



## GOVERNORS' BIOFUELS COALITION

- **South Dakota** Gov. Kristi Noem, Chair • **Minnesota** Gov. Tim Walz, Vice Chair
- **Executive Director**, Larry Pearce

May 8, 2020

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Wheeler:

As the chair and vice chair of the Governors' Biofuels Coalition, we urge the U.S. Environmental Protection Agency to reject the recent request from the governors of Louisiana, Texas, Utah, Oklahoma, and Wyoming<sup>1</sup> to issue a waiver for refineries of the Renewable Volume Obligation under the federal Renewable Fuel Standard due to severe economic hardship.

The economic fallout from the coronavirus pandemic has hit every sector of our nation's economy, not just refineries and oil producers. Before the outbreak, farm income was down over 30 percent<sup>2</sup> compared to 2013 in part because of small refinery waivers which removed four billion gallons of biofuels from the market. The economic pain was exacerbated by the pandemic which sent commodity markets into a tailspin. Not only have the circumstances had a devastating impact on agricultural producers, it has destroyed the market for biofuel producers, resulting in the idling of approximately 70 ethanol facilities<sup>3</sup> or 46 percent<sup>4</sup> of the industry's total production capacity. These shutdowns have an enormous impact on the rural communities in which these plants are located.

The financial pressure oil refiners are now facing is the result of stay-at-home orders leading to a decrease in driving and the oil price war between Russia and Saudi Arabia — not the RFS. The biofuels industry has not only had to deal with these same market forces, but the industry has also had to cope with EPA's failure to comply with the *Americans for Clean Energy V. EPA* ruling<sup>5</sup>, which concluded that EPA illegally waived hundreds of millions of gallons of

<sup>1</sup> <https://www.bloomberg.com/news/articles/2020-04-15/governors-ask-trump-to-waive-biofuel-quotas-amid-pandemic?sref=q-8selhDd>

<sup>2</sup> <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/highlights-from-the-farm-income-forecast/>

<sup>3</sup> <https://ethanolrfa.org/wp-content/uploads/2020/04/COVID19-Ethanol-Industry-Economic-Impact-4-20-20.pdf>

<sup>4</sup> [https://www.eia.gov/dnav/pet/pet\\_pnp\\_wiup\\_dcu\\_nus\\_w.htm](https://www.eia.gov/dnav/pet/pet_pnp_wiup_dcu_nus_w.htm)

<sup>5</sup> [https://www.cadc.uscourts.gov/internet/opinions.nsf/5F1D8BC9815C4C698525816B00543925/\\$file/16-1005-1686284.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/5F1D8BC9815C4C698525816B00543925/$file/16-1005-1686284.pdf)

ethanol due to its regulatory misinterpretation. Granting the requested waiver would only worsen the economic harm that biofuel producers, supporting technology providers, and agricultural producers are experiencing and would do nothing to improve the financial health of the refiners.

As EPA established years ago<sup>6,7</sup>, and the federal courts<sup>8</sup> have upheld, the waiver petitions must demonstrate that the RFS is the direct cause of severe economic harm. In fact, oil companies have admitted that biofuel credits do not impose a real cost on refiners<sup>9</sup> and EPA has repeatedly stated<sup>10</sup> that the cost of RINs are passed down the supply chain. The request also ignores that the RFS obligations are set as a percentage of the total volume of fossil fuel refiners sell or import into the United States, which means lower petroleum demand directly and proportionately reduces the amount of renewable fuel they blend, further weaken the hardship claim.

Undermining the RFS at a time when rural America is struggling economically, farmers are fighting to stay in business, and the biofuels industry has been impacted by furloughs and plant closures is unconscionable. We respectfully urge you to reject this request and work with coalition governors to preserve rural jobs and protect our state economies.

Sincerely,



Kristi Noem, Chair  
and Governor of South Dakota



Tim Walz, Vice Chair  
and Governor of Minnesota

cc:

Member Governors

The Honorable Sonny Perdue, Secretary of Agriculture

The Honorable Doug Hoelscher, Special Assistant to the President, White House Office  
of Intergovernmental Affairs

The Honorable Francis Brooke, Special Assistant to the President for Energy and  
Environmental Policy

<sup>6</sup> EPA, "Notice of Decision Regarding the State of Texas Request for a Waiver of a Portion of the Renewable Fuel Standard," 73 Fed. Reg. 47,168 (Aug. 13, 2008) <https://www.epa.gov/renewable-fuel-standard-program/denial-state-texas-request-waiver-portion-renewable-fuel-standard>

<sup>7</sup> EPA, "Notice of Decision Regarding Requests for a Waiver of the Renewable Fuel Standard," 77 Fed. Reg. 70,752 (Nov. 27, 2012) <https://www.epa.gov/renewable-fuel-standard-program/learn-more-about-denial-requests-waiver-renewable-fuel-standard>

<sup>8</sup> [https://www.cadc.uscourts.gov/internet/opinions.nsf/C9795F1A4BA44BBB85257CD00050B9C1/\\$file/13-1265-1491576.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/C9795F1A4BA44BBB85257CD00050B9C1/$file/13-1265-1491576.pdf)

<sup>9</sup> <http://www.ascension-publishing.com/RFS-Tesoro.pdf>

<sup>10</sup> <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100TDDH.pdf>