RENEWABLE FUELS ASSOCIATION

April 17, 2020

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington DC 20004

Dear Administrator Wheeler:

On April 15, you received a letter from four oil state governors[1] requesting a waiver from the Renewable Fuel Standard (RFS). The governors claim a waiver is necessary because "the macroeconomic impacts of COVID-19 have resulted in suppressed international demand for refined products, like motor fuels and diesel." With one notable exception, an identical letter was sent by Governor Edwards of Louisiana.[2]

I am writing on behalf of the members of the Renewable Fuels Association (RFA) and the entire U.S. ethanol industry to express our strong opposition to such a waiver. The Environmental Protection Agency (EPA) has established an immutable standard for issuing any such waiver, consistent with the statute, in which "severe economic harm" must be a direct result of implementing the RFS and not some other factor or host of factors. In this case, as acknowledged by the Governors themselves, the economic conditions impacting the refining industry—and indeed the entire U.S. economy—are the result of a global health pandemic. In addition, systemic overproduction of crude oil by OPEC, Russia and other producers has driven prices for oil and refined products to historic lows, further weighing on the sector. It is important to note that those same macroeconomic factors have also greatly impacted the U.S. ethanol industry in the last six weeks, resulting in a 45 percent reduction in demand, a 47 percent drop in production, lost jobs, and economic instability across the Midwest.

The oil state request to waive the RFS is nothing more than a cynical gambit to capitalize on the public health tragedy of COVID-19. It's a veiled attempt to achieve the refining sector's long-standing goal of undermining the success of renewable fuels and protecting their chokehold on the nation's fuel market.

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[1] *Letter from Texas Governor Greg Abbott, Utah Governor Gary Herbert, Oklahoma Governor Kevin Stitt, and Wyoming Governor Mark Gordon to EPA Administrator Andrew Wheeler (April 15, 2020)*

[2] *Letter from Louisiana Governor John Bel Edwards to EPA Administrator Andrew Wheeler (April 7, 2020). Governor Edwards' letter was word for word identical to the letter signed by the other four governors, except it included the following sentence in the penultimate paragraph, "Such a waiver should lower the total RVO by an amount commensurate with the current projected shortfall in national gasoline and diesel consumption."*

We are skeptical the letters you received even rise to the level of a petition that would necessitate the opening of a docket and solicitation of public comment. They fail miserably to make any defensible demonstration that the RFS itself is the sole source of "severe economic harm" in their states. With previous RFS general waiver requests in 2008 and 2012, EPA correctly established a rigorous, transparent, and data-driven review process. The letters sent were entirely devoid of data or evidence. Rather, the governors inaccurately posit that a waiver should be granted without regard to whether the RFS itself is the cause of the economic harm. That is a gross misunderstanding of the Agency's authority and past precedent. Section 211(o)(7) of the Clean Air Act allows the Administrator of EPA, in consultation with the Secretaries of Agriculture and Energy, to waive the requirements of the RFS only if the Administrator determines – after public notice and comment – that *implementation of the RFS requirements* would severely harm the economy or environment. EPA cannot ignore that critical prerequisite for a waiver simply because a few governors find it inconvenient.

Importantly, the specific relief requested by Governor Edwards (i.e., to "lower the total RVO by an amount commensurate with the current projected shortfall in national gasoline and diesel consumption") is *already* occurring as part of the existing RFS implementation regulations. The annual Renewable Volume Obligations (RVOs) under the RFS are *percentages* that specify what share of an obligated party's gasoline and diesel production must be comprised by renewable fuels. Because the RVO is applied as a percentage requirement, the absolute volume of required renewable fuel blending can deviate significantly from the volumes assumed when EPA finalizes the RVO rule. Thus, as gasoline consumption has fallen precipitously in response to COVID-19 travel restrictions, so too have the blending obligations for each renewable fuel category. For example, if COVID-19 leads to a 15 percent reduction in 2020 gasoline and diesel consumption (i.e., compared to projected volume from EIA's October 2019 Short Term Energy Outlook, used by EPA to calculate the 2020 standards), then the actual renewable fuel volume requirements drop by the same amount. In this way, the annual RVOs already have a built-in mechanism for accommodating large fluctuations in gasoline and diesel consumption.

When Congress created the RFS, it provided several important mechanisms providing flexibility for refiners. For example, Congress allowed for, and EPA created, a credit trading system (Renewable Identification Numbers, RINs) to accommodate obligated parties. Due in large part to EPA's recent policy of recklessly granting small refiner exemptions in contravention of the statutory standard,[3] there is currently an unprecedented surplus of low-cost RINs available to refiners for compliance with the RFS. Indeed, today refiners can purchase two or three RIN credits—each representing a gallon of renewable fuel—for the same price as one physical gallon of ethanol. The record RIN surplus is just another reason that a waiver from the RFS program is completely unjustified.

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[3] *The 10th Circuit Court of Appeals recently ruled that EPA abused its SRE waiver authority for several reasons, including granting waivers to companies that were not extensions of previously granted waivers and for failing to determine the RFS itself was the cause of the economic hardship.*

There is simply no reason to abandon the RFS, the nation's most successful effort to promote clean-burning, homegrown, low-cost renewable fuels. Further destructing renewable fuel demand by vacating RFS requirements would unnecessarily, callously, and illegally exacerbate the economic harm already being inflicted on farmers and ethanol producers. EPA must abide by the statute. It must require any party seeking a general waiver to provide data and concrete evidence demonstrating that: 1) the RFS itself is the cause of economic harm to a *state* (i.e., not to individual refiners); 2) that the harm is "severe" in nature; and 3) that a waiver would redress the harm. The letters sent to you by these five governors fail to satisfy any of those requirements and should not be considered "petitions." The Agency should immediately reject this cynical effort by oil refiners to capitalize on our nation's current public health and economic challenge.

Sincerely,

Geoff Cooper

Geoff Cooper
President and CEO
Renewable Fuels Association