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April 10, 2019

The Honorable Rick Perry
Secretary
United States Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Dear Secretary Perry:

U.S. Environmental Protection Agency (EPA) Administrator Wheeler has informed me and my colleagues in Congress recently that EPA is waiting on recommendations from the Department of Energy (DOE) regarding a record number of 39 applications submitted by small refineries seeking disproportionate economic hardship exemptions from the Renewable Fuel Standard (RFS) for the year 2018. EPA has granted an unprecedented number of small refinery hardship exemptions for 2016 and 2017 and even more small refineries are seeking exemptions from the RFS for 2018. With Renewable Identification Numbers (RINs) at multi-year lows, it's hard to comprehend the alleged disproportionate economic hardship that any refinery could face. I am writing to seek clarity regarding the DOE's review of requests to exempt certain small refineries from their obligations to comply with the RFS provisions of the Clean Air Act.

As you know, Section 211(o)(9)(B)(ii) of the Clean Air Act requires the EPA to consult with DOE in evaluating the small refinery hardship exemptions. EPA makes the final decision on granting such exemptions but Administrator Wheeler also suggested that EPA simply follows the recommendations of DOE. If this is the case, I would like to understand what has changed in DOE's approach to evaluating such requests that would explain the sudden surge in the number of exemption extensions granted to small refineries over the last two years.

The criteria by which DOE is supposed to evaluate small refinery exemption extensions have not changed since 2011, when DOE created a scoring methodology for such requests as part of a congressionally-mandated study. DOE's methodology requires an evaluation of the structural impacts that compliance with the RFS might cause, such as limited access to capital and credit, as well as an evaluation of how RFS compliance would significantly impair refinery operations viability. Although DOE maintains it hasn't changed these criteria, the number of small refinery exemption applications and approvals inexplicably has soared in the last two years.

Recent litigation in the D.C. Circuit has revealed that out of 48 applications for small refinery exemptions to EPA for compliance years 2016 and 2017, DOE had given the applicant a

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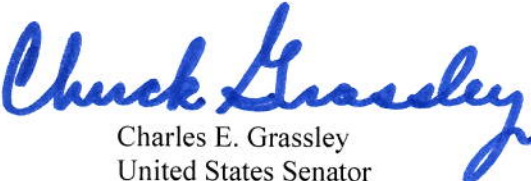
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viability score of zero in at least half of those cases. This seems to indicate that compliance costs with the RFS had little to no impact on the small refinery's ability to stay competitive and profitable. Given EPA's assertion that it's granting of small refinery exemptions remains based on DOE's analysis and recommendations, I respectfully seek the following information from DOE:

1. Has DOE changed the criteria, the interpretation of the criteria, the methodology, or any other significant aspect of how it makes its recommendations to EPA for small refinery exemptions?
2. Are you aware of any instances where DOE recommended no small refinery exemption (or only a partial exemption) but EPA granted a small refinery exemption anyway? If so, how many times has this occurred?
3. DOE's 2011 Small Refinery Study states that DOE would make a recommendation of disproportionate impact if scoring of *both* indices—Disproportionate Structural Impacts Metrics and Viability Index—were greater than one. How does DOE's recommendation for a partial exemption to a small refinery with a Viability Index of 0.0 square with the statute's requirement that the exemption can be extended only if the refinery is subject to a "disproportionate economic hardship" from compliance with the RFS?

I look forward to your response.

Sincerely,


Charles E. Grassley
United States Senator