

Congress of the United States
Washington, DC 20515

March 3, 2020

The Honorable Donald J. Trump
President
United States of America
1600 Pennsylvania Avenue, NW
Washington, D.C.

Dear Mr. President,

We write to you regarding the necessary preservation of small refinery exemptions (“SREs”) under the Clean Air Act. It has been reported that the U.S. Environmental Protection Agency (“EPA”) will apply the Tenth Circuit’s holding in *Renewable Fuels Association, et al. v. EPA* nationwide. We respectfully ask that you reconsider this decision, as it will jeopardize or otherwise end small refinery hardship relief and result in the loss of countless jobs of those Americans that contribute to the energy independence of the U.S. economy.

On January 24, 2020, the Tenth Circuit Court of Appeals found that three small refineries were ineligible to apply for small refinery hardship relief under the Renewable Fuel Standard (“RFS”), as they had not applied for and “consistently received an exemption in the years preceding [their] petition” since the program started in 2008. The Tenth Circuit’s based its ruling on a narrow interpretation of the word “extension,” as applied under the Clean Air Act. This narrow interpretation will effectively end small refinery hardship relief, which would cause extraordinary harm to small refineries, as well as the RFS program as a whole, contrary to Congress’ intent when it established hardship relief.

In order to mitigate the harm that would be caused by the Tenth Circuit’s ruling, several actions are required:

1. EPA must seek an extension and request an *en banc* hearing in the Tenth Circuit, so that the entire court has an opportunity to reconsider this matter;
2. Guidance, or other relevant agency action, should be issued so that the ruling is not applied outside the Tenth Circuit, pending the outcome of the *en banc* rehearing; and

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3. Consideration of pending 2019 hardship petitions from small refineries within the Tenth Circuit should be deferred, and decisions on petitions from other small refineries should be rendered as soon as possible.

The Tenth Circuit's ruling contradicts clearly expressed congressional intent, EPA's consistent determinations that small refineries are eligible to apply for hardship relief *at any time*, and the Department of Energy's ("DOE") express conclusions that harm to small refineries is permanent and will grow increasingly acute over time as volume mandates and RIN prices increase. The Court's decision has already caused a run on the RIN market, with prices reaching a 7-month high in the short time since it was announced.

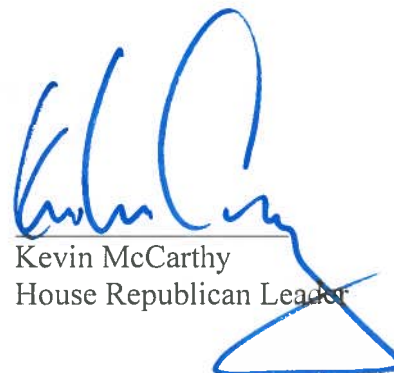
The Tenth Circuit's ruling clearly demonstrates that the panel does not fully grasp that hardship to small refineries is permanent and will grow worse over time. DOE has explained that small refineries lack the capital to make investments in biofuels and downstream blending, and for those reasons, the harm to small refineries was permanent and would grow increasingly acute. The Tenth's Circuit's ruling also conflicts with its own previous ruling, which recognized that a small refinery should not have to demonstrate an existential threat to its long-term viability in order to receive relief. In that case, the court found that EPA applied too stringent a test to determine whether a small refinery has experienced disproportionate economic hardship that warrants relief. Under the Tenth Circuit's new ruling, small refineries previously denied hardship during the years in which EPA applying its unlawfully stringent standard would now forever be barred from receiving relief.

EPA must appeal the Tenth Circuit's decision and request an *en banc* hearing, as well as maintain the longstanding position that small refineries can petition for hardship relief at any time. Your support is necessary in order to uphold the purpose of small refinery hardship relief under the RFS program, while also preventing undue harm to small refineries.

We thank you for your attention to this important issue and look forward to working with you in the weeks and months ahead to strengthen America's energy independence.

Sincerely,

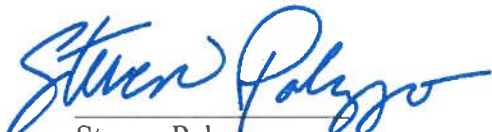

David B. McKinley, P.E.
Member of Congress

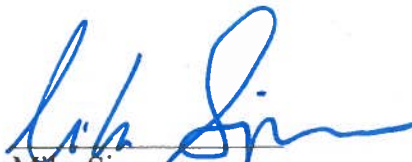

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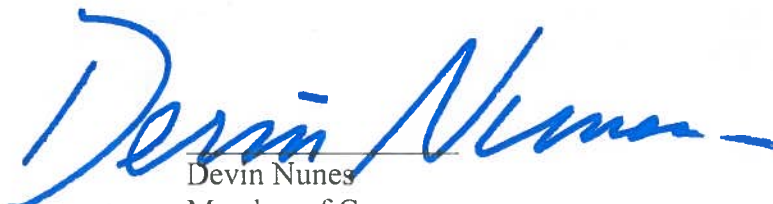

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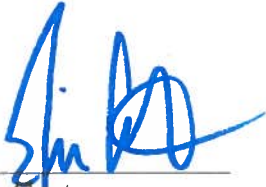

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