



November 15, 2023

Mr. Michael S. Regan
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

**HF Sinclair's Comments on EPA's Request From States for Removal of Gasoline Volatility Waiver
88 Fed. Reg. 13,758 (March 6, 2023)**

HF Sinclair Corporation ("HF Sinclair") is submitting supplemental comments on Environmental Protection Agency's ("EPA") Notice of Proposed Rulemaking, **Request From States for Removal of Gasoline Volatility Waiver 88 Fed. Reg. 13,758 (March 6, 2023)** Docket NoEPA-HQ-OAR-2022-0513, in light of the substantial importance of this issue to our company and the significant costs it will impose on everyone involved in the chain of fuel distribution, including the end-users of the gasoline. HF Sinclair submits this letter as a request to delay implementation of any final rule, pursuant to 42 U.S.C. § 7545(h)(5)(C)(ii), until at least March 31, 2025. HF Sinclair believes removal of the gasoline volatility waiver is not sound policy and EPA should abandon this rulemaking until a legislative solution has been reached, because it will impose enormous expenses on consumers and fuel manufacturers in order to obtain a questionable environmental benefit in the eight petitioning states ("Midwestern States"). Moreover, the proposed rule would command the production and distribution of low Reid Vapor Pressure ("RVP") gasoline under an unreasonable and unachievable timeline. The eight impacted states and refiners serving those markets lack the infrastructure necessary to manufacture and transport low RVP gasoline. Consequently, consumers will face fuel shortages in addition to higher fuel prices. Based on testimony provided to the House Agriculture Committee from EPA, it seems the Agency is likely to approve the petition and while HF Sinclair remains opposed to the overall proposal, the Company believes an additional delay would provide refiners, midstream and storage companies, and retailers time to make crucial infrastructure changes to allow for fuel segregation¹. As outlined below, HF Sinclair maintains the EPA is under no timeline to act on the Governors' request.

HF Sinclair Corporation is a diversified, innovative energy company that manufactures and sells products such as gasoline, diesel fuel, jet fuel, renewable diesel, specialty lubricant products, specialty chemicals, and specialty and modified asphalt, among others. HF Sinclair also owns and operates refineries located in Kansas, Oklahoma, New Mexico, Utah, Washington and Wyoming and markets its refined products across the western half of the United States and a majority of the states in the proposed rule. Accordingly, the proposed rule, if finalized, would impact HF Sinclair's business substantially.

Please note certain information in this letter is entitled to confidential treatment under 40 C.F.R., Part 2, Subpart B. HF Sinclair deems this letter and information transmitted with this letter to constitute Confidential Business Information, not subject to disclosure under the Freedom of Information Act ("FOIA").

¹ <https://www.reuters.com/business/energy/biden-administration-sees-year-round-sales-higher-ethanol-fuel-by-2024-2023-04-19/>



Summary

The Clean Air Act does not compel the EPA to grant the Governors' requests where, as here, eliminating the 1 psi RVP waiver will result in an insufficient supply of gasoline in the affected states or where there is evidence that eliminating the waiver will increase emissions that contribute to air pollution.² We believe withdrawing this rule and allowing time for a legislative solution is the best option for consumers, will more effectively promote the use of biofuels, and will provide certainty to Midwest markets and retailers.

In addition, we do not believe creating a boutique fuel market for E15 in the Midwest serves consumers or advances the goals of blending more ethanol into the gasoline pool. To that end, HF Sinclair supports a legislative solution that would allow for blending of E15 year-round while maintaining the 1 psi RVP waiver. We supported sections of the Consumer and Fuel Retailer Choice Act (S. 785) that was introduced in the 117th Congress by Senator Deb Fischer (R-NE), because it will provide a 50-state solution instead of the patchwork regulatory scheme that will result from EPA's grant of the Governors' petitions. A universal regulatory approach to this issue is the best option for ensuring a level playing field and providing the market with sufficient advanced opportunity to adjust operations for compliance. Accordingly, HF Sinclair continues to work with Congressional stakeholders to find a legislative solution that protects consumers.

EPA's Proposal Will Substantially Increase Fuel Costs and Negatively Impact Fuel Supply

The proposed rule will substantially increase the cost of gasoline for consumers, create gasoline supply shortages, and produce logistical challenges in the Midwestern States. If finalized, the rule could increase the cost of fuel at the pump by 8 to 12 cents per gallon with a net overall cost to consumers of \$500 million to over \$1 billion.³

As EPA has noted, the proposed rule increases fuel prices because lower RVP gasoline is more expensive to manufacture. The rule is also problematic because refiners cannot simply increase production in one year. Therefore, the rule will lead to supply shortages in the Midwestern States. Moreover, EPA's most recent proposed rules have signaled its preference for the electrification of the transportation fleet over continued use of biofuels – a signal that makes it difficult to justify an expansion of gasoline production as a worthwhile capital project.⁴

The proposed rule complicates fuel manufacturing because it would result in the creation of a boutique fuel – 7.8 RVP gasoline – in the Midwestern States. This fuel is more expensive to make because it requires refiners to reduce or extract the lightest components in gasoline. The separation process increases manufacturing time and complexity. At HF Sinclair refineries, for example, we would produce this fuel by removing butane (a high-RVP component) and storing it until the winter months. Not only would this lower overall production volumes, but it would require us to find additional storage capacity

² See 42 U.S.C. § 7545(h)(5)(A), (C)(ii).

³ Baker & O'Brien, Inc. *Midwest States Gasoline RVP – 1 psi Wavier Study*. February 24, 2023.

⁴ See Proposed Rule: Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles <https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-multi-pollutant-emissions-standards-model>.



for butane. Additionally, the rule would force us to segregate the 7.8 RVP gasoline from traditional 9.0 RVP gasoline manufactured at our refineries, thereby requiring even more storage tanks. This is not a minor impact. As a Government Accountability Office (GAO) Report acknowledges, a refinery could produce 12% more gasoline in the absence of a low RVP requirement.⁵ And capacity losses not only lower the volume of fuel available domestically, but also increase fuel prices.⁶

The proposed rule would also strain fuel production because a new fuel specification will require new infrastructure. To comply, refiners like HF Sinclair will need to invest in additional equipment to allow for fuel segregation and increased production of low RVP gasoline. Such capital projects are not only costly, but they require significant time to engineer, permit and construct. HF Sinclair estimates that these projects usually require more than a year from start to finish and could not be completed in time to meet demands of the 2024 summer season. Consequently, the 2024 summer season likely will see fuel shortages at a time of rising demand, resulting in circumstances similar to those the United States experienced in the summer of 2022. As noted in this petition, a delay until 2025 would give the industry additional time to implement process changes and secure funding for infrastructure capital projects.

HF Sinclair assessed the potential impact of the proposed rule and found it to be significant. [REDACTED]

Even if refiners could produce adequate volumes of low-RVP gasoline by 2024, the fuel market in the impacted Midwestern States will face logistical challenges transporting finished gasoline. Pipelines and terminals have limited capacity to deal with multiple grades of gasoline without capital improvements. Consequently, pipeline operators may choose to supply high RVP fuel markets with low RVP fuel. For example, HF Sinclair is facing a potential challenge regarding the transportation of its finished gasoline. We operate two refineries in Tulsa, Oklahoma and El Dorado, Kansas, with a combined throughput of 260,000 barrels per day of crude oil. These refineries primarily supply fuel into the Midwestern States, including those where EPA is proposing to eliminate the RVP waiver, via the Nustar and Magellan pipeline systems. If this rule is finalized, Nustar and Magellan will require an origin specification RVP of no greater than 7.8 psi. In fact, for the transition period to the 2024 summer season, the Baker & O'Brien study notes that most companies would require an origin specification even lower than that – a 7.3 psi RVP fuel – to transition the downstream gasoline to summer gasoline based on EPA's proposal. Producing this fuel specification at current refinery production volumes will be extremely difficult, if not impossible, for HF Sinclair refineries with the existing infrastructure. And this origin specification may reduce availability of these pipelines to ship products to other states.

The impacts of the issues noted above will be substantial. As noted by Baker & O'Brien, the proposed rule could increase production costs for the summer season by \$500 million to \$800 million.⁷ And the

⁵ Special Gasoline Blends Reduce Emissions and Improve Air Quality, but Complicate Supply and Contribute to Higher Prices, GAO-05-421 at 29 (June 2005), available at: <https://www.gao.gov/products/gao-05-421>.

⁶ See *id.*

⁷ Baker & O'Brien, Inc. Midwest States Gasoline RVP – 1 psi Wavier Study. February 24, 2023.



financial impact of this rule on fuel consumers for the summer season is likely to be 8 to 12 cents per gallon.⁸ If the proposed rule results in production shortages and supply disruptions, the total cost could exceed \$1 billion.⁹ Consequently, for a proposal with the magnitude of financial impact, HF Sinclair urges EPA to await a Congressional solution rather than seek a regulatory one.

EPA's proposal further complicates HF Sinclair's operations when considering the recent classification of the Denver Metro/North Front Range ("DMNFR") Area as a Severe Nonattainment Area under the 2015 8-hour ozone National Ambient Air Quality Standards. Pursuant to the Clean Air Act, HF Sinclair will be required to provide reformulated gasoline (RBOB) with a maximum RVP pipeline specification of 6.2 psi to the DMNFR Area beginning in Summer 2024. Consequently, HF Sinclair's refineries would need to produce two new boutique fuels – 6.2 RVP for Denver and 7.8 RVP for the Midwestern States – and the traditional 9.0 RVP for states where the waiver remains viable. Supplying lower RVP gasoline into the DMNFR Area will further constrain gasoline availability in the Midwestern States whose Governors are seeking to opt-out of the RVP waiver for E10. EPA should exercise discretion given that this will be the first driving season where lower RVP gas would be required in both markets.

The Proposed Rule Lacks Significant Environmental Benefits

The proposed rule seeks to eliminate the RVP waiver for 10% ethanol blends based on petitions from eight state governors (the "Governors") suggesting that elimination of the waiver would decrease emissions in their states. These petitions are misplaced. Communication with several Governors and their respective staff revealed that the intent of this request is to impose upon refiners an obligation to produce a new gasoline blendstock that would allow for blending of 15% ethanol during the summer months – the intent was not to reduce air emissions. EPA acknowledges as much in the proposed rule, noting that the states' petition "specifically requested the removal of the 1-psi waiver as a permanent solution to provide year-round E15 in those states beginning in the summer of 2023." 88 Fed. Reg. at 13,761. The basis for the petitions as unrelated to emissions issues is further supported by EPA's data, which indicates that this action would actually *increase* particulate matter emissions and on-road benzene emissions while only achieving fractional percentage decreases of emissions of VOCs, carbon monoxide (CO) and oxides of nitrogen (NOx). *See id.*, Table V-1, Change of Mobile Source Emissions in 2023 MOVES3.01 Sources From 10.0 psi to 9.0 psi. HF Sinclair notes that the data appears to consider the end use of the fuel and disregards the potential impacts associated with manufacturing the fuel, which could negate NOx emission reductions. EPA should consider the full lifecycle impacts of eliminating the RVP waiver rather than simply focus on MOVES modeling that fails to account for full lifecycle emissions. Such an analysis may show that the proposed rule will not result in net emissions reductions, particularly if increasing ethanol content in fuel increases corn farming in the eight states which may have negative impacts on the regional environment.

Conclusion

As explained above, the proposed rule will substantially increase the cost of gasoline for consumers, create gasoline supply shortages, and produce logistical challenges in the Midwestern States. As currently, proposed HF Sinclair cannot support policy that increases costs of consumers. For these

⁸ *Id.*

⁹ *Id.*



reasons, HF Sinclair urges EPA to either not proceed with the gasoline volatility waiver in the Midwestern States or delay implementation of a final rule until at least the 2025 summer season..¹⁰ Alternatively, EPA could continue to issue 20 day emergency waivers which would allow for 15% ethanol blending during the summer months¹¹. Such a delay affords refiners time to invest in the infrastructure needed to comply with the proposal and allows Congress time to promulgate a national standard.

¹⁰ 42 U.S.C. § 7545(h)(5)(C)(ii).

¹¹ <https://www.epa.gov/newsreleases/epa-issues-emergency-fuel-waiver-e15-sales-0>