PETITION FOR REVIEW

Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1) the Advanced Biofuels Association (“ABFA”) hereby petitions the United States Court of Appeals for the District of Columbia Circuit for review of the Environmental Protection Agency’s (“EPA”) decision to modify the criteria or lower the threshold by which the Agency determines whether to grant small refineries an exemption from the Clean Air Act’s Renewable Fuel Standards (“RFS”) for reasons of “disproportionate economic hardship” pursuant to 42 U.S.C. § 7545(o)(9)(B)(i). This modified criteria or lowered threshold was applied to exempt an unknown—but reportedly historically high—number of refineries from their 2016 and 2017
obligations to participate in the RFS program by either blending their share of renewable fuel or purchasing renewable fuel credits on the market.

Upon information and belief, EPA has granted exemptions to an unprecedentedly large number of refineries. However, EPA has thus far refused to provide—even upon receiving requests from members of Congress—basic information about the refineries that receive exemptions or the Agency’s rationale for granting individual exemptions due to alleged protections for confidential business information.¹

EPA’s change to the threshold for demonstrating “disproportionate economic hardship” and the Agency’s retroactive grant of a historically unparalleled number of exemptions has destabilized the national renewable fuels market, economically harmed ABFA’s members, and has undermined Congress’s goals for the RFS Program.

A change of this magnitude in the number of exemptions granted is implausible and cannot be ascribed to year-to-year changes in the renewable fuels

¹ Letter from Charles E. Grassley, United States Senator, to Scott Pruitt, Environmental Protection Agency Administrator (Apr. 12, 2018), https://www.grassley.senate.gov/sites/default/files/Pruitt%20Small%20Refinery%20Letter%204.12.18.pdf (Explaining that recent reports indicate “the EPA has already issued 25 ‘disproportionate economic hardship waivers’” and requesting that EPA “[p]rovide a full list of the refiners that have received a refinery waiver in 2016, 2017 or 2018, including the name, location, refining capacity, date waiver was issued, and number of gallons waived.”) This letter is attached as Appendix A.
market, but can only be attributable to a decision by EPA to modify the criteria or lower the threshold by which it evaluates and grants exemptions in a manner that is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law.

The Corporate Disclosure Statement required by FRAP 26.1 and D.C. Circuit Rule 26.1 is attached as Appendix B. The Certificate of Service and the list of parties served with this petition are attached as Appendix C.

Date: May 1, 2018

Respectfully submitted,

/s/ Rafe Petersen
Rafe Petersen
(D.C. Cir. # 45497)
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Counsel for the Advanced Biofuels Association
April 12, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

We are writing to you regarding the actions the Environmental Protection Agency (EPA) has taken to undermine commitments President Trump made on the Renewable Fuel Standard (RFS) to our constituents. Recent reports indicate dozens of small refiner waivers have been secretly granted to large, multi-billion-dollar companies under the guise of the small refinery hardship exemption provision in section 211(o)(9) of the Clean Air Act. This is extremely concerning to us.

During your confirmation hearing for the post of Administrator of the EPA, you said, “Any steps that the EPA Administrator takes need to be done in such a way as to further the objectives of Congress in that statute, not undermine the objectives of Congress in that statute.” You also wrote to a number of Senators in October 2017 and said, “I reiterate my commitment to you and your constituents to act consistent with the text and spirit of the RFS. I take seriously my responsibility to do so in an open and transparent manner that advances the full potential of this program...”

According to recent reports, the EPA has already issued 25 “disproportionate hardship” waivers to large, multi-billion-dollar refining companies reporting billions of dollars of profits since 2016. Such action would represent a clear violation of your commitments and clearly undermine the President’s long-standing support of the RFS.

These waivers fall well outside the bounds of the letter or spirit of this provision in the law, which sought to provide flexibility for the smallest of U.S. refiners, and only in cases of genuine hardship. Worse, EPA’s actions are already hurting biofuel producers and farmers across the United States at a time when farm income is at the lowest levels since 2006 and retaliatory trade measures from China threaten to deepen the crisis.

In 2015, 37 Senators wrote to the EPA requesting that the agency issue a strong Renewable Volume Obligation (RVO), citing the RFS’s success in driving economic development, strengthening agriculture markets, and creating hundreds of thousands of clean energy jobs in rural communities. Early reports indicate that the small refinery waivers you have granted could effectively cut biofuel demand by 1.5 billion gallons, thus effectively lowering President Trump’s commitment to seeing 15 billion gallons of ethanol blended to 13.5 billion. Additionally, once these select refiners are no longer responsible for complying with these 2016 requirements, they are able to sell excess Renewable Identification Numbers (RINs) back into the market, increasing supply and lowering the price.
This further reduces incentives for blending, slashing demand for biofuels and feedstocks, and hurting farmers and biofuels companies. These waivers could cripple the market for years to come, holding back homegrown biofuels while creating a windfall profits for large oil refiners -- the exact opposite of this administration’s promise to voters.

Perhaps most concerning, these lucrative waivers have reportedly been issued behind closed doors, outside of the public process, while the EPA has simultaneously been working with refineries to pressure President Trump to sign off on a RIN cap that would wreak further havoc on the RFS.

We request that you take the following actions immediately:

- Cease issuing any refinery waivers under the RFS;
- Provide a full list of the refineries that have received a refinery waiver in 2016, 2017 or 2018, including the name, location, refining capacity, date waiver was issued, and number of gallons waived;
- Provide a detailed report to Congress within two weeks of receipt of this letter that describes your justification for providing each of these waivers. Specifically, please include whether the volumes were redistributed to other obligated parties. If the volumes were not redistributed, please explain why they were not and the reason EPA decided to undercut the RVOs against the President’s commitment;
- Respond in writing describing your commitment and plan to consider future small refinery waivers only during the annual RVO rulemaking process and commitment to provide full notice and opportunity for comment on any future small refinery waiver requests.

We appreciate your timely response to these matters.

Sincerely,

Charles E. Grassley  
United States Senator

Amy Klobuchar  
United States Senator

Joni K. Ernst  
United States Senator

Debbie Stabenow  
United States Senator

Deb Fischer  
United States Senator

Richard J. Durbin  
United States Senator
John Thune  
United States Senator

Tina Smith  
United States Senator

Roy Blunt  
United States Senator

Claire McCaskill  
United States Senator

Tammy Duckworth  
United States Senator

Heidi Heitkamp  
United States Senator

Joe Donnelly  
United States Senator
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

__________________________________
ADVANCED BIOFUELS ASSOCIATION
  Petitioner,

v.                                            Case No. _____________
U.S. ENVIRONMENTAL PROTECTION
AGENCY and SCOTT PRUITT, Administrator,
U.S. Environmental Protection Agency,
  Respondent.

__________________________________

RULE 26.1 CERTIFICATE OF CORPORATE DISCLOSURE OF
ADVANCED BIOFUELS ASSOCIATION

Pursuant to Federal Rule of Appellate Procedure 26.1, the Advanced
Biofuels Association (ABFA) certifies that it is an independent 501(c)(6) non-
profit trade association registered in the District of Columbia since 2009. ABFA
has no parent corporation, and no publicly held company has ten percent or greater
ownership in ABFA.

ABFA represents more than 35 companies in the United States and around
the world engaged in the production, marketing, and distribution of advanced
renewable fuels regulated under the Clean Air Act’s Renewable Fuel Standard.
Currently, ABFA members produce over 4.4 billion gallons of renewable fuel each
year, including billions of gallons of biodiesel and renewable diesel as well as a
variety of drop-in fuels such as isobutanol, dimethyl ether, cellulosic ethanol, and
cellulosic heating oil. ABFA’s mission is to secure a stable regulatory environment
and level playing field for advanced renewable fuels on behalf of its members.

Date: May 1, 2018

Respectfully submitted,

Rafe Petersen /s/  
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Counsel for the Advanced Biofuels Association
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

ADVANCED BIOFUELS ASSOCIATION

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY and SCOTT PRUITT, Administrator,
U.S. Environmental Protection Agency,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Review and Rule 26.1 Disclosure Statement were served by placing them in the U.S. mail, first class, postage prepaid, this 1st day of May, 2018, upon each of the following:

Attn: Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Attn: Matthew Z. Leopold  
General Counsel 
Environmental Protection Agency 
1200 Pennsylvania Avenue, N.W. 
Mail Code: 2310A 
Washington, D.C. 20460 

Date: May 1, 2018 

Respectfully submitted, 

Rafe Petersen /s/ 
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