



September 2, 2016

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

Enclosed please find HollyFrontier Corporation's Petition for Rulemaking to Revise the Renewable Fuel Standard Definition of Obligated Party – 40 C.F.R. § 80.1406. If you have any questions, feel free to contact me (george.damiris@hollyfrontier.com or 214-871-3563) or my colleague, Blake Barfield (blake.barfield@hollyfrontier.com or 214-954-6506).

Sincerely,

George J. Damiris
Chief Executive Officer & President

cc: Janet McCabe
Chris Grundler
Ben Hengst



September 2, 2016

Via FedEx and E-mail

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Petition for Rulemaking to Revise the Renewable Fuel Standard Definition of Obligated Party – 40 C.F.R. § 80.1406

Dear Administrator McCarthy:

HollyFrontier Corporation and its subsidiaries (collectively, “HollyFrontier”) hereby write to express their support for and joinder of the Petitions for Rulemaking submitted by Valero Energy Corporation (“Valero”) on June 13, 2016, and the American Fuel & Petrochemical Manufacturers (“AFPM”) on August 4, 2016. We hereby incorporate and adopt those petitions by reference. This rulemaking simply proposes to change the obligated party under the Renewable Fuel Standard (“RFS”) program from refiners and importers to rack sellers who have greater ability to influence the blending of renewable fuels with traditional petroleum products. This change requires minimal administrative changes and would make the program easier for EPA to administer.

Specifically, HollyFrontier joins Valero and AFPM in respectfully requesting that EPA revise the definition of “obligated party” under the RFS program to eliminate flaws in the implementation of the RFS program that are undermining the effectiveness of the program in realizing its regulatory goals and, as a collateral result, unnecessarily imposing significant and unnecessary burdens on HollyFrontier and other independent refiners. As a result, the current RFS structure and renewable identification number (“RIN”) market do not advance the objectives of the RFS program but rather provide economic windfalls to non-obligated parties who separate and trade RINs instead of promoting a level market-based playing field among the regulated industry. As described below, without the requested regulatory change, many independent refiners including HollyFrontier are confronting crippling economic costs to comply with a program that was intended to implement the RFS program and was not intended to endanger the viability of smaller independent refiners and retailers.

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To remedy these consequences, HollyFrontier joins Valero and AFPM in requesting that EPA move the point of obligation for RFS compliance downstream to rack sellers that typically separate RINs for renewable fuels after blending them with traditional petroleum fuels. The rack sellers are more capable of effectively promoting markets for renewable fuel blends at the retail level. In contrast, refiners and importers who are currently obligated parties under the RFS program are too far removed from the retail market to effectively promote the increased blending and sale of renewable fuels that is necessary to meet the renewable fuel requirements set by Congress. To shift the point of obligation downstream, HollyFrontier requests that EPA revise the RFS regulations to define the obligated party as:

the entity that holds title to the gasoline or diesel fuel, immediately prior to the sale from the bulk transfer/terminal system (as defined by IRS regulations in 40 C.F.R. § 48.4081-1) to a wholesaler, retailer or ultimate consumer and is required to report federal excise tax liability for the gasoline or diesel on its Form 720 - Quarterly Federal Excise Tax Return, within the 48 contiguous states or Hawaii, during a compliance period or the entity that is the enterer (as defined by IRS Regulations in 40 C.F.R. § 48.4081-1) of the gasoline or diesel fuel into the 48 contiguous states or Hawaii outside of the bulk transfer/terminal system and is required to report federal excise tax liability for the gasoline or diesel on its Form 720, during a compliance period.

Consistent with the Valero and AFPM Petitions, HollyFrontier will refer to the proposed obligated parties as “rack sellers.” As explained in the Petitions submitted by Valero and AFPM, this change to the definition of obligated party neither will impose additional burdens on implementation of the RFS program nor frustrate EPA’s achievement of its regulatory goals, but will remove current market inefficiencies that promote speculation over the efficient market-based implementation of the RFS while more closely aligning the incentives of rack sellers with the goals of the RFS program.

I. Introduction

HollyFrontier is an independent petroleum refining company operating across midcontinent and western states. Our operations are focused on refining and wholesale marketing of petroleum-based products, principally gasoline and diesel. As a refiner, HollyFrontier is an obligated party under the RFS program and must comply with the RFS mandates. HollyFrontier owns and operates 5 petroleum refineries located in Kansas, New Mexico, Oklahoma, Utah, and Wyoming and has a combined throughput capacity of 443,000 barrels per day. Overall, HollyFrontier employs more than 2,700 people and contributes significantly to the economic vitality of the communities where its refineries are located.

Because HollyFrontier is an independent refiner that does not own many downstream assets, HollyFrontier operates as a wholesale marketer at terminals connected to major product pipelines. Given HollyFrontier’s non-integrated system, our customers possess purchasing power in dictating volumes and types of fuels preferred. In the high-priced RIN period our industry has operated in for some time, bulk and large volume purchasers of fuel at the wholesale level increasingly are demanding production and delivery of clear, unblended products so they

can blend the gasoline or diesel with renewable fuels, separate the RINs, and then market the RINs as a new, lucrative profit center. Since these entities are not obligated parties under the RFS, they have no legal requirement to sell the RINs, retire RINs with EPA when demonstrating compliance, or use proceeds generated by RIN sales as funds for investing to further the goals set forth by Congress and EPA under the RFS program. Thus, while HollyFrontier is incentivized to maximize sales of gasoline and diesel blended with renewable fuels wherever operations permit, due to the terminals' demand for clean, unblended products and their economic incentive to control the RINs in some of our regions, we find limited demand for blended products produced by HollyFrontier and, in particular, virtually no demand for products blended with greater than 10% ethanol. In fact, year to date we have averaged less than 100 barrels per day of flex-fuel gasoline sales, representing approximately 0.01% of our total gasoline sales.

As an obligated party with limited opportunity to separate RINs by blending its products with renewable fuels, HollyFrontier has no choice but to purchase RINs on the open market to fulfill its compliance obligations under the RFS program. As a result of the limited market for high-ethanol content blends and the ever-increasing RFS volume mandates, RIN prices have risen dramatically over the past several years and RFS compliance has led to costs and burdens to the company which cannot be passed on to our customers. *In fact, RFS compliance costs now exceed total payroll costs for our 2,700 employees.* While HollyFrontier recognizes that important environmental regulations may carry costs, this is an unusual circumstance where the extraordinary cost of buying the RINs neither serves any environmental benefit nor satisfies the Congressional mandate. By simply moving the point of obligation to rack sellers, EPA's regulatory approach would be remedied to promote the Congressional directive while no longer artificially creating winners and losers based on the arbitrage of RINs to maximize their economic value.

To be clear, these extraordinary costs are not an inherent or necessary cost of achieving Congress' renewable fuel goals. Instead, they are the product of what we believe are fundamental flaws in EPA's RFS regulations that create market inefficiencies and allow non-obligated parties to separate RINs and sell them at a profit to independent refiners such as HollyFrontier that have no other means of complying with their RFS obligations. Such a loophole harms not only HollyFrontier and other independent refiners, but also small retailers, customers, the communities where the refineries are located, and the goals Congress sought to advance in the RFS program. This loophole simply allows the transfer of wealth from independent refiners to downstream rack sellers and trading houses whose incentive is to maximize their financial gain rather than promoting increased blending of renewable fuels. Given the extreme costs, the lack of environmental and regulatory benefits, and the unfair economic advantage assigned to certain companies, HollyFrontier agrees with Valero and AFPM that EPA must take action to advance a regulatory solution that will remedy these issues while allowing EPA to realize its goals.

II. EPA Has Clear and Undisputed Authority to Revise the Definition of Obligated Party

The Clean Air Act does not require EPA to define refiners and importers as obligated parties for purposes of compliance with the RFS program. Instead, it directs EPA to issue

regulations that “contain compliance provisions applicable to refiners, blenders, distributors, and importers, *as appropriate*, to ensure that the requirements” of the RFS program are met. 42 U.S.C. § 7545(o)(2)(A)(iii) (emphasis added). When EPA proposed the RFS2 Rule in 2009, it expressed some concern about continuing to define refiners and importers as obligated parties for RFS compliance, 74 Fed. Reg. 24,904, 24,963-94 (May 26, 2009), but did not make any changes to the definition in the final rule. However, EPA did state in the final rule that it would reconsider the point of obligation if “the RIN market is not operating as intended.” 75 Fed. Reg. 14,670, 14,722 (Mar. 26, 2010). As described above and more fully in the Petitions submitted by Valero and AFPM, the RIN market is not operating as intended and, therefore, it is appropriate for EPA to shift the point of obligation to rack sellers to ensure that the requirements of the RFS program are met.

III. Moving the Point of Obligation to Rack Sellers Will Improve the RINs Market and Promote Renewable Fuel Blending


By moving the point of obligation from refiners and importers to rack sellers, EPA will address two critical problems with the current implementation of the RFS program. First, moving the point of obligation to rack sellers will improve the functioning of RINs markets by more closely aligning the point of obligation with the renewable fuel blending process where RINs are separated. Improving the alignment between these two points will ensure that, in virtually all cases, obligated parties will be able to separate their own RINs which they can then use for compliance if they choose. While the RINs market will still be able to operate, moving the point of obligation to rack sellers will dramatically reduce both the number of non-obligated parties that separate RINs after blending and the number of obligated parties that cannot separate RINs and are forced to purchase RINs on the open market. This will remove market inefficiencies that harm independent refiners who cannot separate their own RINs and that encourage speculation in RINs markets. It will also eliminate unintended wealth transfers that currently create windfall profits for certain rack sellers and other financial companies at the expense of independent refiners.

Second, moving the point of obligation to rack sellers will create incentives to increase the blending of renewable fuels. Independent refiners without significant downstream assets are too far upstream to have any meaningful influence over the types of fuels that are ultimately demanded and purchased by consumers. In contrast, rack sellers are directly involved in the fuel blending process and have the ability to promote the sale of blended products, including gasoline blended with higher percentages of ethanol. Because rack sellers are not currently obligated parties, they have an incentive to maximize profits from RIN sales rather than maximizing the blending of renewable fuels. In fact, by limiting renewable fuel blending, rack sellers can increase RIN prices and maximize profit at the expense of the RFS program’s goals. Moving the point of obligation to rack sellers will facilitate the incentive to maximize RIN generation by blending as much renewable fuel as possible. For example, they can do so through competitive pricing that promotes the sale of E-85 and other high ethanol content blends. Given the challenges that the blend wall poses for meeting Congress’ renewable fuel volume targets, EPA must take every effort to ensure that the entities capable of influencing renewable fuels markets have appropriate incentives to achieve the RFS programs’ goals. Moving the point of obligation to rack sellers will do so.

IV. Conclusion

For the reasons stated above, as well as those stated in the Petitions submitted by Valero and AFPM, HollyFrontier respectfully requests that EPA take prompt action to commence a rulemaking to move the point of obligation for RFS compliance from refiners and importers to rack sellers. Time is of the essence, as the current approach is both crippling independent refiners such as HollyFrontier, Valero, and other similar refiners and frustrating EPA's regulatory goals for the RFS system. The reasonable revision proposed above is relatively simple to implement with little burden on EPA staff, consistent with the Clean Air Act and Internal Revenue Code, and well suited to expeditious resolution. We appreciate your consideration of this petition.

Sincerely,

A handwritten signature in black ink, appearing to read "George J. Damiris". The signature is fluid and cursive, with the first name "George" and last name "Damiris" clearly distinguishable.

George J. Damiris
Chief Executive Officer & President
(214) 871-3563

Cc: Janet McCabe
Chris Grundler
Ben Hengst