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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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October 30, 2013

**Via Overnight Mail and Electronic Mail**
The Honorable Gina McCarthy
Administrator
United States Environmental Protection Agency Headquarters
1200 Pennsylvania Ave., NW
Mail Code: 1101A
Washington, DC 20460

Re: Petition for Partial Waiver of RFS Mandate by PBF Holding Company LLC

Dear Administrator McCarthy:

PBF Holding Company LLC ("PBF") hereby submits this petition to the U.S. Environmental Protection Agency (the "Agency") for a partial waiver of the 2014 applicable volumes of the Renewable Fuel Standard ("RFS") pursuant to section 211(o)(7)(A) of the Clean Air Act ("CAA"), 42 U.S.C. § 7545(o)(7)(A).

PBF is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants, and other petroleum products in the United States. PBF, through its wholly-owned subsidiaries, currently owns and operates three domestic oil refineries and related assets, located in Delaware City, Delaware, Paulsboro, New Jersey, and Toledo, Ohio, and markets the products for those refineries. The three refineries are equipped with multiple crude unloading capabilities, which enable PBF to process a variety of crudes sourced from both domestic and international locations, up to a combined throughput capacity of 540,000 barrels per day ("bpd").

As a petroleum refiner subject to the renewable fuel standard, PBF is authorized to petition the Administrator to exercise her authority under section 211(o)(7)(A) of the CAA to waive the total volume of renewable fuel required by the RFS. The Administrator may grant the waiver, in whole or in part, if in the Administrator's determination either of the following two circumstances exists: (1) implementation of the RFS would severely harm the economy or environment of a State, a region, or the United States; or (2) there is an inadequate domestic supply. As discussed in more detail below, both of these waiver conditions will be met in 2014 due to the effects of the ethanol "blendwall" and the lack of currently feasible alternatives to avoid the impact that the blendwall will have on domestic supply and the economy. PBF will be uniquely and adversely affected by the blendwall, particularly at its east coast refineries with no affiliated retail outlets and limited opportunities to blend, for example, ethanol in its gasoline.

The "blendwall" represents the maximum quantity of ethanol that can be consumed in the U.S. based on current gasoline consumption levels and existing infrastructure. In 2014, the Energy Information Administration projects that the U.S. will consume 132.8 billion gallons of gasoline.[1] Ethanol content in gasoline is currently limited, as a practical matter, to just under 10% by volume because higher ethanol blends are not widely used due to vehicle compatibility and warranty issues, lack of demand, and insufficient retail infrastructure. Therefore, the current upper bound or "blendwall" on the amount of ethanol that can be blended into gasoline is 13.28 billion gallons (i.e., 10% of 132.8 billion gallons). Section 211(o)(2)(B) of the CAA, however, would set the total 2014 renewable fuel standard at 18.15 billion gallons, which is 4.87 billion gallons above the 10% blendwall.

The gap between the blendwall and the RFS cannot currently be filled by higher ethanol blends such as E15 or E85, or with biodiesel. As a theoretical matter, the consumption of E15 would raise the blend wall to approximately 19.92 billion gallons. However, E15 and E85 are currently compatible with only a small percentage of the existing vehicle fleet – and even that small percentage is debated by various interested parties. In addition, the existing fuel dispensing infrastructure is not compatible with blends above 10% ethanol. Retrofitting this infrastructure would be an enormous expense and would take years to implement even assuming sufficient demand for higher ethanol content fuels.

Advanced biofuels such as drop-in cellulosic gasoline, cellulosic diesel, and biomass based diesel could also theoretically fill the gap between the blendwall and the RFS. However, advanced biofuel supplies remain limited due to feedstock constraints, and cellulosic biofuel production remains at zero despite overly optimistic projections. The best available estimates indicate that approximately 1.52 billion gallons of advanced biofuels will be consumed in 2014, which would still leave a gap of approximately 3.35 billion gallons.

PBF and other obligated parties have little or no control over whether this gap can be filled. Specifically, PBF, as well as certain other refiners, do not own retail fuel dispensing stations; therefore, PBF cannot compel retail stations to undertake the enormous expense of retrofitting their fueling infrastructure to be compatible with E15 and/or E85. Similarly, PBF and other obligated parties do not have any control over the amount of advanced biofuel, such as cellulosic biofuel, that is produced. Therefore, unlike other "technology forcing" regulatory schemes, obligated parties such as PBF have absolutely no control over whether the technology (e.g., higher ethanol content fuel) is adopted.

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[1] U.S. Energy Information Administration, DOE/EIA-0383 (2013), Annual Energy Outlook 2013 2.

The gap between the blendwall and the RFS will have, and is currently having, a severe and direct impact on PBF because there is simply not enough renewable fuel available for U.S. consumption. Compliance with the RFS is demonstrated through the acquisition of Renewable Identification Numbers ("RINs"). The number of RINs available is wholly dependent on the amount of renewable fuel consumed in the U.S. Because there is a gap between the blendwall and the RFS, there will necessarily be a shortage of RINs available in 2014. Indeed, there is already evidence of a shortage as the 2013 prices for RINs spiked to $1.40 per RIN as compared to an historic average price of $0.04 per RIN. With limited ethanol blending opportunities available for products produced at its refineries, PBF must acquire its RINs on the spot market and bears significant expense as a result of this price spike.

The insufficiency of RINs, or the prohibitive cost of such RINs, available to PBF for compliance with the RFS compels that PBF (and similarly-situated obligated parties) are left with four undesirable options to satisfy the RFS: (1) decrease the volume of domestic sales of transportation fuel; (2) export the fuel; (3) use RINs from 2013; and/or (4) carry any 2014 deficit into 2015. The true availability of certain of these options is highly questionable. Decreasing the volume of domestic sales or increasing exports of transportation fuels would both result in a reduction in the domestic supply of fuel and in turn lead to drastic price increases at a time when the economy remains stagnant. Using banked 2013 RINs is likely not a solution as there is already a shortage in reasonably priced RINs and will likely not be sufficient to cover any shortfall. Carrying the deficit into 2015 is also not a viable solution because the gap between the RFS and the blendwall will be even higher, further limiting availability of RINs. Moreover, to the extent even viable, any of these options could have a devastating impact on the U.S. economy, and affect the domestic supply of fuel. Accordingly, a partial waiver of the RFS is clearly warranted.

PBF faces additional challenges relative to RFS compliance options as an independent east coast refiner. PBF produces regulated motor fuels and distributes such fuels within the regional market, with limited alternatives for distribution. PBF is thus directly impacted by the unavailability of sufficient RINs to support the domestic (regional) sale of such fuel. PBF's operations include no dedicated or guaranteed downstream element, and the limited east coast distribution network further constrains PBF's fuel sale and RFS compliance options.

For all these reasons, the 2014 RFS will result in both an inadequate domestic supply of fuel and also severe economic harm. No other option, other than the granting of a partial waiver of the RFS, will avoid the severe impacts associated with hitting the ethanol blendwall.

Therefore, the Administrator should exercise her authority under section 211(o)(7)(A) to grant a partial waiver of the RFS.

Respectfully,

Bart E. Cassidy
For MANKO, GOLD, KATCHER & FOX, LLP
Attorney for PBF Holding Company LLC

BEC/dem
cc: Dallas Burkholder (via electronic mail)