GOVERNOR GREG ABBOTT

December 1, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Pruitt:

On behalf of the State of Texas, please accept this request for a waiver of the mandate of the Renewable Fuel Standard (RFS) consistent with Section 211(o)(7) of the Clean Air Act (CAA) (42 U.S.C. §7545(o)(7)) as amended by the Energy Independence and Security Act of 2007. Current implementation of this dated federal mandate severely impacts Texas' otherwise strong economy and jeopardizes the employment of hundreds of thousands Texans.

It should come as no surprise that RFS is of major importance to Texans and Texas industry. We have 29 refineries in the state which produce over 5.1 million barrels daily — roughly one-third of U.S. capacity.[1] Texas leads the nation in both crude oil production and refining. Our oil and gas sector employs 315,000 people, 100,000 of whom are in refining and petrochemical production; each of these jobs creates 14 indirect jobs. The industry supports the state by paying five times more taxes per worker than the average in other private sector companies. This revenue goes toward funding Texas schools, Medicaid and children's health insurance programs, child protective services, infrastructure, and first responders such as police and firefighters. Texas has the largest concentration of jobs in the refining industry worldwide, so it goes without saying that the economy of the oil and gas sector is absolutely critical to the economy of the Lone Star State. Of course, the need for refined products reliably and affordably produced demonstrates that the Texas refining industry is critical to the economy and security of the nation as a whole.

Yet the strength and resiliency of the industry — and by extension, Texas' economy — is threatened by a restrictive federal mandate. The Environmental Protection Agency (EPA) had been considering — whether formally or informally — several avenues to address problems within the RFS program but has failed to take action to steady the volatile tradeable credits market, known as

[1] US Energy Information Administration, Gulf Coast refinery runs are approaching levels seen prior to Hurricane Harvey, Oct. 26, 2017, at https://www.eia.gov/todayinenergy/detail.php?id=33492

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Renewable Identification Numbers (RINs). The escalating and unjustified RINs prices are creating a severe economic hardship for refiners, small retailers, consumers, skilled labor, and others.

In recent years, RINs, which are mere pieces of paper created to demonstrate compliance with RFS, have escalated in price to over $1.40 per gallon of ethanol equivalent and are traded on a dark market subject to manipulation and even fraud. RINs were originally assumed to be a no-cost or low-cost measurement of compliance, yet now industry finds itself spending billions of dollars on these credits annually. These dollars are not taxes, but massive wealth transfers from the petroleum refining sector to blenders and traders.

Texas companies directly suffer from spiked RINs prices. During previous RINs spikes, Texas merchant refiners lost as much as 64 percent of stock value.[2] While it is true that some companies have made money off of expensive RINs, the majority of refiners are hurt by them. The national trade association for the sector — the American Fuel & Petrochemical Manufacturers — voted to endorse petitions to EPA to address high RINs prices. In Texas, of our 29 refineries, it is estimated that 22 are held by companies in a short position — meaning they are hurt directly by high RINs prices. Alex Holcomb, professor of finance at The University of Texas–El Paso, studied the impact of high RINs prices on employment nationwide, finding that:

> …the RIN mandate, as its currently structured, puts refiners at higher risk of bankruptcy, placing at risk a significant number of jobs that are tied to the refinery sector both directly and indirectly. As is usually the case in bankruptcy, workers end up suffering the most acute economic hardship, especially if they are unable to quickly find comparable re-employment. From steel workers to truckers, to the men and women earning minimum wage at their local gas station, an estimated 75,000 to 150,000 American jobs are potentially at risk if U.S. independent refiners go out of business.[3]

As a result of the increasingly unpredictable cost of RINS, refiners are exploring all options to reduce these escalating costs, including exporting product, which reduces fuel inventories in the United States, increasing the cost of fuel available to U.S. consumers and decreasing the U.S.'s energy independence and self-reliance strategy mentioned in the goals of the legislation when passed. The cost of RINS exceeds the cost of labor for some refineries, causing the most harm to inland refineries, which are not equipped to export product to reduce their costs.

Small retailers, representing approximately 75 percent of the retail gasoline market, are harmed by high RINs prices, too. According to Professor Bernard Weinstein, a distinguished economist at the Maguire Energy Institute at Southern Methodist University in Dallas, "On a global scale, if profit margins for small, independent retailers continue to narrow in order to 'meet the competition,' even more of these businesses can be expected to fail in coming years. Fewer small retailers, in turn, will

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[2] James Osborne, "As price of biofuel credits spike, refiners suspect market manipulation," Houston Chronicle, Aug. 5, 2016.

[3] Prof. Alex Holcomb, College of Business Administration, University of Texas at El Paso, "Market Analysis of the Proposed Change to the RFS Point of Obligation," Feb. 22, 2017 (report on behalf of the United Steelworkers et al).

result in higher fuel prices for consumers along with a reduction in the services these businesses provide, such as auto repair and maintenance."[4] According to the comments recently received by EPA, many Texas retailers are uniquely squeezed by high RINs prices.

The time is ripe for EPA to grant substantive relief from the unique, adverse impacts the RFS program is having on the state of Texas. The extreme, detrimental impacts on large portions of the refining sector have now placed unacceptable burdens on the Texas economy and the economy and security of the nation as a whole. The program is now placing tremendous burdens on industrial and retail employment, and capital expansion and construction in the refining sector. CAA allows relief from RFS upon request by a state, and in light of severe harm to the economy of that state, a region — such as the refinery-heavy Gulf Coast — or the nation as a whole.

Therefore, I am formally requesting an appropriate waiver of the renewable volume obligation under RFS consistent with Section 211(o)(7) of CAA and reasonable use of enforcement discretion in order to address implementation issues and stabilize the RINs market at relative concentrations closer to those originally anticipated by Congress and predicted by EPA at the outset of the program. The Renewable Volume Obligation (RVO) for Renewable (D6) should be set at no higher than 9.7 percent of the gasoline pool, in order to ensure it is below the blend wall and does not inherently create a shortage of RINS due to already maximized blending capacity. EPA's newly proposed RVO compounds the blend wall issues, further necessitating hardship relief.

I urge you to begin the formal process of responding to this request as soon as possible. My staff stands ready to work with you and to answer any questions you may have. But timely action is critical to prevent further adverse impact on refiners, retailers, their skilled workers and our consumers and economy as a whole. Thank you for your prompt consideration.

Sincerely,

Greg Abbott

Greg Abbott
Governor

cc: The Honorable Rick Perry, Secretary, U.S. Department of Energy
The Honorable Sonny Perdue, Secretary, U.S. Department of Agriculture

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[4] Prof. Bernard L. Weinstein, Maguire Energy Institute, Cox School of Business, Southern Methodist University, "RINs Trading under the Renewable Fuels Program: Continued Unintended Consequences for Small Fuel Retailers, Feb. 2017.