



GOVERNOR GREG ABBOTT

July 12, 2019

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

Dear Administrator Wheeler:

On behalf of the State of Texas, and following up on my letter of December 1, 2017, I am again writing to the U.S. Environmental Protection Agency (EPA) regarding the renewable fuel standard (RFS) program established by the federal Clean Air Act, 42 U.S.C. § 7545(o). Recent reports indicate that the EPA, the U.S. Department of Agriculture, and others have discussed limiting the use of small refinery exemptions (SREs) under 42 U.S.C. § 7545(o)(9).¹ That approach is inconsistent with the Act and would represent a step away from sound energy and environmental policy. The EPA must follow the law by continuing to grant SREs to applicants that demonstrate disproportionate economic hardship under the statute.²

A measured and effective SRE program is of great significance to the State of Texas. Texas has 30 refineries that produce over 5.7 million barrels daily—roughly a third of U.S. capacity.³ Our oil and gas sector employs 350,000 people, 100,000 of whom work in refining and petrochemical production.⁴ Additionally, the EPA acknowledged in its January 31, 2018, response, “refining jobs are important and valuable.” In fiscal year 2018, the industry paid more than \$14 billion in state and local taxes and state royalties.⁵ This revenue goes toward funding Texas schools, Medicaid and children’s health insurance programs, child protective services, infrastructure, and critical first responders such as police and firefighters.

¹ Timothy Puko & Alex Leary, *Trump Administration Weighs Further Boost to Ethanol*, WALL ST. J. (June 18, 2019), <https://www.wsj.com/articles/trump-administration-weighs-further-boost-to-ethanol-11560857764>

² See, e.g., *Sinclair Wyo. Ref. Co. v. EPA*, 887 F.3d 986 (10th Cir. 2017).

³ https://www.eia.gov/dnav/pet/PET_PNP_CAP1_DCX_STX_A.htm

⁴ <https://businessintexas.com/industries/petroleum-refining-chemical-products>

⁵ <https://www.txoga.org/texas-oil-and-natural-gas-industry-paid-more-than-14-billion-in-taxes-and-royalties-in-2018-up-27-from-2017/>

The Honorable Andrew Wheeler
July 12, 2019
Page 2

Over 25% of Texas refineries potentially qualify as small refineries under the RFS.⁶ While comparatively small, these refineries can have a large impact on the communities in which they are located. One such refinery, in Big Spring, Texas, employs workers with an average annual salary of \$97,000, in an area with a per capita income of less than \$20,000 a year; it also spends millions of dollars for outside services that support local businesses. In Tyler, Texas, employees at a local refinery earn an average of \$75,000 a year, and that small refinery spent nearly \$33 million in 2018 for outside services.

The refining sector, the people it employs, the businesses that depend on refineries, and consumers all benefit from a workable and effective SRE program. The SRE program provides an essential safety valve, allowing for normalization of the prices of renewable identification numbers (RINs) at levels far closer to those anticipated at the outset of the RFS. As Professor Alex Holcomb of the University of Texas at El Paso wrote in April 2019, high RINs prices have in the past “led to significant financial distress, with some refiners reporting that RIN costs now exceed labor costs, and at least one refiner citing the distortionary cost of RFS compliance as a major reason behind its recent bankruptcy.”⁷

The case against SREs assumes that they will cause demand for ethanol to decline. Professor Holcomb observes that the evidence is to the contrary: “[D]espite concerns that the physical consumption of ethanol would decrease due to EPA’s granting of SREs, the evidence suggests that there has been at most no change in ethanol consumption. In fact, limited evidence shows that there might have been an increase in ethanol consumption since the first slate of exemptions were granted in late 2017.”⁸

I urge you to refrain from changing the EPA’s policy with respect to evaluating, awarding, and accounting for SREs. As required by 42 U.S.C. § 7545(o)(9), the EPA should continue granting an exemption to any small refinery that can show disproportionate economic hardship.

Sincerely,



Greg Abbott
Governor

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cc: The Honorable Rick Perry, Secretary, U.S. Department of Energy

⁶ <https://www.eia.gov/petroleum/refinerycapacity/table5.pdf>

⁷ https://www.realclearenergy.org/articles/2019/04/05/the_unintended_consequences_of_the_renewable_fuel_standard__110422.html

⁸ *Id.*