



April 3, 2020

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20469

Administrator Wheeler:

On behalf of the members of the American Coalition for Ethanol (ACE), I write to urge the Environmental Protection Agency (EPA) to correct a problem regarding the Agency's implementation of the Renewable Fuel Standard (RFS) which has been exposed with the recent nosedive in gasoline use as a result of COVID-19, and use your authority to take additional steps to mitigate ethanol demand destruction.

As you know, the RFS statute mandates volumes of renewable fuel usage each year. On December 19, 2019, EPA set the volume requirement for 2020 at 20.09 billion gallons in accordance with the statute.<sup>1</sup> At the same time, EPA set the total 2020 renewable volume obligation (RVO) at 11.56 percent. Importantly, the statute specifically instructs EPA to set the total RVO at a level that "ensures the requirements" of the statutory obligations are met.<sup>2</sup> Circumstances have changed dramatically since December 19 which necessitate the immediate attention of EPA if the statutory requirement is to be fulfilled.

COVID-19 has exposed a flaw in EPA's rulemaking approach. Social distancing, stay-at-home, and shelter-in-place orders are cutting gasoline demand by more than 50 percent in most of the country. As gasoline demand plummets during the coronavirus pandemic, so does ethanol demand, meaning the 11.56 percent RVO will not result in the use of 20.09 billion gallons in 2020 as required by statute. Without adjusting the percentage of renewable fuel volume obligated parties must use in 2020, EPA will be violating the RFS statute which amounts to an illegal waiver of blending volumes.

Depending on how long gasoline demand continues to fall due to COVID-19 restrictions, ethanol use under the RFS could decline between 1 and 2 billion gallons. If EPA fails to act, this reduction in ethanol use would correspond to a loss of between 350 and 700 million bushels of corn demand. This would cost ethanol producers over \$2 billion based on the six-month average price and farmers over \$1.35 billion in 2020 according to current pricing information.

Fortunately, EPA has authority to quickly address these crippling consequences. We urge the Agency to take three steps. First, use existing statutory authority to issue an interim final rule by July 1 to increase the RVO for 2020 to the percentage necessary to ensure that the full 20.09 billion gallons required by law are used. Second, restore the 500 million gallons of remanded volume as ordered by the DC District Court in 2017. Finally, based on the recent Tenth Circuit Court precedent regarding

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<sup>1</sup> 42 U.S.C. 7545(O)(2).

<sup>2</sup> 42 U.S.C. 7545(O)(3)(B)(i).



small refinery exemptions (SREs), EPA should deny most of the 25 SRE waivers pending for the 2019 RFS compliance year.

The Trump Administration has already used the interim final rule authority to address the economic fallout of COVID-19. For example, the Small Business Administration (SBA) used this authority to provide economic assistance on April 2, 2020 stating the economic impacts resulting from federal, state, and local public health measures to minimize exposure to COVID-19 justified such action. The SBA concluded this was a good cause for using an interim final rule. Similarly, the ethanol industry is being economically impacted as a result of the COVID-19 restrictions.

These issues are critical to the economic survival of many U.S. renewable fuel producers, farmers, and rural communities. We urge quick action. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Jennings", is centered below the "Sincerely," text.

Brian Jennings, CEO  
American Coalition for Ethanol