June 20, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Washington, DC

Dear Administrator Pruitt:

We write to convey our grave concerns and request additional information regarding your failed implementation of the Renewable Fuel Standard (RFS) program. We are deeply troubled by the lack of transparency and continued manipulation of the RFS program through your misuse of the small refinery exemption process authorized in section 211(o)(9) of the Clean Air Act (CAA).

The Environmental Protection Agency (EPA) continues to hurt farmers and undermine the biofuels market by extending waivers to an unusually large number of refineries. Agricultural communities, especially throughout the Midwest and Southern Plains, are experiencing financial hardship due to low commodity prices and reduced access to foreign markets resulting from uncertainties in our trade policies. Additionally, your implementation of the RFS program is undercutting the market for renewable fuels, and inflicting further economic pain in rural communities and throughout the agriculture sector.

Exceeding Clean Air Act Authority

EPA reportedly granted dozens of small refinery waivers[1] and awarded millions of dollars' worth of renewable fuel blending credits to refiners based upon the denial of an extension of a waiver in 2014.[2]

We believe EPA has exceeded its authority under the CAA through the retroactive award of Renewable Identification Numbers (RINS) and by attempting to compensate companies by providing them RINs. Additionally, EPA appears to have further exceeded its authority by issuing RINs that do not represent the production of any actual gallons of biofuels. For example, EPA recently issued RINs worth millions of dollars to two companies, Sinclair Oil and HollyFrontier, on the basis that they did not receive extensions of a waiver in 2014. However, it

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[1] *U.S. ethanol groups bristle as EPA frees refiners from biofuels law*, Reuters (Apr. 4, 2018) (www.reuters.com/article/us-usa-biofuels-epa-refineries/u-s-ethanol-groups-bristle-as-epa-frees-refiners-from-biofuels-law-idUSKCN1HB2AH).

[2] *U.S. EPA grants refiners biofuel credits to remedy Obama-era waiver denials*, Reuters (May 31, 2018) (www.reuters.com/article/us-usa-biofuels-waivers-exclusive/exclusive-u-s-epa-grants-refiners-biofuel-credits-to-remedy-obama-era-waiver-denials-idUSKCN1IW1DW).

is unclear how, if at all, these RINs represent gallons of renewable fuel as required under the law. We are concerned EPA may be issuing RINs worth millions of dollars that represent phantom biofuels.[3]

Dramatic Rise in Hardship Among Refineries is Not Credible

Congress did not intend to permanently relieve small refineries of the obligation to comply with the RFS program. The Energy Policy Act of 2005 provided the original waivers for these facilities through 2011, with the potential for the Administrator to extend a waiver through 2013 if it were warranted based upon information provided in the required Department of Energy (DOE) analysis.

Although the original exemption was provided to 59 refineries, less than half of those responded to DOE's survey that initially would allow them to receive an extension of a waiver for an additional two years.[4] DOE noted in the report summary that several large companies with small refining facilities that received exemptions previously notified DOE that "they were not going to respond to the survey because they did not believe they faced economic hardship."[5]

In 2014, DOE adjusted one of the metrics for scoring small refineries to reflect the improved economic conditions for the refining sector. The adjustment also recognized the fact that obligated parties had developed more physical and contractual compliance mechanisms over the nine years of the RFS program's existence.[6] It is difficult to believe that 13 years into the RFS program, with an economy that is clearly benefiting the oil and refining sectors, that there could be such a dramatic increase in the number of small refineries suffering 'disproportionate economic hardship' – especially those that are part of large, integrated firms.

Lack of Transparency Undermines RFS Program Implementation

By authorizing these waivers in secret, EPA risks creating significant opportunities for market manipulation, uncertainty for regulated entities, and an opportunity to reduce annual renewable volume obligations (RVOs) in an opaque and arbitrary manner.

At a minimum, EPA should be identifying publicly any facility receiving an exemption of its obligation to comply with the RFS. EPA should also provide summary statistics revealing the total number of gallons of biofuels represented by the exemptions granted within a compliance

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[3] *Sinclair Wyo. Ref. Co. v. United States EPA*, 874 F.3d 1159 (10th Cir. 2017).

[4] Department of Energy Office of Policy and International Affairs, *Small Refinery Exemption Study An Investigation into Disproportionate Economic Hardship* (Mar. 2011) (www.epa.gov/sites/production/files/2016-12/documents/small-refinery-exempt-study.pdf).

[5] *Id.* at vii.

[6] U.S. Department of Energy; Office of Energy Policy and Systems Analysis, *Addendum to the Small Refinery Exemption Study An Investigation into Disproportionate Economic Hardship* (May 2014) (www.epa.gov/sites/production/files/2016-12/documents/rfs2-small-refiner-study-addendum-05-2014.pdf).

year. Withholding this information ensures that only a select few participants have information material to the market for renewable fuels and RINs.

Markets cannot function properly without transparency. Company names and awards of exemptions by a federal agency are not confidential business information. In fact, publicly traded firms are required to report the value of these exemptions to the Securities and Exchange Commission, and much of the reporting on these exemptions has been due to examination of these public documents. Withholding this information makes EPA complicit in any unfair manipulation of the renewable fuels and RINs markets.

We request that you provide us with information regarding this recent phenomenon, so that we can evaluate the need for this expansion of the exemption process. Please provide responses to the following specific requests:

1. What is the total number of small refinery exemption petitions that EPA received in each year from 2013 through 2017?

2. For each year from 2013 through 2017, how many exemptions did the EPA grant?

3. What is the total volume of renewable fuels represented by the exemptions granted for each year 2013 through 2017?

4. What is the process for confirming that each refinery submitting a petition falls beneath the 75,000 barrel-per-day throughput capacity? Please provide written documentation of the EPA review process, including all compliance, and verification conducted by EPA staff.

5. What threshold number of gallons exempted under the small refinery exemption does EPA believe represents a significant enough proportion to require an adjustment either to the current compliance year's RVO or to the next compliance year's RVO to assure compliance with the annual volume requirements set by section 211(o)(2)(B)(i) of the Clean Air Act?

6. Are any exempted gallons reassigned to remaining obligated parties for blending? If so, are they reassigned within the same compliance year? If they are not reassigned to the remaining obligated parties, what is the disposition of those gallons relative to the overall RVO set by the annual rules?

7. Did you inform President Trump or White House staff of the potential effects on the renewable fuel market of exempting a significant proportion of the annual renewable fuel blending requirement and the effects of such demand erosion on agricultural commodity prices and the economy in rural communities?

8. Did you consult with Secretary Perdue and USDA officials regarding the effects on agricultural commodity prices and the economy in rural communities?

9. DOE's publicly available 2011 study and addendum to the study clearly explain the metrics DOE uses to evaluate a small refinery's petition for an exemption under the

program. Please provide EPA's established metrics for evaluating small refinery petitions.

10. Did EPA consult with DOE on each of the petitions for a small refinery exemption for 2016 and 2017? How many of the applications reviewed by DOE did the Department recommend receive an extension of an exemption? For how many of the applications reviewed by DOE for these two compliance years did EPA disagree with DOE's recommendation to grant or deny the exemption?

11. Companies with multiple refining facilities can select to comply with the RFS program either on a company-wide basis or on a facility-by-facility basis. How many obligated parties with multiple facilities selected to comply on a facility-by-facility basis in 2016, 2017, and 2018?

12. It is our understanding that EPA has never awarded RIN's to a facility for past compliance years. Provide the citation to the law or the regulation that you relied upon in issuing new RINs to Sinclair Refining Company and HollyFrontier Refining Company.

13. As we are now well-past the time of the initial issuance of exemptions, please provide the list of 59 small refineries that EPA initially exempted from compliance with the RFS from 2011 to 2013, and the list of the 13 small refineries that DOE recommended receive an extension of their exemption through 2013.

We remain extremely concerned about your implementation of the RFS program and its effects on rural communities. Your actions are clearly designed to enrich the oil industry at the expense of farmers and the renewable fuels industry by undermining the RFS program. We request that you suspend the small refinery exemption process until you provide Congress with information to evaluate this program. We anticipate receiving your responses to our request by Friday, July 6, 2018.

Sincerely,

Dave Loebsack
Member of Congress

Cheri Bustos
Member of Congress

Paul Tonko
Member of Congress

Collin Peterson
Member of Congress

Bobby L. Rush
Member of Congress

Ann McLane Kuster
Member of Congress

Diana DeGette
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Tim Walz
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Richard M. Nolan
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Tom O'Halleran
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