

Proposed Federal Philadelphia Energy Solutions Consent Decree: March 26th Petroleum Motor Fuel Trade Association's Objections



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

04/19/2018

Three national trade associations filed with the United States Department of Justice (“DOJ”) Environment and Natural Resources Division a March 26th letter addressing a proposed Consent Decree and Environmental Settlement Agreement (“Agreement”) in regards to Philadelphia Energy Solutions (“PES”). See *In re PES Holdings LLC et Al.*, D.J. Ref. No. 90-5-2-1-10993/1.

PES is stated to consist of two refineries located in Philadelphia, Pennsylvania.

The three trade associations that authored the March 26th letter include:

- National Association of Convenience Stores
- National Association of Truckstop Operators
- Society of Independent Gasoline Marketers of America

(Collectively, “Associations”)

The Associations state they represent approximately 90% of the retail sales of motor fuel in the United States. They argue the proposed Agreement is inappropriate, inadequate, and improper, and that the DOJ should withdraw from and withhold its consent for the Agreement.

The Agreement addresses alleged PES violations involving the Federal Renewable Fuel Standard (“RFS”). The statute establishing the RFS requires the introduction and blending of biofuels into the United States’ fuel supply. It outlines the number of renewable volume obligations which specify the amounts of renewable fuels that must be blended each year into the United States’ transportation fuel supply for four separate renewable fuel categories. Pursuant to rules established by the United States Environmental Protection Agency, certain parties (which include refiners) are required to demonstrate compliance with the RFS by retiring annually a sufficient number of Renewable Identification Numbers to satisfy renewable volume obligations.

The March 26th comments provide the statutory and regulatory history of the RFS and the Association’s view on both the market’s response to the RFS along with PES’s. Their objections to the Agreement include:

- The settlement would harm companies that have sought to achieve Congress’s objectives
- The proposal would reward and incentivize negative behavior
- The settlement represents a misunderstanding of how the fuel industry functions

- Companies that follow the rules would be punished

[A copy of the March 26th letter can be downloaded here.](#)