

ORAL STATEMENT OF
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FOR THE PUBLIC HEARING ON
PROPOSED VOLUMES FOR 2012
RENEWABLE FUEL STANDARD

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Good morning. I am Greg Scott, Executive Vice President and General Counsel of NPRA. NPRA is a national trade association of manufacturing companies that produce over 90 percent of the transportation fuels and petrochemicals used by American consumers, truckers, farmers and businesses every day. The products manufactured by our members for use in the United States include gasoline, diesel fuel, home heating oil, jet fuel, asphalt products, and the chemicals that are “building blocks” in making everything from plastics to clothing to medicine to computers.

To meet our nation’s current and future energy demands, all economically viable energy sources will be needed. Biofuels have become a significant part of the transportation fuel mix in our nation and this role is likely to expand in the future. NPRA supports the prudent development and use of biofuels to diversify our nation’s transportation and nonroad fuels portfolio.

NPRA recognizes the need for a workable, flexible renewable fuels standard (RFS) program. After all, many of our members are obligated parties under the RFS2 program and face fines for non-compliance. Thus, I doubt if EPA will hear from any other stakeholder during today’s hearing with a greater stake in the success of the RFS2 program.

However, my comments today may differ from other stakeholders in that NPRA’s members do not have the luxury of being wrong – modestly or severely – in their predictions and compliance plans. If we miss the mark, EPA will fine us. The same cannot be said either for EPA itself or for the various biofuels promoters presenting testimony today. If EPA is wrong, or if a biodiesel trade group representative or cellulosic ethanol company spokesperson is wrong in his or her rosy predictions for future production, it is our member companies that will experience the economic and regulatory pain.

Thus, NPRA members are forced to confront the real world, rather than the fictional world of unrealistic and unattainable predictions on biofuels production, whether by EPA or biofuel promoters. In January 2011, President Obama signed Executive Order 13563, which includes: federal regulation “must promote predictability and reduce uncertainty.”¹ In fact, EPA’s 2012 RFS proposal does the opposite, particularly when this proposal is compared to the accuracy of EPA’s 2011 biofuels predictions. NPRA sincerely hopes that EPA will substantially revise this proposal to conform more closely to reality, keeping in mind the wide level of error that is already apparent in its 2011 RFS mandates.

Cellulosic biofuels

EPA proposes a range for the cellulosic biofuel volume in 2012 of between 3 and 15 million ethanol-equivalent gallons. This proposal comes on top of a mandate of 6.0 million ethanol-equivalent gallons² for 2011. Based on the latest information available, to date in 2011 – six months into the year – there have been no cellulosic biofuels produced or used in the United States, ethanol-equivalent or not.

The Clean Air Act directs EPA to project the amount expected to be sold or introduced into commerce based on credible facts, not based on press releases, hopes or wishes. No cellulosic biofuel RINs have been generated for the 11-month period of July 2010 – May 2011. This fact should suggest caution when selecting the regulatory volume for 2012.

EPA should not be cheer leader for cellulosic biofuels, because an unrealistically high mandates impose unreasonable burdens on RFS obligated parties. In 2011, EPA’s unrealistic cellulosic biofuels mandate will in effect be no more than a tax on American manufacturers and, ultimately, consumers. RFS obligated parties can buy up to 6.0 million cellulosic biofuel waiver credits at \$1.13/gallon-RIN in 2011 – this is a \$6.78 million tax that NPRA’s members must pay due to EPA’s misguided optimism regarding cellulosic biofuels production this year. Refiners should not have to pay millions of dollars in compliance taxes because of EPA’s gross miscalculation, and EPA must not repeat this miscalculation in 2012.

Biomass-based diesel

Quoting from the proposal under discussion today with respect to biomass-based diesel: “With the limited information available on the current and historical operation of the RFS program, we believe it would be prudent for 2013 to consider only moderate increases above the statutory minimum of 1.0 billion gallons.” NPRA strongly disagrees. It would be prudent to consider an increase above the statutory minimum of 1.0 billion gallons only after the biomass-based diesel industry has demonstrated – from actual experience, not wishful thinking – that annual supplies have exceeded 1.0 billion gallons.

It is unlikely that the regulatory mandate of 800 million gallons of biomass-based diesel will be available in 2011. EIA publishes monthly biodiesel data in its “Monthly Energy Report

¹ Improving Regulation and Regulatory Review, Section 1 (1/18/11)

² 75 FR 76790 (12/9/10)

(DOE/EIA-0035(2011/06)).”³ The June 2011 issue (released on June 28, 2011) shows that U.S. biodiesel production for 2009 was 506 million gallons and for 2010 had dropped to 311 million gallons. It is unrealistic to expect domestic biodiesel supply to increase significantly this year to meet the regulatory volume of 800 million gallons, increase again in 2012 to meet the proposed regulatory volume of 1.0 billion gallons, and then increase again to meet the proposed regulatory volume of 1.28 billion gallons in 2013. These annual steps are too large for an industry that produced 311 million gallons in 2010.

The federal tax credit for biodiesel is set to expire at the end of 2011. Congress previously allowed the biodiesel tax credit to lapse – a lapse that shut down most of the nation’s biodiesel manufacturing capacity. This unsettled tax policy creates considerable uncertainty for the future of the nation’s biodiesel industry and the availability of biomass-based diesel for NPRA members to blend in 2012 and 2013. NPRA urges caution in setting the 2012 and 2013 biomass-based diesel volumes, not wild optimism.

NPRA/API petition for 2011

In February 2011, NPRA and the American Petroleum Institute petitioned EPA to reconsider the RFS volumes for 2011. This petition addressed three topics:

- cellulosic biofuels,
- advance biofuels, and
- delayed RINs.

NPRA appreciates the opportunity to clarify the reasons for submitting this petition and urges EPA to grant the petition. I will briefly summarize new information that was not available in early 2011, when the petition was filed. This new information is more than adequate to justify the requested reconsideration.

So far, there is only a single cellulosic biofuel production facility that is registered and currently eligible to generate cellulosic biofuel RINs – Range Fuels. This facility is not in operation currently. EPA is aware that no cellulosic biofuel RINs have been generated for the 11-month period of July 2010 – May 2011.

EIA reports that imports of ethanol from Brazil were 5 million gallons in 2009, zero in 2010,⁴ and zero so far in 2011. It is very doubtful that many millions of gallons of this product will be imported during the remainder of 2011. Therefore, this will not be available in sufficient quantities to help meet the advanced biofuel requirement.

Excess biomass-based diesel is unlikely because it is questionable that the regulatory 800 million gallons will be available in 2011. EIA’s biomass-based diesel monthly production data, outlined above, makes it unrealistic to expect domestic biodiesel supply to increase significantly

³ Available at http://www.eia.doe.gov/totalenergy/data/monthly/pdf/sec10_8.pdf

⁴ EIA reports that the only country shipping ethanol to the U.S. in 2010 was Canada (10 million gallons).

this year to meet the regulatory volume of 800 million gallons, much less also provide excess supplies for compliance with the advanced biofuel requirement.

Conclusions

EPA should reduce the regulatory volumes for cellulosic and advanced biofuels and the total RFS in 2011. In addition, the Agency should reduce the proposed regulatory volumes of biomass-based diesel in 2012 and 2013. The proposed level for advanced biofuels in 2012, 2.0 billion gallons, and the total RFS (15.2 billion gallons) should both be lowered by the same volumes as cellulosic biofuels and biomass-based diesel. EPA should select a regulatory value for cellulosic biofuel for 2012 that is reflective of actual production in 2011.

I would be pleased to answer any questions my testimony may have raised.