

March 3, 2020

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

The undersigned organizations representing American farmers and workers in the biofuels industry believe the recent ruling by the U.S. Court of Appeals – *Renewable Fuels Association et al. v. EPA, 10th Circuit*, brought by the Renewable Fuels Association, the National Corn Growers Association, the American Coalition for Ethanol, and the National Farmers Union – should put an end to the U.S. Environmental Protection Agency’s (EPA) illegal abuse of the small refinery exemption (SRE) program under the Renewable Fuel Standard (RFS).

In a unanimous panel, the Tenth Circuit held that EPA abused its discretion in granting SREs to three small refineries in 2016 because the statute allows the agency only to grant an *extension* of exemptions that have been continuously extended and in effect since 2011. In the case of these three refineries, there were no previous exemptions to “extend.” The Court also held that EPA exceeded its authority by granting SREs that were based in part on economic hardship unrelated to RFS compliance. Finally, the Court ruled that even if EPA had the authority to grant the SREs, its decision was nonetheless arbitrary and capricious because EPA failed to address its own analysis that refineries recover their RFS compliance costs.

While the decision addresses three specific SREs, we are unified in the belief that the ruling applies much more broadly and should fundamentally change the way EPA addresses *all* SRE petitions. Accordingly, we believe:

- EPA should not pursue an appeal of the court decision, given the clarity, unanimity, and strength of the ruling;
- EPA should apply the decision nationally to all SRE petitions beginning with the pending petitions for 2019 exemptions (notably, EPA has applied other Circuit court decisions on SREs nationally¹);
- EPA should consider the potential implications of the ruling for past SREs granted for the 2016-2018 compliance years, which eliminated more than 4 billion gallons of RFS blending requirements; and,
- EPA should consider the implications of the ruling on the transparency of the SRE program, particularly regarding disclosure of the names and locations of refineries seeking exemptions and DOE’s scoring of their applications.

¹ See, for example, *Sinclair Wyoming Refining v. EPA*, No. 16-9532 (10th Cir. 2017).

We believe that EPA should issue guidance on its interpretation and implementation of the court decision before the end of March 2020, as both regulated parties (i.e., refiners and exporters) and biofuel producers are looking for certainty and stability regarding the Agency’s management of the RFS program going forward.

Implementing the Tenth Circuit decision in the manner described above would not adversely affect consumer gasoline prices or refiner profitability. In fact, EPA officials, the Courts, and even numerous oil company executives themselves have agreed that the price of RFS compliance credits (called “RINs”) has no impact whatsoever on refinery profits.

Applying the Tenth Circuit decision nationally will build on the success of your announcement last fall to boost biofuels and the rural economy. It will help restore integrity to the RFS, revive demand for American biofuels and farm commodities, and bring cleaner, lower-cost fuel options to consumers across the country. We look forward to continuing to work together with you to secure these positive outcomes for rural America and drivers across the country.

Sincerely,

Plaintiffs



Supporting Organizations

