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June 23, 2008

Mr. Robert J. Meyers
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency (Mail Code: 6101A)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

**Re: Renewable Fuel Standard Program
Docket ID No. EPA-HQ-OAR-2008-0380**

Dear Principal Deputy Assistant Administrator Meyers:

NPRA, the National Petrochemical & Refiners Association, appreciates the opportunity to submit the comments on the request for a temporary waiver for the Renewable Fuel Standard (RFS) program (73 FR 29753). NPRA is a national trade association with close to 500 members, including those who own or operate virtually all U.S. refining capacity, as well as most of the nation's petrochemical manufacturers with processes similar to those of refiners. Our members will be significantly affected by any changes in fuel specifications.

In an April 25, 2008, letter to the Environmental Protection Agency (EPA), Texas Governor Perry requested a waiver for a portion of the RFS. Governor Perry's "request is for a waiver of 50 percent of the mandate for the production of ethanol derived from grain." He cited "the unintended consequences of harming segments of our agricultural industry and contributing to higher food prices" as reasons for his waiver request. Governor Perry is authorized by section 1501(a) of the Energy Policy Act of 2005 (revision to section 211(o)(7) of the Clean Air Act) to submit a request for a RFS waiver. EPA is required to approve or disapprove, after public notice and opportunity for comment, a State petition within 90 days after receipt.

Renewable Fuels Can Play an Important Role in Our Nation's Fuel Mix, But the Mandate Is Flawed and Should Be Repealed.

There is little doubt that alternative fuels will continue to be a significant component of our nation's transportation fuel mix. NPRA supports the sensible and workable integration of alternative fuels into the marketplace based on market principles that allow each fuel option to seek its true value and optimum level of use. NPRA opposes, however, the mandated use



of alternative fuels. The foundation for an efficient economy is an open, competitive marketplace that allocates limited resources and capital to create maximum market value with minimal government regulatory oversight. Energy policy based on mandates where the government (and not the marketplace) chooses winners and losers is not, in our view, a recipe for success or growth. There is no free market if every gallon of biofuels – including those that do not exist – is mandated. History has shown that government mandates distort markets that then create false price signals that result in stifled competition and innovation, and sometimes unintended consequences that penalize less fortunate parties in the economy. When not impeded by government regulations, the fuel marketplace will use alternative fuels and other energy substitutes at an appropriate level that minimizes transportation fuel cost to the nation's economy.

NPRA has consistently called for repeal of the renewable fuel mandate. This position was announced by NPRA in testimony before the Subcommittee on Energy and Air Quality of the House Energy and Commerce Committee on May 6, 2008 and repeated in a hearing before the Senate Energy and Natural Resources Committee on May 13, 2008.

The Texas Waiver Petition Highlights the Overall Structural Deficiencies of the RFS.

The renewable fuel mandate is poor public policy. The fact that the Texas RFS waiver petition was submitted to EPA only four months after the Energy Independence and Security Act of 2007 (EISA) was signed into law illustrates why the RFS mandate is seriously flawed. Governor Perry has taken a step in the right direction with the waiver petition. It serves to highlight the greater overall problem of the entire RFS structure.

Governor Perry's request demonstrates that the renewable fuels mandates in EISA 07 are unworkable, and NPRA shares his concerns. Many diverse interest groups are likewise frustrated and concerned over the untenable strain placed on other segments of the economy due to enactment of these policies. Mainstream environment organizations have also voiced opposition to the continuation of the program.

The current situation in the Midwest caused by severe flooding will undoubtedly exacerbate the problem. However, floods, droughts and other setbacks do and will occur. Obligated parties as defined by EPACT 05 cannot be expected to make long-term decisions when operating under ill-conceived policy (EISA 07) that incorporates an after-the-fact, too little, too late waiver process. Governor Perry has rightfully requested flexibility allowed by law. Unfortunately, given the constraints and obligations foisted on refiners and others, this flexibility falls woefully short of what is needed to ensure stability in the marketplace.

There Are Significant Challenges Associated With the Newly Expanded Renewable Fuel Mandate.



With the passage of EISA, the oil industry suddenly faced a significant increase in renewable fuels volume requirement. The Energy Policy Act of 2005 required use of 5.4 billion gallons in 2008. EISA was signed into law 2 weeks prior to the start of 2008 and increased the renewable volume requirement to 9 billion gallons for that year alone. The original RFS only mandated 7.5 billion gallons be blended into the fuel supply by 2012. The oil industry is now faced with trying to rapidly ramp up ethanol blending and making changes in the requisite blending infrastructure. It is uncertain whether 9 billion gallons of production will come on line in time to meet the aggressive requirements of this mandate.

In addition, the credit trading program established in the original RFS will be significantly complicated under the new law. Under the original RFS, refiners had to show compliance through a credit program. EPA created a credit trading and banking program to assist with this compliance and develop an averaging program dictating exactly how many credits each refiner was responsible for handing over. The complex system of numerous mandates for different types of fuels will create several convoluted credit programs. In several cases, the fuels mandated don't even exist. This program could end up being extremely costly and could possibly lead to fuel supply shortages.

Another area of concern is with the ethanol transportation and distribution system. According to NREL (National Renewable Energy Laboratory), the overall cost of transporting ethanol from production plants to fueling stations is estimated to range from 13 cents per gallon to 18 cents per gallon, depending on the distance traveled and the mode of transportation. The dramatic increase in the biofuels mandate under the new law continues to increase the strain on our already congested transportation infrastructure that could very likely drive the costs of shipping ethanol up even further. In addition to these costs being passed on to consumers, strained transportation avenues could create fuel supply problems. The strained rail system created by shipping mandated ethanol is also leading to higher rail cost and shipping delays for other key product sectors that are dependent on rail transportation for distribution such as food products, automobiles, coal, chemicals, etc.

Further, the mandated use of ethanol or other biofuels will not necessarily lower the cost of transportation fuels. Based on a February 2008 Iowa State University study, cellulosic ethanol will be more expensive to produce than corn ethanol. Furthermore, after adjusting for its lower Btu content, current ethanol prices are higher than wholesale gasoline prices. An example of this reality lies in the fact that the American Automobile Association publishes a Btu/miles per gallon (MPG) adjusted price for E85. The adjusted price is based on the fact consumers have to fill up more due to lower energy content of this ethanol fuel. E85 has recently been close to a dollar more expensive than regular gasoline.

The Petroleum Industry Faces Other Compliance Problems Now.

Retailers face challenges in trying to convert retail stations over to ethanol blended gasoline during the summer months. This may be necessary as the industry is trying to increase



blended volumes to meet the new higher mandate volumes. When ethanol is added to gasoline, the gasoline-ethanol blend has a higher RVP than gasoline without ethanol. Therefore, adding ethanol to gasoline can exceed RVP limits. Section 211(h)(4) of the Clean Air Act provides a 1 psi RVP waiver (i.e. fuel blends can be 1 psi higher than the applicable maximum 9.0, 7.8, or 7.0 psi standard) for conventional gasoline blended with 9-10 vol% ethanol. This means that gasohol can exceed the applicable RVP limit by 1 psi if the blend contains between 9 and 10 vol% ethanol.

If a delivery truck pulls up to a retail station in the summer with a load of gasohol (E10 – 10 percent ethanol, 90 percent gasoline) and the underground retail tank has had no E10 deliveries before, then the RVP regulation may be violated because the retail tank would have less than 9 vol% ethanol (the average of summer conventional gasoline without ethanol still in the tank and the new delivery of E10 could result in less than E9 after the new delivery) and does not qualify for the 1 psi RVP waiver. Therefore, if the retail station starts the summer with conventional gasoline without any ethanol, it cannot readily convert to E10 until the summer season ends and the summer RVP regulation does not apply. This obviously constrains the conversion of conventional gasoline retail stations to E10 this summer.

As previously mentioned, the current RFS program includes credit banking and trading. RFS credits are called renewable identification numbers (RINs). Each volume of renewable fuel produced is assigned a RIN. Refiners use these credits to demonstrate compliance with the renewable fuel standard. Refiners obtain credits by purchasing the renewable fuel from the producer or can purchase credits from a blender of the renewable into the base petroleum fuel or from others that have RINs for sale.

One RFS compliance option for refiners in 2008 is carryover of a 2008 RFS deficit to 2009. However, that refiner cannot carry over a deficit for two consecutive years (see Clean Air Act section 211(o)(5)(D), inserted by the Energy Policy Act of 2005, and RFS1 regulations at 40 CFR 80.1127(b)). It is not clear that refiners can fully comply in 2009 with 2009 RINs and purchase additional RINs in 2009 to also meet its RFS deficit for 2008 because the RIN supply in 2009 may not be large enough. Lots of ethanol may be produced and imported in 2009, but not all of it may be blended in gasoline in 2009 and release RINs that be used by a refiner to demonstrate compliance. This situation limits flexibility for refiners to achieve compliance.

Certainly it is probable that some refiners will meet their RFS obligation in 2008 without a deficit carryover to 2009. However, it is unlikely that all refiners will meet their RFS obligation in 2008 without a deficit carryover. It may also be unlikely that all refiners will be able to meet out year RFS obligations given the limitation that deficits cannot be carried over for two consecutive years.



NPRA members are dedicated to working cooperatively at all levels to ensure an adequate supply of clean, reliable and affordable transportation fuels. We stand ready to work with the Administration to ensure a stable and effective fuels policy that utilizes a diversity of resources to improve our national security, assist our consumers and protect our environment.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Drevna", is written over a light gray rectangular background.

Charles T. Drevna
President

cc: Margo T. Oge (EPA, OTAQ)
James W. Caldwell (EPA, OTAQ)
Docket ID No. EPA-HQ-OAR-2008-0380