CLEAN AIR TASK FORCE * ACTIONAID USA * AMAZON WATCH * FRIENDS OF THE EARTH
MIGHTY EARTH * NATIONAL WILDLIFE FEDERATION * RAINFOREST ACTION NETWORK * SIERRA CLUB

October 19, 2017

Mr. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C., 20460

Submitted via regulations.gov

RE: Comments on the U.S. Environmental Protection Agency's "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; Availability of Supplemental Information and Request for Further Comment" 82 Federal Register 46174 (October 4, 2017); EPA-HQ-OAR-2017-0091; FRL-9986-70-OAR

Dear Administrator Pruitt:

As national environmental, conservation, and development organizations, we are pleased to provide joint comments on the Environmental Protection Agency's (EPA) "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; Availability of Supplemental Information and Request for Further Comment" 82 Federal Register 46174 (October 4, 2017); EPA-HQ-OAR-2017-0091; FRL-9986-70-OAR. Our groups represent millions of members who are concerned with fighting global warming, protecting human health, promoting human rights, preserving natural habitats, and advocating for clean energy. We believe that setting appropriate volumes for the Renewable Fuel Standard (RFS) are critical to achieving these goals.

[I] Background

In July 2017, EPA proposed Renewable Volume Obligations (RVOs) for the four categories of biofuels mandated under the RFS: total renewable fuels, advanced biofuels, biomass-based diesel (BBD), and cellulosic biofuels.[1] In various comments to EPA that our organizations submitted both jointly and individually in August 2017, we urged EPA to reduce the 2018 RVOs for total renewable fuel and advanced biofuel and the 2019 RVO for BBD, partly to limit the extent to which the RFS directly and indirectly drives up demand for palm oil and other vegetable oils.[2] Our August 2017 comments (listed in footnote 2) are incorporated herein by reference.

[1] 82 Fed. Reg. 34206 (July 21, 2017).
[2] *E.g.*, Comments from ActionAid USA, Clean Air Task Force, Earthjustice, National Wildlife Federation, Oxfam America, and Sierra Club on the U.S. Environmental Protection Agency's Proposed Rule -

EPA now seeks additional comment on whether and how it should reduce the two annual mandates that most immediately impact near-term demand in the United States for biodiesel—the 2019 BBD RVO and the 2018 advanced biofuel RVO. The Agency's October 4, 2017 notice asks whether the RVOs should be set at levels below the annual targets established in the Energy Independence and Security Act of 2007, and suggests several possible rationales for doing so:

- RFS-mandated demand for BBD will "severely harm the economy of a State, a region, or the United States;"[3]
- there is an "inadequate domestic supply" of BBD;[4] and/or
- "there is a significant renewable feedstock disruption or other market circumstance that would make the price of BBD increase significantly."[5]

As detailed below, we urge EPA to scale back the 2019 BBD RVO and the 2018 advanced biofuel and total renewable fuel mandates, albeit for reasons other than (or, possibly, in addition to) those suggested in EPA's October 2017 notice. EPA should reduce the RVOs to mitigate the environmental harm caused by RFS-driven demand for vegetable oil-based biofuels. The Clean Air Act—specifically Section 211(o)(7)(A)(i)—authorizes EPA to make the reductions.

[II] RFS-Driven Increases in BBD Production Severely Harm the Environment

The likelihood that the United States will impose duties on biodiesel imported from Argentina and Indonesia heightens the concerns that our organizations have raised about the ripple effects of feedstock diversions. US biodiesel blenders rely heavily on imported biodiesel to meet the BBD mandate. (Due to the nested structure of the RFS program, imported BBD is also critical to meeting the annual volume requirements for advanced biofuels and total renewable fuels.) The International Council on Clean Transportation (ICCT) projected the availability of domestic fats, oils, and greases for BBD production, taking into account factors such as domestic production of vegetable oils and livestock, competing demand for fats and oils from

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"Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019" at 2 (filed August 31, 2017) ("ActionAid USA *et al*. August 2017 Comments") (available at http://www.catf.us/resources/filings/biofuels/Joint_NGO_comments_on_2018_RVO.pdf); Comments from Mighty Earth, Friends of the Earth, Rainforest Action Network, Amazon Watch and Biofuelwatch on the Renewable Fuel Standard Program: Proposed Volume Standards for 2018, and the Biomass-Based Diesel Standard for 2019 at 2 (filed August 31, 2017) ("Mighty Earth *et al*. August 2017 Comments") (available at https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0091-3320); Comments from Clean Air Task Force on the U.S. Environmental Protection Agency's Proposed Rule - "Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019" at 9 (filed August 31, 2017) ("CATF August 2017 Comments") (available at http://www.catf.us/resources/filings/biofuels/CATF_comments_on_2018-19_RFS_RVO.pdf).

[3] 82 Fed. Reg. at 46178.

[4] *Id*. at 46177.

[5] *Id*. at 46179.

other sectors, and the production of yellow grease.[6] According to ICCT, the United States can produce 1.526 billion biodiesel-equivalent gallons from "available" US-sourced feedstocks in 2018—an amount that falls 574 million gallons short of the 2018 RVO for BBD (2.1 billion gallons).[7]

The imported biodiesel needed to meet the RFS's annual volume requirements will become more expensive following the expected imposition of import duties on biodiesel produced in Argentina and Indonesia. As the cost of imported BBD rises, United States Department of Agriculture and others expect that US biodiesel blenders will increase their use of domestically refined BBD made from vegetable oil feedstocks produced in the United States—especially soybean oil. According to USDA's September 12, 2017 World Agricultural Supply and Demand Estimates (WASDE) report,

> Soybean oil balance sheet changes for 2017/18 include reduced beginning stocks and supplies and higher use for biodiesel production *reflecting recently imposed duties for imported biodiesel from Argentina and Indonesia*. Despite reduced forecasts for other domestic use and exports, ending stocks are projected lower.
>
> The 2017/18 U.S. season-average soybean price is forecast at $8.35 to $10.05 per bushel, down $0.10 at the midpoint. Soybean meal prices are also lower at $290 to $330 per short ton while soybean oil prices are projected higher at 32.5 to 36.5 cents per pound. *Rising soybean oil prices relative to soybean meal reflects additional demand as increased use of domestic biodiesel feedstock partly offsets reduced biodiesel imports in 2018*.[8]

Specifically, USDA expects soybean oil prices to increase from 29.86 cents/pound in 2015/16 to a midpoint value of 34.5 cents per pound in 2017/18, an increase of 16%.[9] Although a handful of factors likely contribute to the increase, the only factor mentioned in the WASDE report is the imposition of import duties.

USDA projects higher soybean oil prices in part because it expects that the volume of soybean oil used in 2017/8 to produce domestic soy biodiesel will increase by 23% over the volume used in 2015/16.[10] USDA also slightly lowered its projection of soybean oil that will be used for food

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[6] Brett Nelson and Stephanie Searle, *Projected availability of fats, oils, and greases in the U.S.*, ICCT Working Paper at 1 (July 7, 2016) (available at http://www.theicct.org/sites/default/files/publications/Biodiesel%20Availability_ICCT_20160707.pdf).
[7] *Id*. at 1-2.
[8] USDA, World Agricultural Supply and Demand Estimates, at 2 (September 12, 2017) (emphasis added) (available at http://usda.mannlib.cornell.edu/usda/waob/wasde//2010s/2017/wasde-09-12-2017.pdf).
[9] *Id.* at 15
[10] *Id*. USDA expects domestic soybean oil used in domestic biodiesel production to rise from 5.67 billion pounds in 2015/16 to 7 billion pounds in 2017/18.

and feed from its previous projection (released in August 2017), likely to accommodate the diversion of soybean oil to biodiesel production.[11]

This diversion of US-produced vegetable oil to the fuel sector creates a market opening for palm oil and exacerbates a series of attendant social and environmental problems previously highlighted by our organizations and others.[12] In joint comments submitted in August 2017, six anti-hunger and environmental organizations supported EPA's concern about feedstock diversions[13] and pushed the Agency to constrain demand for BBD by

> reduc[ing] the 2019 volume of BBD and 2018 volumes of advanced biofuels and total renewable fuel below the proposed levels of 4.24 billion gallons and 19.24 billion gallons, respectively, to levels that do not result in an increase in the demand for vegetable-oil based biofuels or, indirectly, for the vegetable oils that are used to make those fuels, thereby avoiding competition with food markets and other industries that use vegetable oil.[14]

In separate comments, Mighty Earth and four other environmental organizations described the threat that increased vegetable oil demand poses for critically important forest systems:

> Maintaining record-high demand across the categories which include biomass-based diesel, as proposed, requires record levels of feedstock. Since most biomass-based diesel is made from virgin vegetable oil, this mandate in turn supports vegetable oil crops responsible for the clearance and destruction of tropical forests and other valuable native ecosystems.
> …
>
> The sharp rise of biodiesel imports from [Argentina and Indonesia] comes as both are struggling with deforestation for soy and palm oil production, respectively. Despite progress by some companies to eliminate deforestation from their supply chains and by some governments to curb rampant conversion of native habitats to industrial agricultural farming, agribusinesses throughout Southeast Asia and Latin America continue to carve new plantations from virgin forests. In both regions, existing public policies to curb industrial-scale deforestation are largely ineffective due to economic pressures, weak regulatory frameworks, poor enforcement, widespread corruption, and related governance challenges. It can therefore be assumed, based on current trends, that greater

[11] *Id*.
[12] And alluded to in EPA's July 2017 RVO proposal. *See* 82 Fed. Reg. at 34221.
[13] *See, e.g.,* 82 Fed. Reg. at 34221("To the extent that higher advanced biofuel requirements cannot be satisfied through growth in the production of advanced biofuel feedstocks, they would instead be satisfied through a redirection of advanced feedstocks from competing uses, leading to lower overall GHG emission benefits.")
[14] ActionAid USA *et al*. August 2017 Comments at 2.

> demand for soy and palm oil-based fuels will lead directly, and rapidly, to increases in deforestation.[15]

Comments from the Clean Air Task Force (CATF) described how "the use of soybean oil for biodiesel production contributes indirectly but significantly to the expansion of new palm oil plantations onto peatlands" in Southeast Asia and "to the GHG emissions associated with that land conversion."[16]

> A 2015 study for the European Commission by Hugo Valin and colleagues … found that the net GHG emissions rate from the land use change associated with soybean oil production is 150gC02e/MJ—an emissions level that is more than 50% greater than the lifecycle GHG emissions rate for petroleum diesel. Importantly, about 20% of soybean oil's LUC GHG emissions are linked to peatland oxidation.[17]

The destruction of tropical forests and the associated release of plant- and soil-carbon into the atmosphere separately and collectively satisfy any reasonable definition of "severe environmental harm." This is especially true within the context of the RFS, given that "Congress created the [RFS] program to reduce greenhouse gas emissions."[18]

RFS-driven demand for vegetable oil-based biodiesel also severely harms the environment of states and regions within the United States by exacerbating the expansion of biofuel feedstock production onto highly biodiverse landscapes that have not been previously farmed. As detailed by National Wildlife Federation in 2016 comments to EPA,

> The portion of the U.S. corn crop devoted to ethanol instead of other uses like food and animal feed, rose from nine percent before the RFS, to about 40 percent. *In addition, soybeans, which often accompany corn in rotational planting and are also used to produce BBD (classified as an Advanced Biofuel under the RFS), increased even more dramatically, rising from 62.9 million acres in 2007 to 75.9 million acres in 2012.* The growth in these two biofuel crops drove a rise in overall crop acreage among the major commodity crops of 8.1 million acres during the first five years of the RFS2.[19]

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[15] Mighty Earth *et al*. August 2017 Comments at 2.
[16] CATF August 2017 Comments at 9.
[17] *Id.* (citing Hugo Valin, *et al*. 2015. The Land Use Change Impact of Biofuels Consumed in the EU: Quantification of Area and Greenhouse Gas Impacts, at 39 (Fig. 15). (https://ec.europa.eu/energy/sites/ener/files/documents/Final%20Report_GLOBIOM_publication.pdf).
[18] EPA, Renewable Fuel Standard Program (website, available at https://www.epa.gov/renewable-fuel-standard-program).
[19] Comments from the National Wildlife Federation (NWF) on U.S. Environmental Protection Agency's Proposed Rule - "Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018" at 2 (filed July 11, 2016) (emphasis added; internal citations omitted) (https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0004-1825).

…

> All of this cropland expansion has grave potential impacts, particularly for native grasslands, which are hot beds of biodiversity, huge sinks of carbon storage (in extensive underground root systems), and are also rapidly disappearing. Grasslands are perhaps our nation's most endangered ecosystems, even prior to the RFS era, with less than one percent of historic tall-grass prairies and 30 percent of mixed-grass prairies remaining. With such precious little undisturbed prairie remaining, even small losses to agriculture have an outsized importance in terms of biodiversity and carbon release.[20]

Soybean production in the United States has continued to expand. USDA's October 2017 WASDE projects that 90.2 million acres of soybean will be planted for the 2017/18 marketing season.[21] The October 2017 estimate—which was developed after the US Department of Commerce announced its preliminary determination that it would be appropriate to levy import duties on biodiesel from Argentina and Indonesia[22]—exceeds the pre-announcement July 2017 WASDE projection by 700,000 acres.[23] While the July-to-October increase in the WASDE projection is relatively modest, it nevertheless suggests that the imposition of import duties will exacerbate—not alleviate—the severe environmental harm that the RFS has caused to wildlife habitats and water quality in the Prairie Pothole region and elsewhere in the United States.

EPA must make every effort to mitigate these severe climate-, habitat-, and water-quality harms caused by RFS-driven demand for vegetable oil.

[III] EPA Must Use Its Statutory Authority to Limit Biodiesel's Environmental Harm

EPA has the authority it needs under the Clean Air Act to limit the environmental harm associated with BBD-related vegetable oil demand, by reducing the BBD RVO as well as the overarching RVOs for advanced biofuels and total renewable fuels.

If EPA determines that "implementation of [an RFS volume] requirement would severely harm the economy or environment of a State, region, or the United States," section 211(o)(7)(A)(i) of

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[20] *Id*. at 4 (internal citations omitted).

[21] USDA, World Agricultural Supply and Demand Estimates, at 15 (October 12, 2017) (available at http://usda.mannlib.cornell.edu/usda/current/wasde/wasde-10-12-2017.pdf).

[22] USDOC, U.S. Department of Commerce Issues Affirmative Preliminary Countervailing Duty Determinations on Biodiesel from Argentina and Indonesia (August 22, 2017) (https://www.commerce.gov/news/press-releases/2017/08/us-department-commerce-issues-affirmative-preliminary-countervailing-1).

[23] USDA, World Agricultural Supply and Demand Estimates, at 15 (July 12, 2017) (available at http://usda.mannlib.cornell.edu/usda/waob/wasde//2010s/2017/wasde-07-12-2017.pdf).

the Clean Air Act explicitly authorizes EPA to "reduc[e] the national quantity of renewable fuel required" under the RFS.[24]

EPA has a more than sufficient basis for making such a determination. Implementation of the BBD requirement at current levels diverts vegetable oil to the fuel market, creating a void in the food market that filled primarily by palm oil. RFS-driven increases in the demand for vegetable oil is responsible for only some of the additional carbon dioxide emitted during the development of new oil palm plantations, but those emissions exacerbate climate change. Climate change "severely harm[s] the … environment of … the United States."

Likewise, the RFS-driven demand for vegetable oil-based BBD has caused severe harm to wildlife habitats and water quality in states and regions by promoting the expansion of biofuel feedstock production in the Pothole Prairie region and other highly biodiverse landscapes that have not been previously farmed.

EPA should therefore utilize the authority that Congress provided at Section 211(o)(7)(A)(i) of the Clean Air Act to further reduce the volume standards for advanced biofuel and total renewable fuel.

EPA attempted to render this authority useless when it adopted an impossibly narrow reading of the provision's applicability.[25] In 2008, EPA decided that it could not make a determination that implementation of RFS volume requirements cause severe economic or environmental harm unless the RFS is "itself" solely responsible for that harm.[26] In its October 2017 notice, EPA requests comment on the "appropriateness" of its 2008 interpretation.[27] We think the interpretation is both inappropriate and unlawful, as it essentially nullifies a statutory provision. As explained in CATF's August 2017 comments, "EPA's insistence on finding sole culpability is tantamount to pronouncing Section 211(o)(7)(A)(i) a dead letter," because "[s]ignificant developments in systems as complex as the economy or the environment are *always* shaped by multiple factors."[28]

EPA also seeks comment on the possible use of the Section 211(o)(7)(A)(i) waiver authority to find severe economic harm or "other means of implementing this waiver authority consistent with the statutory provision."[29] Although we do not take a position in these comments on the

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[24] CAA §211(o)(7)(A)(i).

[25] *See* CATF August 2017 Comments at 10, fn31; *see also* ActionAid USA *et al*. Comments on US Environmental Protection Agency's "Request for Comment on Letters Seeking a Waiver of the Renewable Fuel Standard" at 4 (filed October 11, 2012) (critiquing EPA's 2008 interpretation of the applicability threshold for section 211(o)(7)(A)(i) waivers) (available at http://www.catf.us/resources/filings/biofuels/20121011-CATF%20et%20al%20RFS%20Waiver%20Comments%20with%20Appendix.pdf).

[26] 73 Fed. Reg. 47168, 47169/1 (August 13, 2008).

[27] 82 Fed. Reg. at 46179.

[28] CATF August 2017 Comments at 10, fn31 (internal citations omitted).

[29] 82 Fed. Reg. at 46179.

severity of the economic harm that is associated with RFS-driven demand for vegetable oil-based biofuels, we note there is a strong (and potentially complementary) case for reducing the relevant mandates on the basis of severe *environmental* harm. Furthermore, in light of the significant challenges that have accompanied RFS implementation since 2008, we are encouraged that EPA is finally considering whether and how to utilize a provision that Congress created for managing the negative impacts of the RFS.

[IV] Conclusion

EPA can—and must—mitigate the environmental harm caused by RFS-driven demand for vegetable oil-based biofuels by scaling back the 2019 RVO for BBD and the 2018 RVOs for advanced biofuels and total renewable fuels. RFS-driven demand for vegetable oil feedstocks exacerbates climate change by directly and indirectly encouraging carbon-intensive expansions of palm oil production capacity, and degrades habitat and water quality in the United States by promoting the expansion of agricultural production onto previously unfarmed landscapes. Section 211(o)(7)(A)(i) of the Clean Air Act authorizes EPA to address the resulting severe environmental harm by reducing the volume requirements for BBD as well as the overarching volume requirements for advanced biofuels and total renewable fuels.

Thank you for the opportunity to provide comments. We appreciate your consideration.

Respectfully submitted,

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