Renewable Fuel Standard (RFS) compliance costs have increased 500% over the last year and more refineries have found themselves in positions of economic harm because of it.

It is in the midst of this reality that the Supreme Court will be reviewing what the RFS statute says about small refinery relief—what's required to qualify for that relief and whether any small refinery can be forever disqualified.

A little background on RFS & small refinery relief:

The RFS says gasoline and diesel sold in the United States must be blended with biofuels like corn ethanol or biodiesel. Every year blending obligations increase. As the volume goes up, so do annual compliance costs—not just the cost of buying and blending biofuel, but the cost of buying regulatory credits to prove compliance to EPA. It's gotten to the point where refineries are spending billions of dollars each year on the RFS. Those costs are unsustainable and they're contributing to facilities going out of business.

Congress knew the RFS might be a source of economic harm, especially for small refineries. As a result, legislators exempted every small facility from having to pay for RFS compliance for the first few years of the program. At the same time, Congress created a separate lifeline for small refineries so that down the road any small facility experiencing disproportionate economic harm because of RFS regulatory costs would have the option to petition EPA "at any time" to have those costs waived.

The question before the Court:

What is at issue before the Supreme Court is whether the 10th Circuit Court of Appeals was correct when it decided in January 2020 that facilities forfeit relief eligibility if ever a year goes by where they do not receive an exemption. The practical implication of this decision would be that if a small refinery qualified for and received hardship waivers for its first three years of operation under the RFS, but was able to pay for compliance during its fourth year when regulatory credits were lower priced, that facility may never again get relief, regardless of what the RFS costs them now and whether today's costs amount to disproportionate economic harm. That is especially unsettling as credits for conventional corn ethanol today are priced 10 times higher than at the beginning of 2020.

A plain read of the law does not support this interpretation. Congress included no such "use it or lose it" provision for the small refinery exemption program and it's our expectation that the Supreme Court will agree given the plain language of the statute that allows for small refineries to apply for relief "at any time." Take a look at AFPM's filing in the case.

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