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NBB Meeting with OMB
Issues Related to Quality Assurance Plans

The EPA has developed a reasonable proposal that we believe with important modifications will work together with the private sector to prevent RIN fraud and ensure a strong renewable fuels program for both biodiesel producers and petroleum refiners. To that end, we are offering a number of suggestions to strengthen it. If you have not already done so, then we would encourage you to review our comments for our complete views on Quality Assurance Plans (QAPs). In the event you need it we will leave a copy with you.

Today, because of minimal time will focus our discussion on four points:

1. **Independence of the Quality Assurance Plan (QAP) Auditor is Necessary for a Successful Program**
 - We have urged the EPA to establish rigorous standards for approved auditors. One that requires auditors to be truly independent from the Renewable Identification Number (RIN) generation event and the sale or trading of those RINs.
2. **EPA Should Not Prohibit Producers From Separating RINs**
 - We have called on the EPA to reject any effort to prevent biodiesel producers from separating RINs and have emphasized the importance of maintaining RIN separation for biodiesel production as a critical mechanism for a healthy market.
3. **EPA Should Require All Imported Gallons to be Subject to a Quality Assurance Plan**
 - EPA should coordinate implementation of its regulations. Currently pending at EPA are three proposed rules, including this one, related to the RFS; and a separate action that would address whether or not EPA would approve imports from Argentina. We think these issues should be addressed in a coordinated fashion rather than in a vacuum.
 - Import Issues generally.
 - Specific request from Argentina to import biodiesel to the United States.
 - 2014 RVO Volume Issues in a pending proposed rule.
 - Bond Issues in the Pathways II proposed rule which is pending.
 - Attached is a ten-page letter on the Argentina issue and coordination of the pending proposed rules.
4. **We are concerned that EPA's proposal will allow an overall reduction in mandated volumes, which will violate the statute**
 - In the pending rule on the QAP, EPA ultimately allows RIN replacement by the private sector rather than an obligated party. In other words, under the QAP "A" program, EPA allows QAP providers to replace fraudulent RINs. This is a major shift in policy, as obligated parties have always been responsible for RIN replacement. Generally, we think this Administration should take another serious look at this issue.

1. Independence of the QAP Auditor is Necessary for a Successful Program.

The role of the auditor, the entity that will stand in the place of EPA to determine whether RINs are valid, or more importantly, invalid is important. The goal of the EPA should be to have a truly independent QAP provider. In order for them to do so in the purest way possible, the auditor or QAP provider must maintain a level of independence in the fuels marketplace.

In the proposal, EPA sought comment on the following 3 aspects of independence:

- Expanding the definition to include independence from additional parties such as RIN owners;
- Not allowing parties that conduct the engineering review and attest engagements to conduct the QAP; and
- Any other relationships that would prevent a QAP auditor from being independent.

Our comments, highlight what we think are the appropriate rules for auditor independence.

This is important, let us give you an example of what can occur under the current regulations, and if nothing is changed in this rule: one company can conduct the engineering review and verify the registration that is submitted to EPA. That same company can be under contract to handle RIN transaction services: generating, buying and selling RINs for that same producer. They may also compile quarterly and annual reports as well as recordkeeping, while coordinating or conducting the attest engagement. Companies that provide these services can be paid on a per RIN basis, meaning the more RINs they handle, the more they get paid.

EPA has the ability, when finalizing the QAP regulations, to further define independence. Already, the regulation requires a level of independence for engineering reviews and attest engagements. EPA defined an independent third-party as a party that was not operated by the renewable fuel producer (or any subsidiary or employee of the producer) and free from any interest in the renewable fuel producer's business.

Similar provisions appeared under RFS1 and in other fuels programs when a third-party is required to independently test fuel samples, audit reporting and recordkeeping requirements, and/or conduct in-use compliance surveys.

The Auditor must be independent from the producers being audited, and from all RIN transactions and RIN owners.

The third party auditors should have no role in the sale or purchase of RINs. This creates a financial incentive to declare RINs valid in order to reap the economic benefits of selling the RINs. In short, the auditors should not be able to own RINs or even have a stake in a "bank" or "escrow" account that engages in the purchase or sale of RINs. This means not only the auditor and its employees, but also any affiliated companies, their employees, and consultants. Based on the previous example, this is allowed under today's regulations. We think this is wrong – especially when combined with imported renewable fuel and RINs.

NBB is concerned about the independence of auditors, because there are billions of dollars at stake annually in RIN transactions. If the EPA does not require wholly independent auditors with professional competency requirements, then EPA may be expanding rather than curtailing the opportunity for fraud under the RFS program.

In order to have a meaningful program where EPA is creating an affirmative defense for obligated parties, then these third party auditors must be truly independent.

2. EPA Should Not Prohibit Producers From Separating RINs.

The current RFS2 regulations include a specific list of events when a RIN can be separated from a gallon of renewable fuel. Renewable fuel producers are limited in when they can separate RINs. Although EPA does not propose to eliminate this provision, it requests comment on a regulatory change in which renewable fuel producers would be completely prohibited from separating RINs.

Already, this same discussion has been rejected by EPA twice, in the RFS1 rule and the RFS2 rule, and NBB does not believe that EPA should reopen this issue.

We understand that the fraudulent RINs issued by Green Diesel, Clean Green and Absolute Fuels purported to be “separated” RINs. But, the potential for fraud is not adequate grounds for reversing EPA’s position on this matter. First, we do not agree with the statement that “some registered biodiesel producers exploited this provision.” The provision was not exploited. Three actors committed fraud, and RIN brokers, obligated parties, and others in the fuels marketplace initially purchased RINs without confirming that these RINs even came from a viable facility. We think times have changed – there are a number of private sector QAP programs in place today – where if someone wants to know whether the gallons and RINs are valid it is much easier to do today. The private sector is now doing what has been historically asked of obligated parties.

The ability of producers to separate RINs was first promulgated under the RFS1 Rule and initially received no adverse comments. It was retained (and expanded) in the RFS2 Rule.

As a producer, we believe that we should be able to obtain the full value of the fuel and the RINs with each transaction (and each transaction is different) – this would not occur in many cases -- unless we (the producers) are allowed to continue to separate the RINs.

It is clear, that Congress contemplated that not all renewable fuel would be sold directly to blenders or refineries subject to the volume mandates, which is why the EPA has provided a mechanism to allow for the creation and use of these RIN credits. It is difficult to imagine and EPA has provided no explanation as to how these RINs would enter the marketplace for compliance purposes if producers could no longer separate RINs.

Moreover, there is no evidence that removal of this provision would eliminate or even alleviate the ability of an industrious criminal to commit fraud. Obligated parties will still be purchasing “paper” credits, and oversight is needed to ensure the RIN is valid regardless of who is authorized to separate a RIN.

Producers are in the business of selling fuel, not RINs. The RFS program was intended to continue to promote production and use of renewable fuel. The biodiesel marketplace is not as mature as other biofuel markets and many of the gallons sold are to discretionary blenders who are not obligated to use renewable fuels under the RFS. These parties, particularly in local and regional markets, often use biodiesel directly and are not obligated parties, nor do they want to be in the business of owning or selling RINs. Many biodiesel producers have never sold a gallon directly to an obligated party. And, often the value of the RIN provides biodiesel producers with its only opportunity to create a margin.

Producers, particularly small producers, must be given the flexibility to continue to service this market while obtaining full value of their RINs.

3. EPA Should Require All Imported Gallons to be Subject to a Quality Assurance Plan

NBB supports additional assurances that foreign producers of renewable fuel are in compliance with the RFS2, and we support additional provisions to assist EPA in the enforcement of the RFS2 requirements, specifically requiring that each gallon of imported biofuel be subject to a Quality Assurance Plan; together with a bond, which should be increased to at least 10% of the value of the imported gallons.

In both Pathways II and the QAP proposal, we commented at length on how a “quality assurance plan” (Q-A-P) should be applied to foreign biofuel producers.

Specifically, we are concerned about the jurisdiction of the EPA and the U.S. Department of Justice in reaching into other countries to enforce the RFS2 program.

We asked the question: How does EPA best protect obligated parties and the RFS from fraud or invalid RINs that are illegally or invalidly generated from foreign producers? We noted that without a QAP in place it is nearly impossible to track where the feedstocks come from – once biodiesel is in its final form and shipped to the United States it is nearly impossible to tell whether it was made from recycled cooking oil, palm oil or some other oil that may or may not qualify for the program.

The feedstock restrictions require a rigorous tracking program – and we have no reason to believe that once a company is registered with the EPA, that their feedstocks are consistent with those feedstocks registered – because no-one ever checks – or looks -- to see whether the feedstocks used to create imported biodiesel are eligible for the RFS program.

Again, we think this is an important issue for the EPA to get right, as there are currently hundreds of millions and potentially billions of RINs that will likely be generated under the program. We will leave behind an excerpt of our Q-A-P comments on this issue. I will read one paragraph from our comments:

With respect to the verification process, NBB is most concerned with the ability of EPA to accurately verify feedstock used outside of the United States, such as palm oil or palm oil derivatives and soybean oil from Argentina and Brazil used to produce biodiesel. Certain such feedstocks are yet to be approved, and foreign crops (except Canada) are subject to numerous recordkeeping and reporting requirements. High level Q-A-P's should be required to ensure that the renewable fuel generating RINs (i.e., fuel designated as “RFS-FRRF”) has been properly segregated as required under 40 C.F.R. § 80.1466(j)(1).

Separately, currently pending at EPA is an application from producers in Argentina that, if approved, would allow at least hundreds of millions of new gallons of imported biodiesel to come to the United States – these gallons would displace domestic biodiesel production. Also pending is the rule to address volume obligations for 2014 and 2015, the Quality Assurance Plan proposal and finally the proposal to address Pathways II Technical amendments. The QAP and Pathways II proposal specifically address how EPA intends to address biofuel imports.

Import issues are difficult and should not be decided in a vacuum – the QAP proposal combined with the Argentina decision are examples of these overlapping issues. The discussions EPA has undertaken related to the Argentina application without any input or discussion with the U.S. biodiesel industry is troubling. This is not a simple application process, nor should it be decided in a vacuum; but rather, a major policy decision that should be discussed with the domestic biodiesel industry, the U.S. Department of Agriculture, the U.S. Department of State, the U.S. Trade Representative and the White House. Additionally, the decision should be made within the context of the pending final rule related to the 2014-15 RVOs for Biomass-based Diesel and the pending final rules on Quality Assurance Plans and Pathways II.

The Argentinian biodiesel industry has the capacity to produce nearly 1.5 billion gallons of biodiesel each year and much of that production comes from soybeans that are not grown in Argentina.

If EPA coordinated the QAP, the pathways II and the RVO discussion as it relates to imports, then all parties would be better off. Furthermore, because of the reasons we stated in our QAP comments related to imports, we think EPA should require all imported gallons of biodiesel and renewable diesel to be subject to the requirements of a QAP A program.

For the past year we have encouraged EPA to incorporate into its annual RVO analysis a discussion related to imported volumes. Nevertheless, EPA's Notice of Proposed Rule Making (NPRM) related to 2014-15 RVO's proposal did not consider the potential for biodiesel from Argentina to enter the market. Given EPA's proposed biomass-based diesel volume of 1.28 billion gallons for both 2014 and 2015, if EPA were to add additional foreign capacity to an already overfull domestic U.S. marketplace then domestic biodiesel producers would be further disadvantaged. In 2013, according to EMTS data, and without Argentina production qualifying, biodiesel importers already sent more than 530 million gallons to the United States. This is a big number – and this Administration should examine this growing trend.

4. **We are concerned that EPA's proposal will allow an overall reduction in mandated volumes, which will violate the statute**

The Q-A-P Proposal would establish an affirmative defense for RINs that participate in a Quality Assurance Plan (or Q-A-P). The proposal purports to give parties the option to utilize a Q-A-P "A" or a Q-A-P "B", where the requirements of Q-A-P "A" are more rigorous than Q-A-P "B". The other key difference is who is required to replace a RIN subsequently found to be invalid -- the third-party auditor conducting the Q-A-P or the obligated party/RIN holder. This replacement only becomes an issue if the original generator of the invalid RIN is not able to replace the RIN; in other words, if the RIN generator is no longer in existence or has gone bankrupt, someone must replace the invalid RIN to ensure that the volume mandates are made whole. For Option A, EPA proposes that the third-party RIN auditor be responsible for replacing those RINs, up to a certain cap. For Option B, EPA proposes that the obligated party retain the ultimate responsibility to replace the RIN.

NBB believes that the obligated party, in both cases, should retain the ultimate responsibility to replace the RIN. Again, NBB believes that the proposal must be substantially revised. In particular, EPA's RIN replacement provisions are improper because they (a) impose substantial burdens on not-at-fault producers and (b) they would allow for reductions in the overall volume mandates.

Conclusion:

We look forward to working with you on these issues. As you can see, your decisions will have a major impact on the biodiesel sector and the opportunity for fraud – especially fraud from non-regulated overseas producers.

If implemented correctly, the QAP system can add great value to the fuels marketplace. We urge you to review our complete comments, but specifically take into consideration the points we are making today. The RFS is a complicated regulation, but it is a useful one and has allowed our country to diversify its sources of transportation fuels and liquid energy.

U.S biodiesel is the single best fuel produced anywhere in the world today and it exceeds the goals of this Administration's requirements on greenhouse gas reductions. We appreciate your time and if you have questions today or later, then please contact us accordingly.

Thank you.