Written Statement of Kelly Nieuwenhuis, President – Siouxland Energy Cooperative

Hearing on "Protecting the RFS: The Trump Administration's Abuse of Secret Waivers"

Subcommittee on Environment and Climate Change of the Committee on Energy and Commerce

Tuesday, October 29, 2019

Chairman Tonko, Ranking Member Shimkus, and Members of the Subcommittee on the Environment and Climate Change:

Thank you for the opportunity to testify today on this important topic. The Environmental Protection Agency's (EPA) abuse of Renewable Fuel Standard (RFS) small refinery exemptions (SREs) is one that greatly impacts my livelihood, my community, a local biofuels plant, and the economic well-being of rural America and the country.

My name is Kelly Nieuwenhuis, and I'm a farmer near Primghar, Iowa. I've been a farmer for 37 years in a partnership with my two brothers and my father. We grow corn and soybeans and also raise hogs utilizing modern farming practices to preserve our land resources. I also serve as a member of the Iowa Corn Promotion Board, the National Corn Growers Association Ethanol Committee, the U.S. Grains Council ethanol action team, and am president of a local ethanol plant, Siouxland Energy Cooperative. I'm taking time away from my farming operation – during our late fall harvest– because the topic you are covering today is so critically important. Plain and simple, EPA's abuse of small refinery exemptions under the Renewable Fuel Standard is crippling rural America.

I have seen this impact firsthand as president of Siouxland Energy. Siouxland Energy Cooperative is a farmer-owned ethanol plant in Sioux Center, Iowa. Each year our plant produces up to 90 million gallons of clean, renewable biofuel. And nearly all the corn I produce on my 2,100 acres is normally sold to this ethanol plant. Because of EPA's actions to help pad the oil industry's bottom line at the expense of farmers and biofuel producers, about six weeks ago, we had to make the hard decision to shut our local plant down and shut off a key local market for hundreds of farmers, including myself.

I can point directly to an event on August 9, when EPA decided to award exemptions to 31 refineries as the moment it became clear we would have to idle our plant. Our plant has been operating for two decades – including throughout the Great Recession – without ever having to shut down operations. But it wasn't an economic downturn that made our plant close its doors– it was the illogical and unlawful decisions from EPA that brought us to our knees.

Small Refinery Exemptions (SREs) Hurt Farmers and Rural Communities:

The EPA's refinery exemptions destroy demand for homegrown energy at a time when family farms are facing the worst economic conditions in a generation. According to the Energy Information Administration (EIA), ethanol consumption fell last year for the first time in 20 years, and the agency has noted that "growth in higher-level ethanol blends is limited in the near-term by recent small refinery exemptions that reduced volumes of renewable fuel required under the RFS."

It was the most recent round of exemptions – where EPA granted 31 small refinery waivers that forced us to make the decision to shut our doors. Following the most recent round of EPA exemptions, the value of corn fell by 10 percent, the sharpest drop for any August on record, further depressing farm income. This was coupled with a decrease in ethanol prices of 18-20 cents in the immediate aftermath of EPA's August 9 decision to exempt 31 refineries. Economic growth in rural communities has stalled, threatening to freeze capital investments, undercut small businesses, and slash state and local revenues associated with agricultural and investment income. Further, the U.S. Department of Agriculture (USDA) has reduced their estimate for corn used in making ethanol by 225 million bushels between November 2018 and August 2019. USDA Secretary Perdue has said that small refinery exemptions are "demand destruction," yet EPA still makes unsubstantiated claims that there is "no evidence" that refinery exemptions have hurt the ethanol industry.

This pain is being absorbed by agriculture while, the EIA said in May, that "2018 was likely the most profitable year for oil producers since 2013." Under the RFS, EPA may grant exemptions to small refineries experiencing disproportionate hardship. The Department of Energy (DOE) is responsible for providing the study, analysis, and recommendations to the EPA to determine if a small refinery is experiencing a disproportionate economic hardship. Some of the largest and most profitable refiners in the world such as Exxon Mobil and Chevron have received small refinery exemptions. How these global oil giants are small refiners experiencing so-called disproportionate economic hardship, I will never understand.

The Obama Administration EPA granted 23 SREs and denied 18 petitions over the three compliance years of 2013-2015, because these decisions were made after the compliance year passed. Further data included in the most recent EPA proposal on SREs shows that Obama officials followed the (DOE's advice on what SREs to grant.

Since 2016, the current EPA has expanded the use of small refinery exemptions to grant 85 SRE petitions, and it did not deny a single application for 2016 or 2017. Press reports indicate that EPA ignored DOE's recommendations to deny a petition in 24 out of 48 applications in 2016-17. These improperly granted exemptions have wreaked havoc on rural economies as more than 35 biofuel plants have closed, idled production, or cut back production in the past year.

A study by the Food and Agriculture Policy Research Institute (FAPRI) from September 2018, before 31 additional exemptions were granted for the 2018 compliance year, found the U.S. ethanol industry could lose 4.6 billion gallons of domestic demand and nearly $20 billion in sales revenue over the next six years if EPA continues to grant so many exemptions. These figures are startling.

There is also a substantial impact to our nation's climate. Biofuels like ethanol deliver a nearly 40 percent reduction in greenhouse gas emissions compared to gasoline, with some cellulosic biofuels delivering as much as 126 percent greenhouse gas reductions. Sadly, as a result of the exemptions, 4.04 billion gallons of demand for these lower carbon fuels has been lost.

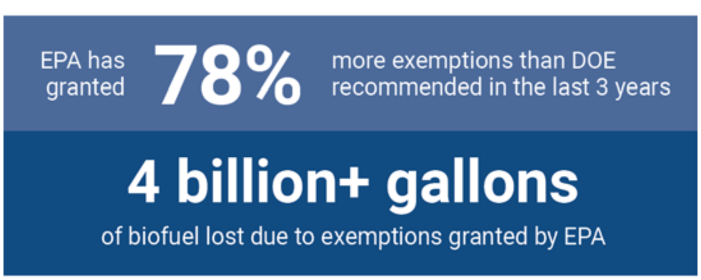
EPA's Small Refinery Exemption Proposal:

On October 4, President Trump, Midwest Senators, USDA Secretary Perdue, and EPA Administrator Wheeler agreed on a plan to address the economic crisis created by the abuse of small refinery exemptions, which have destroyed demand for more than four billion gallons of biofuel. However, on October 15, EPA released a supplemental proposal that undermines the deal agriculture and biofuel stakeholders believed had been agreed to just 11 days earlier.

SOURCE: Docket ID No. EPA-HQ-OAR2019-0136

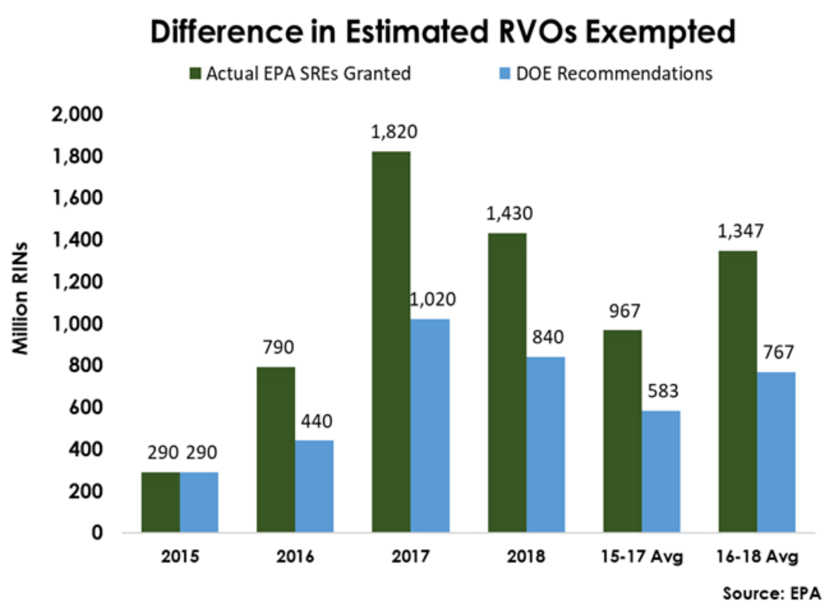
In the original deal, the White House agreed to account for all exemptions based on a three-year rolling average of actual gallons exempted, starting with the 2020 renewable volume obligations (RVOs). We were told that the 15 billion gallons required under the Renewable Fuel Standard (RFS) would actually be blended. In an October 3 briefing with biofuel stakeholders, EPA officials confirmed the actual three-year average would be used. On October 4, Administrator Wheeler stated, "we are putting forth 15 billion gallons plus an additional amount based upon what we've given out in the last three years in waivers."

But the EPA didn't deliver on that proposal. Instead of relying on actual gallons exempted as a way to address this issue, EPA decided to use numbers that were never mentioned in the negotiations to address SREs, the SRE recommendations from the DOE. Many farmers like me believe EPA uses these numbers because it gives them a pathway to minimize the volume of biofuels restored to the market. Moreover, the current EPA has yet to consistently follow the DOE recommendations. In the three years the current EPA has provided SREs, they have consistently gone above and beyond what DOE recommended by an average of 78 percent. The proposal also provides significant room for EPA



SOURCE: Docket ID No. EPA-HQ-OAR2019-0136 to annually exempt more gallons than they restore – negating the deal cut to restore integrity to the RFS. In fact, on six occasions in the proposal EPA clearly states their authority, discretion, or flexibility to go beyond what is recommended by DOE:

- "EPA independently evaluates SRE petitions while taking DOE's recommendation into account and has discretion to provide relief that is different than the DOE recommendation"
- "The statute directs EPA to make an independent decision as to SRE petitions based on DOE's recommendation and other economic factors. While final decisions on 2020 SREs must await EPA's receipt and adjudication of those petitions, we generally have the statutory authority to issue a final decision consistent with DOE's recommendation"
- "Furthermore, we note again that even were EPA to deviate from this policy in adjudicating 2020 SRE petitions, this approach to projection nonetheless provides a reasonable estimate of the aggregate exempted volume at this time."
- "While we cannot predict with certainty the approach that we will in fact take once we have received and reviewed petitions, at this time, we anticipate our evaluation will result in an exempted volume that is on the aggregate consistent with DOE's recommendations."
- "We note that if for any reason we anticipate a different approach to evaluating SRE petitions by the time of the final rule, we may also consider adjusting our methodology for projecting the exempt volumes of gasoline and diesel accordingly."
- "For instance, EPA may deviate from DOE's recommendation where we find that other economic factors compel a different outcome than what DOE recommended. Other factors, such as judicial resolution of pending decisions or subsequent Congressional direction, could also potentially affect EPA's SRE policy going forward."



This EPA proposal is a blatant attempt to undercut the President's promise and deviate from any pledge of 15 billion gallons. As an example, If EPA uses the 2015-2017 average of DOE SRE recommendations (one option proposed in the supplemental proposal) but issues exemptions equal to the actual 2016-2018 SRE average, the real RVO would be just 14.4 bg.

EPA must uphold the President's agreement, which accounts for all exempted gallons based on the actual volumes exempted over the past three years. Additionally, this fix should explicitly apply to future years, not just 2020.

H.R. 3006 Shines Sunlight on a Broken Process:

I strongly support the bill sponsored by Representatives Collin Peterson and Dusty Johnson to provide some stability and transparency to the SRE process at EPA. While most of my testimony has focused on how the SRE problem is hollowing out rural communities, EPA's record on transparency and openness in how they handle SREs is pitiful at best. We have no idea on any sort of specifics used by DOE or EPA in making their decisions. We don't know who applies and who receives an exemption. This bill takes care of these basic transparency concerns.

Over the last two years, EPA has granted a record number of SREs, more than quadrupling the number granted in prior years. And due to the secretive, non-public process in which the SREs are being issued, many of the refineries that have reportedly been granted exemptions — such as those owned by Chevron and ExxonMobil — could hardly be viewed as experiencing disproportionate economic hardship, as the law requires. And EPA data now proves that EPA has not followed the DOE's recommendations outlining which refiners qualify for exemptions or partial exemptions despite multiple EPA officials who have testified in public Congressional hearings that they follow the DoE's advice. Refiners also do not have a deadline for submitting an SRE request, and as a result, EPA is making decisions about RVO calculations often as much as a year after the volumes have actually been finalized.

In particular, this bill:

- Sets a deadline for refineries to apply for an SRE by June 1 in the year before the RVO is in effect (i.e., June 1, 2020, for the 2021 RVOs), allowing EPA time to ensure exemptions are accounted for in the annual RVO process.
- Prevents refineries from claiming certain information submitted to obtain an SRE as confidential business information.
- Increases transparency and gives the public greater insight into the refiners that receive a waiver and why.

I thank the committee for the opportunity to present on this very important topic. I look forward to your questions.