Small Retailers COALITION

Bill Douglass
Chairman
Small Retailers Coalition
PO Box 35537
Washington, DC 20033

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Via Overnight Mail

Scott Pruitt
Administrator
Office of the Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Sarah Dunham
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Mail Code 6101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: **Comment for Docket: EPA-HQ-OAR-2016-0544 - Request to change the point of obligation in the Renewable Fuel Standard to the rack**

Dear Administrator Pruitt and Acting Assistant Administrator Dunham:

My name is Bill Douglass and I am the Chairman of the Small Retailers Coalition ("SRC"). I am writing to submit formal comments to the docket number above on behalf of the SRC. I am writing to beseech you to reconsider your Proposed Denial of Petitions for Rulemaking to Change the Renewable Fuel Standard ("RFS") Point of Obligation. Changing the point of obligation in the RFS is critical to the survival of small, single-store owners and medium-sized gas stations and convenience stores, which, together, comprise approximately 75 percent of the retail fuel market in the United States.[1]

Let me underscore this: when EPA issued its Proposed Denial, it did not have the opportunity to consider any comments from 75 percent of the retail gasoline market most adversely impacted by the current point of obligation. In this action, we are providing you with a record to show that the current point of obligation is disadvantaging the vast majority of retailers in this nation and restraining fuel distribution in the Country.

This is not hyperbole. If the point of obligation is not moved to the position holder at the rack, the majority of small, single-owner gasoline stations in the United States will close or be bought out by mega-chains over the next 24 months.

In a presentation entitled "Shop Talk T.O.C. (Threats, Opportunities and Consolidation) in Mid and Downstream Fueling," the former CEO of The Cumberland Gulf Group projected

[1] *See* RETAIL FUELS REPORT at 3, NAT'L ASSOC. CONV. STORES (2016).

that the number of U.S. gas stations will drop from over 140,000 locations to a mere 115,000 sites. The reason is because:

> Due to the increasing acquisition of convenience store chains by master limited partnerships flush with available cash, the c-store industry will continue to consolidate.[2]

He expects the future will be highlighted by:

- 32 major U.S. c-store retailers operating 56,000 gas stations;
- 15 grocery/hypermarts with a total of 14,000 sites;
- Two mega distributors operating a combined 5,000 locations;
- 20 super distributors with 18,000 sites;
- Just 12,000 single-store operators, a large decline compared to today; and
- 10,000 unmanned locations.[3]

This sums it up. The current point of obligation benefits large corporate entities and pushes small gas stations out of the market. This is purely a by-product of EPA's regulation dictating that the obligated parties are only the refiner or importer. EPA has created a government program that subsidizes the largest corporations in America and closes small businesses.

We know this is clearly not what EPA intended. EPA is trying to implement its Congressional mandate to get more renewable fuels into the marketplace. The RFS is not supposed to cut off distribution chains; instead, it is supposed to increase them.

We are the bulk of the fuel distribution in this Country. Don't shut us down.

Who We Are

Before I offer data to show how the current point of obligation is putting us out of business, I wanted to share with you who "we" are.

The Small Retailers Coalition is a 200-plus member organization made up of small- and medium-sized gas station and convenience store owners. The SRC was formed exclusively to help our members advocate to EPA, the White House, and state and federal legislators to educate them on how the current point of obligation is closing small businesses at a record rate across the Country.

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[2] Brian Berk, *Threats, Opportunities & Consolidation in Fueling: Former Gulf CEO Joe Petrowski shares his outlook at SIGMA Annual Meeting*, Convenience Store News (Nov. 11, 2014), http://www.csnews.com/node/73727.

[3] Joe Petrowski, Presentation at SIGMA Nashville: Shop Talk T.O.C. (Threats, Opportunities, and Consolidation) in Mid and Downstream Fueling (Nov. 2014).

We had to form when our national trade associations refused to advocate for us because the current point of obligation creates a multi-billion dollar financial windfall for the large retailers that now control the vast majority of blending terminals across the Country. As such, the current point of obligation has created the largest transfer of wealth from small business to corporate America in history.

We are independent business owners, the majority of whom own one store. We have ties to our local communities. We are first-generation immigrants and we are from families who have lived in our communities for generations. Many of us are minority business owners who are trying to live the American Dream and make it in a small business. This is why groups like "Empower Consumers"[4] sent a letter to EPA asking to "Please Fix the Renewable Fuel Standard." That letter (included as part of our record) lays it out pretty clearly:

> What's wrong with a few big gasoline retail chains enjoying extra profits generated by the RINs they sell on the market? Well, nothing—if you're one of those chains. But if you happen to be an independent gasoline retailer (many of which are minority-owned) whose competition up the street is suddenly sitting on a pile of cash, it's not so great. It means your competitor's parent company has a newfound ability to spend money on buying up stations, or making their stations look more appealing than yours. Whatever they do, it's not helpful to a small business earning a living as an independent gasoline retailer.[5]

They were joined by a resolution from the National Black Caucus of State Legislators (included as part of our record) urging EPA to fix this market injustice:

> THEREFORE BE IT RESOLVED, the National Black Caucus of State Legislators (NBCSL) calls on the U.S. Environmental Protection Agency to adopt a rule to address problems in the RINs market by moving the point of obligation in order to eliminate incentives for excessive speculation and fraud.[6]

Why We Can't Compete

The reason that small retail gas stations cannot compete fairly in the current market is because the current point of obligation is removed from the rack—that is, the bulk terminal or truck loading terminal where entities control whether gasoline is blended. The large retailers now largely control these terminals and can decide who gets positions at the rack. As a result,

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[4] *See Our Mission*, EMPOWER CONSUMERS, http://www.empowerconsumers.org/about-us/our-mission/ (last visited Feb. 20, 2017).

[5] Letter from Daryl Bassett, Chairman, Empower Consumers, to EPA, *EPA, Please Fix the Renewable Fuel Standard*.

[6] Resolution BED-17-15, Nat'l Black Caucus of State Legislators (Dec. 3, 2016), *available at* http://nbcsl.org/index.php/public-policy/resolutions/item/download/641_91cd4a86fcb96e5427d499b14bb42470.

large retail conglomerates are able to purchase gasoline unobligated and then blend it with ethanol or biofuels at the rack to generate a Renewable Identification Number ("RIN").

These large retailers then sell the RIN to obligated parties and generate enormous windfall profits. This allows our large retail competitors to have a direct price advantage over small- and medium-sized retailers that I and other small/medium-sized retailers cannot match because we cannot blend fuel at the rack.

Small retailers have to purchase blended fuel at a premium. So, the base cost of my product is already higher than the cost to my large competitors that can blend fuel. This is a market reality that we can address through innovation and other marketing incentives. What we cannot overcome is that my largest competitors also get a $.10 to $.15 per gallon subsidy for selling the RIN to obligated parties. They are then able to use this profit to roll up small businesses.

Again, here is why the current point of obligation should be changed to the rack:

1) The current point of obligation gives large retailers a $.10 to $.15 per gallon advantage over small and medium suppliers that is unfair, anti-competitive, and creating an oligopoly in the retail fuel sector;

2) The large retailers, who are able to purchase gasoline unobligated, sell the RINs for a profit. They make such a significant percentage of their profits from RIN sales for E-10 that they have no incentive to invest in infrastructure to support the further penetration of renewables in the market place.

Small and medium retailers make up over 75 percent of the retail gas stations in this Country, but we have been abandoned by our trade associations like NACS, SIGMA, and NATSO. On the issue of the point of obligation, these associations have sided with the mega-distributors in our industry because they pay the lion's share of dues. As our V.P. and Treasurer Stanley Roberts says about the mega-distributors: "They don't outnumber us, they just out-money us!"[7]

Let me be clear: NACS, SIGMA, and NATSO DO *NOT* REPRESENT THE INTERESTS OF SMALL RETAILERS ON CHANGING THE POINT OF OBLIGATION. As a former Chairman of the Board of NACS, this personally saddens me. These organizations have historically served us well and continue to provide some valuable services for small and medium retailers, but on this issue, they have abandoned us for the biggest dues payers.

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[7] See *Small Retailers Coalition – RINs, the RFS, and EPA*, YOUTUBE (Dec. 21, 2016), https://youtu.be/Fpcrt_VSPOg for a video description of how the current point of obligation impacts small retailers.

We Need EPA to Act

Small and medium retailers have nowhere else to turn but to EPA. I ask you to please look at the market facts and consider them in your review of the underlying Petition. The only retailers that EPA cited in its Proposed Denial are the very retailers that get the windfall from the RIN without any obligation to the RFS.

The SRC and other small retailers were not able to provide facts and data in the original record because we did not exist as an organization at the time the Petition was filed. This is an issue of economic survival for us, and one that EPA has an obligation to correct in the rule by aligning the point of obligation with the point of blending at the rack. This simple, but critical, fix would minimize the economic burdens to small retailers and maximize the effectiveness of the RFS program.

The RFS program was designed to drive the market towards selling renewable fuels available in the marketplace, not to drive small- and medium-sized retailers out of business. We know that EPA does not intend to put such businesses in jeopardy across the country, and that there are other issues that EPA must contemplate in the RFS program. Moving the point of obligation, however, is a simple step that EPA can take to level the playing field for all gasoline retailers while allowing EPA to meet the goals that Congress laid out by eliminating this market barrier and protecting and maximizing the fuel distribution system in this Country.

Respectfully, here are the factors that EPA did not consider in its Proposed Denial:

1) EPA has not satisfied its statutory obligations to consider the economic impacts of the RFS and the point of obligation on the small retailers when it promulgated the RFS2 in 2010 and the implementing regulations for the point of obligation.

EPA has stated before the D.C. Circuit Court of Appeals that it believes “the proper place to seek to change the point of obligation” is this Petition.

As such, this is the vehicle through which EPA can correct the deficiency in the previous rulemaking process and “minimize the significant economic impact on small entities” by promulgating an alternative that will not disadvantage small businesses and provide a level playing field for all by changing the point of obligation to the rack.

2) The current point of obligation in the RFS program has resulted in and will continue to result in the decreased “distribution” of renewable fuels in the United States. As such, EPA has an obligation to lift this market impediment to maximize distribution outlets for renewable fuels and consumer choice.

1. <u>EPA has a statutory obligation to minimize the economic impact of the RFS on small entities. This can be satisfied by granting the Petition.</u>

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. §§ 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), ***<u>requires</u>*** federal agencies to consider potential impacts of their rules on small entities. Under the RFA, agencies ***<u>must</u>*** conduct a regulatory flexibility analysis to analyze possible effects of a proposed rule on small businesses, unless the agency certifies that the "rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. § 605(b).

Where a rule is anticipated to have significant economic impacts on a substantial number of small entities, the RFA's provision governing preparation of a final regulatory flexibility analysis, 5 U.S.C. § 604, requires that the agency provide a description of the steps it has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. This includes a statement of the factual, policy and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. 5 U.S.C. § 604(5).

Further, EPA's guidance to its staff when drafting rules clearly dictates that:

> [Y]ou should analyze who is subject to the requirements of the rule even if the rule is either not immediately enforceable or does not impose immediately applicable requirements on those subject to the rule. You should perform this analysis as long as you know (1) who will be regulated; and (2) what requirements will be imposed.

Despite the fact the RFS2 explicitly states that it applies to "Entities . . . involved with *distribution and sale of transportation fuels, including gasoline and diesel fuel, or renewable fuels such as ethanol and biodiesel,"* EPA never did *any* analysis whatsoever on the effects of the RFS and the designation of obligated parties on retailers. It's not that the analysis is insufficient; it is non-existent. This procedural defect in the rule should be addressed and corrected in EPA's response to this Petition, as agencies have done historically when remedying a flawed rulemaking process.[8]

This failure to even consider the significant economic impacts of the RFS2 on small retailers is a procedural deficiency, which, as a defect in the flexibility analysis, can be grounds for a court to strike down the rule. The statutes do not dictate that EPA has to draft rules in a certain way, but it is clear EPA must perform the required analysis of the economic impact of its

[8] *See, e.g.*, *Aeronautical Repair Station Ass'n, Inc. v. F.A.A.*, 494 F.3d 161 (D.C. Cir. 2007); *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Engineers*, 417 F.3d 1272 (D.C. Cir. 2005) (resolved by partial consent judgment); *Thompson v. Clark*, 741 F.2d 401 (D.C. Cir. 1984); *Nw. Min. Ass'n v. Babbitt*, 5 F. Supp. 2d 9 (D.D.C. 1998); *S. Offshore Fishing Ass'n v. Daley*, 995 F. Supp. 1411 (M.D. Fla. 1998).

regulations on small businesses impacted by the regulations. Failure to perform such an analysis or performing a substandard analysis of the impacts has led to remand of the rule in question or a resolution by the government that eliminated the "significant economic impact" on small entities.

EPA itself states in its Proposed Denial that it recognizes that "in any rulemaking to modify the RFS point of obligation, EPA would need to consider the impacts on small entities, as it did in prior rulemakings." We agree! Please DO! EPA has never considered the effects of the RFS on small retailers as blenders in its SBREFA analysis in the historic or current rulemakings under the RFS. EPA has only considered the impacts on small refiners.

So, it is unacceptable that EPA is willing to abdicate its statutory responsibility and shut down potentially 60 percent of the fuel distribution in the United States because it hypothesizes that the "RFS market would experience significant uncertainty in such a transition."

This deficiency must be corrected and can be in EPA's response to this Petition. EPA has stated that "[t]he proper place to seek to change the point of obligation is a petition to reconsider."[9] Again, we agree!

In the Proposed Denial, EPA completely left out all analysis of the extreme market impact on small retailers and based the Proposed Denial almost exclusively on a letter submitted by retailers who financially benefit from the unobligated sale of the RIN. Of course these retailers oppose moving the point of obligation! They get a generous government subsidy that small business cannot access. How can we compete?

We can't.

Even if EPA does not care about shutting down almost 100,000 small businesses, Congress directed EPA to care about maximizing the distribution outlets for renewable fuels. EPA states in the Proposed Denial that "changing the point of obligation is not expected to significantly impact the retail pricing of fuel blends with high renewable content." This may or may not be true. As we all acknowledge, there are many variables that go into fuel pricing. But, what EPA overlooks is that regardless of price, the availability of all fuels will drop dramatically because retail outlets are closing due to the RIN doubling the fuel margins of the few select stores.

In its Proposed Denial, EPA also overlooks the market reality of what consumers want and will pay a premium for. In a market where 75 percent of the retailers are consistently undercut \$.03 to \$.15 a gallon on renewable fuels, they will offer alternatives like clear gasoline or E-0. There is a rising demand for clear gas in the market[10] and consumers will pay an average

[9] Brief for Respondent EPA, *Americans for Clean Energy v. U.S. Environmental Protection Agency*, No. 16-1005, at *119 (D.C. Cir. Dec. 15, 2016), Doc. No. 1651336.

[10] *See* Carlton Carroll, *Consumer Demand for Ethanol-Free Gasoline is Strong and Rising*, API (May 20, 2015), http://www.api.org/news-policy-and-issues/news/2015/05/20/api-consumer-demand-for-ethanol-free-gas.

of $.25 a gallon more for E-0 than they will for E-10. This is pushing the market in the opposite direction of what the RFS mandates.

2. **The current point of obligation in the RFS program has resulted in and will continue to result in the decreased "distribution" of renewable fuels in the United States. As such, EPA has an obligation to lift this market impediment to maximize distribution outlets for renewable fuels and consumer choice.**

In its brief to the D.C. Circuit Court of Appeals, EPA laid out that:

> EPA has explained time and again in its annual renewable fuel standard rulemakings, this increased use of renewable fuels over time requires private parties to invest in production facilities and infrastructure to accommodate such fuels. *E.g.*, 80 Fed. Reg. at 77,453, 77,459-60. Annual reconsideration of the definition of obligated parties would reduce the regulatory certainty required for private parties to plan for growth.[11]

While we support the argument that EPA has an obligation to review the point of obligation and other factors in the RFS annually to accurately capture market trends, we also appreciate that EPA's overall charge is to increase the distribution of renewable fuels into the marketplace. Common sense would dictate that this means investment in infrastructure to distribute the fuels.

In the Proposed Denial, EPA relies on letters from mega-retailers that profit from the RIN which maintain that these large companies use the RIN profits to invest in infrastructure for renewable fuels and pass on the value on the RIN to consumers. This simply is not true. These conglomerates are using the windfall from selling RINs to make infrastructure investment in their operations or to roll-up small, independently owned gas stations. They do not use the value of the RIN to increase the volumes or concentrations of renewable fuels to consumers.

Here is how the giant corporate chains use the RIN. First, these mega-distributors use the RIN proceeds to artificially lower the cost of fuel just enough to undercut the competition that cannot enjoy the RIN—usually from $.02 to $.03 a gallon. They DO NOT pass on the value of the RIN to consumers. Instead, they just use a small portion of it to consistently underprice gasoline at the pump in order to drive small retailers out of business. (For a detailed discussion of how this occurs, please see pages 7–9 of the Amicus brief filed by the SRC in the D.C. Circuit Court of Appeals, which is attached in this submission.)

[11] Brief for Respondent EPA, *supra* note 9, at *113.

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Next, once the small retailers are distressed, the mega-distributors offer to buy the single owner stores. This DOES NOT increase the number of pumps for distribution. The standards formula that mega-chains use is that for every store they open, they close five competitors![12]

Don't take our word for it. Take theirs. The mega-distributors that sell RINs for profit may make claims in letters to EPA that RINs don't impact their bottom line and that they use profits to develop infrastructure for renewables. But they tell their shareholders a very different story in SEC filings and earnings calls.

For the sake of brevity, I have excerpted several quotes from public SEC filings, press releases, and earnings calls. (Along with these comments we will submit copies of the documents for your reference.)

<u>Murphy's</u>

- 2017-02-01 – Q4 2016 Press Release
    - "On a combined basis, PS&W and RINs effectively contributed 4.83 cpg to retail margins in the fourth quarter and 3.85 cpg for the full year." (page 2).
- 2016-11-03 – Form 10-Q
    - "[O]ur cost of goods sold is impacted by our ability to leverage our diverse supply infrastructure in pursuit of obtaining the lowest cost fuel supply available; for example, activities such as blending bulk fuel with ethanol and bio-diesel to capture and subsequently sell Renewable Identification Numbers ("RINs")." (page 28).
    - "In recent historical periods, we have benefited from our ability to attain RINs and sell them at favorable prices in the market." (page 28).
- 2016-11-03 – Q3 2016 Earnings Call
    - "Improvement in product supply and wholesale contribution, net of RINs, recovered almost half of the decline in the retail fuel contribution. Together, these two components added $0.0175 per gallon on a retail equivalent basis versus a negative $0.022 per gallon contribution last year. RIN sales of $48 million offset product supply and wholesale contribution of negative $29 million, as higher RIN prices embedded in the refinery spot

[12] *See, e.g.*, *Texas Continues to Lead U.S. C-store Count: Industry finds fewer single-store owners are selling fuel*, CONVENIENCE STORE NEWS (Feb. 3, 2017), http://www.csnews.com/industry-news-and-trends/corporate-store-operations/texas-continues-lead-us-c-store-count; Catherine MacMillan, *Truck Stops: Reviews, Trivia and Features of the North American Chains*, SMART TRUCKING (Aug. 8, 2016), http://www.smart-trucking.com/truck-stops.html; Citizens Commercial Banking, Consolidation in the Convenience & Retail Fuel Sector: Strategies for Capturing Value (2015);

prices reduced our spot to wholesale rack margins, which stayed negative for much of the quarter." (page 4).

- "While the net contribution is expected to be above guidance, the product supply and wholesale results alone will be below the $25 million to $45 million range, while RINs sales will exceed the $0.30 to $0.50 per-RIN range we guided to. Since RIN prices are essentially embedded in the refinery spot prices, investor focus should remain on the net contributions." (page 5).

- "[W]e're going to continue to report RINs and other income just like refiners report the cost of it separately. I gave a real clear example of how it nets off against our piece, and it's still going to be in that $0.025 to $0.03 range. The refiners have that built into their refinery margin. They just like to call out the cost separately. And I appreciate that refinery margins are now at a very low point again, but that's largely due to the refinery economics, the excess product, the high utilization and the more macro factors, and not really about RINs." (page 15).

- 2016-08-04 – Q2 2016 Earnings Call
  - "[P]eople shouldn't get overly excited in our earnings if RINs are at $0.90 versus $0.50 because you see that impact in the trade-off because spot prices are higher, and that is something, I think, the EPA and RSS anticipated." (page 8).

- 2016-05-09 – Q1 2016 Earnings Call
  - "But then you've got the regulators who will be announcing, hopefully by the end of May, their proposal for the RFS ethanol mandates for 2017. Then those are enacted in November. So depending on whether or not they ratchet up the ethanol mandate or not, that benefit of balancing the supply/demand of RINs may be short-lived if they decide to raise the mandate further." (page 10).

- 2016-03-08 – Raymond James 37th Annual Investors Conference Presentation
  - "So what's the differentiated capability that sets us apart? It's our fuel supply chain. And the way we do that is 50% of the gallons we sell are sourced through proprietary barrels, meaning we buy them from the refiners in the refining centers, we ship them through the pipeline systems for which we have access through our historical shipper status. And that takes decades to build. If you wanted to get in this business tomorrow, you could not go and get pipeline access on most of these pipelines. We take that into mostly third-party terminals. We blend it with ethanol. That captures the RIN. And that leaves us with a landed cost of supply when you add that supply advantage plus the RINs, that's going to be advantaged over our competitors." (page 4).

  - "We have access to the RINs through the blending. We have the credit. We have the scale and scope to hold the working capital and manage through the volatility that smaller competitors don't have." (page 5).

- 2016-02-26 – Form 10-K (FY 2015)

  - "[W]e believe our business model provides additional upside exposure to opportunities to enhance margins and volume. For example, incremental revenue is generated by capturing and selling Renewable Identification Numbers (RINs) via our capability to source bulk fuel and subsequently blend ethanol and bio-diesel at the terminal level." (page 3).

  - "[O]ur revenues are impacted by our ability to leverage our diverse supply infrastructure in pursuit of obtaining the lowest cost of fuel supply available; for example, activities such as blending bulk fuel with ethanol and bio-diesel to capture and subsequently sell Renewable Identification Numbers ("RINs")." (page 30).

- 2016-02-04 – Q4 2015 Earnings Call

  - Murphy is a "major beneficiary of RINs with our proprietary supply chain." (page 3).

  - "RINs, of course, are a source of strength in the PS&W portfolio, given our ability to ship over 50% of our retail barrels and blend the ethanol ourselves." (page 6).

  - "If you dial back your wholesale and then dial back your shipping, you would ultimately start losing that line space, which is a critical advantage, which also allows you to capture the RINs. So, again, there is some interplay there driven by the market dynamics." (page 10).

- 2014-12-31 – Investor Update Presentation

  - "RIN prices elevated, so refiners motivated to sell ethanol blends from terminals" (page 15).

  - "Bottom Line: Elevated RINs accelerates rack price declines" (page 15).

<u>Casey's</u>

- 2016-12-08 – Q2 2017 Earnings Call

  - "The second quarter margin benefited from the sale of renewable fueled credits, commonly known as RINs. During the quarter we sold $17.8 million RINs or a total of $15.9 million. This represented about $0.03 per gallon improvement to the fuel margin.

RINs are currently trading around $1.12. For comparison purposes, going forward, last year in the third quarter, the average RIN sold was approximately $0.61." (page 2).

- "[W]e're fortunate I would say to be able to benefit from [the point of obligation] and due to our market, where we operate and the way we distribute our fuel." (page 7).

- 2016-12-07 – 10-Q (for quarter ending October 31, 2016)
  - "The Company sold 17.8 million renewable fuel credits for $15.9 million during the quarter, compared to 13.6 million fuel credits in the second quarter of the prior year, which generated $4.7 million." (page 12).
- 2016-09-07 – Q1 2017 Earnings Call
  - "Fuel margin was up about $0.02 per gallon from the first quarter of last year due to a decline in the wholesale cost of fuel and a favorable environment for renewal energy credits resulting in a fuel margin of $0.195 per gallon for the quarter. During this time, we sold approximately 17.9 million RINs at an average price of $0.82. This represented about $0.027 per gallon benefit to the fuel margin." (page 2).
- 2016-09-06 – 10-Q (for quarter ending July 31, 2016)
  - "The gross profit margin per gallon increased (to $0.195) in the first quarter of fiscal 2017 from the comparable period in the prior year ($0.175) primarily due to elevated RIN values as well as a declining wholesale fuel cost environment in the current year." (page 13).
- 2016-06-27 – 10-K (for fiscal year ending April 30, 2016) & 2016 Annual Report to Shareholders
  - "While the new volume requirements are lower than those originally set by Congress, we believe they could add support to renewable fuel credit values for the next several years." (page 12 of the Annual Report).
- 2016-06-06 – Press Release - Q4 2016 - Casey's Finishes Year with Record Earnings
  - "The Company sold 12.7 million renewable fuel credits for $9.1 million in the fourth quarter. . . . The fuel margin remained strong throughout the year, aided in part by favorable renewable fuel credit values." (page 1).

- 2016-03-07 – Press Release - Q3 2016 - Casey's Posts 28% Increase on Year-To-Date Net Income

  - "Fuel margins finished above goal for the third quarter due to elevated RIN values as well as a decline in wholesale fuel costs towards the end of the quarter." (page 1).

<u>Couche-Tard</u>

- 2016-11-22 – Q2 2017 Earnings Call

  - Speaker: Brian Hannasch, CEO; Hannasch: "In the U.S., we buy under a variety of structures including some where we get full RIN economics and some where we get partial RIN economics. From our standpoint it's impossible to quantify as you can never tell and I don't think anyone can tell how much is priced in any given rack, at any given time, which is how most of the industry would purchase fuel. However, if it does go away, it goes away for everyone and the markets will adjust and we'll focus on other ways to again establish and widen our competitive advantages on how we purchase fuel. That said, this rule cannot be changed by executive order. It does take full-blown rule making and judicial review for this rule to be changed, and from our perspective and the people we're talking to there's significant and very strong opposition by the American Petroleum Institute, all the major marketing groups, some of the automotive companies and the ethanol producers. So we're watching the issue closely. Again, it's difficult to quantify but at this point we're not overly concerned with the RIN issue." (page 6).

- 2016-08-30 – Q1 2017 Earnings Call

  - Speakers: Brian Hannasch, CEO & Claude Tessier, CFO; Tessier: "We got generally broader access to RINs in the U.S. than most of our competition. So as RINs increase in value we think that widens our competitive advantage and then finally we focus on the Categories. So we think we were widening what we believe it's a key competitive and sustainable advantage in the fuel space." (page 5).

  - Hannasch: "[W]e believe it's impossible to pinpoint exactly the value of RIN. It requires making assumptions about how much of the RIN value makes into wrap [ph] prices and another competitor deals and there is just no way of knowing of that. That said, we focus on having better supply deals than our competition and we think ACT on average has better access to RINs in the overall market. So as RIN values increase we think the advantages we have of having access to those RINs widens our supply advantage vis-à-vis competition, so in general we do like having a higher value RIN." (page 11).

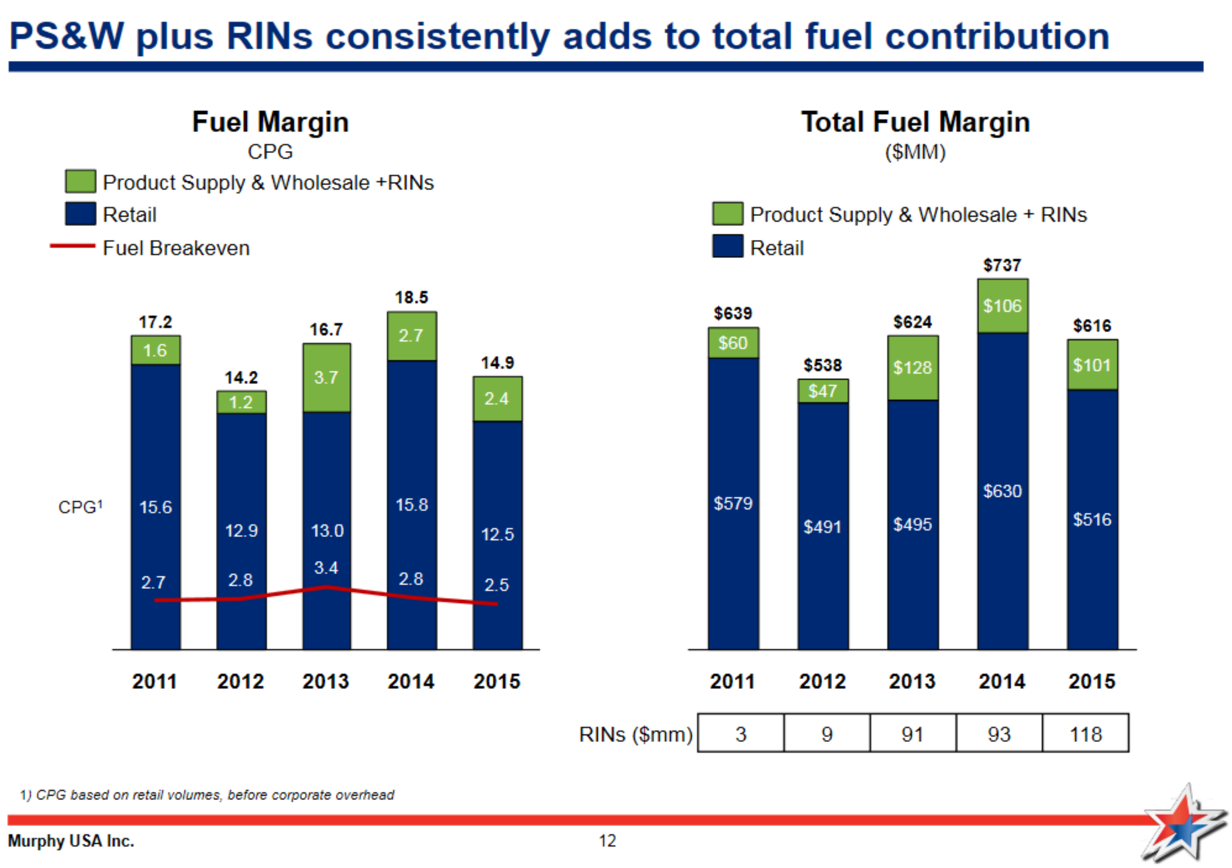
- 2016-07-13 – Q4 2016 Earnings Call

  - Speaker: Brian Hannasch, CEO; Hannasch: "I think in our situation with our scale, I think we're in a position that we're able to capture a greater proportion of the value of the

RINs across our footprint than most of our competitors. So while it's hard to quantify the exact impact, we think we're advantaged vis-a-vis the industry when it comes to RINs, and that a higher RIN value is actually a positive for us vis-à-vis the industry, which is what I think is relevant. I'd also point out, we don't speculate on RINs. We do not try to pretend to know what direction they're going. So as we receive them, we sell them. So you shouldn't see a significant financial impact from a holding period on RINs." (page 9).

We know that EPA is sophisticated about how the market works, and clearly acknowledges in its justification for exercising its waiver authority that "the RIN is currently an inefficient mechanism for reducing the price for higher level ethanol blends at retail, and therefore unlikely to be able to significantly impact the supply of ethanol in the United States in 2016." 80 Fed. Reg. at 77,457.

This is illustrated perfectly by Murphy's in an investor presentation on March 21, 2016, in which it lays out exactly how it uses the RIN to increase fuel margins. The entire presentation is attached to these comments, but the chart below shows that the large retailers that capture the RIN add it to their bottom line. What's more, the large retailers make these huge profits on selling RINs for E-10, not E-85. Why change? There is no incentive to blend higher percentages of renewables, but there is an enormous economic incentive to have the E-10 blend wall broken so RIN prices move even higher. This is happening, and EPA acknowledges this in its justification for using waiver authority.



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This is further supported in a recent study by Ramon Benavides, President of Global Renewable Resources.[13] The study is attached as part of the record with this comment. Benavides analyses the ways in which large retailers are able to double their margins by selling RINs. The paper focuses on Pilot/Flying J and Love's because of the considerable amount of information they make public. But it is not an indictment of those companies; it is simply a study of what it happening in the retail market.

The study uses the Estimated Margin Indicator ("EMI") to ascertain fuel margins for the two companies. The EMI demonstrates that Pilot/Flying J and Love's margins exceed the National Association of Convenience Stores ("NACS") average of $.189 cents by nearly double. This is because these companies enjoy a strong financial advantage over companies that distribute and sell petroleum fuels. The ultimate effect could be selective losses in market share for smaller, less sophisticated market participants.

Benavides concludes:

> While the entire EMI is available in Appendix One, a summary of the results for both Pilot/Flying J and Loves follow. In both instances, these entities' combined gross profits are almost twice as high as the national average. Furthermore, a pass-through to customers did not occur, as additional RIN-derived margins are retained by large fuel retailers as profits. To the contrary, small fuel retailers, which do not have access to similar margins, are likely to lose market share as a result. If the Environmental Protection Agency ("EPA") were to alter the point-of-obligation under the Renewable Fuel Standard ("RFS"), small fuel retailers would be considerably more likely to be able to achieve price parity with large fuel retailers and sustain operations in local markets that continue to thrive based in substantial part on robust retail competition.

In our amicus brief to the D.C. Circuit Court of Appeals, we cited a report by Dr. Bernard L. Weinstein (Associate Director, Southern Methodist University Maguire Energy Institute) that supports these conclusions:

> The bias against small retailers has serious implications for their long-term survival because the current regulatory regime governing RINs trading allows large fuel marketers and large retailers to gain revenues and a competitive advantage over small retailers. Reports indicate that large retailers are using the RIN profit stream for retail expansion and acquiring a larger share of a limited market. Small retailers are losing both sales volume and stores to large retailers. In other words, small retailers aren't just less profitable but they

[13] *See* Ramon M. Benavides, Renewable Fuel Incentives: Estimation of Large Retailers' Margins (Feb. 2017), *available at* http://smallretailerscoalition.com/wp-content/uploads/2017/02/Renewable-Fuel-Incentives_Estimation-of-Large-Retailers-Profits.pdf.

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are going out of business due to their growing inability to compete with large retailers. As a result, the demise of small "mom-and-pop" fueling stations has accelerated, with more than 12,000 closing since 2007.[14]

Dr. Weinstein further updated his report in February of this year after reviewing EPA's Proposed Denial and analyzing the impacts that a denial would have on small retailers. He outlines in great detail how EPA's apathy here will drive small retailers out of business and creates a $30-billion-a-year incentive for unobligated blenders to blend E-10 and nothing more.

Our Plea – Grant the Petition to Move the Point of Obligation

The era of the large, non-obligated, RIN-rich retailer dominating the market is underway. If the EPA does not move the point of obligation to the rack, small retailers will have little choice but to close or sell-out to the non-obligated, RIN-rewarded large retailers. We hope that you take the information that we have submitted to heart, but we encourage you to also do your own research. Go out and ask retailers, small and large, for copies of their fuel contracts to see how the system really works. We are prevented by anti-trust laws from providing you our members' contracts, but you can get them. See what the market reality is particularly for the branded retailer. Please do not base your decision on the unsupported statements of the beneficiaries of the system.

America needs and depends on small and medium retailers for up to 75 percent of its fuel needs. Don't shut us down for the benefit of approximately 50 mega-companies. History shows that oligopolies are not good for distribution of goods or for customer choice. All we are asking is a level playing field upon which to compete.

I close by offering that I, or a member of the SRC, will come to Washington to meet, to answer questions and provide anecdotes or more market data. We will provide any additional information you need. Hopefully, several of our members will also write to you to share their personal stories. We want to sell renewable fuels! But the current point of obligation is simply closing us down.

Please stop this RINsanity and let us compete in a fair, unbiased market.

Very truly yours,

Bill Douglass

Bill Douglass

[14] *See* Bernard L. Weinstein, Renewable Identification Numbers (RINS) Trading Under the Renewable Fuels Program: Unintended Consequences for Small Retailers 6 (Aug. 2016) (report for Southern Methodist University Maguire Energy Institute), *available at* http://smallretailerscoalition.com/wp-content/uploads/2016/08/SMU-Retailer-RINS-analysis-8-17-1.pdf.