated, and that requiring covers only on portable tanks continues to be justified.

Impact - ACA is concerned that EPA will increase burden by increasing the stringency of MCM process tank requirements. The installation of thermal oxidation controls on stationary tanks is not cost justifiable. Also requiring add-on controls on portable tanks is technically challenging, and very expensive (hundreds of thousands of dollars), and would not provide any additional environmental benefit.

Recommended Solution - ACA suggests EPA retain the current and effective process tank control requirements.

5% Pollution Prevention Option Is Needed

The 5% pollution prevention option, in accordance with 40 C.F.R. § 63.8055, has been utilized by several MCM facilities. It provides emission reduction with minimum burden, and it provides strong incentives for facilities to reformulate their coatings to containing zero or low-concentrations of HAP substances. ACA strongly requests that EPA retain this important compliance option.

Impact - ACA maintains that the 5% option is a very important compliance option, and its removal would be devastating to several coatings manufacturing companies. Eliminating this option would require facilities to install very expensive control technology without environmental benefit given that the 5% option is effective.

Recommended Solution - ACA suggests EPA retain this very important compliance option.

EPA Must Consider the Facility Closures That Resulted From the MCM and Consolidation

In the 2003 preamble to the final rule, EPA concluded that only "one plant closure [is] expected out of the 127 facilities affected by the proposed NESHAP." And that it "should be noted that ... the facility predicted to close appears to have low profitability levels currently.

Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the proposed.”

The coatings, adhesives and ink manufacturing industry has changed dramatically since 2003. Industry consolidation as well as the promulgation of the MCM rule forced many facilities to close. Of the 128 facilities that EPA considered in 2003, approximately 43 (34%) of the facilities have closed.

Impact – The stark reality of 43 facility closures highlights the impact of the MCM rule on the coatings, ink and adhesive manufacturing industry.

Recommended Solution - ACA is working diligently with EPA in the RTR rulemaking process. We urge EPA to be open to considering the potential economic impact of the MCM requirements with the knowledge that there are 43 fewer facilities than there were when the original rule was finalized. ACA strives to bring real data to the rulemaking regarding costs and environmental benefits of the current requirements.

Thank you for your consideration of our concerns. As this rulemaking is moving rather quickly and involves several rules, ACA’s goal here is to articulate our concerns as early as possible. Please note that we will be following up later with suggestions on a possible work practice standard for start-up, shut-down and malfunction and a suggested exclusion from the rule applicability for operations that process or use organic HAP substances present only at incidental concentrations. ACA is happy to provide updates on these issues as the rulemaking progresses and we are always available to answer questions.

Please do not hesitate to contact me if you have any questions.

Sincerely,



David Darling,
VP, Health, Safety and Environmental Affairs
American Coatings Association

Cc: Jennifer Caparoso, EPA

Message

From: Johnson Koch, LeAnn M. (Perkins Coie) [LeAnnJohnson@perkinscoie.com]
Sent: 2/22/2018 12:20:28 AM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Small Refinery Hardship Under the Renewable Fuel Standard
Attachments: 2.21.18 Coalition Letter to Pruitt, Wehrum.pdf

Dear Administrator Pruitt and Assistant Administrator Wehrum:

Attached is a letter from the Small Refiners Coalition concerning small refinery hardship relief under the Renewable Fuel Standard, responding to letters from the Renewable Fuels Association and the American Petroleum Institute.

Thank you for your consideration of SRC's views.

LeAnn Johnson Koch, on behalf of the Small Refiners Coalition

LeAnn Johnson Koch | Perkins Coie LLP

Ex. 6 (office)
(mobile)

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February 21, 2018

LEANN JOHNSON KOCH
LEANNJOHNSON@PERKINSCOIE.COMD. [REDACTED] Ex. 6
F. +1.202.654.9943

VIA ELECTRONIC AND U.S. MAIL

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., 1101A
Washington, DC 20460

The Honorable William Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., 1101A
Washington, DC 20460

Re: Small Refinery Hardship Under the Renewable Fuel Standard (“RFS”)

Dear Administrator Pruitt and Assistant Administrator Wehrum:

I am writing on behalf of the Small Refiners Coalition (“Coalition”) regarding the Renewable Fuels Association’s (“RFA”) January 24, 2018¹ and API’s February 12, 2018² letters concerning small refinery hardship under the RFS.

The Department of Energy, in a 2011 report for Congress, performed a detailed analysis of how the RFS program would evolve over time and cause harm to small refineries.³ As explained in the DOE study, small refinery hardship is caused by the increasing renewable fuel volume mandates (blendwall), the resulting increase in the price of RINs, and the inability of small refineries to position themselves to avoid the harm due to their lack of vertical integration, lack of market power, and capital constraints. Therefore, small refinery harm was expected to

¹ Letter from Renewable Fuels Association to Scott Pruitt, Administrator, U.S. EPA (Jan. 24, 2018) (<http://www.ethanolrfa.org/wp-content/uploads/2018/01/EPAsmallrefinerletterjanuary24-1.pdf>).

² Letter from American Petroleum Institute to William Wehrum, Assistant Administrator, U.S. EPA (Feb. 12, 2018) (<http://www.api.org/~media/Files/News/Letters-Comments/2017/API-Letter-2-12-18.pdf>).

³ U.S. Department of Energy, Small Refinery Exemption Study: An Investigation Into Disproportionate Economic Hardship (2011)(“DOE study”)(<https://www.epa.gov/sites/production/files/2016-12/documents/small-refinery-exempt-study.pdf>).

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The Honorable William Wehrum
VIA ELECTRONIC AND U.S. MAIL
Page 2

grow worse over time, not diminish, as the volume mandates increased. As explained in the study:

The response to the RFS2 requirements depends in large measure on the size and scope of the operations of individual companies. Large integrated refiners can more easily obtain financing for blending facilities, generate options, accommodate their needs efficiently and shift emphasis from one sector to another as opportunities indicate. For example, over the past couple of years, compliance strategies for larger companies included engaging in joint ventures with ethanol producers, investing in companies in the renewable sector, or conducting research on renewable fuels. As a result, RFS2 compliance costs for the larger refiner may be a small part of overall operating costs.

Small companies are more limited in their options. They face a number of challenges and access to capital is generally limited or not available. Even when capital is available, they may have to choose between making substantial investments in blending and investing in other needed facilities to improve operating efficiencies to remain competitive.⁴

As predicted in the DOE Study, large integrated refiners have positioned themselves to respond to the increasing volume mandates by entering into joint ventures with biofuels producers and through their control of blending and retail. Fifty percent of retail outlets sell fuel under the brand of one of the 15 largest refiner-suppliers through supply agreements.⁵ These entities secure RINs because of the large amount of blending and retail they control. While RFA and API contend that small refineries “have had ample time to adjust their businesses to operate under the burden of the RFS,” small refineries would have to enter new business areas in other geographic areas to displace established, well-funded, long time market players from the wholesale and retail markets they control. This is not easily, cheaply or quickly accomplished and requires changing how these businesses operate.

More fundamentally, small refiners were never expected to make capital investments to avoid the harm caused by high-priced RINs. As EPA explained in the 2007 rulemaking, “obligated parties [would] be able to fulfill their renewable fuel obligation without having to make capital investments” and “sufficient RINs [would] be available and at reasonable prices.”⁶ These were the assumptions that were the foundation for EPA’s SBREFA analysis and EPA’s conclusion that small refineries would not be harmed.⁷ But the RIN market has not operated as

⁴ DOE Study at 23.

⁵ http://www.convenience.org/YourBusiness/FuelsReports/GasPrices_2013/Pages/WhoSellsGas.aspx

⁶ Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program, 72 Fed. Reg. 23900, 23926 (May 1, 2007).

⁷ “We have concluded that the final RFS rule will not have a significant impact on a substantial number of small entities. We based this conclusion on several criteria. First, the industry is expected to be overcomplying by a wide

The Honorable Scott Pruitt
The Honorable William Wehrum
VIA ELECTRONIC AND U.S. MAIL
Page 3

EPA intended. RIN prices have increased by 4-5000%, exempt distributor/retailer chains have retained windfall RIN revenues rather than investing in renewable fuel blending, retailers are “fuel agnostic” and unmotivated to sell higher ethanol blends,⁸ the RIN market has experienced unprecedented fraud, and distributor/retailers are lining their pockets instead of passing along RIN value to encourage E15/E85 use.⁹ Therefore, the market conditions are much worse than DOE expected when it concluded that small refineries could be significantly harmed.

Although they were not expected to do so, most small refineries have made investments to blend renewable fuel, but their investments have been displaced by exempt distributor/retailers. With the increase in the price of RINs since 2013, large distributor/retailers have made investments in blending in close proximity to small refinery racks, and then refused to buy blended fuel. The small refineries lost both their investments in rack blending and the RINs they had been generating for compliance. These examples are described in small refinery hardship petitions submitted to EPA. In addition, a now common practice in the industry is the capture of RIN value by large distributor/retailer chains by requiring discounts on the wholesale price of transportation fuel tied to the value of the RIN on the date of the sale. In requests for proposal and contracts with distributor/retailers provided to EPA through the hardship petition process, small refineries have demonstrated that even when they are able to make investments in renewable fuel blending, they cannot retain the RIN or the value of the RIN to reduce their RFS burden because of their lack of vertical integration (retail) and lack of market power.

API, citing an EPA study,¹⁰ contends that small refineries are not harmed by high RIN prices because large and small refineries are largely able to pass through their RIN costs. But the EPA study cited by API did not look at small refineries; it looked only at “merchant refineries.” As the DOE study explained, “the degree to which the costs burdening small refineries will be passed through to the market depends on many factors, including the market power and relative cost level of a small refinery relative to other market participants.”¹¹ Therefore, the ability of a small refinery to pass through its RIN costs will depend on the unique facts of the small refinery, its cost level and its market power. These factors are properly assessed through the small refinery hardship petition process.

margin independent of the standard, thus causing compliance costs to be minimal.” Regulatory Impact Analysis: Renewable Fuel Standard Program, page 336-337, April 2007.

⁸ Letter from David Masuret, Senior Vice President of Petroleum Supply and Operations, and Matthew Durand, Manager of Government Affairs and Public Policy, Office of the General Counsel, Cumberland Farms, to Gina McCarthy, Administrator, U.S. Environmental Protection Agency 9 (Nov. 2, 2016) (available at EPA-HQ-OAR-2016-0544-0055).

⁹ Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017, 80 Fed. Reg. 77420, 77482-83 (Dec. 14, 2015).

¹⁰ “A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effect,” Dallas Burkholder, Office of Transportation and Air Quality, US EPA. May 14, 2015.

¹¹ DOE Study at 22-23.

But EPA's study on RIN cost pass-through suffers from other infirmities. The study failed to explain how a merchant refiner can recover its RIN cost when competing at the rack with "a blender that does not have an RVO, i.e., a gasoline marketer, or . . . a refiner who blends in excess of its RVO."¹² In contrast to EPA's conclusion, DOE concluded that, after consideration of the ethanol margin and tax credits, the refiner that blends in excess of its RVO and the gasoline marketer would have a significant cost advantage over the merchant refiner at the rack.¹³ Unlike DOE's study, EPA's study failed to explain how, in the intensely competitive transportation fuel market, a merchant refiner could pass through its higher RIN cost when its rack competition has little or no RIN cost to pass through, any more than a refiner would have the ability to pass through higher labor or utility costs. Either the merchant refiner does not recover all of its RIN costs or the gasoline marketer and RIN-long refiner are recovering a cost they did not incur, either of which hurts the competitive position of the merchant refinery.

RFA and API express concerns that increasing the number and magnitude of small refinery hardship exemptions could destabilize the program or cause RIN market disruptions, but their worries are misplaced. First, as API acknowledges, its members have, through capital investments, taken steps to reduce their RFS burden. Therefore, small refineries owned by large integrated refiners are unlikely to apply for relief or receive it based on the findings in the DOE study. Small refineries not owned by large integrated companies produce less than 7.4% of the national transportation fuel volume and, to address RFA's particular concern, small refineries disproportionately produce diesel fuel, not gasoline. In fairness, EPA could address RFA's and API's concern, in part, by timely deciding hardship petitions. If hardship petitions were decided 90 days after submission, the exemptions would occur throughout the year and not all at once on the eve of the compliance deadline.

RFA also expresses concerns about a lack of transparency in the hardship petition process. However, the standard applied to small refinery hardship petitioners is already public. It is described in detail in the DOE study. The 10th Circuit Court of Appeals reminded EPA that hardship relief does not require a demonstration that compliance with the RFS will cause an existential threat to the small refinery, and that the hardship standard is intended to measure the disproportionate regulatory burden and not whether the refinery can absorb the disproportionate regulatory burden and remain profitable.¹⁴ The Coalition does not oppose EPA releasing the aggregated volume of exempted fuel, but does not support releasing the identity of refineries applying for or receiving hardship relief.

¹² DOE Study at B-5.

¹³ *Id.*

¹⁴ *Sinclair Refining Co. v. U.S. Environmental Protection Agency*, No. 16-9532 (10th Cir. Aug. 15, 2017) (available at <https://www.ca10.uscourts.gov/opinions/16/16-9532.pdf>).

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The Honorable William Wehrum
VIA ELECTRONIC AND U.S. MAIL
Page 5

RFA is an aggressive advocate for the ethanol industry. It opposes lowering the nationwide volume mandates, opposes state waiver petitions, opposes granting relief to Philadelphia Energy Solutions in the pending bankruptcy proceeding, opposes moving the point of obligation downstream to those that control the blending, and now opposes small refinery hardship relief. EPA should be circumspect when weighing RFA's interests against the interests of all other stakeholders. The program is not working as Congress or EPA intended, and causing additional harm to small refineries in an effort to force more ethanol into the market is not the solution.

The Coalition supports RFS reform that would put small refineries back on a level playing field with the API members. EPA, RFA, API, the small refineries, and other interested parties should be working together to reform the RFS to achieve the goals of the program without causing harm to critical energy infrastructure and important American jobs. Until then, EPA should grant hardship relief to small refineries as Congress intended for all of the reasons described in the DOE Study.

Very truly yours,



LeAnn Johnson Koch

cc (via electronic mail only): Mandy Gunasekara, EPA
Members of the Coalition¹⁵

¹⁵ Alon Refining Krotz Springs, Inc.; American Refining Group, Inc.; Calumet Specialty Products Partners, L.P.; Lion Oil Company; Ergon Refining, Inc.; Ergon-West Virginia, Inc.; Hunt Refining Company; Placid Refining Company LLC; U.S. Oil & Refining Co.; Par Hawaii Refining, LLC and Wyoming Refining Company.

Message

From: Holmstead, Jeff [jeff.holmstead@bracewell.com]
Sent: 2/15/2018 10:25:30 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: My Oral Statement from Yesterday's NSR hearing
Attachments: Holmstead NSR Oral Testimony 2-14-18-3.docx

I suspect you didn't have the chance to watch yesterday's hearing. Nothing you wouldn't have expected, but I did use my oral statement to respond to John Walke's hysterical written testimony claiming that the Griffith reform bills would cause either "massive" or "enormous increases in dangerous air pollution" -- a claim he repeats 10 different times.

Attached is what I said in my oral statement.

Congressman Griffith also asked me about a statement on page 23 of John's testimony that says:

"In 2002, the Bush administration EPA weakened the clean air regulations at issue here, to insert loopholes and exemptions that let industry increase harmful air pollution significantly and evade any modern pollution controls to reduce emissions."

I thanked him for giving me a chance to respond and pulled out the graph from EPA's latest air trends report showing that air pollution has actually decreased by more than 30% in the U.S. since 2002.

.....
JEFF HOLMSTEAD

Partner

jeff.holmstead@bracewell.com

T: Ex. 6 || F: +1.800.404.3970

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**Oral Statement of Jeffrey R. Holmstead
before the
House Committee on Energy and Commerce
Subcommittee on Environment**

**Hearing on
New Source Review Permitting Challenges
for Manufacturing and Infrastructure
February 14, 2018**

Thank you for giving me the chance to testify this afternoon.

For almost 30 years, I have focused my professional career on the Clean Air Act – as a White House Staffer, as the head of the EPA Air Office, and as an attorney in private practice. I think that even my good friend John Walke from NRDC would concede that I am very familiar with all the Clean Air Act programs that apply to major manufacturing and energy facilities.

You might be surprised to know that there are many different CAA programs that regulate the very same pollutants from these very same facilities. For example, SO₂ and NO_x emissions from coal-fired power plants – the pollutants that have historically been of greatest concern – are regulated under at least 14 different Clean Air Act programs. Yes, 14.

Acid Rain
The NO_x SIP Call
MATS
NSPS
Regional Haze
The 110(a)(2)(d) “good neighbor” provision
Section 126
CSAPR
BART
The SO₂ NAAQS
The NO₂ NAAQS
The Ozone NAAQS
The PM_{2.5} NAAQS
and NSR.

If I had said the full names of these programs instead of the acronyms, I would have used up all my time.

Over the last 25 years, regulators and policy analysts have learned a lot about regulatory policy – what works well and what doesn't – and will tell you that some of these programs are much more effective than others. Because of all the overlapping regulatory programs, our society – you and I and all the people you represent – are paying much more than we need to pay for preserving and improving air quality. If we take advantage of the lessons that have been learned over the last 25 years and use only the most cost-effective approaches for reducing air pollution, we can achieve the same air quality goals that we have today at a much lower cost.

Today we are talking about just one Clean Air Act program known as new source review or NSR. As the name implies, this is an important program for regulating emissions from new sources – power plants and industrial facilities. But over the last 20 years, as EPA has tried to expand it to capture as many existing sources as possible, NSR has become a convoluted, burdensome, and completely unnecessary mess.

As someone who has worked on Clean Air policy for almost three decades, I can say with confidence that the NSR program, as it applies to existing facilities, is the least successful and most counterproductive of the dozens of programs created under the Clean Air Act. To the extent that it provides environmental benefits, those same benefits can be preserved by reforming the program in a thoughtful way and by relying on other, much more effective programs that regulate the same pollutants from the same facilities.

The critique offered by my friend from NRDC in his written testimony is more than a bit over the top. I did a word search last night and found 10 different places where he says that the reforms being proposed by Congressman Griffith would allow either **“massive” or “enormous” increases in “harmful air pollution”**; 15 places where he says the bills **would allow facilities to “evade pollution controls”**; and 11 places where he uses the words **“reckless” or “irresponsible”** to refer to the proposed reforms.

Statements like this are just plain silly – and demonstrably untrue. They ignore the fact that every single existing facility that is covered by the NSR program is also regulated by multiple other Clean Air Programs – in the case of coal-fired power plants, as many as 13 other programs that regulate the very same pollutants covered by NSR. I can guarantee that, even if the NSR program for existing

facilities completely disappeared tomorrow, there would not be a “massive increase in air pollution.” In fact, there would be no increase at all. Because of the many other programs that regulate the same pollutants from the same facilities, air pollution would continue to decrease as it has since 1990.

As I explain in my written statement, the reforms being proposed by Mr. Griffith would simply re-introduce some common sense into the NSR program and make sure that it does what it was intended to do:

1. Ensure that, when a new industrial facility is built or an existing facility is significantly expanded, modern pollution controls will be used to minimize its emissions; and
2. Ensure that the NSR program does not make it hard for companies to keep their facilities in good working order and, where possible, to reduce the operating cost of these facilities by making them more efficient.

* * * * *

Again, I thank you for inviting me here today, and I look forward to answering any questions that you may have.

Message

From: Heidi McAuliffe [hmcauliffe@paint.org]
Sent: 5/11/2018 8:19:12 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; shaw.elizabeth@epa.gov
Subject: Request for Meeting - American Coatings Association

Dear Mr. Wehrum,

I would like to request a meeting with you to discuss a few of the hot button regulatory issues for the paint and coatings industry. American Coatings Association (ACA) represents over 150 manufacturers of coatings products, a \$30 billion dollar industry that employs over 280,000 employees in the US, and all of our products are heavily regulated by the Clean Air Act.

We are currently engaged in the Residual Risk and Technology Review (RTR) of the Paper and Other Web Surface Coating MACT in addition to the Miscellaneous Coatings Manufacturing (MCM) and the Miscellaneous Organic Chemical Manufacturing (MON) MACT rules. In addition, ACA has a petition for rulemaking outstanding on the aerosol coatings regulation.

I would like to discuss a few of these issues with you and your staff. I look forward to hearing from you.

Best regards,

Heidi K. McAuliffe ▪ American Coatings Association ▪ Vice President, Government Affairs

Ex. 6 | **Ex. 6** (m) | 202-263-1102 (fax) | hmcauliffe@paint.org | www.paint.org

901 New York Ave. NW, Suite 300 West ▪ Washington, DC 20001

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Message

From: Meyers, Robert [RMeyers@crowell.com]
Sent: 5/4/2018 5:20:54 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
CC: Freeman, Paul [PFreeman@crowell.com]
Subject: Request for Meeting

Bill—

I am writing to request a meeting with you concerning the Quality Assurance Plan (QAP) program, a program under the Renewable Fuel Standard (RFS) involving the verification of Renewable Identification Numbers (RINs).

As you may know, on January 4, 2017, EPA issued a notice of intent to revoke the ability of our client, Genscape, Inc. (Genscape) to verify RINs, and to direct Genscape to replace approximately 68 million RINs. This matter is still pending before the Agency. Given that Genscape has not had the opportunity to meet with you on this matter since your confirmation, Genscape would like to request such a meeting.

Genscape is happy to accommodate your schedule, but initially we would be available to meet during the week of May 21, 2018.

Thank you for your consideration of this request.

Sincerely,

Bob Meyers

Robert J. Meyers

Ex. 6 (c)
RMeyers@crowell.com
Crowell & Moring LLP
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Message

From: Alonso, Richard [ralonso@sidley.com]
Sent: 7/30/2018 1:55:59 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: FW: You're Invited: Join Sidley during the Texas Environmental Superconference - August 1, 2018 (pdf attached)
Attachments: 20180801 Texas Environmental Superconference Dinner.pdf; image001.png

Bill — I see you are speaking this week at the Texas Superconference. It really is a great audience and well worth the trip.

Sidley is hosting a dinner on Wednesday night with various in-house counsel. You are welcomed to attend. Attached is the invite. I see Administrator Wheeler is also planning to speak. He is also welcomed to attend. Feel free to pass this information along to him.

I figure your portion of the dinner will be approximately \$50 to \$80.

Please let me know if you can attend. I look forward to seeing you in Austin. Safe travels.

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Please join Sidley for dinner at the
Texas Environmental Superconference

Wednesday, August 1, 2018 | 7:30 p.m.

Lonesome Dove | 419 Colorado Street | Austin, TX 78701

Cocktails and hors d'oeuvres 7:30 p.m.

Dinner 8:00 p.m.

[Click here to RSVP](#)

Please respond by Friday, July 27, 2018.

For more information or questions, please contact hnevents@sidley.com.

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Sidley Austin LLP, 1000 Louisiana Street, Suite 6000, Houston, TX 77002

Message

From: Alonso, Richard [ralonso@sidley.com]
Sent: 2/15/2018 12:20:01 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RE: Email address test

Thanks!

Sent with BlackBerry Work
(www.blackberry.com)

From: Wehrum, Bill <Wehrum.Bill@epa.gov>
Date: Wednesday, Feb 14, 2018, 6:59 PM
To: Alonso, Richard <ralonso@sidley.com>
Subject: Re: Email address test

Hi Rich. Yes, this is the correct address. Thanks for coming in. Very interesting discussion.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Feb 14, 2018, at 6:53 PM, Alonso, Richard <ralonso@sidley.com> wrote:

Hi Bill – I hope all is well. Thanks for the meeting this week. The client would like to send you a thank you note for the meeting but I wanted to make sure I have your correct email. Please let me know if you received this email. I am not sure if your email is Wehrum.bill@epa.gov or Wehrum.william@epa.gov. If there is another general office email they should use, please let me know.

I know this is a strange request. Hope to see you again soon.

RICHARD ALONSO

SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005

Ex. 6
ralonso@sidley.com
www.sidley.com

<image001.png>

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immediately.

Message

From: Brian C Mormino [brian.c.mormino@cummins.com]
Sent: 12/12/2017 4:40:42 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Re: Congrats & Dec 12th

Hi bill. I see you are on the CAAAC agenda now for this afternoon. I am there now but will need to leave before your time as I need to connect with the others in the industry before our 3:00 meeting at epa with Mandy and hopefully you. Take care and connect soon, Brian

Sent from my iPhone

On Dec 7, 2017, at 7:07 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

External Sender

Hi Brian. Thanks for your note. I will stop by if I can.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Dec 7, 2017, at 10:15 AM, Brian C Mormino <brian.c.mormino@cummins.com> wrote:

Hi Bill. Hope your first few weeks back on the job are going well. I will see you next week at the Clean Air Act Advisory Committee meeting and look forward to connecting.

Additionally, as I mentioned below, we are meeting with Mandy and others at EPA next Tuesday, December 12th at 2:00 pm. I will be joined my multiple manufacturers from the Truck and Engine Manufacturers Association (EMA) to discuss the need for EPA leadership on developing a new rulemaking to the heavy-duty emissions program. We had a very positive discussion with CARB leaders last week in Sacramento – which is a follow-on to the industry CEO meeting in September with Administrator Pruitt.

It would be great if you were able to join or even just stop by for the meeting next Tuesday. We hope EPA will soon make a public commitment to working on such a rulemaking.

Thanks for your consideration,

Brian

From: Wehrum, Bill [<mailto:Wehrum.Bill@epa.gov>]
Sent: Wednesday, November 15, 2017 3:10 PM
To: Brian C Mormino <brian.c.mormino@cummins.com>
Subject: RE: Congrats & Dec 12th

Thanks for your note, Brian. I look forward to seeing you soon.

From: Brian C Mormino [<mailto:brian.c.mormino@cummins.com>]
Sent: Wednesday, November 15, 2017 2:39 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Congrats & Dec 12th

Bill – Congratulations on your Senate confirmation! It has been awhile since we connected as I moved to Indiana to lead Cummins environmental issues globally. However, I am still very involved in the clean air policy issues for heavy-duty vehicles in the US. I look forward to working closely with you again.

I wanted to make you aware of an upcoming meeting in DC at EPA with Mandy Gunasekera on Tuesday, December 12th at 2:00 pm. This is a follow-up to a CEO level meeting by Cummins and others in the industry in September where we discussed with Administrator Pruitt the need for EPA leadership on developing a new rulemaking to the heavy-duty emissions program that would both streamline the requirements and achieve lower NOx. We believe this could be a win-win approach for the environment, industry and many other stakeholders.

The December 12th follow-up meeting will involve the President of the Truck and Engine Manufacturers Association (EMA) and senior representatives from several of the companies including Cummins, Daimler, Navistar, Paccar and Volvo. I will be the Cummins representative as I serve as the Public Policy Group Chair and an Executive Committee Member for EMA. I also will be coming in that day as a member of EPA's Clean Air Act Advisory Committee where I anticipate that I might see you as well.

I had a call today with Alex Dominguez from EPA to prepare for the December 12th meeting. We expressed support for including Chris Grundler from the Office of Transportation and Air Quality (OTAQ) in the meeting as well.

Again, congratulations on your appointment and I look forward to working with you. If we cannot make December 12th work, then I hope we can find another time soon.

-Brian

Brian C. Mormino
Executive Director -- Worldwide Environmental Strategy & Compliance
Cummins Inc.
MC 60203, 500 Jackson Street
Columbus, IN 47201

Ex. 6 (p)
(c)
brian.c.mormino@cummins.com

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Message

From: Ben Grumbles -MDE- [ben.grumbles@maryland.gov]
Sent: 12/26/2017 6:43:21 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Re: Greetings from Grumbles

Ditto. Let's get together soon.
Ben

Sent from my iPhone

> On Dec 26, 2017, at 1:07 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:
>
> Hi Ben. Nice to hear from you. Happy Holidays! I look forward to working with you again.
>
> _____
> Bill Wehrum
> Assistant Administrator
> Office of Air and Radiation
> U.S. Environmental Protection Agency
> (202) 564-7404
>
>> On Dec 26, 2017, at 12:07 PM, Ben Grumbles -MDE- <ben.grumbles@maryland.gov> wrote:
>>
>> Bill:
>>
>> A belated but hearty congrats on the OAR appointment and confirmation.
>> Great news for EPA and the states.
>>
>> I look forward to working with you and your team. I am in Baltimore
>> but find myself in DC a lot.
>>
>> In 2018, I am chairing the OTC, RGGI, and the ECOS Air Committee, so
>> feel free to call me an Air Head officially. Unofficially, I still
>> have a whole lot to learn, especially from you and others.
>>
>> Happy New Year.
>>
>> Best.
>> Ben
>> **Ex. 6** ^o_c
>>
>> Sent from my iPhone
>>
>> --
>> Click here
>> <<http://www.doit.state.md.us/selectsurvey/TakeSurvey.aspx?agencycode=MDE&SurveyID=86M2956>> to
>> complete a three question customer experience survey.

--
Click here
<<http://www.doit.state.md.us/selectsurvey/TakeSurvey.aspx?agencycode=MDE&SurveyID=86M2956>> to
complete a three question customer experience survey.

Message

From: Ben Grumbles -MDE- [ben.grumbles@maryland.gov]
Sent: 12/26/2017 5:06:19 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Greetings from Grumbles

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Great news for EPA and the states.

I look forward to working with you and your team. I am in Baltimore
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have a whole lot to learn, especially from you and others.

Happy New Year.

Best.

Ben

Ex. 6 ^o_c

Sent from my iPhone

--

Click here

<<http://www.doit.state.md.us/selectsurvey/TakeSurvey.aspx?agencycode=MDE&SurveyID=86M2956>> to
complete a three question customer experience survey.

Message

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Sent: 8/9/2018 12:31:37 PM
To: Brian C Mormino [brian.c.mormino@cummins.com]
CC: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Rakosnik, Delaney [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=274573739a9f446883072599086ededd-Rakosnik, D]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: Re: EMA/DTF Invitation - Nov 13-14

Hi Brian. I'm sure we can accommodate both requests. I've copied Delaney Rakosnik, who can help schedule a discussion sometime in the next few days. I will work with Emily and others on firming up plans for the conference.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Aug 9, 2018, at 8:25 AM, Brian C Mormino <brian.c.mormino@cummins.com> wrote:

Good morning Bill. I am following up on the invitation below to have you speak at the EMA/DTF meeting in November. Additionally, after speaking with Acting Administrator Wheeler, I think it would be good for us to have a short discussion on a few items.

Can we arrange for a 30 minute phone call this week or next to follow-up on these two items?

Please let me know what would work. Thank you,

Brian

From: Brian C Mormino
Sent: Monday, July 23, 2018 5:58 PM
To: 'Wehrum, Bill' <Wehrum.Bill@epa.gov>
Cc: Jed Mandel - Engine Manufacturers Association (jmandel@clpchicago.com) <jmandel@clpchicago.com>; 'Atkinson, Emily' <Atkinson.Emily@epa.gov>; Chris Grundler - EPA OTAQ (Grundler.christopher@Epa.gov) <Grundler.christopher@Epa.gov>
Subject: EMA/DTF Invitation - Nov 13-14

Dear Assistant Administrator Wehrum – EMA is holding its annual Public Policy Forum (in conjunction with the Diesel Technology Forum) on November 13 and 14 in Washington, D.C. We view this meeting as an opportunity for senior policy and government affairs representatives from EMA and DTF member companies to meet with senior government officials and other public policy-makers.

We very much would like you to speak to our group. Several of your colleagues have addressed this meeting in the past, including Jeff Holmstead, Margo Oge and Chris Grundler.

I would anticipate your speaking 20 to 30 minutes or so and, I hope, being available to answer a few questions. No press or outsiders (other than EMA and DTF member representatives) will be in attendance.

We are very flexible with the timing of our agenda and are willing to accommodate whatever your schedule might allow. Please do not hesitate to contact me if you have any questions or need additional information.

I look forward to hearing from you,

Brian

Brian C. Mormino
Executive Director -- Worldwide Environmental Strategy & Compliance
Cummins Inc.
MC 60203, 500 Jackson Street
Columbus, IN 47201
Ex. 6 (p)
(c)
brian.c.mormino@cummins.com

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Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 5/31/2018 10:41:25 PM
To: McWatters, Denise [Denise.McWatters@HollyFrontier.com]
Subject: Re: Thank you

Thanks Denise. As I said at the meeting, I appreciate the time and effort you invested in your materials and presentation. Very well done.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On May 31, 2018, at 6:36 PM, McWatters, Denise <Denise.McWatters@HollyFrontier.com> wrote:

Bill-

Thanks again for taking time to meet with us today. We appreciate your thoughtful approach to the RFS issues.

Denise

Denise Clark McWatters
Senior Vice President & General Counsel
The HollyFrontier Companies
2828 North Harwood, Suite 1300
Dallas, Texas 75201

Ex. 6

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Sent: 5/31/2018 9:51:26 PM
To: Alonso, Richard [ralonso@sidley.com]
CC: Whitfield, Peter [pwhitfield@sidley.com]
Subject: Re: HollyFrontier materials from EPA meeting on 5 31 18

Thanks Rich.

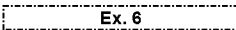
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

> On May 31, 2018, at 5:33 PM, Alonso, Richard <ralonso@sidley.com> wrote:

>
>
> Bill - Thank you for meeting with us today. We appreciate your time. Please find attached an electronic version of the materials we presented today. Please let us know if you have any questions. We look forward to working with you and your team.

> RICHARD ALONSO

>
>
> SIDLEY AUSTIN LLP

>  Ex. 6
> ralonso@sidley.com<mailto:ralonso@sidley.com>

>
>
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>
> *****
> <Wehrum meeting 5 31 18.pdf>

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 2/20/2018 3:44:26 PM
To: Holmstead, Jeff [jeff.holmstead@bracewell.com]
Subject: RE: Tomorrow

Thanks for making the reservation. See you tomorrow.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Holmstead, Jeff [mailto:jeff.holmstead@bracewell.com]
Sent: Tuesday, February 20, 2018 10:36 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Re: Tomorrow

Sounds good. If you haven't already made a reservation, I will do so and will assume that 12:00 works for you.

I will look forward to seeing you tomorrow.

Sent from my iPhone

JEFF HOLMSTEAD

Partner

jeff.holmstead@bracewell.com

T: | F: +1.800.404.3970

BRACEWELL LLP

2001 M Street NW, Suite 900 | Washington, D.C. | 20036-3310

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On Feb 20, 2018, at 9:48 AM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

Jeff – I will not be able to switch our lunch tomorrow with John Graham to dinner. I have a prior dinner commitment. Does the Occidental Grill on Pennsylvania Ave. work for you?

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 2/15/2018 11:45:52 PM
To: Holmstead, Jeff [jeff.holmstead@bracewell.com]
Subject: RE: My Oral Statement from Yesterday's NSR hearing

Thanks Jeff. Good job.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Holmstead, Jeff [mailto:jeff.holmstead@bracewell.com]
Sent: Thursday, February 15, 2018 5:26 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: My Oral Statement from Yesterday's NSR hearing

I suspect you didn't have the chance to watch yesterday's hearing. Nothing you wouldn't have expected, but I did use my oral statement to respond to John Walke's hysterical written testimony claiming that the Griffith reform bills would cause either "massive" or "enormous increases in dangerous air pollution" -- a claim he repeats 10 different times.

Attached is what I said in my oral statement.

Congressman Griffith also asked me about a statement on page 23 of John's testimony that says:

"In 2002, the Bush administration EPA weakened the clean air regulations at issue here, to insert loopholes and exemptions that let industry increase harmful air pollution significantly and evade any modern pollution controls to reduce emissions."

I thanked him for giving me a chance to respond and pulled out the graph from EPA's latest air trends report showing that air pollution has actually decreased by more than 30% in the U.S. since 2002.

JEFF HOLMSTEAD
Partner
jeff.holmstead@bracewell.com
T: Ex. 6 | F: +1.800.404.3970

BRACEWELL LLP

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From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 4/18/2018 11:53:56 PM
To: Alonso, Richard [ralonso@sidley.com]
Subject: Re: Dinner

I just landed. Matt is on this flight. See you in the morning.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Apr 18, 2018, at 5:49 PM, Alonso, Richard <ralonso@sidley.com> wrote:

Hi Bill. Just in case you took an earlier flight — we are meeting in the lobby for dinner at 6:45. We will take an uber from there. Matt took a later flight so he will likely not attend.

If you cannot make it, I will see you tomorrow morning. Safe travels.

Sent with BlackBerry Work
(www.blackberry.com)

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Message

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Sent: 2/26/2018 2:30:18 PM
To: Ben Grumbles -MDE- [ben.grumbles@maryland.gov]
Subject: RE: Apologies

Thanks Ben. I look forward to catching up sometime soon.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

-----Original Message-----

From: Ben Grumbles -MDE- [mailto:ben.grumbles@maryland.gov]
Sent: Sunday, February 25, 2018 11:59 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Apologies

Sorry I missed our ECOS call last week. As is often the case, I blame the MD General Assembly! They are easily distracted and diverted and I am often along for the ride. They are focusing in on climate change, RGGI politics, RPS, the role of natural gas and the battle over pipelines, CAFO air emissions, among other things. MDE is focusing on OTC, RGGI, title 5 permitting and SIPs, and chairing ECOS Air Committee.

I look forward to working with you and team OAR. If I can help in ways, either as a Marylander, a former Arizonian, or an ECOSian chair of the Air Committee, please let me know. Glad you, Clint, Tad Aburn of MDE, and Kelly Poole of ECOS got a chance to meet and greet a bit while waiting for AWOL Grumbles. Looking forward to rescheduling or catching up in person soon.

Also Looking forward to tomorrow's call with you and ECOS writ large.

Best.
Ben

--
Click here
<<http://www.doit.state.md.us/selectsurvey/TakeSurvey.aspx?agencycode=MDE&SurveyID=86M2956>> to complete a three question customer experience survey.

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 4/20/2018 2:24:22 PM
To: Alonso, Richard [ralonso@sidley.com]
Subject: RE: Dinner

Hi Rich. Thanks for the opportunity. It was fun. Sorry we didn't get to catch up.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Alonso, Richard [mailto:ralonso@sidley.com]
Sent: Friday, April 20, 2018 9:49 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: RE: Dinner

It was great seeing you. Have a great weekend. Thank you for flying down to Orlando and speaking.

Sent with BlackBerry Work
(www.blackberry.com)

From: Alonso, Richard <ralonso@sidley.com>
Date: Wednesday, Apr 18, 2018, 5:49 PM
To: 'Wehrum, Bill' <Wehrum.Bill@epa.gov>
Subject: Dinner

Hi Bill. Just in case you took an earlier flight — we are meeting in the lobby for dinner at 6:45. We will take an uber from there. Matt took a later flight so he will likely not attend.

If you cannot make it, I will see you tomorrow morning. Safe travels.

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Sent: 2/14/2018 11:59:15 PM
To: Alonso, Richard [ralonso@sidley.com]
Subject: Re: Email address test

Hi Rich. Yes, this is the correct address. Thanks for coming in. Very interesting discussion.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Feb 14, 2018, at 6:53 PM, Alonso, Richard <ralonso@sidley.com> wrote:

Hi Bill – I hope all is well. Thanks for the meeting this week. The client would like to send you a thank you note for the meeting but I wanted to make sure I have your correct email. Please let me know if you received this email. I am not sure if your email is Wehrum.bill@epa.gov or Wehrum.william@epa.gov. If there is another general office email they should use, please let me know.

I know this is a strange request. Hope to see you again soon.

RICHARD ALONSO

SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Ex. 6
ralonso@sidley.com
www.sidley.com

<image001.png>

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Sent: 11/15/2017 8:10:28 PM
To: Brian C Mormino [brian.c.mormino@cummins.com]
Subject: RE: Congrats & Dec 12th

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The December 12th follow-up meeting will involve the President of the Truck and Engine Manufacturers Association (EMA) and senior representatives from several of the companies including Cummins, Daimler, Navistar, Paccar and Volvo. I will be the Cummins representative as I serve as the Public Policy Group Chair and an Executive Committee Member for EMA. I also will be coming in that day as a member of EPA's Clean Air Act Advisory Committee where I anticipate that I might see you as well.

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-Brian

Brian C. Mormino
Executive Director -- Worldwide Environmental Strategy & Compliance
Cummins Inc.
MC 60203, 500 Jackson Street
Columbus, IN 47201

Ex. 6 (p)
(c)
brian.c.mormino@cummins.com

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Subject: Re: Congrats & Dec 12th

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Bill Wehrum
Assistant Administrator
Office of Air and Radiation
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(202) 564-7404

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Sent: Wednesday, November 15, 2017 3:10 PM
To: Brian C Mormino <brian.c.mormino@cummins.com>
Subject: RE: Congrats & Dec 12th

External Sender

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Sent: Wednesday, November 15, 2017 2:39 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Congrats & Dec 12th

Bill – Congratulations on your Senate confirmation! It has been awhile since we connected as I moved to Indiana to lead Cummins environmental issues globally. However, I am still very involved in the clean air policy issues for heavy-duty vehicles in the US. I look forward to working closely with you again.

I wanted to make you aware of an upcoming meeting in DC at EPA with Mandy Gunasekera on Tuesday, December 12th at 2:00 pm. This is a follow-up to a CEO level meeting by Cummins and others in the industry in September where we discussed with Administrator Pruitt the need for EPA leadership on developing a new rulemaking to the heavy-duty emissions program that would both streamline the requirements and achieve lower NOx. We believe this could be a win-win approach for the environment, industry and many other stakeholders.

The December 12th follow-up meeting will involve the President of the Truck and Engine Manufacturers Association (EMA) and senior representatives from several of the companies including Cummins, Daimler, Navistar, Paccar and Volvo. I will be the Cummins representative as I serve as the Public Policy Group Chair and an Executive Committee Member for EMA. I also will be coming in that day as a member of EPA's Clean Air Act Advisory Committee where I anticipate that I might see you as well.

I had a call today with Alex Dominguez from EPA to prepare for the December 12th meeting. We expressed support for including Chris Grundler from the Office of Transportation and Air Quality (OTAQ) in the meeting as well.

Again, congratulations on your appointment and I look forward to working with you. If we cannot make December 12th work, then I hope we can find another time soon.

-Brian

Brian C. Mormino
Executive Director -- Worldwide Environmental Strategy & Compliance
Cummins Inc.
MC 60203, 500 Jackson Street
Columbus, IN 47201

Ex. 6 (p)
(c)
brian.c.mormino@cummins.com

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Appointment

From: Rakosnik, Delaney [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=274573739a9f446883072599086ededd-Rakosnik, D]
Sent: 8/14/2018 4:32:30 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]
CC: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Michaels, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a44e1a5c23404801bd12621455cde517-Reid, Laure]
Subject: Meeting with Ergon-West Virginia, Inc re: RFS
Attachments: CONFIRMED RE: Meeting Request -- Bill Wehrum
Location: WJC - N 5400 + Video with AA + Ex. 6
Start: 8/22/2018 8:30:00 PM
End: 8/22/2018 9:15:00 PM
Show Time As: Busy

TO: Bill Wehrum, Gautham Srinivasan, Mandy Gunasekara, Chris Grundler, Ben Hengst, Byron Bunker

Outside attendees (in person):

- Kirk Latson
- Alan Walters
- Susan Butler
- LeeAnn Johnson Koch



CONFIRMED RE:
Meeting Request...

Message

From: Rakosnik, Delaney [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=274573739A9F446883072599086EDED-RAKOSNIK, D]
Sent: 8/14/2018 5:28:14 PM
To: Johnson Koch, LeAnn M. (Perkins Coie) [LeAnnJohnson@perkinscoie.com]
CC: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: CONFIRMED RE: Meeting Request -- Bill Wehrum

Dear LeAnn,

You are confirmed for a 45 min meeting with Bill Wehrum on Wednesday, August 22nd at 2:30pm.
Directions and procedures to 1200 Pennsylvania Avenue NW:

Metro: If you come by Metro get off at the Federal Triangle metro stop. Exit the metro station and go up two sets of escalators to the surface level and turn right. You will see a short staircase and wheelchair ramp leading to a set of glass doors with the EPA logo - that is the William Jefferson Clinton Federal Building, North Entrance.

Taxi: Direct the taxi to drop you off on 12th Street NW, between Constitution and Pennsylvania Avenues, at the elevator for the Federal Triangle metro stop - this is almost exactly half way between the two avenues on 12th Street NW. Facing the building with the EPA logo and American flags, walk toward the building and take the glass door on your right hand side with the escalators going down to the metro on your left – that is the North Lobby of the William Jefferson Clinton building.

Security Procedures: A government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared and arrive at the meeting room on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. If you are a foreign national entering on a non-US passport, please let us know in advance, as there is a separate clearance process.

Upon arrival, let the guards know that you were instructed to call 202-564-7404 for a security escort. Please send me a list of participants in advance of the meeting and feel free to contact me should you need any additional information.

Many thanks,

Delaney Rakosnik
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-2229
Email: rakosnik.delaney@epa.gov

From: Johnson Koch, LeAnn M. (Perkins Coie) [mailto:LeAnnJohnson@perkinscoie.com]
Sent: Tuesday, August 14, 2018 1:00 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: Meeting Request -- Bill Wehrum

Sounds great. Thanks

LeAnn Johnson Koch | Perkins Coie LLP

Ex. 6

(office)
(mobile)

From: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Sent: Tuesday, August 14, 2018 12:35 PM
To: Johnson Koch, LeAnn M. (WDC) <LeAnnJohnson@perkinscoie.com>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: Meeting Request -- Bill Wehrum

Hi LeAnn,

How does 2:30pm on 8/22 sound?

Thanks,

Delaney Rakosnik
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-0935
Email: rakosnik.delaney@epa.gov

From: Johnson Koch, LeAnn M. (Perkins Coie) [mailto:LeAnnJohnson@perkinscoie.com]
Sent: Tuesday, August 14, 2018 12:29 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: Meeting Request -- Bill Wehrum

Delaney –

Thank you. The 22nd works for Ergon. If it works for EPA, the afternoon would be better, to give our team time to get into town in the morning.

LeAnn

LeAnn Johnson Koch | Perkins Coie LLP

Ex. 6

(office)
(mobile)

From: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Sent: Monday, August 13, 2018 4:51 PM

To: Johnson Koch, LeAnn M. (WDC) <LeAnnJohnson@perkinscoie.com>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: RE: Meeting Request -- Bill Wehrum

Hi LeAnn,

Bill Wehrum is happy to take this meeting. He can meet as early as 8/22. Do you have a time frame in mind?

Many thanks,

Delaney Rakosnik
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-0935
Email: rakosnik.delaney@epa.gov

From: Johnson Koch, LeAnn M. (Perkins Coie) [<mailto:LeAnnJohnson@perkinscoie.com>]
Sent: Friday, August 10, 2018 6:12 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: FW: Meeting Request -- Bill Wehrum

Ms. Rakosnik –

I would like to schedule a meeting with Mr. Wehrum and my client, Ergon West Virginia, Inc., to discuss the 4th Circuit's decision concerning the company's 2016 small refinery hardship petition under the Renewable Fuel Standard.

Thanks,
LeAnn

LeAnn Johnson Koch | Perkins Coie LLP

Ex. 6 (office)
(mobile)

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