

July 8, 2019

LeAnn Johnson Koch
LeAnnJohnson@perkinscoie.com
D. +1.202.654.6209
F. +1.202.654.9943**VIA CERTIFIED & ELECTRONIC MAIL**Hon. Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler:

I write this letter on behalf of numerous small refineries that submitted confidential information to EPA and DOE as part of their petitions for hardship relief from the Renewable Fuel Standard (RFS) for the 2018 and prior compliance years. Recent media reports indicate that the Secretary of Agriculture is attempting to gain access to the confidential business information (CBI) submitted by small refineries during the hardship petition process. We strongly oppose EPA sharing the small refineries' petitions or supplemental information with the United States Department of Agriculture (USDA) because (1) small refineries submitted the information under claims of confidentiality with the understanding that only EPA and DOE would have access to it, and (2) the USDA has no reason to access small refineries' CBI because it has no legal authority or role with respect to the petitions.

Petitions for hardship relief contain confidential financial information about each small refinery and the unique hardship each refinery experiences under the RFS for all the reasons described in the DOE 2011 Small Refinery Exemption Study. The information is extremely sensitive from a competitive standpoint, illustrating both the financial and commercial vulnerability experienced by the small refinery petitioning for relief. As a result, small refineries have gone to great lengths to protect the confidentiality of their CBI. Disclosure of this information to parties outside of EPA and DOE would not only be improper as a matter of law but would also allow opponents of small refinery exemptions to skew and misuse the confidential information to the detriment of petitioning small refineries and allow competitors to target vulnerable small refineries.

The USDA seeks the small refineries' CBI in order to assert influence over EPA's final decisions and thereby reduce the number of small refinery petitions granted by EPA. This interference is improper as a matter of law. Twelve senators recognized as much in a letter dated June 28, 2019, in which they accurately argue that, under the Clean Air Act (CAA), the Secretary of Agriculture has no

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legal authority or role over the decision-making process for small refinery hardship relief.¹ *See* 42 U.S.C. § 7545(o)(9)(B)(ii) (the CAA authorizes only “the Administrator [of EPA], in consultation with the Secretary of Energy,” to act on petitions from small refineries). Because the USDA has no role in the small refinery hardship petition process, EPA has no reason to give USDA access to the CBI submitted by small refineries as part of their petitions.

Moreover, USDA’s ties to farmers create a significant risk that small refinery CBI released to the USDA will be shared beyond the agency. Secretary of Agriculture Sonny Perdue has made clear his commitment to farmers by expressing his position that farmers should have greater access to small refinery exemption information.² And, before taking his current role, Deputy Secretary of Agriculture Stephen Censky served as chief executive officer of the American Soybean Association for 21 years, an organization opposed to small refinery exemptions.

Lastly, EPA is months behind in issuing its small refinery hardship decisions for the 2018 compliance year, compounding the hardship to small refineries rather than relieving it. The USDA’s demand for small refinery hardship information is undoubtedly causing or contributing to the delay in issuing those decisions. The decision whether to grant small refinery hardship is a legal decision, not a political one and EPA should act in accordance with the law and the several Court decisions directing EPA to grant hardship relief as Congress intended.

For these reasons, we urge EPA to continue to protect the CBI submitted by small refineries as part of their hardship petitions against the USDA. We would view any release of CBI to USDA as an indication that USDA was given improper influence over the decision-making process for small refinery hardship relief.

Thank you in advance for your consideration.

Very truly yours,



LeAnn Johnson Koch

cc: Mr. Clint Woods (via electronic mail)

¹ *See* Letter from Senators Barrasso, Capito, Enzi, Inhofe, Wicker, Cornyn, Lankford, Toomey, Kennedy, Cassidy, Cruz, Lee, and Daines, to President Trump (June 28, 2019).

² *See, e.g.*, Spencer Chase, “EPA launches new RFS transparency website,” *Agri-Pulse*, September 20, 2018.