December 28, 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:

Coffeyville Resources Refining & Marketing, LLC ("CRRM") and Wynnewood Refining Company, LLC ("WRC" and together with CRRM, "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 to comply with the Clean Air Act's unambiguous textual limitations on the generation and use of Renewable Identification Numbers ("RINs") under the Renewable Fuel Standard ("RFS").

The Clean Air Act and the RFS adopted thereunder directed EPA to develop a credit program in which RINs could be "generated" only by obligated parties that "over-complied" and transferred only to other obligated parties for the purpose of compliance.[1] EPA affirmed this interpretation in 2006, stating 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***."[2]

Despite this clear and unambiguous language, EPA unlawfully created a RIN-trading program in which *any person* may participate, generating credits for blending at any level they choose,

[1] *See* 42 U.S.C. § 7545(o)(5)(A)(i) ("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)* [the nationwide renewable fuel mandates for each category of renewable fuel]") (emphasis added); 42 U.S.C. § 7545(o)(5)(B) ("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)*.") (emphasis added).

[2] Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program; Proposed Rule, 71 Fed. Reg. 55,556, 55,556, 55,576 (Sept. 22, 2006) (emphasis added).

and selling RINs to anyone for any purpose—including entities participating in the market purely for profit. This departure from the statutory text and purpose has led to gross market manipulation that caused RIN prices to skyrocket from pennies at the outset of the program, to more than $2.00 in 2022, inflicting disproportionate economic harm on small refineries, crippling many merchant refineries, contributing to the closure of several refineries, and by EPA's own admission, increasing fuel costs for the American consumer.

On July 12, 2023, EPA for the first time exercised its authority to establish or "set" the post-2022 total volume targets for renewable fuel, cellulosic biofuel, and total advanced biofuel in its final Set Rule.[3] The Clean Air Act directs EPA, when using its set authority, to establish the biofuel volume targets "based on a review of the implementation of the [RFS] program" through 2022. 42 U.S.C. § 7545(o)(2)(B)(ii). EPA failed to meet that statutory requirement by ignoring the programmatic harms caused by its illegal regulatory scheme. EPA claimed that, in the future, it would monitor the RIN market's health and proper functioning.[4] But the illegal RIN market is causing harm now (and has been for years), and EPA has the ability and obligation to fix it now by revising its own regulations. EPA also indicated in the Set Rule that it would meet with the Commodity Futures Trading Commission (CFTC) to reassess the sufficiency of the agencies' March 2016 Memorandum of Understanding (MOU) that allows EPA to share RIN transaction data with CFTC to improve oversight of the RIN market.[5] But EPA has not made information as to the outcome of that meeting public.

Even before EPA's recent Set Rule, the Agency had committed to "evaluat[ing] the functionality of the RIN market."[6] When promulgating the RFS2 regulations, EPA made clear that if "the RIN market is not operating as intended, driving up prices for obligated parties and fuel prices for consumers," it would reconsider its regulations governing the generation, ownership, transfer, and retirement of RINs.[7] Despite its promise, EPA has failed to do so. Because the current regulation exceeds EPA's statutory authority under the Clean Air Act, it is unlawful. *See Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 321 (2014) (citation omitted) ("[A]n agency interpretation that is 'inconsistent with the design and structure of the statute as a whole' does not merit deference.").

Roughly three months ago, EPA's Office of Inspector General (OIG) conducted an audit to determine whether the EPA Moderated Transaction System (EMTS) and Quality Assurance Program (QAP) include sufficient controls to reduce fraudulent RIN generation and trading.[8] The OIG concluded that the RIN market remains susceptible to fraudulent activity and recommended that EPA develop a process to verify RIN data entered in EMTS and integrate its system to facilitate oversight of RFS rules and regulations. The OIG's report, however, does not address other

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[3] Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes; Final Rule, 88 Fed. Reg. 44,468, 44,476 (July 12, 2023).
[4] *See* 88 Fed. Reg. at 44,474.
[5] *Id.* at 44,475; Memorandum of Understanding between EPA and CFTC (Mar. 15, 2016), available at https://www.epa.gov/sites/default/files/2016-03/documents/epa-cftc-mou-2016-03-16.pdf.
[6] Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program; Final Rule, 75 Fed. Reg. 14,670, 14,722 (Mar. 26, 2010).
[7] *Id.*
[8] The EPA Must Improve Controls and Integrate Its Information System to Manage Fraud Potential in the Renewable Fuel Standard Program, EPA Office of Inspector General (Sept. 19, 2023), available at https://www.epaoig.gov/sites/default/files/reports/2023-09/_epaoig_20230919-23-p-0032.pdf.

aspects of illegal activity in the RIN market. Nor does it address the most important underlying cause of those problems: EPA's illegal regulatory scheme. While it may be true that the RIN verification process needs improvement, the creation of fraudulent RINs is not the only issue plaguing the RIN market.

Most recently, a federal court rejected the economic foundation on which EPA has rested its conclusion that the RIN market is functioning properly. On November 22, 2023, the United States Court of Appeals for the Fifth Circuit vacated and remanded EPA's April and June 2022 denials of small refinery hardship relief for six small refinery petitioners, including WRC. *Calumet Shreveport Ref., L.L.C. v. EPA*, 86 F.4th 1121, 1127 (5th Cir. Nov. 22, 2023). In its opinion, the court rejected one pillar of EPA's justification for its illegal regulatory scheme: that all refiners are able to pass through their RIN costs to customers in the prices of their fuels. Specifically, the court held EPA's finding that all refineries can completely pass on their RIN costs is "so implausible as applied to petitioners that it cannot be ascribed to a difference in view or agency expertise." *Id.* at 1140. The court based its conclusion on the fact that small refineries had "demonstrated that the local markets in which they operate are inefficient," and therefore, "EPA's macro-level analysis about fuel markets only supports a conclusion that passthrough can occur in fuel markets generally—it does not rule out the existence of inefficient fuel markets. And those are the markets in which petitioners operate." *Id.* at 1140–1141. The Fifth Circuit also rejected as unreasonably narrow EPA's conclusion that the statutory standard for hardship relief—which asks whether a small refinery like WRC would experience disproportionate economic hardship from the RFS—is concerned exclusively with the refinery's cost of RFS compliance. *Id.* at 1137–1139.[9] WRC has advised EPA multiple times that it must not only purchase RINs on the open market but also discount the price of the fuel it sells by a percentage of the RIN cost, a double harm that EPA told the Fifth Circuit would constitute disproportionate harm.[10]

The proper functioning of the RIN market is particularly important for small refineries that historically received hardship relief from their RFS compliance obligations. EPA's new interpretation of the Clean Air Act would effectively extinguish the ability for small refineries to get relief despite the disproportionate harm they suffer under the RFS.[11] Small refineries like WRC would be left with no option but to enter the RIN market to purchase the RINs they need to meet their compliance obligations. For these small entities, a functioning RIN market is critical to their survival.

We urge EPA to immediately cure its erroneous and harmful interpretation of the Clean Air Act. Doing so will benefit EPA and the Administration in the following ways beyond curing EPA's own failure to interpret the statutory text in a reasonable manner:

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[9] Moreover, the Fifth Circuit also ruled that EPA's April and June 2022 denials of hardship relief were impermissibly retroactive. *Calumet Shreveport*, 86 F.4th at 1134–1137.

[10] *See* Oral Argument at 49:42, *Calumet Shreveport*, 86 F.4th 1121, https://www.ca5.uscourts.gov/OralArgRecordings/22/22-60266_10-2-2023.mp3.

[11] June 2022 Denial of Petitions for RFS Small Refinery Exemptions (June 2022), available at https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P10156DA.pdf.

- Driving down the cost of RINs by minimizing the potential for market manipulation by non-obligated parties, as evidenced by public statements of non-obligated parties boasting about their practice of generating RINs and hoarding them until prices rise[12];

- Lowering the cost of transportation fuel to the American consumer, as EPA claims the cost of RINs is passed through to the driving public;

- Mitigating/eliminating the disproportionate economic harm to small and merchant refineries, with the likely result that fewer small refineries will need to submit hardship petitions to EPA; and

- Minimizing lawsuits against EPA necessitated by exorbitant RIN costs and EPA's ever-changing position on small refinery hardship relief, allowing EPA to spend its energy and resources instead on its statutory mission: protecting the environment.

I. Background

CRRM and WRC operate crude oil refineries in Kansas and Oklahoma, respectively. Absent waivers or exemptions, the refineries are required to comply with the RFS by either blending renewable fuel into the transportation fuel they produce or buying RINs.[13]

CRRM and WRC are "merchant" refineries that are only able to blend approximately 30 percent of the transportation fuel they produce.[14] Seventy percent of the companies' transportation fuel is sold at the refinery gate to large integrated refiners and large retail chain owners that control the downstream blending, distribution, and retail sale of CRRM's and WRC's transportation fuel. This means that downstream parties generate the RINs that CRRM and WRC need for compliance. CRRM and WRC are thus captive buyers in the RIN market, and absent any waivers or exemptions, must pay whatever the market demands to comply with the RFS.

The Clean Air Act directed EPA to create a credit trading program in which RINs could be "generated" by obligated parties that "over complied" and transferred only to other obligated parties that need them for compliance. Instead, EPA created a program in which any person may participate, generating credits for blending at any level they choose, and selling RINs to anyone for any purpose, including purely for profit. EPA's position departs from the bedrock principles that characterize every other EPA fuels credit trading program.[15] EPA's illegal regulatory scheme is the root cause of the extreme volatility, manipulation, fraud, and abuse in the RIN market; the harm to captive participants in the market; and the market constraints preventing more renewable fuel blending.

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 EPA's illegal regulatory

[12] Murphy USA 2016 10-K Report at 34, available at https://d18rn0p25nwr6d.cloudfront.net/CIK-0001573516/309f10d7-a9a6-4241-a2ff-58330bdd43e3.pdf.
[13] 40 C.F.R. §§ 80.1406(b) and 80.1427.
[14] Merchant refineries are not vertically integrated. They 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.
[15] *See* Part V below.

scheme. RIN sellers are reaping windfall profits selling RINs to captive merchant and small refineries like CRRM and WRC with no corresponding increase in ethanol consumption. Perversely, EPA's illegal regulatory scheme thwarts rather than serves Congress' purpose of increasing the use of renewable fuels. *See HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2175, 2182–2183 (2021).

Due to the exponential increase in the price of RINs, the value of the RIN market was projected to exceed $30 billion for 2021 compliance alone.[16] The extraordinary size of the RIN market, and the fact that it is unregulated, has attracted international criminal activity. Experts estimate that fraud in the RIN market has cost taxpayers nearly $1 billion.[17] On August 1, 2016, the Renewable Fuels Association asked the CFTC to investigate illegal activity in the RIN market.[18] Five months earlier, EPA and CFTC entered into their MOU allowing the CFTC to exercise oversight of the RIN market.[19] 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]."[20] But the problems with the RIN market cannot be cured by CFTC oversight because they are inherent in EPA's current ultra vires structure for the RIN trading program.

The extreme volatility, manipulation, fraud, and abuse in the RIN market harm refineries that are compelled by law to buy RINs for compliance. The program as administered puts the Companies and other similarly situated merchant and small refineries at a permanent competitive disadvantage relative to large, integrated refiners that comply with the RFS through blending and exempt, non-refining blenders that have no obligation to comply, both of which sell RINs to merchant and small refineries for windfall profits.

The RIN market's distortion in favor of large integrated refineries, commercial trading houses, and retail chain owners serves no regulatory or environmental purpose. RIN scarcity increases RIN prices but does not increase renewable blending, as has been repeatedly shown.[21] The resulting windfall profits to RIN-long obligated parties and non-obligated RIN sellers (brokers and market speculators) occur because the illegal regulatory scheme allows RINs to be generated for blending by any person (even those who are not involved in producing fuel), at any level (including

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

[17] 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"), available at https://smallretailerscoalition.com/wp-content/uploads/2016/08/Doug-Parker-EW-Strategies-White-Paper-Addressing-Fraud-in-the-Renewable-Fuels-Market-and-Regulatory-Approaches-to-Reducing-This-Risk-in-the-Future-September-4-2016.pdf.

[18] Letter from Renewable Fuels Association, Bob Dinneen, to Commodity Futures Trading Commission (Aug. 1, 2016), available at https://d35t1syewk4d42.cloudfront.net/file/208/RFA-Letter-to-CFTC-and-EPA_re_RIN-volatility.pdf.

[19] MOU, *supra* note 5.

[20] Erin Voegele, *CFTC, EPA enter MOU to share RFS data, collaborate on RIN market*, Ethanol Producer Magazine (Mar. 16, 2016), https://ethanolproducer.com/articles/cftc-epa-enter-mou-to-share-rfs-data-collaborate-on-rin-market-13162.

[21] 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), https://farmdocdaily.illinois.edu/2018/09/small-refinery-exemptions-and-ethanol-demand-destruction.html.

below the statutory mandates), and to be sold for any purpose including profit. But nothing in the text of the statute supports distinctions between firms involved in fuel production based on their position in the supply chain, or among refiners based on size or level of integration. These practices violate the Clean Air Act.

As described in greater detail below, CRRM and WRC urge EPA to initiate a rulemaking to change the regulations implementing the RIN trading program to comply with the Clean Air Act and avoid further harm to merchant and small refineries.

II. Under the Clean Air Act, RINs May Be "Generated" Only By Obligated Parties That "Over Comply" With Their Own Obligations.

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—**
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> (A) **IN GENERAL—**The regulations promulgated under paragraph (2)(A) shall provide—
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> > (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)" prescribes the nationwide renewable fuel mandates for each category of renewable fuel. 42 U.S.C. § 7545(o)(2).

When promulgating the regulations implementing the "credit program" in 2006, EPA explained that the program was intended to facilitate the trading of credits among obligated parties—specifically, between those that "over complied" with "their annual obligation" and those that could not satisfy "their annual obligation" through blending. EPA said:

> 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*.[22]

Despite EPA's assessment of the Clean Air Act's requirements in that paragraph, EPA then promulgated regulations allowing *any* party to "generate" RINs without regard to the nationwide renewable fuel mandates specified in paragraph (2) and without reference to an obligated party's annual obligation. And EPA's regulations unlawfully permitted any party to participate in the

[22] 71 Fed. Reg. at 55,556, 55,576 (emphasis added).

market, buying or selling credits for any reason. EPA's departure from the statutory text and the market intended by Congress has resulted in a litany of unintended consequences.

In a 2011 report for Congress describing the permanent competitive disadvantage imposed on small and merchant refineries by the RFS due to their inability to blend renewable fuel or invest in blending infrastructure, the Department of Energy (DOE) described the Clean Air Act's intent for the "credit program" in the same manner EPA characterized it 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.[23]

Although EPA and 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 annual obligation—neither agency 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 blend at all, and there is no measure of "over compliance" or determination whether the blending of renewable fuel with gasoline exceeds the quantities *required* in paragraph (2). Blenders are not required to demonstrate that the gasoline they control across the rack, blend, or sell to retail is above or below the quantities in paragraph (2). Under EPA's regulations, exempt parties can "generate" RINs by blending renewable fuel in quantities *below* those in paragraph (2), which the Clean Air Act does not authorize. Yet "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

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."[24] But EPA's trading rationale does not explain how a party that has *no* annual RVO can "generate" credits in the first instance. EPA violated Section 7545(o)(5)(A) by allowing exempt parties to "generate" RINs by blending at whatever level they choose.

This extension of EPA's authority 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:

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[23] DOE, Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship 2 (Mar. 2011), EPA-HQ-OAR-2021-0566-0002 (emphasis added).
[24] 71 Fed. Reg. at 55,577 (emphasis added).

> . . . 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).[25]

42 U.S.C. § 7545(o)(2)(A)(i) (emphasis added). 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." 42 U.S.C. § 7545(o)(2)(A)(iii)(I) (emphasis added).

By allowing RINs to be generated when blending occurs at any level, rather than the incremental difference reflecting over compliance with the annual standards, the value of the RIN market has ballooned. The size of the RIN market, combined with the fact that it is entirely unregulated, has attracted criminal activity, including organized crime organizations with potential international links.[26] This level of criminal activity does not exist in 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.[27]

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. As a result, the decisions whether to blend, invest in blending and distribution infrastructure, or pass along RIN revenues to increase higher ethanol blends will be driven by profits without regard to upstream obligated parties' need to blend renewable fuel to secure RINs for compliance.

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.[28] In a report prepared by the Renewable Fuels Association (RFA), RFA indicated that only 9 of Murphy's 1,128 stores offered E15 or E85.[29] Murphy used its RIN revenues to buy back company stock, upgrade existing retail outlets, and acquire more stores.[30] The RIN advantage continues today. For 2022, Murphy reported "exceptionally strong" fuel margins coupled with a contribution of 4.7 cents per gallon (cpg) from its product supply and wholesale "+ RINS."[31] Murphy's RIN advantage helped the company to once again achieve "a record $1.6 billion of total fuel contribution."[32]

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[25] 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.
[26] *See* Parker Paper, *supra* note 17.
[27] *See* Part V below.
[28] Murphy USA 2016 10-K Report, *supra* note 12 at 34.
[29] 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.
[30] *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.
[31] 2023 Proxy Statement at 8, available at https://s22.q4cdn.com/506259022/files/doc_financials/2022/ar/457745_Murphy-USA-2022-AR-BMK-NEW1.pdf.
[32] *Id.*

Murphy reported a fuel margin of 34.3 cpg including RINs.[33] 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."[34] 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.[35]

Companies like Murphy and other non-obligated blenders and retailers control the down-stream blending and distribution of a significant portion of the US gasoline supply. Under EPA's illegal regulatory scheme, however, those parties act in their best economic interest without regard to nationwide targets, annual percentages standards, or the needs of upstream obligated parties to secure RINs for compliance. The structure of EPA's implementing regulations permits and encourages them to do so in derogation of the Clean Air Act and with no benefit to the environment.

III. Under The Clean Air Act, RINs May Be Transferred Or Sold *Only By* 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 … ." 42 U.S.C. § 7545(o)(5)(B) (emphasis added). Because non-obligated blenders are exempt from the standards in paragraph (2), they cannot "generate" credits in accordance with subparagraph (A), which then prohibits them from using, transferring, or selling RINs. It is even clearer that non-obligated RIN speculators, too, cannot generate RINs. So even if speculators could lawfully purchase RINs (which they cannot, *see* Part IV, *infra*), they cannot lawfully sell those RINs under the Act.

EPA's RFS implementing regulations exceed the Agency's limited authority under Section 7545(o)(5)(B), which simply allows obligated parties to use or transfer RINs for the purpose of compliance. Neither Section 7545(o)(5)(B) nor any other section of the Clean Air Act permits parties to generate RINs by blending below the statutory mandates and transfer those RINs to other parties.

IV. 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).*

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[33] *Id.*
[34] *Id.* at 17.
[35] *Id.*at 39 ("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.").

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 to comply with its own RFS obligation; or (ii) transfer the credits to another person to comply 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.

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." 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 acting beyond the limitations of 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 to comply with the Clean Air Act.

V. EPA Disregarded its Own Experience in Credit Trading.

The RFS credit program is different from EPA's other fuels credit trading programs including the ultra-low sulfur gasoline (ULSG) and mobile source air toxics (MSAT) programs. However, the statutory provisions creating the MSAT credit trading program are essentially identical to the RFS provisions. That statutory parallelism highlights that the two programs should be the same, not different.

> (7) **Credits.—**
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> (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—
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> (ii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).

42 U.S.C. § 7545(k)(7)(A)(ii). The MSAT program regulates the maximum amount of benzene that may be present in gasoline. Parties that reduce the benzene concentration in their gasoline below the standard (i.e., 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 for the MSAT and ULSG credit trading programs are identical.[36] Unlike the RFS credit trading program, only obligated parties that "over comply" can generate and sell credits to parties and then, only to parties that need them for compliance.[37] As an extra protection for obligated parties, EPA restricted the number of times credits could be traded.[38]

[36] The ULSG and MSAT credit trading programs are both promulgated at 40 CFR Part 1090 Subpart H.
[37] 40 C.F.R. § 1090.720(a); *see also* 40 C.F.R. § 1090.730.
[38] 40 C.F.R. § 1090.730(d).

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, using the words of the statute, *blend* "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). 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 regulations allow non-obligated blenders to generate credits when they blend renewable fuel in quantities less than the standards in paragraph (2), which expressly violates the Clean Air Act and must be changed.

VI. Conclusion

There can be no dispute that the RFS and small refinery hardship relief thereunder have been a political hot potato. EPA's shifting approaches to the RFS and hardship relief have put several small and merchant refineries out of business and driven up the cost of fuel to the American consumer. EPA has also drained its own valuable time and resources through contorted legal positions that strain both statutory text and logic to accommodate the wiles of changing administrations and the political interests the agency seeks to appease.

EPA's regulations creating the RIN program violate the Clean Air Act because they: (1) allow non-obligated parties to generate RINs when blending at levels below the statutory mandates; (2) allow non-obligated parties that blend below the statutory mandates 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), which require EPA to promulgate regulations to ensure that the statutory volumes are met. In addition, non-obligated parties are violating the Clean Air Act by generating RINs from blending below the statutory mandates and selling RINs to parties that do not need them for compliance.

EPA's promulgation of regulations, directly at odds with the express direction of the Clean Air Act, has irreparably harmed merchant and small refineries like CRRM and WRC. The companies are captive buyers in an illegal 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 (who, it should come as no surprise, vehemently oppose any changes to the RIN market's current structure).[39]

CRRM and WRC petition the Agency to initiate a rulemaking to fix its illegal regulatory scheme to ensure that it complies with the Clean Air Act.

[39] *See, e.g.*, Comment letter submitted by Marathon Petroleum Company, Docket ID EPA-HQ-OAR-2018-0775-0796 (Apr. 29, 2019), available at https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0775-0796; *see also* Comment letter submitted by Murphy USA, Docket ID EPA-HQ-OAR-2018-0775-0867 (Apr. 29, 2019), available at https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0775-0867.

Thank you for your consideration of the Companies' request. If you have any questions, please contact me at 281-207-2300 or via email at dllamp@cvrenergy.com.

Sincerely,

COFFEYVILLE REFINING RESOURCES & MARKETING, LLC AND WYNNEWOOD REFINING COMPANY, LLC

David L. Lamp
President and Chief Executive Officer