United States Senate
WASHINGTON, DC 20510

February 11, 2019

The Honorable Andrew Wheeler
Acting Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington DC 20460

Dear Acting Administrator Wheeler:

We write to request additional information on multiple agency actions regarding the Renewable Fuel Standard (RFS) which could significantly impact compliance costs for our nation's independent refiners. As we continue to evaluate your nomination to be Administrator, it is important that we have a better understanding of your views and approach to administering the RFS and the agency actions you believe could alleviate costs. Without an adequate proposal to meaningfully lower the regulatory burden of Renewable Identification Numbers (RINs), we will have serious concerns with your nomination.

1) The RFS includes a provision that compels EPA to rewrite the RFS statutory tables if, starting in 2016, 20 percent of the statutory volumes are waived in consecutive years, or by 50 percent in one year. EPA has triggered this reset for the total renewables category as well as the cellulosic and advanced categories. In your recent testimony in front of the Senate Committee on Environment and Public Works, you indicated that the Agency is working to propose a reset rulemaking in February, assuming an end to the government shutdown.

    a. Will the Agency use this opportunity for reset to better align the applicable mandates with the actual conditions in the renewable fuels market?
    b. Will new volumetric ranges take into account the ethanol blend wall?
    c. Will new volumetric ranges exceed the statutory cap of 15 billion gallons for conventional corn ethanol?

2) As part of the 2016 volumes, EPA utilized its "inadequate domestic supply" general waiver authority to waive 500 million gallons of renewable fuels, finding that demand-side factors such as the E10 blend wall limited the supply of RINs available for obligated parties to comply with the law. When EPA's final rule was challenged, the Court of Appeals for the D.C. Circuit upheld EPA's rule with the exception of the "inadequate domestic supply" waiver utilized by EPA for the 2016 total renewable volumes and remanded the 2016 rule back to EPA.

    a. Do you agree that the Court's decision does not require the Agency to reallocate the 500 million gallons in question?
    b. Is the Agency considering reallocating these gallons or otherwise increasing next year's/future RVOs to account for the waived 500 million gallons?
    c. The Court suggested that EPA may be able to use other waiver authority to sustain its original decision to waive these volumes. What is the Agency doing to analyze the other sources of relief, such as utilizing its general waiver authority to prevent "severe economic harm"?

3) During your hearing before the Senate Committee on Environment and Public Works, you were asked several questions regarding EPA's review and granting of Small Refinery Exemption (SRE) applications.
    a. Do you intend to continue granting justified SREs fully in accordance with the statute and case law?
    b. Are you aware that EIA's most recent analysis demonstrates that ethanol blending and consumption has not been harmed as a result of SRE applications being granted?
    c. Are you aware that ethanol consumption and sales rose in 2018, even though RIN prices remained relatively low in comparison to where they were in 2017?
    d. Do you believe that these facts demonstrate there is no direct correlation between SREs and ethanol consumption? Or between ethanol consumption and RIN prices?

4) Recently, the President proposed a series of potential reforms to the RIN market, coupled with a policy allowing the year-round sale of ethanol blends over 10%, namely E15.
    a. Is EPA considering reforms to the RIN market that can prevent market manipulation and speculation?
    b. Is EPA considering implementing a mechanism to directly control the price of RINs, either through a waiver credit mirroring the one that currently exists for cellulosic ethanol (but at a much lower price) or some other means that puts a ceiling on costs, while still ensuring an adequate volume of RINs are available for refiners as part of an overall package of RIN market reforms?
    c. Is EPA considering allowing exported ethanol to count toward the statutory volumes as part of an overall package of RIN market reforms?

Thank you for your prompt attention to this matter of importance. We respectfully request that you provide your answers to the following questions as soon as possible, but **no later than 5:00 p.m. on February 22, 2019**.

Sincerely,

TED CRUZ
United States Senator

PAT TOOMEY
United States Senator

BILL CASSIDY, M.D.
United States Senator

JOHN KENNEDY
United States Senator

MICHAEL S. LEE
United States Senator