September 16, 2015

Ms. Janet McCabe
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U.S. Environmental Protection Agency
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Re: Supplemental Comments to EPA's Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass- Based Diesel Volume for 2017, Docket ID No. EPA-HQ-OAR-2015-0111

The American Petroleum Institute ("API") and the American Fuel & Petrochemical Manufacturers ("AFPM") submit these supplemental comments in response to the Environmental Protection Agency's proposed rule entitled *Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017*. We are submitting these supplemental comments to address misrepresentations and factual inaccuracies that some commenters posted to the docket with regards to the retail availability of higher-level blends of ethanol, such as E15 and E85.

AFPM and API members are directly regulated as obligated parties under the Renewable Fuel Standard ("RFS"). Several members also are renewable fuel producers. API and AFPM support EPA's exercise of the general waiver authority to reduce the volumes of renewable fuel for 2014, 2015, and 2016 as a necessary step to address the E10 blendwall. As articulated in our original comment submission, E85 and E15 are not solutions to the E10 blendwall due to compatibility limitations of both the vehicle fleet and refueling infrastructure, in addition to a lack of consumer demand.

In reviewing comments submitted to the docket, we identified several examples where false and misleading statements were made regarding obligated party business decisions and commercial agreements. We provide the following comments to correct the record on these points. We ask that EPA ignore the false claims when finalizing the RFS regulations.

<u>Retail Station Ownership</u>

The assertion that refiners maintain control of the fuels they produce through the distribution system until the point of retail sale to the consumer is an often repeated misconception. For example, Abengoa Bioenergy, DuPont Industrial Biosciences and POET -DSM Advanced Biofuels stated in joint comments: "if they were forced to do so, the Obligated Parties [could] use their control of the gasoline marketing sector to penetrate the E 10 'blendwall.'"[1] In fact, approximately 96% of the gasoline stations in the country are independently owned, and it is beyond the control of the obligated parties to require investments to make those stations E85 or E15 compliant.[2] The decision to invest in new infrastructure needed to offer higher level blends is a decision each retailer has to make based on a careful evaluation of the market and economic conditions for their business.

Lack of E85 Demand and Alleged Actions to Discourage E85 Sales

The lack of retail E85 availability is primarily due to a lack of consumer demand. Only about 6% of vehicles are compatible with the fuel, and E85 reduces fuel economy and range by about 20-30 percent.[3] Retail station owners must weigh the cost of investing in new infrastructure with expected demand, which is particularly challenging for the 58% of retail stations in the U.S. that are owned by individuals who own a single store.[4] The Society of Independent Gasoline Marketers of America (SIGMA) and the National Association of Convenience Stores (NACS) in joint comments noted the lack of demand, stating: "the number one trait of any successful retailer is an ability to identify what his or her customers want to buy, and then sell that product at a cost that enables the retailer to earn a profit. Fuel retailers' customers do not purchase products because members of SIGMA and NACS sell them; members of SIGMA and NACS sell products because their customers purchase them."[5] Rather than citing the lack of fueling pumps or the refining sector's alleged recalcitrance as the predominant impediment to marketing greater E15 and E85 volumes as some members of the ethanol industry contend, it would be more constructive to critically review the structure and overall implementation of the RFS2 program for the unintended outcomes in execution that are creating the disincentives for ethanol blends and discordant market behavior.

Comments submitted to the docket by Protec Fuel falsely accuse API and some of our members of "doing everything possible to discourage their franchisees from carrying E15/E85 and increase the cost of installing infrastructure and selling E15/E85."[6] Protec Fuel also claims to "have at least one letter from every single major oil company threatening my customers if they proceed forward in selling the fuel, and for those who took the risk and are currently selling the fuel, make them take it out."[7] EPA should disregard these misleading and false statements when considering public comments and developing a Final Rule.

Contrary to Protec's assertions, franchised retail stations are offering E85. These station owners made the necessary investments to ensure the station's infrastructure is compatible with the product and meet the local demand for a niche product. While the total *number* of stations offering E85 is low, refiner brands represent a significant *percentage* of those retail stations offering E85. Our analysis of

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[1] EPA-HQ-OAR-2015-0111-3272
[2] PMAA letter to Chairman Upton and Ranking Member Pallone, House Committee on Energy and Commerce, May 1, 2015
[3] http://www.epa.gov/oms/renewablefuels/420f10010a.pdf
[4] National Association of Convenience Stores, 2015 NACS Retail Fuels Report, p. 28
[5] EPA-HQ-OAR-2015-0111-1937 p. 4
[6] EPA-HQ-OAR-2015-0111-1194
[7] EPA-HQ-OAR-2015-0111-1043 p. 136

the U.S. Department of Energy's Alternative Fuels Data Center E85 station locator data[8] shows that approximately 28 percent of the 2,639 stations offering E85 nationwide are franchised by major refiner brand names, 27 percent are unbranded retailers, another 36 percent are non-refiner brand names, and the remaining 9 percent are owned by co-ops and municipalities. The wide distribution of station types offering E85, as well as the large fraction of refiner branded stations represented in the above referenced data demonstrate that refiners are not a significant obstacle to retail E85 availability.

Franchise Brand Agreements

Franchise contracts are voluntary agreements between private entities that benefit both parties; the franchisee may benefit from supply contracts, advertising and other marketing assistance from the franchisor, and the franchisor can differentiate their product offerings from other manufacturers. Protec and others have pointed out that franchise agreements may include dispenser and signage placement restrictions, and labeling requirements relating to the sale of alternative fuels.[9] The implication is that any such requirements are intended to discourage the sale of alternative fuels. To the contrary, these requirements are consistent with the Petroleum Marketing Practices Act and would allow the refiner to protect its brand's trademarks and allow the customer to distinguish branded from unbranded products at the dispenser. Clear labeling of products and brands at the dispenser helps to ensure the customer purchases the product of their choice that is also appropriate for their vehicle.

E15 Liability

Comments from ethanol advocates including Poet point to branding agreements as a restriction on E15 availability.[10] Gasoline retailer associations PMAA, SIGMA and NACS make clear the primary obstacles to offering E15 are a lack of demand, equipment compatibility and potential liability concerns. PMAA states: "Consumer and retailer acceptance of E15 will determine the pace of market growth for E15. In the near term, E15 will be offered at very few gas stations."[11] SIGMA and NACS detail the groups' concerns over potential liabilities from using incompatible equipment, misfueling, and voiding warranties for legal and unapproved use.[12] We encourage EPA to review comments from PMAA, SIGMA and NACS in detail. Refiner brands share many of these concerns.

Conclusion

AFPM and API remain concerned that the proposed volumes for 2016 exceed the E10 blendwall based on unsupported estimates that E85 demand will dramatically increase. Should this presumed demand increase fail to materialize, the 2016 volume proposal could begin to trigger the negative economic consequences of the ethanol blendwall.[13] EPA should not base any assumptions of E85 or E15 demand

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[8] U.S. Department of Energy, Energy Efficiency & Renewable Energy, Alternative Fuels Data Center, Fuel Locator, http://www.afdc.energy.gov/data_download/

[9] API and AFPM are not privy to the specific language detailed in our members' franchise agreements and this type of company specific information is not discussed as a matter of API or AFPM business.

[10] EPA-HQ-OAR-2015-0111-2481 p. 20

[11] EPA-HQ-OAR-2015-0111-1197

[12] EPA-HQ-OAR-2015-0111-1921

[13] NERA Economic Consulting, Economic Impacts Resulting from Implementation of the RFS2 Program (2015)

increases on comments from parties that have provided inaccurate information or unsubstantiated assertions.

EPA correctly points out in the Proposed Rule that members of the renewable fuel industry are free to invest in infrastructure to offer higher level blends of ethanol[14] – it is after all, their product that they are trying to force on consumers. Indeed, if members of the ethanol industry truly believed that the only market impediment to greater consumption of E15 and E85 were a lack of fueling pumps, they should be willing to invest in retail fueling stations so that they could reap the rewards of alleged unmet consumer demand for higher ethanol blends.

Sincerely,

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[14] Federal Register / Vol. 80, No. 111 / Wednesday, June 10, 2015 P. 33114