



January 20, 2012

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Administrator Lisa Jackson
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Subject: Petition for Waiver of 2011 Cellulosic Biofuel Volumetric Requirements

Dear Administrator Jackson:

Pursuant to Section 211(o)(7)(A)(ii) of the Clean Air Act (CAA or Act), American Petroleum Institute (API), the National Petrochemical and Refiners Association (NPRA), and the Western States Petroleum Association (WSPA) submit this petition requesting the Environmental Protection Agency (EPA) to waive the volumes of cellulosic biofuels required for the 2011 compliance year under the Renewable Fuel Standard (RFS) due to an inadequate domestic supply of such fuel (hereinafter the Petition).

We represent high-tech American manufacturers, fueling and building America's future. Our members produce virtually all the refined petroleum products and petrochemicals manufactured in the United States. These manufacturers provide jobs directly and indirectly for two million Americans, economic and national security, and thousands of vital products to families and businesses throughout the United States. Our members are obligated parties under EPA's RFS and as such are adversely impacted by shortages of renewable fuels that preclude their ability to comply with the RFS.

In 2010, EPA promulgated the applicable volumetric requirements for various renewable fuels under the RFS.¹ This rulemaking established the regulatory volume of cellulosic biofuel for 2011 at 6.0 million ethanol-equivalent gallons. Biofuel manufacturers failed to produce cellulosic biofuels and the 6 million gallon cellulosic biofuel target was not attained.

Congress foresaw the possibility that the aggressive renewable fuel targets might not be achievable and established several waiver provisions in the CAA. On January 9, 2012, EPA published the 2012 RFS Volumes Final Rule.² In that rule, EPA responded to obligated party comments requesting that in any year in which actual production of cellulosic biofuel falls below the applicable volume used to set the annual standard, EPA use its waiver authority to reduce the required volume of cellulosic biofuel by an amount equal to the shortfall in February of the following year and that this waiver occur prior to the February 28 deadline for submission of compliance demonstration reports by obligated parties. In response to these comments, EPA indicated that the appropriate mechanism for addressing RFS shortfalls is through the waiver process.

These comments deal with EPA's general waiver authority under CAA section 211(o)(7)(A), and thus are not directly related to the annual standard setting process or the waiver authority that is specific to cellulosic biofuel under section 211(o)(7)(D). At this time EPA has received no petitions for a waiver of the 2011 cellulosic biofuel volume under section 211(o)(7)(A) due to inadequate domestic supply, and thus we are not considering at this time whether and how any portion of the 2011 cellulosic biofuel applicable volume should be waived.³

Under section 211(o)(7)(A) of the CAA, a waiver petition may be submitted by any person subject to the requirements of the RFS. Thus, API, NPRA, and WSPA, on behalf of their U.S. refining members, are submitting this petition pursuant to section 211(o)(7)(A) of the Act and requesting a waiver of the 2011 cellulosic biofuel volume in its entirety on the grounds that there is "an inadequate domestic supply" of cellulosic biofuel.⁴

EPA provided some general guidance regarding section 211(o)(7)(A) waiver requests in its 2008 denial of a request by the Governor of the State of Texas.⁵ We reference and respond to the relevant portions of the guidance below:

¹ See 75 *Federal Register* 76790 (December 9, 2010).

² See 77 *Federal Register* 1320 (January 9, 2012).

³ *Id.* at 1330.

⁴ See 42 U.S.C. §7545(o)(7)(A)(ii).

⁵ 73 *Federal Register* 47168, 47183 (August 13, 2008). Note most of EPA's guidance is directed to a waiver request based on severe harm to the economy of a State, a region, or the United States [211(o)(7)(A)(i)]; and therefore, is inapplicable to a waiver request based on inadequate domestic supply [211(o)(7)(A)(ii)].

*1. Petitions that clearly do not contain information and analysis of a type and quality sufficient to support a grant of a waiver may not justify public consideration prior to issuance of a denial by EPA.*⁶

To support this Petition, per EPA's guidance, API, NPRA, and WSPA reference the cellulosic biofuel RINs and volumes depicted in EPA's Moderated Transaction System (EMTS).⁷ EPA's monthly summary shows zero volumes for July 2010 through October 2011 for cellulosic biofuel. Clearly, this is far short of 6 million gallons and supports the petition for EPA to issue a waiver equivalent to 6 million ethanol-equivalent gallons for 2011 RFS compliance period.⁸

*2. EPA expects that applicants would state the requested start date and duration of the waiver, with waiver applications received generally at least six months before the requested start date, and to the extent that applications cannot be submitted in such timeframe an application should include an explanation why such expectation could not be met.*⁹

API and NPRA have sought this relief for almost a full year. In February 2011, API and NPRA petitioned EPA to reconsider the RFS volumes for 2011. Last summer the Agency proposed to deny this request.¹⁰ On August 11, 2011, NPRA and API individually submitted comments on EPA's proposed rulemaking to establish the applicable RFS volumes for 2012 and urged EPA to reduce the regulatory volume for cellulosic biofuel for 2011.¹¹ EPA did not respond to this aspect of NPRA's or API's comments in the final rule establishing the RFS volumes for 2012.¹² We did not know, until EPA issued the 2012 RFS Volumes Final Rule, that EPA interpreted section 211(o)(7)(A) as the only appropriate mechanism under which to seek a waiver of the 2011 cellulosic biofuel requirement. Upon learning that, NPRA and API have submitted this waiver request as quickly as possible -- within two weeks.

While the Clean Air Act requires EPA to act on this petition within 90 days, we respectfully request a more expeditious decision based on our prior requests for EPA to adjust the cellulosic biofuel targets and the fact that the 2011 compliance period for obligated parties concludes on February 28, 2012, just five weeks away.

EPA should take prompt action on this petition. Cellulosic biofuel waiver credits for 2011 are to be purchased in January and February 2012. Given the requirement for public comment, the Agency should defer the requirement to purchase cellulosic biofuel

⁶ *Id.* at 47183.

⁷ See <http://www.epa.gov/otaq/fuels/rfsdata/2010emts.htm> and <http://www.epa.gov/otaq/fuels/rfsdata/2011emts.htm>.

⁸ While EPA has not disclosed the amount of cellulosic fuel produced for the last two months of 2011, we are not aware of any cellulosic RINs available for purchase.

⁹ 73 *Federal Register* at 47184.

¹⁰ See 76 *Federal Register* 38844 (July 1, 2010).

¹¹ See NPRA and API Comments in Docket No. EPA-HQ-OAR-2010-0133 (August 11, 2011)

¹² 77 *Federal Register* 1320 (January 9, 2012).

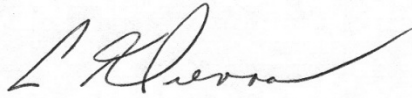
waiver credits for 2011 by the end of February 2012 until EPA can formally act on this Petition. Given the clear shortfall in cellulosic biofuels produced in 2011, it is not reasonable to require the purchase of cellulosic credits while EPA solicits public comment and consults with the Departments of Agriculture and Energy.

If you have any questions concerning the issues raised in this Petition, please contact Tim Hogan/NPRA at (202) 552-8462, Patrick Kelly/API at (202) 682 8192, Catherine Reheis-Boyd/WSPA at (916) 498-7752 or Gina Grey/WSPA at (480) 595-7121.

Respectfully submitted,



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cc: Secretary Steven Chu, U.S. Department of Energy
Secretary Tom Vilsack, U.S. Department of Agriculture