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March 26, 2018

The Honorable Jeffrey H. Wood
Acting Assistant Attorney General,
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: PES Holdings, LLC, et al., D.J. Ref. No. 90–5–2–1–10993/1

Dear Acting Assistant Attorney General Wood:

PBF Holding Company LLC ("PBF") respectfully submits these comments in response to the U.S. Department of Justice, Environment and Natural Resources Division's ("ENRD") "Notice of Lodging of Proposed Consent Decree and Environmental Settlement Agreement Under The Clean Air Act," in relation to *PES HOLDINGS LLC., et al.* (collectively, "PES"), Civil Action No. 18–10122 (Bankr. D. Del.), published in the Federal Register on March 16, 2018 ("the proposed settlement agreement").[1]

PBF is one of the largest independent, merchant petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States. The company currently has affiliates that own and operate five domestic oil refineries in five states: Delaware, New Jersey, Ohio, Louisiana and California - and related logistics assets with combined processing capacity of approximately 900,000 barrels per day. PBF employs more than 3,200 people nationally. As one of the largest U.S. merchant refiners and having the most refining capacity on the East Coast, Renewable Identification Number (RIN) costs associated with the Renewable Fuel Standard (RFS) have a well-documented, significant, negative impact on PBF. ENRD's proposed settlement agreement recognizes the significant, negative impact of RIN costs under the RFS on PES and therefore, notwithstanding the assertions to the contrary therein, the proposed settlement agreement will establish a precedent that is directly relevant to PBF.

As the following information summarizes, in order for PES to successfully operate post-bankruptcy, the RFS requires revision. A one-time forgiveness of RIN obligations fails to remedy the root cause for the bankruptcy and provides the wrong incentives to the RIN market, which can now allow some participants to continue to prey on similarly situated merchant refiners, potentially creating more bankruptcies knowing the government will simply forgive the obligations. Rather than only pursuing the proposed settlement agreement that provides temporary relief for just one market participant, the Environmental Protection Agency (EPA) can resolve PES' issues and prevent future bankruptcies from occurring by changing the RFS in a manner that provides immediate relief to PES ***and*** allows them to operate successfully going forward while at the same time addressing similar issues faced by other independent, merchant refiners burdened by the broken RFS and its manipulated RIN market. The survival of this vital market segment, crucial to energy independence, national security and a strong economy is dependent upon a full reform of the RFS.

[1] 83 Fed. Reg. 11,792

The proposed settlement agreement is acknowledgement by the Department of Justice (DOJ) and EPA that the RIN market is broken, causing severe economic harm to domestic refiners.

The government's acceptance of the PES bankruptcy plan is proof that escalating RIN costs are causing domestic refiners severe economic harm. The proposed settlement agreement means the government directly acknowledges the following factors identified in the PES bankruptcy filing:

- "As a result (of being a merchant refiner), PESRM (Philadelphia Energy Solutions Refining and Marketing) must purchase RINs for compliance from market participants that blend biofuels (typically large integrated oil companies and companies that own retail gasoline stations) or from companies that trade in RINs for profit."[2]
- "Unlike a tax, the amount paid by PESRM for RINs is not remitted to the government but generates profits for the sellers of the RINs. This unpredictable, escalating, and unintended compliance burden has cost the Debtors $832 million since their commencement of operations in September 2012 and, on an annual basis, the Debtors' expense associated with complying with the RFS Program is twice their annual payroll, nearly one and one-half times their annual average capital expenditures, four times their interest expense, and now represents their single largest expense after crude oil. *The effect of the RFS Program on the Debtors' business is the primary driver behind the Debtors' decision to seek relief under the Bankruptcy Code*."[3]
- "PESRM's ability to blend biofuels is very limited because it does not own sufficient blending infrastructure and its position in the fuel distribution chain limits its ability to sell blended gasoline and diesel fuel and capture the RINs needed for compliance with the RFS Program."[4]
- "Those without an RVO, such as large fuels retailers, can generate RINs and then sell them for a windfall profit to Obligated Parties like PESRM or other third parties for profit."[5]
- "Prior to 2013, ethanol RINs typically cost less than $0.05 per RIN, representing the cost of administering the RFS Program. In fact, from the Debtors' commencement of operations in September 2012 to the end of 2013, ethanol RINs cost just $0.04 per RIN on average and represented a manageable cost of compliance. But in 2017 ethanol RINs averaged $0.70 per RIN, representing a 17.5 fold average increase from these 2012 levels, and have sold for as much as $1.50 per RIN at their peak. This price increase has been fueled by a combination of escalating RVO requirements promulgated by the EPA through annual rule-making processes, practical limitations of existing downstream infrastructure and vehicle engines to handle the increased volume of biofuels, as well as market speculation. All of these factors create a real or perceived scarcity of RINs, which has had the effect of driving up prices and threatening the existence of independent merchant refiners such as the Debtors."[6]

Failure to address the problem of runaway RIN costs prospectively could result in PES and other refiners facing bankruptcy in the future.

Since the government now acknowledges the severe economic harm excessive RIN costs impose on merchant refiners, EPA must take action to address the crushing burden of RIN costs on all such refiners to save other facilities from bankruptcy. In fact, as PES itself has acknowledged in relation to the

[2] In re PES Holdings LLC, Case No. 18-10122 (KG), Declaration of Gregory Gatta, Chief Executive Officer of PES Holdings LLC, in Support of Chapter 11 Petitions and First Day Motions [Docket 16, page3]
[3] Ibid. p. 4.
[4] Ibid. p. 13.
[5] Ibid. p. 29.
[6] Ibid.

proposed settlement, "This is only a partial and temporary reprieve, and we are hopeful that policymakers will substantively address the flawed RINs compliance mechanism so that a restructured PES and other independent merchant refiners can finally compete on a level playing field."[7][8]

As one recent article notes, "Under the proposed deal, the EPA would allow PES to use the roughly 210 million RINs it already has to cover its 467 million RINs deficit. The company said the average RIN price in 2017 was 70 cents, so it would save about $180 million under the EPA's deal, if it is approved."[9] Failing to address the RINs issue prospectively could result in PES facing the same financial stress it experienced prior to filing for bankruptcy. However, taking action that would appreciably lower RIN costs for all market participants immediately and over the long run will help both reduce PES' retrospective liability, while ensuring its future viability. Government should act expeditiously to advance prospective RIN relief, because evidence is clear that sky-high RIN costs are not a PES only problem.

Over 25 small refiners filed for economic hardship exemptions from the RFS this year; the most EPA has received at once and certainly among the highest number of filings historically.[10] Small refiners would not have to keep filing for such waivers if they were able to recover RIN costs. These facilities and companies are shutting down or being acquired by larger refiners because they can't compete with the unnatural advantage the RFS provides integrated oil companies. Antelope Refining in Wyoming shutdown in 2016. The Dakota Prairie refinery in North Dakota was acquired by Tesoro (now Andeavor) and Calumet's Shreveport refinery was acquired by Husky Energy. The competitive distortion in favor of integrated oil companies and large retail chain owners was predicted by the Department of Energy in its 2011 study for Congress.[11]

Additionally, even biofuel interests have recognized the RIN market is not operating as intended and have called on the U.S. Commodity Futures Trading Commission (CFTC) to investigate RIN market manipulation.[12] A flawed market structure, coupled with overly aggressive volume requirements have resulted in a nearly $20 billion RIN market that severely harms the merchants that must buy RINs for compliance without being able to recover costs, as EPA acknowledges by accepting the PES bankruptcy plan in the settlement agreement.

The proposed settlement agreement is a waiver of RFS program requirements and EPA has an obligation to maintain a level playing field with respect to enforcement of the RFS requirements.

EPA is charged with enforcing the RFS program requirements. On EPA's website, it states "[i]n order to protect the program's integrity ***and maintain a level playing field for regulated companies***, EPA is pursuing enforcement actions against renewable fuel producers and importers that generated invalid

[7] Renshaw, Jarrett. "U.S. biofuels sector blasts EPA settlement with bankrupt Philadelphia refinery." Reuters. March 13, 2018. Available at: https://www.reuters.com/article/us-usa-biofuels-rins/u-s-biofuels-sector-blasts-epa-settlement-with-bankrupt-philadelphia-refinery-idUSKCN1GP1RC

[8] The fact that the proposed settlement provides PES with only a "temporary reprieve" of its obligations runs counter to the Bankruptcy Code requirement for plan confirmation that "Confirmation of a plan is not likely to be followed by the liquidation or need for further financial reorganization of the debtor…" See 11 U.S.C. § 1129(a)(11)

[9] Rodriguez, Juan Carlos. "EPA Lets Bankrupt Pa. Refiner Slide on Biofuel Payments." Law360. March 13, 2018. Available at: https://www.law360.com/articles/1021369/epa-lets-bankrupt-pa-refiner-slide-on-biofuel-payments

[10] Renshaw, Jarrett. "U.S. small refiners make surge of biofuel waiver requests." Reuters. January 25, 2018. Available at: https://www.reuters.com/article/us-usa-epa-biofuels-exclusive/exclusive-u-s-small-refiners-make-surge-of-biofuel-waiver-requests-sources-idUSKBN1FE1KA

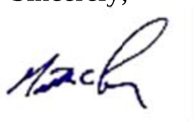
[11] Comments from Small Refiners Coalition on EPA's Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019 (EPA-HQ-OAR-2017-0091- 3105)

[12] http://www.ethanolrfa.org/wp-content/uploads/2016/08/RFA-Letter-to-CFTC-and-EPA_re_RIN-volatility.pdf

RINs."[13] In furtherance of its mandate, EPA has implemented enforcement response policies relating to obligated parties or renewable fuel exporters that have broadly applied to obligated parties, without affording individual companies special treatment, and has issued notices of violation (NOVs) to parties who have violated the RFS program requirements. In the proposed settlement agreement with PES, EPA has not issued any NOV nor alleged any violation of RFS program requirements. Historically, EPA's practice has been to enter into administrative settlement agreements to ***resolve*** NOVs that it has issued. As no violation has occurred or even been alleged by EPA, the proposed settlement agreement is not actually a settlement but rather a waiver of RFS program requirements. As such, this waiver should be available to all independent refiners negatively impacted by the RFS program requirements and not limited to PES.

Thank you for considering our comments.

Sincerely,



Matthew Lucey
President

[13] https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program