

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

<p>RENEWABLE FUELS ASSOCIATION,</p> <p>Petitioner,</p> <p>v.</p> <p>UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,</p> <p>Respondent.</p>	<p>Case No.: _____</p>
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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), Rule 15(a) of the Federal Rules of Appellate Procedure, and Rule 15 of the Tenth Circuit Court of Appeals, the Renewable Fuels Association hereby petitions this Court for review of the United States Environmental Protection Agency’s (“EPA’s”) action on January 19, 2021, granting three small refinery exemption extension petitions under 42 U.S.C. § 7545(o)(9)(B).

Petitioner originally filed a petition for review challenging this EPA action on January 19th in the U.S. Court of Appeals for the District of Columbia Circuit. *See Renewable Fuels Ass’n v. EPA*, No. 21-1032 (D.C. Cir. filed Jan. 19, 2021), ECF No. 1880783. Petitioner simultaneously filed an emergency motion to stay the effectiveness of EPA’s action pending appeal and for an administrative stay

pending consideration of the motion. *Id.*, ECF No. 1880787. On January 21, 2021, the D.C. Circuit granted Petitioner's request for an administrative stay. *Id.*, ECF No. 1880862.

Petitioner filed its initial petition for review and emergency motion to stay in the D.C. Circuit because, at the time of that filing, EPA had not provided a decision document or otherwise identified the recipients of the exemption extensions. Rather, EPA simply notified the public by email (Exhibit A) and updated its web page to show an increase in the total number of small refinery exemption extension petitions that had been granted (Exhibit B).

Petitioner subsequently learned that the challenged exemptions were issued to two small refineries within the Tenth Circuit: the Sinclair Wyoming Refinery and the Sinclair Casper Refinery. *See Sinclair Mot. to Intervene, Renewable Fuels Ass'n v. EPA*, No. 21-1032 (D.C. Cir. filed Jan. 19, 2021), ECF No. 1881891.

Petitioner therefore now believes that the Tenth Circuit is the appropriate venue for this case. Petitioner has also learned that EPA notified Sinclair that it had granted the challenged small refinery exemptions on January 14, 2021, although the Agency did not notify the public until January 19th. *Id.* at 7.

Pursuant to 42 U.S.C. § 7607(b), a petition for review of EPA action under the Clean Air Act that is "locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit." This Court has

confirmed that it is the appropriate venue for a petition for review challenging EPA's decisions granting petitions for small refinery exemption extensions to refineries within the Tenth Circuit when such decisions are unpublished and are not based on a determination of nationwide scope or effect. *See Renewable Fuels Ass'n v. EPA*, 948 F.3d 1206, 1214 (10th Cir. 2020), *cert. granted sub nom. HollyFrontier Cheyenne Refining LLC v. Renewable Fuels Ass'n*, No. 20-472 (U.S. Jan. 8, 2021).

Petitioner intends to dismiss the D.C. Circuit case once this Court has addressed any challenges to its jurisdiction in this case. Petitioner will move to hold the D.C. Circuit case in abeyance in the interim.

Date: February 8, 2021

Respectfully submitted,

/s/ Matthew W. Morrison

Matthew W. Morrison

Cynthia Cook Robertson

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CERTIFICATE OF CORPORATE DISCLOSURE

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioner provides the following corporate disclosure statement:

The Renewable Fuels Association is a non-profit trade association. Its members are ethanol producers and supporters of the ethanol industry. It operates for the purpose of promoting the general commercial, legislative, and other common interests of its members. The Renewable Fuels Association does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

Date: February 8, 2021

Respectfully submitted,

/s/ Matthew W. Morrison

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*Counsel for Renewable Fuels
Association*

CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Appellate Procedure 15(c) and Tenth Circuit Rule 15.2, I certify that on February 8, 2021, I will serve via FedEx overnight delivery copies of the foregoing petition for review and corporate disclosure statement upon the following:

Jane Nishida
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Correspondence Control Unit
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Counsel for Sinclair Wyoming Refining
Company & Sinclair Casper Refining Company
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Washington, D.C. 20036

Date: February 8, 2021

Respectfully submitted,

/s/ Matthew W. Morrison
Matthew W. Morrison

CERTIFICATE OF DIGITAL SUBMISSION

In accordance with the Court's CM/ECF User's Manual, I hereby certify that:

- 1) All required privacy redactions have been made per Tenth Circuit Rule 25.5;
- 2) Hard copies of this pleading that may be required to be submitted to the Court are exact copies of the ECF filing; and
- 3) The ECF submission has been scanned for viruses with the most recent version of a commercial virus scanning program, SentinelOne 4.6.11.191 and, according to the program, is free of viruses.

Date: February 8, 2021

Respectfully submitted,

/s/ Matthew W. Morrison
Matthew W. Morrison

EXHIBIT A

-----Original Message-----

From: enviroflash@epacdx.net <enviroflash@epacdx.net>

Sent: Tuesday, January 19, 2021 4:56 PM

To: Geoff Cooper <GCooper@ethanolrfa.org>

Subject: Notice of EPA's Intent to Update RFS Small Refinery Exemption Data

At 7 PM today (EST), January 19, 2021 EPA will provide decisions to some small refineries that have petitioned the agency for RFS small refinery exemptions. At the same time, EPA will update the Renewable Fuel Standard Small Refinery Exemption website (<https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions>) to reflect that information.

EXHIBIT B

Table 2: Summary of Small Refinery Exemption Decisions Each Compliance Year *

Com... Year	Number of Petitions	Number of Grants Issued	Number of Denials Issued	Number of Petitions Declared	Number of Petitions	Number of Pending
2011	42	24	13	3	0	2
2012	41	23	13	3	0	2
2013	30	8	18	0	1	3
2014	28	8	16	0	0	4
2015	28	7	17	1	0	3
2016	29	19	7	0	1	2
2017	37	35	0	0	1	1
2018	44	32	4	2	3	3
2019	32	2	0	0	0	30
2020	15	0	0	0	0	15

EPA, *RFS Small Refinery Exemptions*, [\(https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions#:~:text=Beginning%20with%20the%202013%20compliance,80.1441\(e\)\(2\)\)](https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions#:~:text=Beginning%20with%20the%202013%20compliance,80.1441(e)(2)) (last updated Jan. 19, 2021).