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This letter is the Canadian Petroleum Products Institute (CPPI)<sup>1</sup> response to the Canada Gazette Part I entitled Renewable Fuels Regulations (RFR). We are writing to you to outline our response to the proposed regulations as well as the Regulatory Impact Analysis Statement (RIAS).

CPPI members want to continue to provide quality product, and meet legal requirements, however adequate time and regulatory certainty are required to plan and implement. CPPI participated in the consultation process over the past few weeks and appreciated the openness and professionalism of officials in this review. We shall outline our feedback in five significant areas of concern followed by a number of general questions/comments.

## **1. Implementation Timeframe**

CPPI has expressed in previous letters to the Ministry our overriding concern surrounding the limited implementation timeframe faced by the petroleum industry. We are constantly reminded that all elements of the regulation are subject to change as a result of the 60-day comment period and therefore it is extremely difficult for our members, and may be impossible for some, to develop and implement plans to meet the September 2010 timeframe.

The downstream petroleum industry is the obligated party in this regulation and consequently shoulders the responsibility for an effective infrastructure to deliver critical and reliable products to the customer. Based on history, for the scope of contemplated projects, adequate lead-time of 3 years from date of final regulation gives the regulatory certainty required to make capital investments. A notice of intent from government cannot advance a project beyond general planning.

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<sup>1</sup> CPPI members: Bitumar Inc., Chevron Canada Limited, Husky Energy Inc., Imperial Oil Limited (Products and Chemicals Division), North Atlantic Refining Limited, NOVA Chemicals (Canada) Ltd., Parkland Income Fund, Shell Canada Products, Suncor Energy Products Inc., and Ultramar Ltd .

The valuable experience gathered by the industry over the recent years with the enacted provincial biofuel mandates indicates that:

- For Ethanol blending infrastructure, this can be phased in prudently and experience to date indicates at least 18 – 24 month was required, in areas of the country that did not have any renewable mandate, from promulgation of final regulations, to market introduction.
- For Renewable Diesel (RD) infrastructure, the inherent characteristics of this biofuel require additional design and planning for cold weather protection resulting in increased implementation periods of anywhere up to 30 months. In some provinces, public hearings will result in additional delays. For example, in Québec, two recent storage tanks projects have triggered the environmental assessment process that lasted 18 to 24 months.<sup>2</sup> Also, due to our winter climate, one cannot reasonably expect a renewable diesel blending facility to be commissioned and operated during the winter months. Consequently, adequate implementation lead time is required. To increase chances of success with the commissioning phase, CPPI recommends that the RD initial compliance period contains two summers and one winter.
- The adoption of CAN/CGSB standards associated with biofuel quality and blending<sup>3</sup> is a pre-requisite for success. Without the government allowing time for the fuel quality standards development, consumers may end up with fuel that does not meet quality standards, engine performance and warranty.
- Physical modifications to meet the metering expectations within the terminal / refinery gates will be numerous and lengthy. A thorough assessment of existing installations is required prior to design and making physical changes.
- The recording and reporting requirements outlined in Gazette Part 1 will require significant modifications to existing information technology (IT) interface systems. This work is highly specialized, requires specially skilled personnel and must be carefully planned not to interfere with ongoing business operations.
- Contractual modifications between obligated parties will be required on existing supply agreements to ensure that the Compliance Units (CU) that are created are properly validated before transfer of ownership.

Based on the points above, CPPI continues to recommend additional flexibilities that will be required for a successful and timely implementation of the Federal RFS for both gasoline and diesel/heating oil.

Assuming a Federal final RFR regulation comes into force in September 2010, CPPI members require time to implement the infrastructure necessary to achieve compliance. Absent the clarity provided by final regulations, and the knowledge of what additional flexibilities will be provided (see comments below), it is not possible for CPPI to propose a specific time period that would close the current gap between the proposed September 2010 coming into force date for the 5% renewable volume requirement based on the gasoline fuel pool, and assured compliance.

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<sup>2</sup> BAPE (<http://www.mddep.gouv.qc.ca/evaluations/lisprode.htm>)

<sup>3</sup> Relevant CGSB Standards are listed in appendix A

The regulations, as currently proposed, make the existing fuel supply system in Canada more vulnerable to circumstances that are not necessarily within the control of our members. It is important that the regulations recognize this and provide sufficient flexibility to ensure the continuous and reliable the supply and distribution to the consumer.

## **2. Measurement of Production**

CPPI members are concerned on what appears to be an unnecessary requirement to report all production streams within an operational facility. In our discussions with Environment Canada (EC), it became apparent that there is an expectation that petroleum product production facilities will be required to have ‘calibrated’ measurement devices, temperature compensated on many refinery product rundown streams. CPPI believes this is unnecessary and would require significant resources to accommodate the proper installation as well as maintenance. CPPI recommends that production data based on ‘dispatched volumes’ associated with the refinery or terminal gate would be an effective volume that can be utilized for the denominator of the RFR. Refiners and Importers are already subject to a series of volumetric reporting requirements under the following regulations, made under the Canadian Environmental Protection Act (CEPA):

- Benzene in Gasoline regulations (SOR 97/493)
- Fuels Information Regulations, No. 1 (SOR/C.R.C., c. 407)
- Sulphur in Diesel Fuel Regulations (SOR/2002-254)
- Sulphur in Gasoline Regulations (SOR/99-236)

Volumetric information is also provided to the Minister of Industry, on a monthly basis, under Canada Statistics Act, S-19.

In the most recent sulphur in liquid fuels report, published by EC (Sulphur in liquid Fuels 2007, dated November 2009), EC states, (pp12, section 3.0: “*in order to verify their accuracy, the reported volumes of produced fuels were compared to Statistics Canada figures for 2007*”, and states “*...there appears to be reasonable agreement between the two sets of data.*” In the appended note 3 to the table 3.1, it also states: “*Volumes reported to Environment Canada mostly reflect production at the various refineries while Statistics Canada considers opening and closing inventories and inter-products transfers.*”

Volumetric information is also included in the annual “Benzene in gasoline report 2007, December 2009” that states the total volume of gasoline reported, for the year. Schedule 3 (section 8) of the regulation requires that primary supplier report the composition of gasoline supplied during the reporting period, and includes the volume of gasoline in m3.

CPPI considers there are already sufficient volumetric requirements in place, under many regulations, with four of them enacted under CEPA, and that the introduction of yet another requirement, to determine the size of the denominator under RFR is not justified.

We further contend that this contradicts the spirit and intent of the Cabinet Directive on Streamlining Regulations. With respect to specific guidelines, the proposed regulations do not

- “limit the cumulative administrative burden and impose the least possible cost on Canadians and business that is necessary to achieve the intended policy objectives”; nor
- “take measures to ensure that monitoring and reporting activities are effective while imposing the least possible burden on government, business and Canadians.”

CPPI recommends that the volume of liquid fuels reported under the Benzene in gasoline regulations, and the Sulphur in Diesel Fuel regulations (with the addition of Heating Oil), be used to determine the denominator applicable to the Renewable Fuels Regulations.

With regards to the metering aspect, we stress the fact that each facility has its own complexity and that flexibility must be provided in order to establish the fuel volume to be reported. CPPI recommends that the approach currently in place for the Benzene in Gasoline Regulation and the Sulphur in Diesel Fuel Regulations be authorized, in circumstances where no meters exist or in cases where API Manual of Petroleum Measurement Standards are not applicable. This means that each facility could choose to provide its own compliance plan that demonstrates how it will determine the fuel volumes produced for the purpose of this regulation. This approach would remain subject to third party audits as is the case for other fuels regulations under CEPA Part IV.

### **3. Records and Reporting**

Throughout the Gazette I RFR, there are many areas that require capturing and recording of data. Currently there are numerous IT systems in use within the various facilities, which will require modifications to meet the intent of the Federal Regulation. Similar requirements are being placed upon the fuel supply industry in order to meet the multitude of Provincial mandates and at different schedules during the year.

The booking of compliance units should be based on the obligated parties' record keeping systems, that are auditable and that follow recognized standards such as the Generally Accepted Accounting Principle (GAAP). CPPI strongly opposes the specification by the Minister of a “format” for reports. The proposed format is highly prescriptive, and does nothing to meet the regulatory objective of reducing Greenhouse gases. Section 27 of the proposed regulations already covers situations where the Minister does not specify a Format. Given the specific nature of each producing/import facility and blending location involved in generating the required information, such a large additional administrative burden should not be imposed upon industry without fully assessing its impact on the mandate start date. Given the significant tasks before us, to develop a format that will be compatible with existing inventory and volumetric accounting systems, as well as financial transactions, and the potential new systems' interfaces, the start-up date would need to be pushed back into 2011 for that reason alone, should EC want to pursue this option. CPPI urges confirmation of the Minister's intention to this issue at the earliest possible date since the recording and reporting of CU is a pre-requisite to the proposed regulations, and this functionality must be in place prior to the start date of the initial gasoline compliance period.

#### **4. Renewable Diesel Requirements**

Although this Gazette I is not intended to address the start date of the initial distillate compliance period, there are numerous references to the future renewable diesel requirements throughout. CPPI members reinforce their concerns on implementation timing stated above and suggest that the implementation and infrastructure for renewable diesel in the Canadian jurisdictions represents a more significant challenge than ethanol. This point is highlighted by the various National Renewable Diesel Demonstration Initiatives (NRDDI) as well as in the NRDDI Infrastructure Project sponsored by NRCan that establishes a series of conditions that must be met to reflect the Canadian climate, and assesses the infrastructure requirement impact and timing implementation. This, combined with the establishment of appropriate fuel standards, is a pre-requisite to ensure a seamless introduction into the market place.

#### **5. Excluded Volumes**

CPPI believes that the exception listing should be expanded to include products that currently are not compatible with biodiesel mixing. For example:

The RFR outline that fuel used in **military combat equipment** may be subtracted from total production volumes. However in discussions with EC, it became apparent that it was the responsibility of the fuel supplier to distinguish between fuel used for combat equipment versus other ‘defense’ purposes. CPPI believes this is an unrealistic expectation and recommends excluding all fuel sold to the Department of National Defense (DND), since it would be inappropriate for a fuel supplier to obtain actual information on use, volume, and location of the fuel it sells to the Military.

Marine **bunker flux** used in the production of Marine Fuel Oil should also be excluded from the list.

**Fuel used within the refinery** in the production of conventional hydrocarbon products should also be excluded from the list. Fuel is excluded when used in the production of chemicals in the proposed regulation, and a fuel used in the refinery should be treated similarly.

**Kerosene** sales need to be added to the list of exemptions since the blending of biodiesel will render it unsuitable for sale as kerosene, as specified by CAN/CGSB 3.3-2007.

In some provinces where a biodiesel mandate is being implemented, such as Manitoba, Alberta and B.C., **rail diesel** is already excluded from the application of the respective Renewable Fuel Regulations until 2013 and therefore should be excluded under the proposed Federal regulations.

In summary, for distillate exclusions, CPPI recommends that any distillate product utilized in the manufacture of other petroleum products before final sale to customer, be excluded from the diesel/heating oil pool denominator. We also recommend that products in which biodiesel cannot be safely blended be excluded from the pool denominator.

## **Other Comments on Specific sections:**

### 21.(1) Carry Forward of Compliance Units

During the Industry Technical Advisory Group (ITAG) meetings held in May/June 2009 and based on previous discussions with EC, CPPI members understood that credits for early action resulting from renewable diesel blending would be 100% transferable to the initial distillate compliance period. However it appears this carry forward provision is now limited to 20%, which will hinder the smooth transition and gradual introduction of renewable diesel into the market. CPPI believes a higher limit (80 to 100%) is necessary to ensure the gradual integration of renewable diesel in the marketplace.

### 24. Carry Back of Compliance Units

The carry back provision is considered by CPPI to be one of the least attractive options in case of compliance units shortfall. We believe it will not be used purposely as an on-going compliance pathway. Nonetheless, CPPI appreciates the efforts made to provide this additional compliance flexibility. However, we recommend that the carry back provision be allowed in consecutive periods and that clause 24.(2) be eliminated.

## Part 3 - Records and Reporting

Throughout the Gazette 1, it is noted that all reports and records must be expressed in litre units. Given the magnitude of the production volumes in Canada, the litre unit is impractical. CPPI would recommend units of m<sup>3</sup> (1000 litres) be utilized, as is the case currently for existing regulations made under CEPA, such as the Benzene in Gasoline Regulations (schedule 3, item 2 ) or the Sulphur in Diesel Fuel Regulations, Schedule 1.

## Definitions

Under “renewable fuel” (a)(ii) substances should specifically exclude water, which is often present in neat biofuels. A definition for “additives” should also be provided and its maximum volumetric allowance should be based on existing CAN/CGSB Standards.

The appropriate term under "biodiesel" (a) should read ‘mono-alkyl esters’.

“Gasoline compliance period” – please refer to comments expressed in section 1 of this submission, as it pertains to the timing. Depending on the results of the 60 Day comment period, and the date the Regulations come into force, via publication in Canada Gazette Part II, the start date of the initial gasoline compliance period, and possibly end date of the first compliance period, will have to be adjusted. Since those two date may not coincide, CPPI members also recommend that, in order to encourage early adoption, CU can be created and banked during the period starting with the coming into force of the Regulations, and could be used during either to the first gasoline compliance period or the first distillate compliance period.

Section 6. (4) (h): CPPI recommends this be modified to read: “gasoline, diesel fuel or heating distillate oil, as the case may be, that the supplier, at the time of the sale or delivery, reasonably expects that it will be exported.

### **Other Comments**

CPPI members are concerned that there appears to be limited capability under the Regulations to deal with the impact of unforeseen circumstances on the supply network. In the North American marketplace, there is limited biodiesel available, and the RIAS study indicates increased reliance on imported product, which can add a significant amount of uncertainty that is beyond CPPI members’ control. CPPI has already commented on the proposed regulations amending Section 147 of CEPA as a potential means to deal with those unforeseen circumstances<sup>4</sup> and is looking forward to the publication of the final regulations in Canada Gazette Part II.

Once again, we want to assure you that CPPI and its members are eager to work with you to ensure a successful implementation of a Federal RFR. It is in both our interests – the Federal Government and the downstream petroleum products sector - that consumers continue to hold in high confidence the reliability, quality and availability of transportation and heating fuel choices.

CPPI appreciates the opportunity to participate in this review process. We feel it is imperative to meet with your department officials to resolve the very serious issues of timing of implementation and other issues raised in this submission.

Yours truly,

A handwritten signature in black ink, appearing to read "PS Boag". The signature is stylized and cursive.

Peter Boag  
CPPI President

CC: Mike Beale, Steve McAuley, Helen Ryan – Environment Canada  
Keith Quach, Industry Canada  
Mark Corey, Claude Gauvin, Jeff Labonté, Mike Rau – Natural Resources Canada

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<sup>4</sup> CPPI Submission to Environment Canada dated January 13, 2010: “As future fuels regulations are under development, (such as the RFS), it is our understanding that regulations made under Division IV of CEPA would be subject to the same prescribed circumstances.”

## Appendix A: Associated CGSB Standards

Number	Title
<b>Relevant CGSB Gasoline based Standards</b>	
CAN/CGSB-3.5	Unleaded Automotive Gasoline
CAN/CGSB-3.511	Oxygenated Unleaded Automotive Gasoline Containing Ethanol
CAN/CGSB-3.512	Automotive Ethanol Fuel (E50-E85)
CAN/CGSB-3.5XX	Denatured Fuel Ethanol for Use in Automotive Spark Ignition Fuels
<b>Relevant Middle Distillate based CGSB Standards</b>	
CAN/CGSB-3.2	Heating Fuel Oil
CAN/CGSB-3.520	Automotive Low-Sulphur Diesel Fuel Containing Low Levels of Biodiesel Esters (B1-B5)
CAN/CGSB-3.522	Automotive Low-Sulphur Diesel Fuel Containing Biodiesel Esters (B6 to B20)
CAN/CGSB-3.524	Biodiesel (B100) blendstock for use in middle distillate fuels

## **Appendix B: CPPI comments on the RIAS for 5% ethanol**

### **Federal Renewable Fuels Regulations (RFR) Draft RIAS (Gazette 1) – April 10 2010**

CPPI has reviewed the Regulatory impact assessment associated with the regulations, as well as the consultant report that was made available. We would like to offer a few observations and also make some recommendations as follows:

We note that in the past, Regulations to which our Industry has been subject to under CEPA, were justified on a balance of a cost-benefit analysis that showed that the benefits exceed costs. The justification contained in the RIAS indicates that in this case, the costs to Canadian Industry and consumers exceed the benefits by a factor of more than 5 to 1 as shown on table 10.

We also note that the discount rate used (8%) to derive the Cost NPV is significantly higher than the Discount rate (3%) used to derive the benefits. This has the effect of lowering the NPV costs while inflating the benefits. Given the negative cost effectiveness of the proposed regulations, this serves to reinforce CPPI requests that administrative burden and metering aspects raised earlier be addressed in the most efficient manner, since the costs associated would not improve the anticipated GHG benefits.

The base line assumes a series of provincial regulations are in place. We notice that it does not reflect the Dec. 2009 amendment to the BC regulations that is gradually phasing in its mandate over a 3 year period.

**Table 1: Legislated Provincial Renewable Fuel Mandates for Gasoline**

<b>Province</b>	<b>Regulated Level<sup>1</sup></b>	<b>Implementation Timeframe</b>
British Columbia	5%	By 2010
Saskatchewan	7.5%	In 2007
Manitoba	8.5%	In 2008
Ontario	5%	In 2007

Source: Canada West Foundation (February 2008), *Building on Our Strengths — An Inventory of Current Federal, Provincial, and Territorial Climate Change Policies*.

<sup>1</sup> The existing mandated provincial percentages are based on the volumes used or sold to end users, rather than on volumes of gasoline produced.

Health impacts based on HC study is out of date. Part of the study basis is referring to pre-99 gasoline qualities (prior to Bz in gasoline) and does not take into account the introduction of Low Sulphur fuels. Industry spent over 5 Billion\$ in the early 2000s to produce transportation fuels that are now some of the cleanest in the world, and that enable to introduce vehicle emission technology that improved emissions by 90 to 95%. As a result, air quality benefits from introducing biofuels subsequent to the new clean fuels, would have negligible impact on air emissions. In fact, some more recent studies<sup>5</sup>, by the US EPA concluded that NOx emissions and acetaldehydes (CEPA toxic) would increase with increase of ethanol use. CPPI requests that in the absence of more recent studies, based on current gasoline qualities, the reference to this out of date Health study be removed.

### **Sector Profiles**

Fuel sales and data based on 2007 refinery production and sales. Since the 2009 data from Statistics Canada is now available, 2009 data should be used in the final regulations

### **Consultation**

In response to Industry comments regarding the Short Lead time for implementation. Environment Canada responded that the Notice of Intent of 2006 “clearly indicated Gov’t’s intent”. Industry strongly disagrees with this statement, as it lacks the clarity and certainty required to make enlightened business investment decisions. Industry has asked numerous times during all stages of consultation and discussion with Environment, if it could assume that some provisions will be included in the final regulations, and seek to understand which provisions are final. We have consistently been reminded by Government officials that until the Regulations is passed into Gazette part II, “***All provisions are subject to change***”.

Industry welcomes the fact that some of the flexibility provisions that were discussed at the Industry Technical working group were retained in the proposed G1, as an important step to facilitate the implementation of the proposed regulations.

### **Performance compliance and enforcement**

The aspects associated to the prescriptive and complex record keeping, reporting continues to be a significant concern to Industry. Given most of these “administrative” provisions are pre-requisite to generate Compliance Units (CU), the proposed approach appears to be a very cumbersome and detailed process to enable regulator to monitor, and report activity to demonstrate incremental GHG reduction. With the high costs (129.5\$/tonne of GHG reduction) identified in the RIAS, efficiency improvements are essential to minimize administrative costs to Industry, Government and consumers.

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<sup>5</sup> <http://www.epa.gov/otaq/renewablefuels/420r07004-sections.htm> see Chapter 3 and 5 for emission impact discussion of available studies

## **Appendix C: CPPI comments on the RIAS for 2%**

CPPI and its members have participated to a series of programs under the National Renewable Diesel Demonstration Initiative, led by Natural Resources Canada. During the course of the programs, valuable insight has been gained, on the impact of various biodiesel types and renewable diesel blends, under Canadian conditions. In some cases, the gap between experimentation and practical application remains substantial and must be adequately addressed in the final decision-making to ensure a seamless introduction of biodiesel blends into the market place.

Those findings need to be taken under consideration by the Standards setting organizations, such as CGSB, to develop and adopt the required standards that will ensure consumers that the new products are fit for intended purpose, when introduced into the market. CPPI does not support the introduction in the market place, of a new fuel product, without the appropriate standard.

The introduction of Renewable diesel and Biodiesel blends requires extensive and careful planning, as it impacts on many segments of the supply chain, from Refinery to storage, blending and distribution. Sufficient time must be available, from regulatory certainty, to allow proper infrastructure design, construction and commissioning. For example, the initiatives provided direction on blending components (ULSK & HDRD) requirements and biodiesel attributes (SMG) of concern that require addressing, in order to mitigate the risks to customers of using biodiesel blends under severe Canadian winter operating conditions. We remain concerned that many of the initiatives understated the logistical challenges in sourcing/transporting the required blending components. The NRDDI NRCan Biodiesel Distribution Infrastructure Analysis is expected to provide additional insight on these important aspects. CPPI members have provided detailed information on the specific requirements and associated timelines and therefore shall be considered a key element in assessing the technical readiness.

In closing, CPPI stresses that these three aspects must be taken into consideration; that is:

- understanding the conditions and limitations,
- having appropriate standards in place, and
- providing sufficient time to implement the necessary infrastructure.

Only when those three aspects are present, one can consider the supply chain is technically ready for a seamless transition to the end consumer.