



January 12, 2021

Via Electronic and U.S. Mail

Hon. Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: *Notice of Intent to Challenge Agency Action and Request for Stay Pending Review*

Dear Administrator Wheeler,

The Renewable Fuels Association (RFA) hereby provides notice of its intent to challenge any action the Environmental Protection Agency (EPA) takes to grant small refinery exemptions under the Renewable Fuel Standard (RFS) for the 2019 compliance year. We submit this notice in advance of EPA's action(s) due to the secret nature of EPA's exemption decisions and because we intend to seek time-sensitive injunctive relief. We ask that EPA stay effectiveness of any exemptions granted during the pendency of potential litigation, such that EPA would not reinstate the Renewable Identification Numbers (RINs) retired for compliance by newly exempt refineries until the court has resolved the legal challenge. If EPA cannot agree to a stay, we would file a motion for a stay with the court and would ask that EPA not take action to reinstate RINs until the court has ruled on the motion.

Although the Supreme Court has indicated its intention to review the Tenth Circuit's decision in *Renewable Fuels Association v. EPA*,¹ it remains the most definitive legal pronouncement on whether and when exemptions can be extended. It makes no sense to consider granting any exemptions unless and until that decision is modified. Nor should the Agency consider granting exemptions when it has consistently asserted that RIN compliance costs are passed through to wholesale purchasers, making it impossible to reconcile with a finding of disproportionate economic hardship, as the Tenth Circuit also found.

With just eight days remaining under the current Administration, it makes no sense to take actions that will impact the incoming Administration, which has been clear in its disapproval of the unwarranted expansion of what were to be temporary compliance exemptions early in the RFS program. Most importantly, issuing exemptions would be ill-conceived when the incoming administration would likely make up the exempt volumes by increasing the annual standards for all non-exempt obligated parties. The current Administration's unwarranted and unprecedented expansion of small refinery exemptions over the last four years has only served to destabilize the RIN and commodity markets and spawn litigation that hurts America's farmers and wastes

¹ 948 F.3d 1206 (10th Cir. 2020).

taxpayer resources. We therefore request that EPA refrain from taking any action on the pending 2019 small refinery exemption requests until the Supreme Court has determined whether to affirm the Tenth Circuit's ruling, or at least until the new Administration is in place.

Please let us know if EPA can agree to a stay and we will proceed accordingly.

Sincerely,

A handwritten signature in black ink that reads "Geoff Cooper". The signature is written in a cursive, slightly slanted style.

Geoff Cooper
President and CEO

cc (via electronic mail):

Anne Idsal
Assistant Administrator, Office of Air and Radiation
U.S. Environmental Protection Agency

David Fotouhi
Acting General Counsel, Office of General Counsel
U.S. Environmental Protection Agency