



For Immediate Release:
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Senators Call on President Trump to Fight for Small Refineries

WASHINGTON, D.C. — Today, U.S. Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW), along with a dozen other senators, sent a letter to President Trump urging him to file a petition for a rehearing of the U.S. Court of Appeals for the Tenth Circuit’s decision to invalidate hardship relief for small refineries under the Renewable Fuel Standard (RFS).

The letter was also signed by Sens. Jim Risch (R-ID), Mike Enzi (R-WY), Jim Inhofe (R-OK), Mike Crapo (R-ID), Shelley Moore Capito (R-WV), Steve Daines (R-MT), John Kennedy (R-LA), Mike Lee (R-UT), James Lankford (R-OK), Ted Cruz (R-TX), Pat Toomey (R-PA), and Roger Wicker (R-MS).

In the letter, the senators urge the president to act regarding the decision and if necessary, seek review by the U.S. Supreme Court.

Read the full letter [here](#) and below.

Dear President Trump:

We are deeply concerned about a recent decision by a three-judge panel of the U.S. Court of Appeals for the Tenth Circuit, invalidating hardship relief for three small refineries under the Renewable Fuel Standard (RFS). If allowed to stand, the decision will put a dozen small refineries in the Tenth Circuit under severe financial strain and thousands of jobs at risk. If applied nationally, it will jeopardize nearly all small refineries. More widely, the decision will dramatically increase RFS compliance costs for refineries of all sizes and raise gasoline prices for American drivers. We urge you, in the strongest terms, to file a petition for rehearing en banc and, if necessary, seek review by the U.S. Supreme Court. We also urge you to oppose pending efforts asking the D.C. Circuit to apply the Tenth Circuit’s decision nationally.

In granting standing to a biofuels coalition, the three-judge panel found that the coalition was harmed by EPA's decisions to grant relief to two small refineries for 2016 and one small refinery for 2017. We find this inconsistent with the facts and legal precedent. Data from the Energy Information Administration shows that ethanol blending rates have remained steady or increased since 2016. Last September, Administrator Wheeler testified that "[e]thanol demand has not been impacted by the small refinery program." We note that, in 2018, a federal bankruptcy court rejected standing for a biofuel coalition alleging harm from EPA's decision to forgo retiring 426 million compliance credits (or RINs) for a large refinery. That is over triple the amount of relief that EPA granted the three small refineries at issue in the recent Tenth Circuit decision.

On the merits, the three-judge panel held that if a small refinery has not received hardship relief each year since 2006, it is no longer eligible to receive hardship relief. The ruling all but ignores the plain text of the Clean Air Act, which states that a small refinery may apply for hardship relief "at any time." It also conflicts with the position of the EPA over Democrat and Republican administrations – namely, that a small refinery is eligible for hardship relief whether or not it received relief in the prior year. The ruling is also at odds with a decision from the U.S. Court of Appeals for the Fourth Circuit, which implicitly acknowledged that small refineries are eligible to receive hardship relief whether or not they had received relief each year since 2006. We note that, in a prior case, the Tenth Circuit did not even inquire whether a small refinery had received relief each year since 2006, suggesting the question was irrelevant.

As Administrator Wheeler put it, the Tenth Circuit's decision "has the potential of completely changing the small refinery program." If allowed to stand and applied or adopted nationwide, it is believed that only two small refineries would still be eligible for hardship relief, putting tens of thousands of jobs at dozens of ineligible small refineries at risk. Since the decision, the price of RFS compliance credits (or RINs) has already tripled. If your administration does not appeal the decision, RIN prices will increase exponentially. Higher RIN prices will inevitably mean higher gasoline prices for American families and businesses. We trust that you share our view that higher fuel prices and fewer jobs are the last thing the American public or economy need.

Thank you in advance for your consideration.

Sincerely,

John Barrasso, M.D.

James E. Risch

Mike Enzi

James M. Inhofe

Mike Crapo

Shelley Moore Capito

Steve Daines

John Kennedy

Mike Lee

James Lankford

Ted Cruz

Pat Toomey

Roger F. Wicker

Background Information:

On Dec. 2, 2019, Barrasso sent a [letter](#) to EPA Administrator Wheeler to express his opposition to the agency’s proposal regarding the Renewable Fuel Standard (RFS). EPA proposed to reallocate the blending obligations of small refineries, which receive hardship relief under the RFS, to refineries (small and large), which do not receive or are ineligible for hardship relief.

On August 12, 2019, Barrasso [praised](#) the Trump administration’s decision to grant hardship relief to 31 small refineries under the RFS for compliance year 2018.

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