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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-5175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATON, MINORITY STAFF DIRECTOR

March 5, 2018

The Honorable E. Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

The Honorable Rick Perry
Secretary
Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Dear Administrator Pruitt and Secretary Perry:

We write to reaffirm our strong support for your leadership in providing, as Congress intended, relief to small refineries suffering hardship under the Renewable Fuel Standard (RFS). Hardship relief is critical to the commercial viability and survival of small refineries – and the thousands of jobs that they provide – in our home states and across the country. We are deeply troubled by the recent attacks on hardship relief for small refineries and what seem to be the efforts of some opponents to obtain confidential business information about these entities. We urge you, in the strongest terms, to ensure that your staff and contractors do not disclose to any outside parties the confidential and other sensitive information of small refineries that petition for hardship relief.

Under the RFS, a small refinery may petition the Environmental Protection Agency (EPA) for relief from its annual renewable fuel volume obligations (RVOs) based on “disproportionate economic hardship.” When evaluating a petition, EPA consults with the Department of Energy (DOE), which uses detailed scoring metrics to determine whether a small refinery would suffer disproportionate economic hardship. Generally, a small refinery must experience a high cost of compliance relative to the industry average or an effect sufficient to cause a significant impairment of the refinery’s viability. To show this, a small refinery must submit confidential and other sensitive information about its financial status, compliance status, and market position, the disclosure of which would compound the harm that the RFS already causes to the refinery.

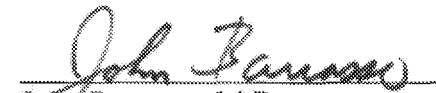
In January, we were alarmed that *Reuters* reported the number of small refineries currently petitioning for hardship relief. While we understand that EPA and DOE consider the identity of these small refineries to be confidential business information, we are concerned that opponents may be trying to obtain this and other highly sensitive information through other means, such as federal securities laws, Freedom of Information Act requests, and contacts with government officials involved in this process. Many of these opponents compete with small refineries by, for example, selling refined products in the same market or renewable identification numbers to small refineries. If opponents obtain this information, they would be able to extract even greater profits from or at the expense of small refineries. EPA and DOE must not let that happen.

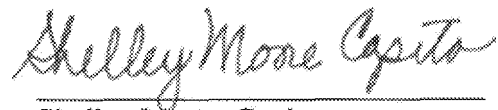
Under the RFS, EPA’s responsibility is not to maximize the amount of corn ethanol used as transportation fuel. Nor is it to enhance the competitive position of large refiners and others who profit from the RFS. Rather, EPA’s responsibility is to apply the law, which requires the

Administrator, in consultation with the Secretary, to provide relief to any small refinery that would suffer disproportionate economic hardship from the RFS. We ask you to continue to fulfill this responsibility and do so in a timely manner. We make this request regardless of whether EPA continues its long-standing practice – which we strongly support – of *not* allocating the annual RVOs of small refineries to other refineries when providing relief after setting the RVOs.

Thank you for your consideration and we look forward to your prompt response.

Sincerely,


John Barrasso, M.D.
Chairman


Shelley Moore Capito
Chair
U.S. Senate Subcommittee on
Clean Air and Nuclear Safety