

JOHN BARRASSO, WYOMING, CHAIRMAN

JAMES M. INHOFE, OKLAHOMA  
SHELLEY MOORE CAPITO, WEST VIRGINIA  
JOHN BOOZMAN, ARKANSAS  
ROGER WICKER, MISSISSIPPI  
DEB FISCHER, NEBRASKA  
JERRY MORAN, KANSAS  
MIKE ROUNDS, SOUTH DAKOTA  
JONI ERNST, IOWA  
DAN SULLIVAN, ALASKA  
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
BERNARD SANDERS, VERMONT  
SHELDON WHITEHOUSE, RHODE ISLAND  
JEFF MERKLEY, OREGON  
KIRSTEN GILLIBRAND, NEW YORK  
CORY A. BOOKER, NEW JERSEY  
EDWARD J. MARKEY, MASSACHUSETTS  
TAMMY DUCKWORTH, ILLINOIS  
CHRIS VAN HOLLEN, MARYLAND

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

April 24, 2018

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR  
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

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

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

Dear Administrator Pruitt and Secretary Perry:

We write to follow up on our letter to you dated March 5, 2018. In that letter, we reaffirmed our strong support for the relief you have provided to small refineries suffering “disproportionate economic hardship” from the Renewable Fuel Standard (RFS). We also expressed deep concern about the attacks on hardship relief and the efforts of some to obtain the confidential business information of small refineries.

Since then, *Reuters* appears to have obtained such information. We urge you, again, to ensure 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. Disclosure of this information would not only compound the harm to small refineries, but may move markets for renewable identification numbers (RINs) and publicly-traded companies.

The Clean Air Act requires EPA to grant relief to any small refinery that suffers disproportionate economic hardship from the RFS. EPA, in consultation with the Department of Energy (DOE), must conduct a detailed, objective analysis based on confidential business information and act within 90 days of receiving a petition. EPA must look at each small refinery on an individual basis – whether or not it is part of a company that also owns other refineries.

During the Obama administration, EPA and DOE raised the threshold for small refineries petitioning for hardship relief and the U.S. Court of Appeals for the Tenth Circuit held their standard to be unlawful. There is nothing in the Act that authorizes EPA to delay or suspend consideration of petitions for hardship relief. Any suggestion otherwise is an interpretation that would not hold up in court.

Historically, EPA and DOE have protected the confidential business information – which includes the identities – of small refineries petitioning for hardship relief. Disclosing this information would give entities selling refined products in the same market as a small refinery a competitive advantage over that refinery. Disclosing this information would also give entities selling RINs to a small refinery an opportunity to extract a higher price from that refinery. This information can even move the entire secondary RINs market, which is measured in billions of dollars.

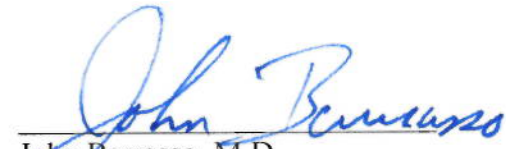
In the past, in the rare instances in which the identities of the petitioners of hardship relief were disclosed, the petitioners *themselves* disclosed this information voluntarily because they believed that disclosure outweighed the harm or was necessary under federal securities laws. We think that failure to protect the confidential business information of the 13 publicly-traded companies that own small refineries would also increase the risk of insider trading and securities fraud.

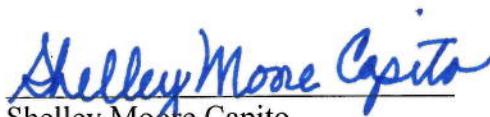
According to EPA's regulations, failure to protect confidential business information "shall constitute grounds for dismissal, suspension, fine, or other adverse personnel action." A willful violation "may result in criminal prosecution." This applies to employees and contractors.

In light of the recent *Reuters* reports and repeated requests from outside parties for the confidential business information of small refineries, we ask that you remind your staff and contractors of their obligations under the law and the consequences for failing to adhere to the law. We applaud you for providing hardship relief to small refineries, as enacted by Congress and ordered by the federal courts.

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

Sincerely,

  
John Barrasso, M.D.  
Chairman

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

CC:

Jay Clayton, Chairman, Securities and Exchange Commission

Enclosures:

*Reuters* article by Jarrett Renshaw and Chris Prentice (April 3, 2018)

*Reuters* article by Jarrett Renshaw and Chris Prentice (April 12, 2018)