CALUMET
SPECIALTY PRODUCTS PARTNERS, L.P.

Calumet Montana Refining, LLC
1900 10th St NE Great Falls, MT 59404
Phone: 317-328-5660 Fax: 317-328-5668 Sales: 1-800-437-3188 www.calumetspecialty.com

August 25, 2023

VIA ELECTRONIC AND CERTIFIED MAIL

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Regan.michael@epa.gov

Re: Petition for Rulemaking To Fix The Renewable Fuel Standard's Illegal Credit Trading Program

Dear Administrator Regan:

Calumet Montana Refining, LLC ("Calumet Montana") and Calumet Shreveport Refining, LLC ("Calumet Shreveport") (collectively "Calumet" or "the companies") hereby petition the United States Environmental Protection Agency ("EPA" or "Agency"), pursuant to 5 U.S.C. § 553(e), to initiate a rulemaking to change the regulations in 40 C.F.R. Part 80 subpart M. The regulations must be revised promptly to comply with the Clean Air Act with respect to the generation, ownership, transfer, and retirement of Renewable Identification Numbers ("RINs") under the Renewable Fuel Standard ("RFS").

Calumet operates petroleum refineries in Great Falls, Montana and Shreveport, Louisiana. The companies are required to comply with the RFS by blending renewable fuel into the transportation fuels that they produce or by buying blending credits called "RINs." 40 C.F.R. §§ 80.1406(b) and 80.1427.

The companies are "merchant" refineries. That is, they are not vertically integrated and do not control either the blending of renewable fuel into most of their products (which occurs downstream) or any of the retail sale of their fuels.[1] As merchant refineries, it is downstream parties that blend renewable fuel into the Calumet refineries' transportation fuel and it is those parties who generate the blending credits that the Calumet refineries need for compliance. The

[1] As merchant refineries, the companies have only very limited capacity to blend renewable fuel directly into the transportation fuels that they produce. For example since 2017, 83% of the Calumet Shreveport refinery's transportation fuel is sold unblended at the refinery gate or via pipeline to large integrated refiners and large retail chain owners that control the downstream blending, distribution, and retail sale of the refinery's transportation fuel. And while Calumet Montana is capable of blending ethanol into most of the gasoline that it produces, it disproportionately produces diesel fuel for which renewables are blended at far lower rates due to market resistance to biofuel, including because of the cold climate.

Calumet refineries are thus captive buyers in the RIN market. To the extent the Calumet refineries need RINs, they are forced to pay whatever the market demands in order to comply with the RFS. We have previously provided EPA with specific evidence of the predatory behavior exhibited by these downstream offtakers. **EPA's RIN Market does not comport with statutory requirements.**

The Clean Air Act directed EPA to create a credit trading program in which RINs (i) could be "generated" by parties that "over complied" with their own RFS obligation and (ii) could be sold only to parties that needed them for compliance. Instead, EPA created a program in which any person may generate credits for blending at any level they choose and may sell RINs to anyone for any purpose, including purely for profit. EPA's departure from the statutory text and its refusal to impose the bedrock guardrails present in every other EPA fuels-credit trading program is the root cause of the speculation, fraud, and abuse in the current RIN market; the harm to captive participants in the market; and limitations in renewable-fuel blending.

The RIN market in which the Calumet refineries are compelled by EPA to participate is effectively unregulated; wildly volatile; and wrought with speculation, fraud, and abuse. At the start of the program in 2013, RINs traded at 2–5 cents, which Calumet has estimated is the cost to blend renewables at a terminal. And that is still the cost today: the production value of RINs—the cost to blend ethanol with gasoline—has not increased. Yet the price of RINs on the market has increased by 4000%–5000% due to the RIN market's unlawful structure, enabled by EPA's current rules. RINs sellers are reaping windfall profits selling RINs to captive merchant and small refineries like the Calumet refineries, with no attendant increase in ethanol consumption (which has been capped at 15 billion gallons per year for a decade). Put simply, EPA is deliberately enabling a giant short squeeze.

Due to the extraordinary increase in the price of RINs, the value of the RIN market is nearly $30 billion for 2021 compliance alone.[2] The extraordinary size of the RIN market, and the fact that it is wholly unregulated, has attracted international criminal activity. Experts estimate that fraud in the RIN market cost American taxpayers nearly $1 billion.[3] On August 1, 2016, the Renewable Fuels Association asked the Commodity Futures Trading Commission (CFTC) to investigate illegalities in the RIN market. Five months earlier, EPA entered into a memorandum of understanding with the CFTC to exercise oversight over the RIN market.[4] It is now 2023, and neither the CFTC nor EPA have taken steps to "minimize fraud, market abuses, or other violations [ ] to aid EPA in successfully fulfilling its statutory functions under [the RFS]."[5] But the root problems with the RIN market cannot be cured by CFTC oversight; the problems are embedded in EPA's current structure for the RIN trading program.

---

[2] *As RINs Disappear, 2021 Compliance Could Hit $30 billion*, American Fuel & Petrochemical Manufacturers Communications (Jun. 17, 2021), https://www.afpm.org/newsroom/blog/rins-disappear-2021-rfs-compliance-could-hit-30-billion.

[3] Doug Parker, *White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future*, E&W Strategies (Sept. 4, 2016) ("Parker Paper").

[4] Letter from Renewable Fuels Association, Bob Dinneen, to Commodity Futures Trading Commission (Aug. 1, 2016); Memorandum of Understanding between EPA and CFTC (Mar. 15, 2016).

[5] Erin Voegele, *CFTC, EPA enter MOU to share RFS data, collaborate on RIN market*, Ethanol Producer Magazine (Mar. 16, 2016).

The wild volatility, market speculation, and fraud in EPA's RIN market harm refineries that are compelled by law to buy RINs for compliance. The program puts the Calumet refineries and other similarly situated small refineries at a massive, permanent competitive disadvantage relative to other market participants. The winners are (i) large integrated refiners that control a significant amount of downstream blending and RIN generation, and (ii) exempt non-refining blenders that have no obligation to comply with the RFS. Both groups either horde RINs to drive up the price and/or sell RINs to merchant and small refineries for windfall profits.

The EPA RIN market's distortion in favor of large companies and non-obligated parties serves no regulatory or environmental purpose. RIN scarcity increases RIN prices but does not increase renewable blending, as has been repeatedly shown.[6] The resulting windfall profits to non-obligated RIN sellers occur because the current regulatory scheme allows RINs to be generated for blending at any level a party chooses, including below the statutory mandates, and allows RINs to be sold for any purpose, including purely for profit. Both practices violate the Clean Air Act.

As described in greater detail below, the Calumet refineries urge EPA to initiate a rulemaking to change the regulations implementing the RIN generation and trading program to comply with the Clean Air Act and avoid further harm to Calumet and other small refineries. Simply put, the RIN trading market should look like EPA's other credit trading markets, as the law requires.

I. The Act Provides That RINs Can Be "Generated" Only By Obligated Parties That Over Comply With Their Own Obligation

The Clean Air Act requires EPA to promulgate regulations establishing a "credit program" providing for the "generation" of credits when renewable fuel is blended with gasoline in quantities exceeding the annual renewable fuel standards. It says:

> **(5) Credit Program**
>
> **(A) In general**
>
> The regulations promulgated under paragraph (2)(A) shall provide—
>
> > (i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2) …

42 U.S.C. § 7545(o)(5)(A)(i) (emphasis added). "Paragraph (2)" contains the nationwide renewable fuel mandates for each category of renewable fuel. 42 U.S.C. § 7545(o)(2).

In 2006, when EPA was promulgating the regulations implementing the "credit program," the agency explained that the credit program was intended to facilitate the trading of credits among obligated parties from those that "over complied" with "their annual obligation" to those that could not satisfy "their annual obligation" through blending. EPA said:

---

[6] Scott Irwin, *Small Refinery Exemptions and Ethanol Demand Destruction*, *farmdoc daily* (8):170, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign (Sept. 13, 2018).

> The [Clean Air] Act requires [EPA] to promulgate a credit trading program for the RFS program whereby an obligated party may generate credits for over complying with their annual obligation. The obligated party can then use these credits or trade them for use by another obligated party. … Under the credit trading program required by the Act, each obligated party is allowed to satisfy its obligations either through its own actions or through the transfer of credits from others who have more than satisfied their individual requirements.[7]

Yet despite EPA's assessment of the Clean Air Act's requirements in that paragraph, EPA then promulgated unlawful regulations allowing *any* party to "generate" RINs without regard to the nationwide renewable fuel mandates in paragraph 2 and without reference to an obligated party's annual obligation. Worse yet, EPA's regulations unlawfully permitted any party to participate in the market, buying or selling credits for any reason, including purely for profit.

In a 2011 report for Congress describing the permanent competitive disadvantage imposed on small refineries by the RFS due to their inability to blend renewable fuel or invest in blending infrastructure, the Department of Energy described the Clean Air Act's requirements for the "credit program" in the same manner as EPA in 2006:

> The RFS program is based on a national mandate for renewable fuels, enforced through obligated parties who are responsible to EPA for their pro-rata share of the renewable fuel mandate. However, the program incorporates a market solution to the process of fulfilling the mandates, allowing trading between the obligated parties from those who **over-comply** to those who find it less advantageous to blend renewable fuels into the transportation fuel mix. Transfer of the obligation is formally accomplished through the market for RINs.[8]

Although EPA and the U.S. Department of Energy ("DOE") each correctly described how the statute permits an obligated party to "generate" RINs consistent with the Clean Air Act—by "over complying" with their own annual obligation—neither DOE nor EPA has explained how a party with no annual obligation could satisfy the Clean Air Act requirement that RINs can be "generated" only for gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph 2.

Without an annual obligation, blenders are free to blend at whatever level they choose, or not to blend at all, and there is no measure of "over compliance" to determine whether any blending of renewable fuel with gasoline exceeds the quantities required in paragraph 2. Paragraph 2 contains the nationwide volume mandates, but blenders are not required to demonstrate that the gasoline they control across the rack, blend, or sell to retail is above or below either standard. Under EPA's current regulations, exempt parties can "generate" RINs by blending renewable fuel in quantities *below* the levels in paragraph 2, which is expressly prohibited by the Clean Air Act.

---

[7] Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program; Proposed Rule, 71 Fed. Reg. 55552, 55556, 55576 (Sept. 22, 2006) (emphasis added).

[8] DOE, Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship 2 (Mar. 2011), EPA-HQ-OAR-2021-0566-0002 (emphasis added).

In proposing the regulations, EPA explained that "[o]ur proposed program provides additional flexibility in that it would permit all RINs to be transferred between parties before they were deemed to be in excess of a party's annual RVO [Renewable Volume Obligation] at the end of the year."[9] But EPA's trading rationale does not explain how a party that has no annual RVO can "generate" credits in the first place. EPA violated Section 7545(o)(5)(A) by allowing exempt parties to "generate" RINs by blending at whatever level they choose.

This leap violated not only Section 7545(o)(5)(A), but also subsections 7545(o)(2)(A)(i) and (o)(2)(A)(iii)(I), both of which require EPA to promulgate regulations to ensure that the renewable fuel mandates are met on an annual average basis. Section 7545(o)(2)(A)(i) states:

> [T]he 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).

42 U.S.C. § 7545(o)(2)(A)(i) (emphasis added).[10] In addition, EPA's regulations must contain "appropriate" compliance provisions applicable to refineries, blenders, distributors, and importers, to ensure that the annual standards are met. *Id*. § 7545(o)(2)(A)(iii)(I).

By allowing RINs to be generated when blending occurs at any level, rather than the incremental difference that reflects over compliance with the annual standards, the value of the RIN market has ballooned to nearly $30 billion. The extraordinary size of the RIN market, combined with the fact that it is entirely unregulated, has attracted an extraordinary volume of criminal
activity, including organized crime with potential international links.[11] This level of criminal activity does not exist in other properly structured EPA credit trading programs, which exclude third parties, limit credit generation, permit trading only among obligated parties that over comply with the applicable standard, and limit the number of times that a credit can be traded.

Distributors and retailers are not passing along RIN revenue to encourage higher ethanol blends because they are able to generate RINs by blending at whatever level they choose under EPA's illegal regulatory scheme. EPA's current regulations have created a system where the decision to blend or not blend, invest or not invest in blending and distribution infrastructure, or pass along RIN revenues to increase higher ethanol blends is driven by profits without regard to upstream obligated parties' need to increase renewable fuel blending to secure RINs for compliance.

---

[9] Proposed Rule, 71 Fed. Red. at 55577 (emphasis added).
[10] Subparagraph B contains the nationwide blending targets and the annual percentage standards, by renewable fuel category, applicable to obligated parties for each calendar/compliance year.
[11] Doug Parker, *White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing this Risk in the Future*.

For Murphy USA, a non-obligated blender, RIN revenues represented an astounding 85% of the company's annual profits in 2015. Murphy bragged to investors about earning $117.5 million that year by selling RINs to obligated parties.[12] In a report prepared by the Renewable Fuels Association, RFA indicated that only nine of Murphy's 1,128 stores offered E15 or E85.[13] Murphy used its RIN revenues to buyback company stock, upgrade existing retail outlets, and acquire more stores.[14] The RIN advantage continues today. In its 2022 10-K, Murphy reported "exceptionally strong" fuel margins coupled with 4.7 cent per gallon of contribution from its product supply and wholesale "+ RINS."[15] Murphy's RIN advantage helped the company to once again achieve "a record $1.6 billion of total fuel contribution."[16]

Murphy reported a fuel margin of 34.3 cents per gallon (cpg) including RINs. The company's competitive advantage from selling RINs is so significant that it had to warn investors that "the current level of revenue that is generated from RINs may not be sustainable," and that a decline in RIN prices could have a material impact on the Company's revenues."[17] In 2022, Murphy reported that it received on average $1.42 per ethanol RIN, and generated revenue of more than $300 million dollars from RIN sales.[18]

Although companies like Murphy and other non-obligated blenders and retailers control the downstream blending and distribution of a significant portion of the U.S. gasoline supply, under EPA's current RINs scheme they act in their best economic interest without regard to nationwide targets, annual percentage standards, or the needs of upstream obligated parties to secure RINs for compliance. The structure of EPA's implementing regulations permit and encourage them to do so in violation of the Clean Air Act.

EPA Disregarded its Own Experience in Credit Trading

The RFS credit program is different than all of the other fuels credit trading programs including ultra-low sulfur gasoline (ULSG), ultra low sulfur diesel (ULSD), and mobile source air toxics (MSAT), even though the statutory provisions creating the credit trading program for MSAT are essentially identical to the RFS credit trading program. That statutory parallelism highlights that the two programs should be the same, not different.

[12] Murphy USA 2016 10-K Report at 34.
[13] Renewable Fuels Association, Protecting the Monopoly: How Big Oil Covertly Blocks the Sale of Renewable Fuels at 3 (July 2014), available at https://ethanolrfa.org/library/reports-studies-and-white-papers/archives.
[14] *See* Press Release, Murphy USA Inc. Reports Fourth Quarter 2015 Results (Feb. 3, 2016), https://s22.q4cdn.com/506259022/files/doc_news/archive/Q4-2015-Earnings-Release-final.pdf.
[15] Murphy USA 2022 Annual Report and 2023 Proxy Statement at 8.
[16] *Id*.
[17] *Id*. at 17.
[18] *Id*. at 37. "During 2022, other operating income included $305.8 million from the sale of 215.6 million RINs at an average selling price of $1.42 per RIN compared to $265.3 million from the sale of 202.0 million RINs at an average price of $1.31 per RIN in 2021." *Id*. at 39.

> **(7) Credits.**
>
> (A) The regulations promulgated under [the MSAT program] shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—
>
> (ii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).[19]

MSAT regulates the maximum amount of benzene that may be present in gasoline. Parties that reduce the benzene concentration in their gasoline below the standard (that is, parties that over comply) may generate credits. The credits may then be sold to other obligated parties whose gasoline benzene concentration is above the standard.

The regulations in MSAT, ULSG, and ULSD have identical credit trading programs. Unlike the RFS credit trading program, obligated parties that "over comply" can sell credits to parties that need them for compliance. And as an extra protection for obligated parties, EPA restricted the number of times credits could be traded.

The regulations implementing the RFS credit program are illegal because it is a legal impossibility for a party that has no compliance obligation to "over comply." Or in the words of the statute, it is not possible for a non-obligated party to "blend a quantity of renewable fuel that is greater than the quantity required under paragraph (2)."[20] The regulations do not require non-obligated blenders to measure the quantity of renewable fuel they control across the rack, blend or sell through their retail outlets against the nationwide standards in paragraph 2. EPA's existing regulations unlawfully allow non-obligated blenders to generate credits when they blend renewable fuel in quantities less than the standards in paragraph 2. Those regulations violate the Clean Air Act and must be changed.

II. RINs Cannot Be Transferred Or Sold By Non-Obligated Parties

With respect to the "[u]se of credits," the Clean Air Act provides that only "[a] person that generates [RINs] under subparagraph (A) may use the [RINs] or transfer all or a portion of the [RINs] to another person … ."[21] Because non-obligated blenders are exempt from the standards in paragraph 2 they cannot "generate" credits in accordance with subparagraph A for the reasons explained above. And their inability to generate credits also prohibits them from using, transferring, or selling RINs. Non-obligated RIN speculators, too, even more clearly cannot generate RINs. So even if speculators could lawfully purchase RINs (which they cannot, *see* Part III, *infra)*, they cannot lawfully sell those RINs under the Act.

---

[19] 42 U.S.C. § 7545(k)(7)(A)(ii).
[20] 42 U.S.C. § 7545(o)(5)(A)(i) (emphasis added).
[21] 42 U.S.C. § 7545(o)(5)(B) (emphasis added).

Section 7545(o)(5)(B) is an express statutory prohibition. It is not directed at EPA's obligation to promulgate regulations like Section 7545(o)(2)(A). Therefore, irrespective of the RFS implementing regulations, parties that generate and transfer RINs from blending below the statutory mandates are violating the Clean Air Act.

III. The Act Allows RINs To Be Transferred Or Sold Only To Parties That Need Them For Compliance

Section 7545(o)(5)(B) allows RINs to be transferred or sold only to a person that needs them for compliance. It states:

> **(B) Use of credits**
>
> A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

42 U.S.C. § 7545(o)(5)(B) (emphasis added). Paragraph 2, as discussed above, refers to the general obligation to blend the statutorily required amount of biofuel. *Id*. § 7545(o)(2). And the grammatical structure of Section 7545(o)(5)(B) makes it abundantly clear that a person generating credits has only two options: (i) use the credits for compliance with its own RFS obligation; or (ii) transfer the credits to another person for compliance with the transferee's RFS obligation. The statute does not permit RINs to be transferred or sold to parties that have no RFS obligations, nor for any purpose other than satisfying the transferee's obligation. How then do banks and speculators come into possession of RINs?

EPA's current implementing regulations allow anyone to participate in the RIN market. All that is required is registration in EPA's [EMTS] system as a "RIN owner." These RIN traders/market speculators participate in the market by buying, selling, and transferring RINs for profit and not for the purpose of complying with paragraph 2. These non-obligated parties are violating the express statutory prohibition in the Clean Air Act by buying and selling RINs for profit and not to parties that need them for compliance. Accordingly, EPA's regulations must be revised in order to comply with the Clean Air Act.

IV. Conclusion

EPA's current regulations establishing the RIN program violate the Clean Air Act because they: (1) allow non-obligated parties to generate RINs; (2) allow non-obligated parties to transfer and sell RINs; (3) allow obligated parties to transfer and sell RINs even when those parties blend at a level below their obligations; and (4) allow RINs to be sold to anyone for any purpose including purely for profit, rather than for purposes of complying with the Clean Air Act. These departures from the Clean Air Act also violate Subsections 7545(o)(2)(A)(i) and (o)(2)(A)(iii)(I) of the Act, which require EPA to promulgate regulations to ensure that the statutory volumes are met. EPA's current regulations enable non-obligated parties' violations of the Clean Air Act, which prohibits the generation of RINs from blending below the statutory mandates and the sale of RINs to non-obligated parties that do not need them for compliance.

EPA's promulgation of regulations that are directly at odds with the express direction of the Clean Air Act is responsible for the extraordinary damage to the Calumet refineries. The companies are captive buyers in an illegal and fraudulent RIN market where RINs trade at hundreds of times their production cost for the benefit of market speculators, criminals, large retail chain owners, and RIN-long large, vertically integrated refiners that vehemently oppose any changes to the RIN market's current structure.

Because EPA's current credit trading program is contrary to the statutory text and harmful to the Calumet refineries, other merchant and small refineries, and the RFS program as a whole, the Calumet refineries request that the agency promptly initiate a rulemaking to fix the RIN trading program such that it complies with the Clean Air Act.

Thank you for your consideration of the companies' request. If you have any questions, please contact me at (317) 957-5452 or via email.

Sincerely,

Bruce Fleming
EVP Strategy & Growth

cc: Mr. Dave Podratz
Greg Morical, Esq.