

# United States Senate

WASHINGTON, DC 20510

February 3, 2021

Ms. Jane Nishida  
Acting Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Acting Administrator Nishida:

As Senators who represent states with large agriculture interests, we write to highlight the pressing concern of restoring integrity to the Renewable Fuel Standard (RFS) and to alert you to pressing policy decisions that the Administration must make to bring regulatory certainty to the transportation fuels sector of the economy.

Your predecessor, former Administrator Andrew Wheeler, took action to exempt three unidentified oil refineries from their 2018 and 2019 Renewable Fuel Standard (RFS) obligations under the Clean Air Act just hours before the inauguration. These exemptions betrayed earlier assertions made by the Trump Administration that the Environmental Protection Agency (EPA) would not grant or deny additional waivers pending the resolution of ongoing litigation over the use of the small refinery waiver authority. In January 2020, the U.S. Court of Appeals for the Tenth Circuit found that EPA had “grossly exceeded” its authority by granting certain small refinery exemptions. On January 8, 2021, the Supreme Court indicated its intention to review the Tenth Circuit case (*Renewable Fuels Association v. EPA*), with oral arguments expected this spring and a decision by summer.

As this litigation is ongoing, we respectfully ask that you review the three waivers issued by Mr. Wheeler on January 19, 2021. If these waivers do not meet the three-part test laid out in the Tenth Circuit Court of Appeals then we urge you to immediately reverse them and deny the refiners’ waiver requests.

Fortunately, on January 21, 2021, the U.S. Court of Appeals for the D.C. Circuit, acting in response to an emergency motion, ordered an administrative stay of the three exemptions pending further order by the court. The order granting a stay – which does not require a response from EPA until February 3, 2021 – provides you a timely opportunity to carefully review the three midnight waivers and examine the previous administration’s flawed approach to adjudicating waiver petitions. We urge you to take advantage of this opportunity.

Because the Tenth Circuit decision is the most definitive legal pronouncement to date regarding EPA’s small refinery waiver authority, we encourage the Agency to adhere to that decision for the purposes of deciding all pending exemption petitions during the pendency of the Supreme Court’s review of the decision.

EPA could provide additional certainty and stability to the renewable fuels marketplace by swiftly issuing a proposed rule for the 2021 Renewable Volume Obligation (RVO) that provides growth in all renewable fuel categories and finally restores the 500 million gallons of blending

requirements that were illegally removed from the 2016 RVO. Finally, in order to continue growing the market for cleaner, lower-cost biofuels, we respectfully ask that EPA move forward with the E15 streamlining proposal that was published just days before the end of the previous administration.

Not only would the actions requested in this letter restore integrity to the RFS and revive confidence throughout our nation's farm communities, but they would also help fulfill commitments made by President Biden to expand the use of environmentally friendly renewable energy sources.

Sincerely,

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**/s/ Amy Klobuchar**  
Amy Klobuchar  
United States Senator

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**/s/ Charles Grassley**  
Charles Grassley  
United States Senator

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**/s/ Tina Smith**  
Tina Smith  
United States Senator

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**/s/ Joni Ernst**  
Joni Ernst  
United States Senator

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**/s/ Tammy Baldwin**  
Tammy Baldwin  
United States Senator

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**/s/ Roy Blunt**  
Roy Blunt  
United States Senator

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**/s/ Richard J. Durbin**  
Richard J. Durbin  
United States Senator

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**/s/ Ben Sasse**  
Ben Sasse  
United States Senator

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**/s/ Tammy Duckworth**  
Tammy Duckworth  
United States Senator

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**/s/ John Thune**  
John Thune  
United States Senator

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**/s/ Debbie Stabenow**  
Debbie Stabenow  
United States Senator

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**/s/ Roger Marshall, M.D.**  
Roger Marshall, M.D.  
United States Senator

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**/s/ M. Michael Rounds**  
M. Michael Rounds  
United States Senator

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**/s/ Deb Fischer**  
Deb Fischer  
United States Senator

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**/s/ Josh Hawley**  
Josh Hawley  
United States Senator

CC: Michael Regan, Administrator Nominee, Environmental Protection Agency