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January 15, 2015

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VIA US MAIL AND ELECTRONIC MAIL TO LARSON.BEN@EPA.GOV

US Environmental Protection Agency
William Jefferson Clinton Bldg. - North
ATTN: Ben Larson
Mail Code 6405A
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Re: Comments in Response to 79 Federal Register 73577, Relating to *Perkins Coie LLP v. McCarthy*, No. 1:13-cv-1799 (TDC) (D.D.C. filed Nov. 11, 2013)

Dear Mr. Larson:

Perkins Coie submits these comments in response to the United States Environmental Protection Agency's ("EPA" or "the agency") December 11, 2014 Notice, seeking comment on Perkins Coie's Freedom of Information Act ("FOIA") request for certain records submitted to the agency under the Renewable Fuel Standard ("RFS"). 79 Fed Reg. 73577.

Perkins Coie submitted its May 1, 2013 FOIA request that is the subject of the agency's Notice on behalf of a petroleum refining company. Perkins Coie seeks the requested information for several valid purposes related to the RFS rulemaking, and not for any competitive purpose. First, Perkins Coie expects to obtain data that will shed light on the extreme volatility and dysfunction in the RIN market, which caused the price of RINs to increase from their historic values of 2-5 cents/RIN to as high as $1.44/RIN in July 2013. Perkins Coie also expects it will find that the participation of "unobligated" parties in the RIN market, *e.g.*, unobligated blenders and Wall Street speculators, has caused or has contributed to the extreme volatility and dysfunction in the RIN market and the sharp increase in the price of RINs, which is now wholly disconnected from the cost of blending renewable fuels. Finally, Perkins Coie expects to find that there are insufficient RINs available for 2013 compliance and that RIN scarcity due to the blend wall is contributing to the volatility and dysfunction in the RIN market.

Importantly, the agency failed to mention in its Notice (and in the individual CBI substantiation request letters the agency sent out to some submitters), that Perkins Coie is ***not*** seeking company specific or company identifying information. As stated in many attempts to "clarify" the FOIA request, Perkins Coie neither wants nor needs a submitting company's name, address, general location, registration, or other information that would enable it to identify the submitter. Rather, Perkins Coie is looking for raw data by party type. From the outset of the

discussions between Perkins Coie and EPA regarding the FOIA request, Perkins Coie advised EPA that the agency may redact any company identifying information, and that it was sufficient for Perkins Coie to know whether the data pertained to an "obligated" entity such as a refiner or importer, or an "unobligated" entity such as a blender, Wall Street or other third party, based on the registration classification of the submitting entity. Although the agency is aware that Perkins Coie is not seeking information identifying the submitting entity, EPA failed to inform the submitting entities of this fact, and failed to ask submitting entities if they object to the disclosure of the information without company identifying information.

It is also important to note EPA's early observation about Perkins Coie's request -- that the volume of data being sought by Perkins Coie is so large and the transactions in RINs so numerous -- that it would be impractical, if not impossible, to "back into" or "reverse engineer" the data if that were Perkins Coie's intent. At one time, EPA and Perkins Coie had agreed upon a method of production that the agency was satisfied would not reveal any confidential company information because it was being produced in a summary fashion without company identifying information. Had EPA noted these facts in the Notice, submitters might have agreed that the information could be produced and that there was not a risk of revealing information that could be claimed as CBI.

Perkins Coie believes that EPA seeks to prevent the disclosure of the information for its own purposes and not to protect the confidentiality of the information of the submitters. If the agency's intent was to find a way to produce responsive information that is not CBI, it would have shared with submitters that Perkins Coie is not requesting company identifying information and that EPA and Perkins Coie had agreed on a method for production that would not reveal company identifying information. Therefore, in any representations to the Court on the confidentiality of the information sought by Perkins Coie in reliance on CBI substantiation responses and comments submitted in response to EPA's Notice, Perkins Coie will be able to document EPA's transparent efforts to rally industry to oppose the production of the requested information through these important and material omissions in the Notice.

In addition, although Perkins Coie's FOIA request covered the time periods 2011-May 31, 2013, the Federal Register notice indicates that Perkins Coie sought information for the period 2011-2014. This is an unwarranted expansion of the data Perkins Coie requested. Submitters, not knowing that Perkins Coie is not requesting company identifying information, would naturally be concerned that the production of company-specific 2013 and 2014 RIN data would reveal the market position of individual companies, *e.g.*, whether they have purchased sufficient RINs for compliance, still require RINs for compliance, and the price at which they have purchased or sold RINs.

EPA expressed concerns to Perkins Coie that the disclosure of the requested information, without the company identifying information, could be confusing to Perkins Coie and others with

whom Perkins Coie shares this information. EPA also expressed concerns that the information could be used "against" the agency at the White House or on Capitol Hill. These concerns are not recognized exemptions from FOIA's requirements. Perkins Coie seeks the information for valid reasons, including encouraging the agency to fix the renewable fuel standard to prevent "unobligated" blenders from reaping windfall profits at the expense of obligated refiners by reducing the volume mandates to avoid RIN scarcity and by excluding third party speculators from the market. By withholding the requested information, EPA is preventing an obligated party from meaningfully participating in the RFS rulemaking.

Put simply, the information that Perkins Coie seeks is not confidential business information if it cannot be associated with the submitter. Yet, it will be useful to Perkins Coie for purposes of proving the volatility and dysfunction in the RIN market and the windfall that the RFS rule mandates for unobligated blenders and other third parties.

Thank you for your consideration of Perkins Coie's comments.

Regards,

John F. Henault