

# United States Senate

WASHINGTON, DC 20510

June 28, 2019

President Donald J. Trump  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear President Trump:

Recent media reports indicate that the Secretary of Agriculture is trying to influence decisions on small refineries' petitions for hardship relief under the Renewable Fuel Standard (RFS).<sup>1</sup> We strongly oppose giving the Secretary any role in the decision-making process over the petitions. The Clean Air Act authorizes only "the Administrator [of the Environmental Protection Agency], in consultation with the Secretary of Energy," to act on petitions from small refineries. The law does not give any authority or role over the petitions to the Secretary of Agriculture. Any effort to provide the Secretary of Agriculture influence over the petitions requires an act of Congress.

Notably, the Clean Air Act authorizes the EPA Administrator to consult *both* the Secretary of Agriculture *and* the Secretary of Energy before taking some actions under the RFS. For example, the Administrator must consult both secretaries before determining the volume of biomass-based diesel that must be blended into the nation's fuel supply after 2012 and the volumes of renewable fuel, advanced biofuel and cellulosic biofuel that must be blended into the fuel supply after 2022.

The Administrator must also consult both secretaries before reducing, on the basis of economic harm or inadequate domestic supply, the volumes of renewable fuel, advanced biofuel, cellulosic biofuel and biomass-based diesel that must be blended into the nation's fuel supply. Finally, the Administrator must also consult both secretaries before reducing, on the basis of a feedstock disruption or other market circumstances that would increase the price of biomass-based diesel, the volumes of biomass-based diesel that must be blended into the nation's fuel supply.

These provisions stand in stark contrast to the Act's other provisions that *only* authorize the Administrator to consult with the *Secretary of Energy* on petitions for hardship relief from small refineries. As recently as last week, the nonpartisan Congressional Research Service, explained that: "In light of the Secretary of Agriculture being included with the Secretary of Energy in the other consultation requirements in the statute, a court would likely interpret the *exclusion* of the Secretary of Agriculture from the small refinery exemption provisions as intentional and find that Congress intended that only the Secretary of Energy be consulted for those exemptions."

For these reasons, we ask that you prohibit the Secretary of Agriculture from influencing or interfering with the Administrator's decisions concerning small refineries' petitions for hardship relief. To date, two federal appeals courts have already rebuked EPA for decisions – dating from

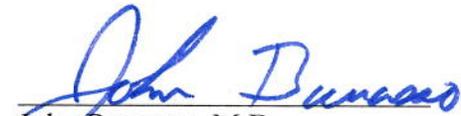
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<sup>1</sup> See, e.g., Rob Hotakainen and Marc Heller, [Trump under growing pressure to block refinery waivers](#), *E&E Greenwire*, June 21, 2019; Jarrett Renshaw, [Trump orders review of controversial biofuel waiver program: sources](#), *Reuters*, June 20, 2019; Timothy Puko and Alex Leary, [Trump Administration Weighs Further Boost to Ethanol](#), *Wall Street Journal*, June 18, 2019.

the Obama administration – denying hardship relief to small refineries. Since you took office, your administration has rightly determined that the law requires it to grant hardship relief to small refineries. We would view any decisions to further delay, reduce, or deny hardship relief to small refineries, or reallocate the obligations of small refineries to other refineries, as the result of the Secretary of Agriculture’s impermissible interference. We are confident that others, including the federal courts, would do the same.

Thank you in advance for your consideration.

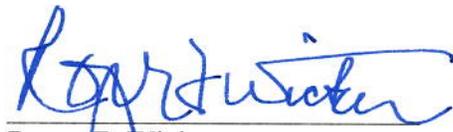
Sincerely,

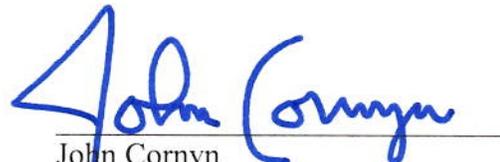
  
John Barrasso, M.D.  
Chairman  
U.S. Senate Committee on  
Environment and Public Works

  
Shelley Moore Capito  
United States Senator

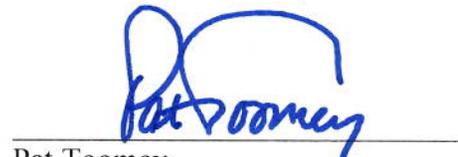
  
Michael B. Enzi  
United States Senator

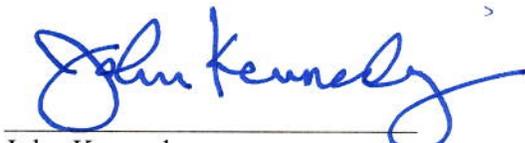
  
James M. Inhofe  
United States Senator

  
Roger F. Wicker  
United States Senator

  
John Cornyn  
United States Senator

  
James Lankford  
United States Senator

  
Pat Toomey  
United States Senator

  
John Kennedy  
United States Senator

  
Bill Cassidy, M.D.  
United States Senator

  
Ted Cruz  
United States Senator

  
Mike Lee  
United States Senator



Steve Daines  
United States Senator

CC: Andrew Wheeler, Administrator, Environmental Protection Agency  
Rick Perry, Secretary of Energy