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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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

April 4, 2017

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

Dear Administrator Pruitt:

We are writing to you about hardship exemptions for small refineries under the Renewable Fuel Standard (RFS). We are troubled with your predecessor's rejection of the Secretary of Energy's recommendations in favor of hardship exemption petitions. Congress directed the Administrator of the Environmental Protection Agency (EPA) to consult with the Secretary on these petitions. As you review petitions for hardship exemptions from the 2016 Renewable Fuel Volume Obligations (RVOs), we ask that you give meaningful consideration to the Secretary's views.

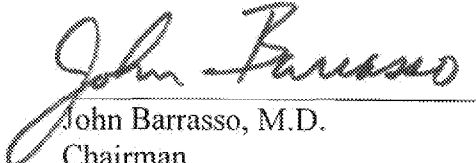
Under the Clean Air Act, a small refinery may petition the Administrator for an exemption from its annual RVOs under the RFS on the basis of "disproportionate economic hardship." When evaluating a petition, Congress directed the Administrator to consult with the Secretary of Energy. Historically, the Secretary used a two-part test to determine whether a small refinery experiences disproportionate economic hardship. Specifically, a small refinery had to experience: "a high cost of compliance relative to the industry average disproportionate impacts and an effect sufficient to cause a significant impairment of the refinery operations viability."


In 2015, Congress included report language to accompany the "Consolidated Appropriations Act, 2016." This language instructed the Secretary to recommend to the Administrator that EPA grant a 50 percent exemption to small refineries experiencing *either* a high cost of compliance relative to the industry average disproportionate impacts *or* an effect sufficient to cause a significant impairment of the refinery operations viability. Since its adoption, the Secretary has recommended that the Administrator grant petitions for a 50 percent exemption for a number of small refineries. However, we understand that Administrator McCarthy rejected these petitions.

During your confirmation hearing, you stated that "[i]t is not the job of the Administrator...to do anything other than administer the [RFS] program according to the intent of Congress." You rightly emphasized the importance of process, the rule of law, and listening to others. We request that you – in contrast to your predecessor – acknowledge the direction that Congress gave the Secretary with respect to petitions for hardship exemptions and give meaningful consideration to the Secretary's recommendations. This should apply to the 2016 RVOs as well as future RVOs.

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

Sincerely,


John Barrasso, M.D.
Chairman
U.S. Senate Committee on
Environment and Public Works


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

Enclosure

provided for BER. The agreement provides \$75,000,000 for the fourth year of the second five-year term of the three BioEnergy Research Centers. The Department is urged to give priority to optimizing the operation of BER user facilities.

Fusion Energy Sciences.—The agreement continues the new budget structure for fusion energy sciences and provides funding accordingly.

The agreement provides \$214,755,000 for burning plasma science foundations; \$41,021,000 for burning plasma science long pulse; and \$67,224,000 for discovery plasma science, including \$2,750,000 for high energy density science and discovery plasma science opportunities at NDCX-II in support of the mission of Fusion Energy Sciences.

The agreement provides not less than \$71,000,000 for the National Spherical Torus Experiment, not less than \$90,000,000 for DIII-D, and not less than \$18,000,000 for Alcator C-Mod.

The agreement includes funding for the in-kind contributions and related support activities of ITER. In addition to the reporting language included in the bill, the Department shall provide to the Committees on Appropriations of both Houses of Congress not later than February 15, 2016, and again on August 15, 2016, a report on the status of the ITER project and the implementation of the Director General's Action Plan, including new budget projections, project schedule, cost overruns, delays, organizational structure changes, manufacturing deliveries, assembly, and installation.

High Energy Physics.—The agreement provides \$26,000,000 for the Long Baseline Neutrino Facility (LBNF) project construction line. The agreement provides no funding for LBNF within Other Project Costs. It is expected that increased funding for LBNF will come from other Fermi National Laboratory funding within the High Energy Physics account. Within available funds, \$10,300,000 is provided for DESI, \$10,500,000 is provided for LUX ZEPLIN, and \$46,800,000 is provided for the Large Synoptic Survey Telescope Camera. The agreement provides no further funding direction within the High Energy Physics account.

Nuclear Physics.—Within available funds, the Department is encouraged to fund optimal operations for the Relativistic Heavy Ion Collider at Brookhaven National Laboratory. The agreement provides \$100,000,000 for the Facility for Rare Isotope Beams. No further direction is provided for the Nuclear Physics account.

Workforce Development for Teachers and Scientists.—The agreement does not include previous Senate direction for the Computational Sciences Graduate Fellowship program.

ADVANCED RESEARCH PROJECTS AGENCY—ENERGY

The agreement provides \$291,000,000 for the Advanced Research Projects Agency—Energy.

TITLE 17—INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

The agreement provides \$42,000,000 for administrative expenses for the Title 17 Innovative Technology Loan Guarantee Program. This amount is offset by estimated revenues of \$25,000,000, resulting in a net appropriation of \$17,000,000.

The Department is directed to continue to provide to the Committees on Appropriations of both Houses of Congress quarterly reports on the status of the Cape Wind conditional commitment, including an update on ongoing litigation and the risks this litigation poses to the success of the project.

ADVANCED TECHNOLOGY VEHICLES MANUFACTURING LOAN PROGRAM

The agreement provides \$6,000,000 for the Advanced Technology Vehicles Manufacturing Loan Program.

DEPARTMENTAL ADMINISTRATION

The agreement provides \$130,971,000 for Departmental Administration.

Small Refinery Exemption.—Under section 211(o)(9)(B) of the Clean Air Act, a small refinery may petition the Environmental Protection Agency (EPA) Administrator for an exemption from the Renewable Fuel Standard (RFS) on the basis that the refinery experiences a disproportionate economic hardship under the RFS. When evaluating a petition, the Administrator consults with the Secretary of Energy to determine whether disproportionate economic hardship exists. According to the Department's March 2011 Small Refinery Exemption Study, disproportionate economic hardship must encompass two broad components: a high cost of compliance relative to the industry average disproportionate impacts and an effect sufficient to cause a significant impairment of the refinery operations viability.

If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner. The Secretary is also directed to seek small refinery comment before making changes to its scoring metrics for small refinery petitions for RFS waivers and to notify the Committees on Appropriations of both Houses of Congress prior to making any final changes to scoring metrics.

The conference report accompanying the Energy and Water Development and Related Agencies Appropriations Act, 2010, addressed similar issues and directed the Secretary to redo an earlier study done to evaluate whether the RFS program imposes a disproportionate economic hardship on small refineries. In calling for the Secretary to redo the study, the conference report cited the lack of small refinery input into the earlier study, concerns about regional RFS compliance cost disparities, small refinery dependence on the purchase of renewable fuel credits (RINs), and increasing RIN costs. Since then, the dramatic rise in RIN prices has amplified RFS compliance and competitive disparities, especially where unique regional factors exist, including high diesel demand, no export access, and limited biodiesel infrastructure and production. In response to recent petitions, the Secretary determined that the RFS program would impose a disproportionate economic and structural impact on several small refineries. Despite this determination, the Secretary did not recommend, and EPA did not provide, any RFS relief because it determined the refineries were profitable enough to afford the cost of RFS compliance without substantially impacting their viability. The Secretary is reminded that the RFS program may impose a disproportionate economic hardship on a small refinery even if the refinery makes enough profit to cover the cost of complying with the program. Small refinery profitability does not justify a disproportionate regulatory burden where Congress has explicitly given EPA authority, in consultation with the Secretary, to reduce or eliminate this burden.

OFFICE OF THE INSPECTOR GENERAL

The agreement provides \$46,424,000 for the Office of the Inspector General.

ATOMIC ENERGY DEFENSE ACTIVITIES NATIONAL NUCLEAR SECURITY ADMINISTRATION

The agreement provides \$12,526,512,000 for the National Nuclear Security Administra-

tion (NNSA). In lieu of direction in the Senate report, the agreement includes language addressing the Consolidated Emergency Operations Center, which will contain the Energy Resilience and Operations Center, in an earlier section.

Budget Structure Changes.—The agreement provides funding for Weapons Activities consistent with the budget structure in the House report. The NNSA is specifically prohibited from requesting any further changes to the budget structure provided in this Act unless the NNSA has obtained agreement in advance from the Committees on Appropriations of both Houses of Congress.

Laboratory Directed Research and Development.—In light of the report of the Commission to Review the Effectiveness of the National Energy Laboratories, the Secretary is directed to provide a report on the impact of burdening Laboratory Directed Research and Development and provide recommendations on legislative changes to address the Commission's findings.

WEAPONS ACTIVITIES

The agreement provides \$3,846,948,000 for Weapons Activities.

Life Extension Programs and Major Alterations.—The NNSA is directed to clearly account for all costs of any major multi-year stockpile refurbishment activity with a total cost greater than \$1,000,000,000 and shall ensure a formal and comprehensive acquisition management plan is in place to manage such efforts. All reporting and other requirements required by the Committees on Appropriations of both Houses of Congress for "Life Extension Programs" shall also apply to any major multi-year stockpile refurbishment activity with a total cost greater than \$1,000,000,000.

Stockpile Production.—The NNSA is directed to conduct an assessment of the feasibility and costs of work leveling strategies that would reduce the impact of performing simultaneous major refurbishments in the 2020 to 2025 timeframes and to provide a report on its findings to the Committees on Appropriations of both Houses of Congress not later than 120 days after the enactment of this Act. The report shall include a description of costs to accelerate dismantlements prior to 2020 and to extend production of the W98 Alt 370 by two years.

W98-4 Life Extension Program.—Not later than September 15, 2016, the NNSA shall provide to the Committees on Appropriations of both Houses of Congress a report on the independent analysis of the alternatives selected by the NNSA for the W98-4 Life Extension Program as directed in the House report.

Strategic Materials.—The agreement provides \$250,040,000 for Strategic Materials Sustainment to consolidate funding for activities needed to manage the NNSA's inventory of strategic materials, as directed in the House report. This amount includes funding for planning and other activities the NNSA determines are necessary to support the sustainment of strategic materials. The agreement does not include restrictions in the Senate report regarding Domestic Uranium Enrichment.

Advanced Radiography.—The agreement provides \$45,700,000. The agreement does not include restrictions in the House report on the use of funds for new radiography capabilities at Ula. The NNSA is directed to provide an estimate of the cost to develop new radiography capabilities at Ula and detail the costs of any Major Items of Equipment in its budget request.

Inertial Confinement Fusion and High Yield.—The agreement provides \$511,050,000. Within this amount, \$329,000,000 shall be for the National Ignition Facility, \$68,000,000 shall be for OMEGA, and \$7,000,000 shall be for the Naval Research Laboratory.