

United States Senate
WASHINGTON, DC 20510

June 25, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

We write with frustration and significant concern about recent reports that the Environmental Protection Agency (EPA) is considering granting over 50 petitions for Small Refinery Exemptions (SREs) under the Renewable Fuel Standard (RFS) for past compliance years. We urge you to reject these petitions outright and respond in writing to our questions about recent use of SREs under the RFS. Granting these petitions would worsen the unprecedented economic challenges facing the biofuels industry and the rural communities that it supports while violating EPA's own policy on this issue.

On January 24, 2020, the U.S. Court of Appeals for the Tenth Circuit made a ruling in *Renewable Fuels Association v. EPA* that struck down three small refinery exemptions granted by your agency. In ruling that EPA exceeded its statutory authority, the court determined that the waivers for those refineries had lapsed and that there was no waiver available to extend.

It is for this reason that we are especially alarmed to hear that EPA is considering over 50 petitions for retroactive SREs that are intended to circumvent the Tenth Circuit decision by allowing refineries with lapsed SREs to establish a continuous chain of exemptions. These are refineries who either did not submit petitions or were not granted waivers in past years, meaning they were not experiencing "true economic hardship" to comply at the time. These petitions should not even be entertained because they are inconsistent with the Tenth Circuit decision, Congressional intent, the EPA's own guidance, and – most importantly – the interests of farmers and rural communities who rely on the biofuel industry.

As you know, Congress passed SREs under the RFS program with the intention of mitigating and eliminating economic harm to small refinery operations. On the EPA's website, in a document titled "Small Entity Compliance Guide for Changes to Renewable Fuel Standard Program," an eligible small refinery shall have "no more than 1,500 employees corporate-wide" defined as "for all subsidiary companies, all parent companies."¹ This guidance also states that companies should apply for small refinery status by July 1, 2010 to be eligible for SREs. That means that under EPA's own guidance, the majority of SREs EPA has granted would be ineligible for the program.

You previously testified in January 2019 to the Environment and Public Works Committee (EPW) that the decision to grant Chevron and Exxon small refinery exemptions under the RFS was made at the refinery level and not at the corporate level. In light of EPA's guidance and your contradictory statements we hope you will provide complete answers in writing to the following questions:

1. Were you aware that your own Agency had determined that Chevron and Exxon were ineligible for SREs when you appeared before EPW in January 2019?

¹ <https://19january2017snapshot.epa.gov/sites/production/files/2015-06/documents/compliance-renewablefuel.pdf>

2. Do you commit to applying the 10th Circuit decision nationwide now that it has unanimously rejected a petition for a rehearing and abandoning the agency's misuse of the RFS waiver program once and for all?
3. A number of organizations associated with the oil industry have asked you to change the 2020 RFS volumes or waive them for the rest of the year, using the coronavirus pandemic (COVID-19) as the pretext for doing so despite the fact that the drop in gasoline demand has devastated the biofuels industry. Are you aware that the structure of the RFS already ensures that RVOs are effectively automatically adjusted proportionally based on actual sales of gasoline?

Even before COVID-19, the misuse of small refinery waivers under the RFS had led many biofuel plants to shut down partially or altogether. The further loss of biofuel demand and sales during COVID-19 has resulted in further harm to the industry, with over 100 biofuel processing plants now idled or closed. This has resulted in reductions to the rural workforce, decreases in commodity purchases and prices, and shortages of co-products critical to the agricultural supply chain. Meanwhile, the Administration has taken steps to help the oil industry through purchases for the Strategic Petroleum Reserve.

The approval of SREs for past compliance years at this moment would only worsen the unprecedented economic challenges facing the biofuels industry and the rural communities that it supports. EPA must deny these petitions and apply the 10th Circuit decision nationally.

Thank you for your consideration of our requests.

Sincerely,

/s/ Amy Klobuchar
Amy Klobuchar
United States Senator

/s/ Joni K. Ernst
Joni K. Ernst
United States Senator

/s/ Tammy Duckworth
Tammy Duckworth
United States Senator

/s/ Charles Grassley
Charles Grassley
United States Senator

/s/ Tina Smith
Tina Smith
United States Senator

/s/ Roy Blunt
Roy Blunt
United States Senator

/s/ **Debbie Stabenow**
Debbie Stabenow
United States Senator

/s/ **M. Michael Rounds**
M. Michael Rounds
United States Senator

/s/ **Gary C. Peters**
Gary C. Peters
United States Senator

/s/ **Ben Sasse**
Ben Sasse
United States Senator

/s/ **Tammy Baldwin**
Tammy Baldwin
United States Senator

/s/ **John Thune**
John Thune
United States Senator

/s/ **Richard J. Durbin**
Richard J. Durbin
United States Senator

/s/ **Josh Hawley**
Josh Hawley
United States Senator

/s/ **Sherrod Brown**
Sherrod Brown
United States Senator

/s/ **Deb Fischer**
Deb Fischer
United States Senator