



January 12, 2021

Mr. Sean W. O'Donnell
Inspector General
Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, NW. (2410T)
Washington, DC 20460

Dear Mr. O'Donnell:

As you know, federal employees are prohibited by law from participating in matters that would benefit their own financial interest such as possible future employment with an organization or entity their actions would serve to profit or advantage. We write to seek your assurance that EPA Administrator Andrew Wheeler's potential last-minute action to grant a significant number of petitions for small refinery exemptions (SREs) under the Renewable Fuel Standard complies with federal law.¹

According to EPA's database there are 41 requests from refineries to waive their requirements for the 2019 and 2020 compliance years of the RFS.

EPA's use of SREs to undermine the integrity of the RFS for the economic benefit of oil refiners has been subject to ongoing litigation. Most notably, on January 24, 2020, the Tenth Circuit Court of Appeals ruled in *Renewable Fuels Association v. EPA*, 948 F.3d 1206 that small refineries are entitled to an RFS exemption only if that exemption remained continuously in effect. HollyFrontier and CVR petitioned the Supreme Court to hear the case.

On November 2, 2020, days before the election in response to a question about when EPA would act on pending SRE petitions, Administrator Wheeler responded, "the refiners appealed that to the Supreme Court; we're waiting to see if they take it up, and what they do with that." Wheeler continued, "What I don't want to be in a position of doing is making a decision one way or the other and then have the court instruct me to reverse it, because it's much worse to reverse a decision afterwards than it is to just wait for the court to decide. So, I think it would be inappropriate for me to either grant or deny them until that litigation has completely run its course."²

On January 8, 2021, the Supreme Court agreed to hear the refiners' appeal of the Tenth Circuit's ruling. The Supreme Court will hear arguments this spring and a decision is likely by summer. Using Administrator Wheeler's November rationale, EPA would have legal clarity on how to proceed only at that time.

Unfortunately, we understand that Administrator Wheeler and other political appointees at EPA are considering granting a significant number of these waivers on their way out the door to the private sector. We are unaware of any substantive change in circumstance surrounding whether to grant or deny these waivers. In fact, the Supreme Court's decision to hear the refiner appeal gives more

¹ <https://www.reuters.com/article/us-usa-biofuels/exclusive-trump-administration-expected-to-grant-biofuel-waivers-for-some-oil-refiners-sources-idUSKBN29G2I5>

² <https://www.agweb.com/article/epa-administrator-rfs-waiver-requests-wait-court-appeal>



clarity about when the legal challenges will be complete. Given Wheeler's prior explanation of waiting until the Supreme Court has decided, it is perplexing why he appears to be rapidly reversing course.

Therefore, we encourage you to ensure that all communications from Administrator Wheeler and any other correspondence of President Trump's political appointees about the pending SRE waiver petitions be preserved. This should include communications among Trump appointees and EPA career staff with trade groups and law firms who represent oil refineries with waiver petitions pending, as well as with officials or lobbyists of these companies directly.

This information, in part, is needed to ensure that dispensation of these waiver petitions comply with federal laws regarding political appointees' roles in federal acts affecting a personal financial interest.³ As you know, federal law prohibits federal employees from participating in any matter that would have a direct and predictable effect on their own financial interests or on the financial interests of a person or organization with whom discussions are underway to reach an agreement regarding possible employment or compensation. We ask you to ensure federal law is being followed.

Thank you for your attention to this matter.

Sincerely,

Brian Jennings, CEO
American Coalition for Ethanol

³ 18 U.S.C. § 208