

United States Senate

WASHINGTON, DC 20510

November 26, 2019

The Honorable Andrew R. Wheeler
Office of the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 0460

RE: EPA-HQ-OAR-2019-0136-0352

Dear Administrator Wheeler:

We are concerned by the recent actions of the U.S. Environmental Protection Agency (EPA) that seem to undermine the regulatory relief required under the Clean Air Act (the Act) and the promises by President Trump to protect refinery jobs in light of the potentially adverse effects of the Renewable Fuel Standard (RFS). Your October 15, 2019, *Proposed Volumes for 2020 and Biomass-Based Diesel Volume for 2021: Supplemental Notice* (the Supplemental) dealing with the manner in which EPA would set future renewable volume obligations (RVOs) describes a potential program that runs counter to the law and intent of the Act. We believe that an attempt to reallocate exempted small-refiner volumes back on the industry as a whole is contrary to law and will have the unintended consequence of diminishing energy security and endangering industrial jobs from Pennsylvania to Texas to California.

As you know, the EPA proposed in its initial 2020 RVO rulemaking that refiners must use—and therefore presumably motorists must consume—15 billion gallons of conventional biofuel. The Supplemental, however, effectively increases the mandate above 15 billion gallons by establishing a program that attempts to forecast future Small Refinery Exemption (SRE) volumes and reallocate them to the remaining refineries subject to the RVO. Reallocation would not only violate the law, but would also undermine the SRE program and exacerbate the market distortions caused by the RFS.

The Act does not authorize the EPA to pass the exempted ethanol-volume obligations to refineries that do not qualify for the exemptions. Such an action only shifts the economic hardship Congress intended to address through the SRE program to non-exempt refineries that are otherwise in compliance with RFS obligations. In addition to arbitrarily imposing additional costs on non-qualifying refineries without any due process of law, the proposal to reallocate exempted volumes seems inconsistent with rulings from multiple federal courts requiring the EPA to faithfully execute its obligation to grant SREs when there is “disproportionate economic hardship.”

The entire concept of prospectively recovering SRE volumes is based on a false premise that fair treatment of smaller refineries hurts ethanol demand. The overwhelming consensus of data—confirmed by this EPA in hearings before Congress this year—shows that SREs do not suppress U.S. ethanol production or demand. Domestic ethanol consumption is already robust and blending

levels are high. University of Illinois at Urbana–Champaign agricultural economist Scott Irwin found that “there is little if any evidence that the physical use of ethanol has declined during the last year.” You yourself confirmed this fact in a House hearing on September 19, 2019, when you said, “Ethanol demand has not been impacted by the small refinery program. In fact, we’ve seen an uptick in ethanol over the past two years. So far this year, the industry has produced more ethanol than they did at this point last year”

Twice, the administration had agreed to reform proposals that would contain the regulatory costs on refiners and also dramatically increase the amount of corn and ethanol sold each year. One of those proposals—allowing RINs for exports—would have increased ethanol sales by an additional 1.2 billion gallons a year, addressing a major complaint of America’s farmers that export markets are diminishing. Those proposals, however, are not included in the Supplemental.

The Supplemental is deeply flawed, unlawful, and will have numerous unintended consequences. Now is not the time to increase regulatory costs and endanger U.S. jobs. Instead, we should be strengthening our economy and working together to implement win-win solutions that benefit both our hardworking corn farmers and refinery workers.

Sincerely,



Senator Ted Cruz



Senator John Kennedy