

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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ADVANCED BIOFUELS ASSOCIATION)	
)	
	Petitioner,)	
)	
	v.)	Case No. <u>18-1115</u>
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY and SCOTT PRUITT, Administrator,)	
U.S. Environmental Protection Agency,)	
)	
	Respondent.)	
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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)
HOLLAND & KNIGHT LLP
800 17th Street, N.W., Suite 1100
Washington, D.C. 20006
Telephone: (202) 419-2481
Facsimile: (202) 955-5564
rafe.petersen@hklaw.com

*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.

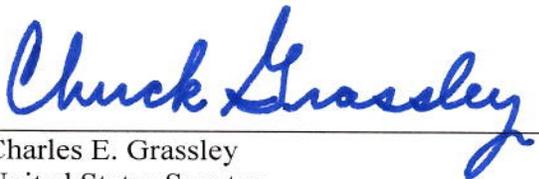
Perhaps most concerning, these lucrative waivers have reportedly been issued behind closed doors, outside of the public process, while the EPA has simultaneously been working with refineries to pressure President Trump to sign off on a RIN cap that would wreak further havoc on the RFS.

We request that you take the following actions immediately:

- Cease issuing any refinery waivers under the RFS;
- Provide a full list of the 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;
- 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



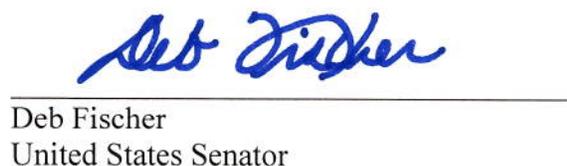
Amy Klobuchar
United States Senator



Joni K. Ernst
United States Senator



Debbie Stabenow
United States Senator



Deb Fischer
United States Senator



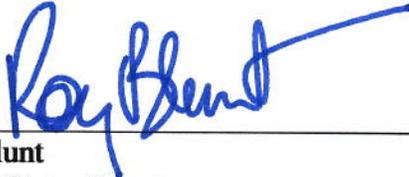
Richard J. Durbin
United States Senator



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

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**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/

Rafe Petersen
(D.C. Cir. # 45497)
HOLLAND & KNIGHT LLP
800 17th Street, N.W., Suite 1100
Washington, D.C. 20006
Telephone: (202) 419-2481
Facsimile: (202) 955-5564
rafe.petersen@hklaw.com

*Counsel for the Advanced Biofuels
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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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(D.C. Cir. # 45497)
HOLLAND & KNIGHT LLP
800 17th Street, N.W., Suite 1100
Washington, D.C. 20006
Telephone: (202) 419-2481
Facsimile: (202) 955-5564
rafe.petersen@hklaw.com

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