



GOVERNORS' BIOFUELS COALITION

- **South Dakota** Gov. Kristi Noem, Chair • **Minnesota** Gov. Tim Walz, Vice Chair
- **Executive Director**, Larry Pearce

June 29, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler:

On behalf of the Governors' Biofuel Coalition, we write to express our concern that the Environmental Protection Agency (EPA) is considering 52 applications for retroactive small refinery exemptions (SREs) under the Renewable Fuel Standard (RFS) for past compliance years. These "gap year" exemptions are an attempt to circumvent the recent decision by the Tenth Circuit Court of Appeals in *Renewable Fuels Association v. EPA*, No. 18-9533 (10th Cir. 2020). If these applications are approved, another unnecessary financial burden will be placed on the nation's farmers and consumers. If all 52 applications are approved, the market will lose more than two billion gallons of biofuel blending requirements.

As you know, EPA granted 85 SREs since the beginning of 2017, undermining farmers and biofuel producers throughout the nation. In January, the U.S. Court of Appeals for the Tenth Circuit ruled that EPA could not legally award exemptions to refiners that did not receive waivers in previous years and had failed to demonstrate hardship in any way related to the RFS.

We are concerned that EPA is considering exemptions for prior years that were specifically submitted to evade the court of appeal's decision by allowing refineries with lapsed SREs to establish a continuous chain of exemptions. Approving prior-year SREs in this manner ignores the court's decision and congressional intent and will severely impact farmers and rural communities that support the biofuels industry.

Even before the coronavirus pandemic, the misuse of small refinery waivers under the RFS caused a significant number of plants to partially or fully shut down. The resulting job losses, decreases in commodity purchases and prices, and shortages of co-products affect rural America every day. Your approval of these SRE "gap filings" would only worsen the unprecedented

economic challenges facing the renewable fuels industry and rural communities. We strongly urge you to reject these applications and work with us to uphold the spirit and intent of the RFS by ensuring a role for biofuels in the nation's energy future.

Thank you.

Sincerely,



Kristi Noem, Chair
and Governor of South Dakota



Tim Walz, Vice Chair
and Governor of Minnesota



Kim Reynolds, Former Chair
and Governor of Iowa



Pete Ricketts, Former Chair
and Governor of Nebraska

cc:

Member Governors

The Honorable Sonny Perdue, Secretary of Agriculture

The Honorable Doug Hoelscher, Special Assistant to the President, White House Office of Intergovernmental Affairs

The Honorable Francis Brooke, Special Assistant to the President for Energy and Environmental Policy