

**STATEMENT OF THE
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS
AT THE PUBLIC HEARING ON THE
2013 RENEWABLE FUEL STANDARDS**

Docket ID No. EPA-HQ-OAR-2012-0546

March 8, 2013

Good morning. I am Tim Hogan, Director of Motor Fuels at the American Fuel & Petrochemical Manufacturers. AFPM is a trade association representing high-tech American manufacturers of virtually the entire U.S. supply of gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of products vital to everyday life.

This hearing is about EPA's implementation of the RFS. The Energy Independence and Security Act of 2007 provides EPA with "tools" to adjust the volumes of renewable fuels under certain circumstances. Today, as EPA seeks to implement the RFS for 2013, we face significant issues with E10 vehicle and retail infrastructure compatibility and very limited cellulosic biofuel production. The Energy Independence and Security Act of 2007 provided EPA with the authority to make adjustments in the total advanced and total renewable volumes when waiving cellulosic. However, to date and again in the 2013 proposal, EPA has chosen not to exercise this authority which contributes to the program being unworkable. EPA continues to apply aspirational criteria to set the annual volumetric targets.

This proposal is taking place at a critical time for RFS2. The E10 blendwall is fast approaching and many obligated parties are concerned that they may be unable to acquire sufficient RINs to cover their 2013 production of gasoline and diesel as demonstrated by the increase in ethanol RIN costs since EPA issued the Proposed Rule in January and 70-fold increase since last summer. This dramatic increase in the price of ethanol RINs is the market's reaction to the realization that the blendwall is a very real problem that will inhibit obligated parties' ability to comply with the Proposed Rule. Per EIA, sales of E85 will continue to be too small to help and E15 still has many problems to overcome; some of which we will describe in greater detail this morning. EPA needs to take an honest look at the marketplace and the nation's ability to consume the mandated volume of biofuels. This is not about the ability to produce biofuels, but rather our limited ability to consume them. Existing engine technologies, compatibility with fuel delivery infrastructure, and consumer impacts are real world circumstances that require EPA to reduce the 2013 Renewable Volume Obligations (RVOs) for all four renewable fuel categories to more realistic levels.

The RFS provides limited options to obligated parties that cannot acquire sufficient RINs, such as reduce their production of gasoline and diesel or export these transportation fuels. Each

of these options will have a harmful impact upon consumers. EPA needs to demonstrate that it is going halt this insane and destructive process with this rulemaking.

In addition to the detrimental impact upon consumers, AFPM also opposes the Proposed Rule on the grounds that the proposed RVOs for 2013 are aspirational and therefore exceed the agency's statutory authority.

As a threshold matter, AFPM and its members are deeply disturbed and frustrated that EPA repeatedly refuses to follow the rule of law. The United States Court of Appeals for the District of Columbia Circuit could not have been clearer in its recent decision vacating the 2012 cellulosic biofuel RVO. The court specifically found that the EPA procedures used to determine that 2012 cellulosic biofuel RVO were inappropriate and unlawful. Yet here we are again with EPA following the same flawed procedure and proposing to act in an unlawful manner by relying upon aspirations in setting the 2013 RVO.

Further, the Clean Air Act does not provide that EPA publish the renewable fuel obligation for each year by March or April of the applicable year. The EPA has again missed a clear statutory deadline to publish the proposed renewable fuel RVOs in the summer of 2012 so that the rule could have been finalized by November 30 of 2012. Further, EPA has not published a proposed volume for biomass-based diesel for 2014 even though that quantity was required to be set by the CAA by November 1, 2012. We are at a loss to explain how the agency can repeatedly ignore these statutory requirements.

I will now turn my attention to some of the specific concerns AFPM has with the Proposed Rule:

1. EPA has not considered the combined effects of the inability to blend increasing volumes of ethanol into the fuel supply, the drought on corn supply, the shutdown of many ethanol plants, and rapidly accelerating ethanol (renewable fuel) RIN costs to use its authority to adjust statutory renewable fuel volumes.
2. EPA has failed to use realistic estimates of cellulosic biofuel production in setting the 2013 cellulosic biofuel RVO. This repeated problem stems from the agency's misplaced reliance upon the estimates provided by cellulosic biofuel producers, rather than an objective independent assessment or actual production.
3. EPA has ignored the Clean Air Act deadline to set the 2013 RVOs by November 30, 2012 and now must retroactively apply the RVO for 2013 in the middle of 2013. Obligated parties need to know the 2013 RVOs before the end of 2012 in order to plan RIN carryover because of the 20% cap on the use of last year's RINs to meet the current RVO. EPA has failed to adjust the advanced biofuel and total renewable fuel volumes for 2013 to account for the shortfall in cellulosic biofuel production.
4. EPA has failed to apply the statutory criteria in establishing the biomass-based diesel RVO for 2013 and the agency has failed to respond to AFPM's petition for reconsideration.
5. EPA has failed to timely propose the 2014 biomass-based diesel mandated volumes under the RFS and we are concerned about the retroactive impact of such delay.

6. Procedurally, EPA has failed to use the most recent EIA data available in establishing these proposed RVOs.
7. By not adjusting the advanced biofuel RVO, sugarcane ethanol is being pulled into the U.S. from Brazil but Brazil is then being forced to replace this by importing US corn ethanol or gasoline. These real world factors were not considered when EPA approved the sugarcane ethanol pathway. EPA needs to delay any increases in the advanced biofuel volumes until it has reexamined whether the entire Brazilian sugarcane ethanol pathway actually achieves sufficient GHG emission reductions, given the phenomenon of fuel shuffling.
8. EPA is proposing total volumes of ethanol amounting to 10.4% of gasoline demand, knowing well the economic impacts of the E10 blendwall to the U.S.

AFPM will elaborate on these points when we submit written comments next month.

Today I would like to discuss two issues in greater detail: the blendwall and EPA's continuing use of unrealistic aspirational estimates of cellulosic biofuel production.

The blendwall

EPA acknowledged that the blendwall could be a problem for 2013 (see 78 *Federal Register* 9301). In the latest monthly Short-Term Energy Outlook (released on February 12, 2013), EIA projects that gasoline demand in 2013 will be 8.73 million barrels/day, or 133.83 billion gallons. Assuming that E10 can be blended throughout the country, then ethanol consumption would be 13.383 billion gallons versus the proposed requirement of 13.8 billion gallons. Assuming 10 percent ethanol can be blended into every gallon nationwide, the proposed RVOs would result in 417 million gallons of ethanol that could not be absorbed into the gasoline pool without exceeding the 10 percent threshold. This systemic problem already is creating market uncertainty and has resulted in more than a 1000% increase in the price of ethanol RINs since the beginning of the year. The cost to obligated parties of purchasing these expensive RINs increases refinery operating costs and ultimately will disadvantage consumers.

RFS compliance options in an environment of short RIN supplies are limited and include a potential reduction in the production of gasoline and diesel fuel for domestic consumption and increased exports of gasoline and diesel fuel. Lower volumes of transportation fuels in the U.S. will impact fuel costs and the economy.

To avoid the significant economic impacts that would ensue from "crossing" the RFS blendwall, including the loss of jobs and tax revenues, AFPM recommends that the Agency reduce the conventional and sugarcane ethanol biofuel volumes. Specifically, AFPM recommends that EPA establishes the 2013 advanced and total renewable standards so that the total ethanol volume remains less than 10% of gasoline demand.

Cellulosic biofuels

EPA proposes to establish a cellulosic biofuel mandate of 14 million ethanol-equivalent gallons for calendar year 2013. This continues the agency's pattern of promulgating a cellulosic

biofuel mandate that is aspirational, disconnected from market realities and disregards the D.C. Circuit Court of Appeals recent controlling precedent.

AFPM is troubled by the timing, substance, and rationale that the Agency used in proposing the 2013 cellulosic biofuel RVO. For several years AFPM's complaints that the cellulosic mandate is far too aggressive, was not in compliance with the Clean Air Act, and penalizes obligated parties have fallen on deaf ears. As such, we were encouraged by the U.S. Court of Appeals decision in *API v. EPA*,¹ which vacated the 2012 cellulosic biofuel RVO due to the agency's unrealistic projections for cellulosic biofuel production. Specifically, the court instructed EPA to abandon its role in "promoting growth" in cellulosic biofuel production and to embrace a prediction "that aims at accuracy, not at deliberately indulging a greater risk of overshooting than undershooting."²

Unfortunately, the Proposed Rule continues to suffer from the very same bias that the court found to be unlawful. EPA did not alter the methodology used to predict the amount of cellulosic biofuel that will be produced in 2013. The proposed 2013 cellulosic production estimates depart from the historical production numbers, exceed EIA's production estimates, and continue the same inaccurate, unrealistic reliance upon the individual predictions of cellulosic biofuel producers.

The Court of Appeals recently took issue with the consequences of this approach. I quote the court:

Apart from their role as captive consumers, the refiners are in no position to ensure, or even contribute to, growth in the cellulosic biofuel industry. "Do a good job, cellulosic fuel producers. If you fail, we'll fine your customers." Given this asymmetry in incentives, EPA's projection is not 'technology-forcing' in the same sense as other innovation-minded regulations that we have upheld.³

EPA's predictive methodology is flawed and virtually guarantees that the proposed 2013 RFS cellulosic biofuel requirement will not be met.

Conclusion

When Congress passed RFS2, the country used more than 144 billion gallons of gasoline and experts were predicting that gasoline demand would continue to grow. If this were true today, the amount of ethanol required would not have exceeded the E10 blendwall. Moreover, Congress was told that cellulosic biofuel producers could make "drop-in" biofuels that were fungible with gasoline, rather than cellulosic ethanol, which cannot be used in blends higher than 10 percent for the majority of in-use engines. Today, the world is a different place, gasoline demand has shrunk rather than grown, so the amount of ethanol that can be safely incorporated

¹ See *API v. EPA*, Case No. 12-1139 (decided January 25, 2013).

² *Id.* at 11.

³ *API v. EPA*, Slip Op. at 12.

into our fuel supply is lower than expected. Moreover, cellulosic ventures are likely to produce ethanol substitutes rather than gasoline substitutes, which places additional pressure on the blendwall and creates a tension between the 1st generation corn-based ethanol industry and advanced biofuels that may eventually come on line. These new realities require EPA to implement the flexibilities provided in the RFS statute to the maximum extent possible to avoid harming consumers.

Thank you for this opportunity.