United States Senate
WASHINGTON, DC 20510

October 21, 2020

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Wheeler,

We write to urge you to use your authorities under the Clean Air Act (CAA) to ensure that obligations imposed on refineries under the Renewable Fuel Standard (RFS) provide regulatory certainty for 2021, do not exceed the "blend wall" of ethanol's proportion of actually marketable fuel blends, and – perhaps most pressingly – account for the unprecedented collapse in demand for gasoline, diesel, and jet fuel resulting from the economic downturn associated with the COVID-19 crisis.

To ensure refiners and retailers can continue to provide American consumers with affordable fuels that are safe for their vehicles and specialized tools, as well as prevent damage to fueling infrastructure, the proportion of biofuels proposed in the 2021 Renewable Volume Obligation (RVO) must not exceed the "blend wall" of 10 percent ethanol. A recent Energy Information Administration (EIA) report documents a year-on-year decrease in gasoline consumption of 14 percent.[1] Previous EIA reports from April 2020 – the bottom of the economic downturn amid state and locally mandated shutdowns to prevent transmission of the coronavirus – showed a 50 percent reduction in gasoline consumption, a 72 percent reduction in jet fuel consumption, and refinery utilization rates averaging as low as 70 percent.[2] Those reductions represent a suppression of demand unseen in this country since the end of the global oil crisis in 1974.[3] The ongoing suppressed demand for fuels and broader economic disruption arising from the COVID-19 pandemic is expected to continue well into 2021 and dictates that the RVO must be reduced to prevent outstripping the "blend wall," an unprecedented rise in the cost of Renewable Identification Number (RIN) offset credits, or both.

Within the Energy Policy Act of 2005's amendments to Clean Air Act creating the RFS, Congress explicitly gave the Environmental Protection Agency (EPA) the authority to reduce the RVO to realistically achievable levels through the use of a general waiver if "implementation of the requirement would severely harm the economy or environment of a state, a region, or the United States".[4] With refinery utilization rates and demand for fuels remaining at or near historic lows, it is clear that maintenance or expansion of the current RVO would impose this "severe economic harm," indicating the need for a general waiver.

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1 Energy Information Administration. "Weekly Petroleum Status Report, Data for Week Ended: September 4, 2020." Released September 10, 2020. https://www.eia.gov/petroleum/supply/weekly/archive/2020/2020_09_10/pdf/wpsrall.pdf.

2 Energy Information Administration. "Weekly Petroleum Status Report Archives." https://www.eia.gov/petroleum/supply/weekly/archive/

3 Energy Information Administration. "U.S. gasoline prices heading into Labor Day weekend are the lowest since 2004." September 4, 2020. https://www.eia.gov/todayinenergy/detail.php?id=45036

4 42 U.S.C. §7545(o)(7)(A)

In addition, the EPA should utilize its other discretionary authorities to further safeguard the nation's fuel supply. There must be no reallocations of any volumes associated with granted 2021 exemptions, nor of prior year volumes – including the 2016 remand – which would only exacerbate market distortions and add to the substantial burdens of compliance. While there is clear legislative intent regarding EPA's obligation to provide small refinery exemptions, Congress has not provided the same clear statutory authority to reallocate exempted volumes. Any reallocations will result in all refiners – regardless of size – facing higher obligation levels than are called for in statute.

Finally, the 2022 biomass-based diesel and the 2021 advanced and cellulosic standards under the RFS must be set at levels of demonstrated domestic production to ensure compliance feasibility. Put simply, EPA must not mandate blending too much biofuel into a dwindling fuel supply. Ethanol producers and refiners should proportionally share the economic hardships associated with the current declines in fuel demand, rather than having government mandates shift the burdens of the former onto the latter.

Any increase in blending volumes mandated under the RFS, especially an expansion of the 2021 RVO, would ultimately impact American consumers forced to bear the associated costs, creating another drag on a national economy that is in a state of fragile recovery from the depths of the pandemic. It is essential that you use all available statutory authorities to see to it that these unnecessary impacts are avoided. Thank you for your timely consideration of this request.

Sincerely,

Shelley Moore Capito
United States Senator

Michael B. Enzi
United States Senator

Mike Crapo
United States Senator

John Cornyn
United States Senator

John Barrasso, M.D.
United States Senator

Roger F. Wicker
United States Senator

James E. Risch
United States Senator

Pat Toomey
United States Senator

Mike Lee
United States Senator

Ted Cruz
United States Senator

Bill Cassidy, M.D.

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United States Senator

James Lankford
United States Senator

Steve Daines
United States Senator

John Kennedy
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Cindy Hyde-Smith

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