UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WYNNEWOOD REFINING COMPANY LLC, Petitioners, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 22-1178 and consolidated cases

MOTION OF RENEWABLE FUELS PRODUCERS TO INTERVENE IN SUPPORT OF RESPONDENT U.S. ENVIRONMENTAL PROTECTION AGENCY

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), the Renewable Fuels Association ("RFA"), Growth Energy, the American Coalition for Ethanol ("ACE"), and the National Farmers Union ("NFU") respectfully move for leave to intervene in support of Respondent United States Environmental Protection Agency ("EPA") in this action seeking review of EPA's final action entitled "June 2022 Denial of Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program," published in the Federal Register at 87 Fed. Reg. 34,873 (June 8,

2022).[1] Respondent EPA does not oppose the relief requested in this motion. Petitioners oppose the motion.[2]

BACKGROUND

"Congress created [the Renewable Fuel Standard ('RFS')] in order 'to move the United States toward greater energy independence and security' and 'increase the production of clean renewable fuels.'" *Americans for Clean Energy v. EPA*, 864 F.3d 691, 697 (D.C. Cir. 2017) (quoting Pub. L. No. 110-140, 121 Stat. 1492 (2007)). To this end, the RFS "requires" that obligated parties—refiners and importers of gasoline and diesel—introduce "increasing volumes of renewable fuel" into the gasoline and diesel they produce. *Id.* EPA "establish[ed] a 'credit program' through which obligated parties can acquire and trade credits and thereby comply with" their volume obligations. *Americans for Clean Energy*, 864 F.3d at 699. These credits—called Renewable Identification Numbers ("RINs")—are generated when renewable fuel is produced and then acquired by obligated parties when they acquire the renewable fuel. The RINs are then "separated" from the renewable fuel once they are blended with fossil fuel to make transportation fuel—at which point they may be traded in an open

[1] A corporate disclosure statement pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1 and a certificate of parties pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A) are also attached to this motion.

[2] Pursuant to D.C. Circuit Rule 15(b), this motion should be deemed a motion to intervene in all appeals that have been filed and that will be filed in this Court involving the same underlying EPA action.

market. Finally, the RINs are "retired" when used by an obligated party to show compliance with its RFS obligations. *Id*.

As relevant here, Congress allowed individual "small refineries" to petition EPA for an "exemption" from their RFS obligations for a given year "for the reason of disproportionate economic hardship." 42 U.S.C. § 7545(o)(9)(B)(i); *see* § 7545(o)(1)(K) (defining "small refinery"). These compliance exemptions are known as "small refinery exemptions" ("SREs").

On June 3, 2022, EPA denied 69 SRE petitions for compliance years 2016-2021 (the "June SRE Denial")—the action challenged here—based on a revised approach to evaluating SRE petitions.[3] EPA adopted this revised approach in response to the Tenth Circuit's decision invalidating EPA's prior interpretation of the relevant statutory provision and its disregard of essential facts.[4] Specifically, in its June SRE Denial, EPA concluded that a small refinery is eligible for an SRE only if its RFS compliance causes disproportionate economic hardship, and found that all obligated parties, including small refineries, face the same proportional costs to comply with the RFS (in large part because all obligated parties pass their RIN costs down the supply chain), so

[3] In a related action, EPA denied 36 SRE petitions for the 2018 compliance year that had been remanded to EPA by the D.C. Circuit. 87 Fed. Reg. 24,300 (Apr. 25, 2022) ("April SRE Denial"). This decision is the subject of separate litigation. *See Sinclair Wyoming Refining Company LLC v. EPA*, No. 22-1073 (D.C. Cir. filed May 4, 2022).

[4] *See Renewable Fuels Association v. EPA*, 948 F.3d 1206 (10th Cir. 2020), *rev'd in irrelevant part sub nom. HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172 (2021).

"there is no disproportionate cost to any party, including small refineries, and no hardship given that the costs are recovered." 87 Fed. Reg. at 34,874. Consequently, EPA concluded that the small refinery petitioners did not satisfy the statutory requirements for an SRE. *See id.*

ARGUMENT

RFA, Growth Energy, ACE, and NFU seek to intervene in this case in order to protect their substantial interest in EPA's implementation of the RFS program, including ensuring that the renewable fuel volume requirements are not unlawfully reduced by SREs. This Court has consistently confirmed that, as representatives of producers of renewable fuels and their feedstocks, RFA, Growth Energy, ACE, and NFU meet the standard for bringing challenges against and intervening to defend EPA's actions related to the RFS, including SRE-related actions. *See, e.g.*, Order, *American Fuel & Petrochemical Mfrs. v. EPA*, 3 F.4th 373 (D.C. Cir. 2021), ECF No. 1799049; Order, *RFS Power Coalition v. EPA*, No. 20-1046, ECF #1843937 (D.C. Cir. May 22, 2020); Order, *Growth Energy v. EPA*, No. 19-1023, ECF #1784196 (D.C. Cir. Apr. 23, 2019); Order, *Am. Fuel & Petrochem. Mfrs. v. EPA*, No. 17-1258, ECF #1725309 (D.C. Cir. Apr. 5, 2018); Order, *Alon Refin. Krotz Springs, Inc. v. EPA*, No. 16- 1052, ECF #1722824 (Mar. 19, 2018); Order, *Coffeyville Res. Refin. & Mktg v. EPA*, No. 17-1044, ECF #1706266 (D.C. Cir. Nov. 28, 2017); Order, *Ams. for*

Clean Energy v. EPA, No. 16-1005, ECF #1611965 (D.C. Cir. May 5, 2016); Order, *Monroe Energy, LLC v. EPA*, No. 13-1265, ECF #1468501 (D.C. Cir. Dec. 2, 2013).

I. Movants Are Entitled to Intervene

Federal Rule of Appellate Procedure 15(d) permits a party to intervene in a proceeding to review agency action if a motion to intervene is timely and "contain[s] a concise statement of the interests of the moving party and the grounds for intervention." Fed. R. App. P. 15(d). Beyond that, intervention in this Court "is governed by the same standards as in the district court." *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997). Consequently, a party has a right to intervene if it "claims an interest relating to the … transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a); *see also Deutsche Bank Nat'l Tr. Co. v. FDIC*, 717 F.3d 189, 192 (D.C. Cir. 2013). RFA, Growth Energy, ACE, and NFU satisfy this standard.[5]

[5] RFA, Growth Energy, ACE, and NFU also satisfy the standard for permissive intervention because they have a "defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b).

A. This Intervention Motion is Timely and Procedurally Proper, and Will Not Delay or Cause Undue Prejudice

This motion is timely because it is being filed by the deadline established by this Court's scheduling order. *See* Order, ECF #1961770 (Sept. 1, 2022).[6] It is being served on all parties to the case and the discussion herein constitutes "a concise statement of [movants'] interest … and the grounds for intervention." Fed. R. App. P. 15(d). Granting this motion to intervene will not delay the proceedings in this Court and will not cause undue prejudice to any party.

B. RFA, Growth Energy, ACE, and NFU Have a Strong Interest in This Case

RFA, Growth Energy, ACE, and NFU are leading trade associations dedicated to promoting the commercial production and use of the most widely used renewable fuel, ethanol. Emily Skor ("Skor Decl.") ¶9 (attached). Their memberships include producers of renewable fuel and its feedstock (mainly corn), as well as associated supporters of the renewable fuel industry. *See* Geoff Cooper ("Cooper Decl.") ¶9 (attached); Skor Decl. ¶11; Brian Jennings ("Jennings Decl.") ¶¶4-5 (attached); Rob Larew ("Larew Decl.") ¶4 (attached); RFA, *RFA Members*, https://ethanolrfa.org/about/rfa-members (last visited Nov. 1, 2022); Growth Energy,

[6] The Court's Order set November 1, 2022 as the deadline for procedural motions. This Court's Handbook of Practice and Internal Procedures defines procedural motions to include motions to intervene. *See* D.C. Cir., *Handbook of Practice and Internal Procedures* at 28, https://tinyurl.com/2s3fz9vf.

Our Members, https://ethanol.org/people/member-directory (last visited Oct. 21, 2022); NFU, *Membership*, https://nfu.org/join/ (last visited Nov. 1, 2022).

The RFS volume requirements define the national "demand" for renewable fuel, *i.e.*, for movants' members' products. *Americans for Clean Energy*, 864 F.3d at 705; *Monroe Energy, LLC v. EPA*, 750 F.3d 909, 917 (D.C. Cir. 2014). By relieving certain obligated parties of their RFS obligations, however, SREs depress the demand for those products, "creat[ing]" a "renewable-fuel shortfall." *Am. Fuel & Petrochemical Mfrs. v. EPA*, 937 F.3d 559, 568, 571 (D.C. Cir. 2019); Cooper Decl. ¶¶12, 15; Skor Decl. ¶¶15-16. The reduced demand for renewable fuel in turn drives down the price of ethanol and other renewable fuels, as well as the price of the feedstocks used to produce renewable fuels. Cooper Decl. ¶¶13-14; Jennings Decl. ¶¶12, 14-15. This is so even when EPA grants an SRE petition after the compliance deadline (which would be the case with respect to many of the SREs at issue here if they were to now be granted, as petitioners want); EPA would return to the exempt refineries RINs reflecting their newly exempt volumes, *see, e.g.*, *Producers of Renewables United for Truth & Transparency v. EPA*, 778 Fed. App'x 1, 3 (D.C. Cir. 2019), which could be used to meet future RFS obligations in place of physical volumes of renewable fuel, thereby suppressing the use of renewable fuel in that future year. Cooper Decl. ¶¶12, 16; Skor Decl. ¶16; Jennings Decl. ¶12.

Accordingly, participation in this litigation is essential for RFA, Growth Energy, ACE, and NFU to protect the interests of their respective members. Vacatur of the June SRE Denial would disrupt the renewable fuel market, adversely impacting the businesses and investments that RFA's, Growth Energy's, ACE's, and NFU's members have made in the biorefineries, feedstocks, and technologies used to produce renewable fuel.

Because of the effect that SREs have on movants' members' business, RFA, Growth Energy, ACE, and NFU actively participated in the public comment process to express support for EPA denying SREs, submitting comments in response to EPA's notice of proposed denial of SREs.[7] Additionally, RFA, Growth Energy, ACE, and NFU have led previous challenges to EPA's small refinery exemption decisions and the underlying policy, including the Tenth Circuit case that precipitated the denials at issue here (*Renewable Fuels Ass'n*, 948 F.3d 1206) and a case in this Court challenging EPA's initial decision to grant the SRE petitions that are now the subject of the related April SRE Denial action (*see supra* n. 4; *Sinclair Wyoming Refining Co. v. EPA*, No. 19-1196 (D.C. Cir.)). Similarly, Growth Energy has played an active role in publicly advocating for clarity and efficiency in the renewable fuels market by,

[7] *See* Comments of Renewable Fuels Ass'n, EPA-HQ-OAR-2021-0566-0065 (Feb. 7, 2022); Comments of Growth Energy, EPA-HQ-OAR-2021-0566-0073 (Feb. 7, 2022); Comments of American Coalition for Ethanol, EPA-HQ-OAR-2021-0566-0035I (Feb. 7, 2022); Comments of National Farmers Union, EPA-HQ-OAR-2021-0566-0049 (Feb. 10, 2022).

among other things, expressing public support for the proposed Small Refinery Exemption Clarification Act.[8]

D. RFA's, Growth Energy's, ACE's, and NFU's Interests Would Not Be Adequately Represented by Another Party

The requirement that there be no adequate representation is "low," and precludes intervention only if "it is clear that the party will provide adequate representation." *Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) (quotation marks omitted); *see also Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (movant's burden "not onerous" (quotations omitted)). Further, courts "look skeptically on government entities serving as adequate advocates for private parties." *Crossroads*, 788 F.3d at 321 (quotation marks omitted). EPA, in representing its institutionally biased view of the RFS program and of SREs, will not adequately represent the private interests of the trade associations movants or their members. Indeed, as has happened in numerous prior RFS cases, EPA's arguments here may in some respects be in tension with movants' interests and arguments. *See Crossroads*, 788 F.3d at 321 (agency did not adequately represent

[8] *See* Press Release, Growth Energy, Growth Energy Applauds New Legislation to Clarify Oil Refinery Exemption (Jul. 2, 2021), *available at* https://growthenergy.org/2021/07/02/growth-energy-applauds-new-legislation-to-clarify-oil-refinery-exemptions/. The Small Refinery Exemption Clarification Act is a proposed piece of legislation in the 117th Congress. If enacted, the bill would amend CAA section 211(o)(9) to limit refineries eligible to receive SREs to those refiners who have continuously received an SRE since 2011.

private party even though there was "general alignment" between their positions); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736-737 (D.C. Cir. 2003).[9]

II. If Article III Standing Is Required, Movants Have It

A. Movants Should Not Have to Establish Standing to Intervene in Support of Respondent

This Court has required intervenors supporting respondent to demonstrate Article III standing. *See, e.g.*, *Deutsche Bank*, 717 F.3d at 193. That requirement is infirm in light of venerable principles of standing and contrary to recent Supreme Court precedent. Article III requires that the party "invoking the power of a federal court have standing"—thus, standing entails showing that the challenged action caused that party an injury that would be redressed by the requested relief. *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1950-51 (2019); *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006) ("the party asserting federal jurisdiction when it is challenged has the burden of establishing it"). But defensive parties—including "intervenor[s] in support of … [d]efendants"—by nature do not "invok[e] a court's jurisdiction" and therefore it is "not … incumbent on [them] to demonstrate [their] standing." *Virginia House*, 130 S. Ct. at 1951. Indeed, the

[9] RFA, Growth Energy, ACE, and NFU also can provide this Court with information concerning the renewable fuels industry that may assist the Court in understanding the issues in this litigation and assessing the practical implications of its decisions.

notion of a defensive party's "standing" is nonsense because such parties do not claim an injury caused by the challenged action; they want to *preserve* that action.

Moreover, even if defensive standing were a coherent concept, there would be no need for movants to establish it because EPA undoubtedly would have such standing, only "one" party "must have standing to seek each form of relief requested," and movants do not seek "relief that is broader than or different from the relief sought by" EPA. *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 137 S. Ct. 1645, 1651 (2017); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2379 n.6 (2020).[10]

B. In Any Event, Movants Have Standing Under This Court's Precedents

In any event, RFA, Growth Energy, ACE, and NFU satisfy the standard articulated in this Court's intervenor-standing precedents. The Tenth Circuit, in fact, held recently that the same associations had standing to challenge (as petitioners) EPA's prior decision to *grant* some of the same SRE petitions at issue here. *Renewable Fuels Association*, 948 F.3d at 1230-39. There is no reason this Court should reach a different conclusion.

An association has Article III standing to sue on behalf of its members when: "(a) its members would otherwise have standing to sue in their own right; (b) the

[10] If the Court considers standing dispositive of this motion, then movants respectfully request that the Court overturn the rule articulated in *Deutsche Bank* and similar precedent through the *Irons* procedure.

interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Military Toxics Project v. EPA*, 146 F.3d 948, 953-54 (D.C. Cir. 1998). Only one member of an association needs to have standing in its own right to satisfy the first requirement. *Id.* at 954; *Deutsche Bank*, 717 F.3d at 193.

For the same reason that movants' members have a substantial interest in the outcome of this case as under Federal Rule of Civil Procedure 24, they also satisfy this Court's Article III standing requirement. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("any person who satisfies Rule 24(a) will also meet Article III's standing requirement"). Specifically, the production and profitability of movants' members will be directly harmed by vacatur of the June SRE Denial because granting the requested SREs will lower the demand and prices for the members' renewable-fuel and feedstock products. *See* Cooper Decl. ¶¶12-15; Skor Decl. ¶¶15-16; Jennings Decl. ¶¶12-15; Larew Decl. ¶¶11-13. Moreover, by rejecting the analysis that EPA applies to SRE petitions, vacatur could impair the future value of movants' members' businesses and investments. That is plenty to establish Article II standing. *See Clinton v. City of New York*, 524 U.S. 417, 433 (1998) ("The Court routinely recognizes probable economic injury resulting from [governmental actions] that alter competitive conditions as sufficient to satisfy the [Article III 'injury-in-fact' requirement] …. It follows logically that any … petitioner who is likely to suffer

economic injury as a result of [governmental action] that changes market conditions satisfies this part of the standing test" (alterations in original)); *Crossroads*, 788 F.3d at 317 ("Our cases have generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit."); *Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) ("[E]conomic actors suffer [an] injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition against them." (quotation marks omitted)); *Fund for Animals*, 322 F.3d at 733-734; *Military Toxics*, 146 F.3d at 954.

Finally, the interests that movants seek to protect in this litigation are germane—indeed, vital—to their purposes and membership, *see National Lime Ass'n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000) ("mere pertinence between litigation subject and organizational purpose is sufficient"), and the validity of the relevant determinations reflected in the June SRE Denial can be adjudicated without the participation of any of their individual members.

CONCLUSION

For the foregoing reasons, RFA, Growth Energy, ACE, and NFU respectfully request that the Court grant them leave to intervene in support of Respondent EPA.

Dated: November 1, 2022 Respectfully submitted,

Respectfully submitted,

/s/ *Matthew W. Morrison*

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Movants provide the following corporate disclosure statement:

The **Renewable Fuels Association** ("RFA") states that it is a non-profit trade association within the meaning of Circuit Rule 26.1(b). Its members are ethanol producers and supporters of the ethanol industry. It operates for the purpose of promoting the general commercial, legislative, and other common interests of its members. The Renewable Fuels Association does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

The **American Coalition for Ethanol** ("ACE") is a non-profit trade association. Its members include ethanol and biofuel facilities, agricultural producers, ethanol industry investors, and supporters of the ethanol industry. ACE promotes the general commercial legislative, and other common interests of its members. ACE does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

Growth Energy is a non-profit trade association. Its members are ethanol producers and supporters of the ethanol industry. It operates to promote the general commercial, legislative, and other common interests of its members. Growth Energy does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

The **National Farmers Union** ("NFU") is a non-profit trade association. Its members include farmers who produce biofuel feedstocks and consume large

quantities of fuel. The NFU promotes the general commercial, legislative, and other common interests of its members. It does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

Dated: November 1, 2022

Respectfully submitted,

/s/ *Matthew W. Morrison*
Matthew W. Morrison

CERTIFICATE OF PARTIES AND AMICI CURIAE

As required by Circuit Rule 27(a)(4), the RFA, Growth Energy, ACE, and NFU certify that the parties in this case are:

Petitioners: Wynnewood Refining Company, LLC. (22-1178)

Delek US Holdings Inc.; Lion Oil Company, LLC; Alon Refining Krotz Springs, Inc.; Delek Refining, Ltd. (22-1181)

Sinclair Wyoming Refining Company LLC and Sinclair Casper Refining Company LLC (22-1183)

CHS Inc. (22-1185)

HollyFrontier Refining & Marketing LLC; HollyFrontier Cheyenne Refining LLC; HollyFrontier Woods Cross Refining, LLC (22-1186)

Kern Oil & Refining Co. (22-1187)

Cross Oil Refining & Marketing Inc. (22-1188)

United Refining Company (22-1189)

American Refining Group, Inc. (22-1190)

Calumet Montana Refining, LLC and Calumet Shreveport Refining, LLC (22-1191)

Countrymark Refining and Logistics, LLC (22-1192)

Ergon Refining, Inc., Ergon-West Virginia, Inc. (22-1193)

Hunt Refining Company (22-1194)

Par Hawaii Refining, LLC (22-1195)

Placid Refining Company LLC (22-1196)

San Joaquin Refining Co. Inc. (22-1197)

The San Antonio Refinery LLC (22-1198)

Countrymark Refining and Logistics, LLC (22-1238)

Wyoming Refining Company (22-1240)

American Refining Group, Inc. (22-1246)

Respondent: U.S. Environmental Protection Agency

Dated: November 1, 2022

Respectfully submitted,

/s/ *Matthew W. Morrison*
Matthew W. Morrison

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 2,594 words, excluding the exempted portions of the brief, as provided in Fed. R. App. P. 32(f). As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.
2. This motion complies with the typeface and type style requirements of Fed. R. App. P. 27(a)(5)-(6) because it was prepared in proportionally-spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

Dated: November 1, 2022

Respectfully submitted,

/s/ *Matthew W. Morrison*
Matthew W. Morrison

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 1, 2022

Respectfully submitted,

/s/ *Matthew W. Morrison*
Matthew W. Morrison

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
CIRCUIT

WYNNEWOOD REFINING COMPANY Petitioners, v. U.S. ENVIRONMENTAL PROTECTION AGENCY Respondent.	Case No. 22-1178 and consolidated cases

DECLARATION OF GEOFF COOPER

1. My name is Geoff Cooper. I am over 18 years of age and am competent to give this Declaration. This Declaration is based on personal knowledge, published data, and studies and information developed by the Renewable Fuels Association ("RFA"). I am submitting this Declaration on behalf of the movants' motion to intervene in the above-captioned matter.
2. Since 1981, RFA has served as a non-profit, national trade association and voice for the United States' ethanol industry both domestically and internationally. Ethanol is a renewable fuel produced from plant-based feedstocks, including grains like field corn and sorghum. The members of RFA include companies that manufacture ethanol fuel and market it to

blenders and marketers of gasoline, as well as companies that provide goods and services (such as process technologies and raw feedstocks) to ethanol producers. RFA's members operate facilities across the United States, from California to New York, and are responsible for a substantial share of the nation's ethanol production. Among RFA's purposes is representing its members in lawsuits affecting the ethanol industry.

3. I am currently the President and CEO of RFA and have served in that capacity since 2018. I have been employed with RFA since 2008, when I was hired as the organization's director of research and analysis. I have served in various capacities throughout my tenure, most recently as Executive Vice President. Prior to serving as CEO, I led RFA's regulatory activities, oversaw the group's research and technical initiatives, supported public and media relations efforts, assisted with legislative initiatives and managed the Renewable Fuels Foundation. Prior to RFA, I worked on ethanol issues for the National Corn Growers Association and served as a captain in the U.S. Army, where I specialized in bulk petroleum product logistics. Throughout my 14 years working for RFA and years of prior work experience, I have developed an in-depth understanding of the business and operations of the members of RFA, and the market for ethanol fuel in the United States.

4. Operators of domestic petroleum refineries are obligated to comply with the Renewable Fuel Standard ("RFS"), which mandates that transportation fuel sold or introduced into commerce domestically contains, on an average annual basis, specified volumes of renewable fuel and three subcategories of renewable fuel: cellulosic biofuel, advanced biofuel, and biomass-based diesel.
5. The statute establishes annual volumes for each subcategory, though EPA adjusts these volumes if specific statutory criteria are satisfied. EPA uses these annual volumes and estimates of transportation fuel consumption (gasoline and diesel) to calculate the annual percentage of total transportation fuel that must be comprised of each type of renewable fuel. *See* 40 C.F.R. § 80.1405.
6. Obligated parties under the RFS then apply those annual percentages to their own annual production or import volume of gasoline and diesel to determine the number of gallons of each type of renewable fuel for which they are responsible each year (their renewable volume obligation, or "RVO").
7. Obligated parties demonstrate compliance with their renewable volume obligations by accumulating quantities of renewable identification numbers ("RINs"), which represent physical gallons of renewable fuel, either by blending renewable fuel into transportation fuel themselves and "separating"

RINs, or by purchasing RINs from other parties who have blended renewable fuel.

8. Obligated parties can obtain RINs at any time during the compliance period. They may "bank" any RINs they obtained for compliance with their volume obligations. Any RIN credits that aren't used to meet an obligated party's current year RFS obligation may be "carried over" and held in inventory. The "carryover RINs" may be used to meet up to 20 percent of an obligated party's compliance requirements for the following year.

9. RFA's members primarily produce a type of renewable fuel, ethanol, that can be used by obligated parties to meet their RFS renewable fuel obligations. Some RFA members also produce small volumes of biomass-based diesel, renewable diesel, or cellulosic ethanol—which can be used by obligated parties to meet the biomass-based diesel, advanced biofuel and cellulosic biofuel portions of the RFS.

10. Congress has allowed individual "small refineries" to petition the U.S. Environmental Protection Agency ("EPA") for an exemption from compliance with their RFS obligations for a given year "for reason of disproportionate economic hardship." 42 U.S.C. § 7545(o)(9)(B)(i).

11. On June 3, 2022, EPA denied 69 petitions for small refinery exemptions ("SREs") for compliance years 2016-2021 (the "June SRE Denial") based

on a revised approach to evaluating SRE petitions. Petitioners—the small refineries whose SRE petitions were denied—have challenged EPA's decision in the case at issue. Because this case could have significant ramifications for RFA and its members, RFA is moving to intervene to support EPA's decision.

12. If petitioners' challenge were to succeed and EPA were to grant the 69 SREs at issue, EPA would retroactively relieve those refineries from their RFS compliance obligations by returning to the refineries RINs reflecting their newly exempt volumes. The refineries could then use these RINs to meet their future compliance obligations in lieu of physical volumes of renewable fuel, which in turn would cause a decrease in demand for the renewable fuel and feedstocks that RFA's members produce.

13. In addition, the influx of RINs returned to these refineries would cause a decline in RIN prices due to increased supply. Lower RIN prices weaken the incentive to blend renewable fuel. This is because obligated parties may easily comply with their RFS obligations by purchasing low-cost surplus RINs instead of blending physical volumes of renewable fuel.

14. It is my understanding that SREs granted (and, in turn, RINs returned) to refiners in the past led to reduced ethanol blending volumes and lower per-

gallon prices for ethanol, both of which caused lower revenues for RFA's ethanol producer members.

15. In addition, when D6 RIN[1] prices fall below the level necessary to incentivize E15 and E85 consumption, then small refinery exemptions can erode demand for this segment of physical ethanol consumption, which otherwise offers the industry's best opportunity for demand growth.[2]

16. SREs also increase the number of carryover RINs, which means that if EPA's decision were to be reversed and the 69 exemptions granted, RFA's members would continue to be harmed as obligated parties used carryover RINs to satisfy their renewable volume obligations for future compliance years. Even if exempt small refineries do not use these RINs for their own compliance and instead sell the RINs to other obligated parties, RFA and its members are harmed when other obligated parties use the carryover RINs for compliance instead of blending newly produced volumes of renewable fuel or obtaining RINs representing additional blending from other parties.

17. Because of the foregoing points, RFA and its members will be harmed if the Court finds for the petitioners in this case.

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[1] D6 RINs are the credits associated with blending corn-based ethanol into gasoline.

[2] *See* Gabriel E. Lade, Sébastien Pouliot, and Bruce A. Babcock, *E15 and E85 Demand Under RIN Price Caps and an RVP Waiver*, Iowa State University 4 (March 2018), https://www.card.iastate.edu/products/publications/pdf/18pb21.pdf.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on my personal knowledge and information prepared by RFA.

Executed this 1st day of November, 2022 in Ellisville, Missouri.

Geoff Cooper

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WYNNEWOOD REFINING COMPANY LLC, Petitioners, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 22-1178 and consolidated cases

DECLARATION OF EMILY SKOR

1. My name is Emily Skor. I am over 18 years of age and am competent to give this Declaration. This Declaration is based on personal knowledge. I am submitting this Declaration on behalf of the movants' motion to intervene in the above-captioned matter.

2. I serve as the CEO of Growth Energy. Growth Energy is a national trade association dedicated to promoting the commercial production and use of renewable fuels, particularly conventional and cellulosic ethanol. Growth Energy's 90 producer members make more than 8 billion gallons of ethanol that is used to meet the blending requirements of the Renewable Fuel Standard

(RFS).

3. The RFS was first enacted by the Energy Policy Act of 2005 and then further broadened by the Energy Independence and Security Act of 2007. In order to reduce our dependence on foreign oil imports and to reduce greenhouse gas emissions, the RFS program was established to blend more renewable fuels into our nation's transportation fuel system. The statutory requirements called for 36 billion gallons of renewable fuel to be blended by 2022.
4. In the market for transportation fuel, renewable fuel competes with fossil fuels. Any renewable fuel that is used for transportation purposes displaces the fossil fuel that would otherwise be used.
5. The RFS annual volume requirements define the amount of renewable fuel that must be used in the nation's transportation fuel supply. Thus, the requirements define a guaranteed level of demand for renewable fuel.
6. The volume requirements address four "nested" categories of renewable fuel: (1) cellulosic biofuel and (2) biomass-based diesel are types of (3) advanced biofuel, and all three of these are types of renewable fuel that can be credited toward (4) the total renewable fuel obligation.
7. Once the required volume requirements are determined for a given year, EPA converts those volumes into volume obligations, which are expressed as a percentage of the total transportation fuel projected to be consumed in the year.

Each obligated party must ensure that the fuel it refines contains the required percentages of renewable fuel, sometimes called "RVOs."

8. An obligated party may meet its RVOs directly by blending renewable fuel with the fossil fuel it refines to make transportation fuel (and thereby displacing some amount of fossil fuel). Or an obligated party may meet its RVOs indirectly by buying credits, called RINs, from others—either those who themselves blended renewable fuel (thereby displacing fossil fuel) or those who acquired the RINs from yet another party who blended.

9. Ethanol is, by far, the most commonly used renewable fuel in the transportation-fuel market. Roughly three-quarters of the renewable fuel used to comply with the RFS annually is ethanol. And in the segment of the market where all types of renewable fuels compete among themselves—that is, once the advanced RFS standard is met—conventional ethanol accounts for roughly 95% of the renewable fuel that is used to comply with the RFS annually.

10. Conventional ethanol generates D6 RINs, and thus D6 RIN prices best reflect the overall level of demand for renewable fuel.

11. Growth Energy's membership includes producers of conventional and cellulosic ethanol.

12. Under certain limited circumstances, EPA has the statutory power to exempt certain obligated parties – "small" refineries – from their RVOs. Because

historically EPA has not required obligated parties to make up the exempt volumes (whether prospectively or retrospectively), the effect of small refinery exemptions has been to reduce the RFS volume requirements gallon-for-gallon. In other words, small refinery exemptions have reduced the demand for renewable fuel.

13. On June 3, 2020, EPA denied 69 petitions for small refinery exemptions ("SREs") for compliance years 2016-2021 (the "June SRE Denial") based on a revised approach to evaluating SRE petitions. Petitioners – the small refineries whose SRE petitions were denied – have challenged EPA's decision in this case.

14. Growth Energy is moving to intervene to support EPA's June SRE Denial because the case could have significant negative implications for the association and its members. The significant adverse effect of the SREs on ethanol producers can be seen in various ways.

15. Reducing the amount of renewable fuel that refineries are required to blend into transportation fuel exposes renewable fuel producers to additional competition with fossil fuel producers to determine the composition of transportation fuel.

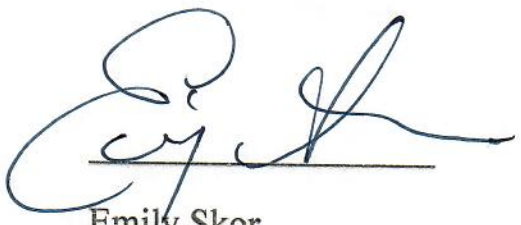
16. Additionally, SREs substantially reduce the demand for renewable fuel. If the SREs at issued were granted, EPA would retroactively relieve those refineries from their RFS compliance obligations by returning RINS reflecting the refineries' newly exempt volumes. The refineries could then use these RINs to

meet their future compliance obligations in lieu of physical volumes of renewable fuel, which would lead to decreased demand for feedstocks and renewable fuel.

17. Because of the foregoing points, Growth Energy and its members will be harmed if the court finds for the petitioners in this case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on my personal knowledge and information prepared by Growth Energy.

Executed this 1st day of November, 2022 in Washington, D.C.



Emily Skor

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WYNNEWOOD REFINING COMPANY LLC, Petitioners, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 22-1178 and consolidated cases

DECLARATION OF BRIAN JENNINGS

1. My name is Brian Jennings. I am over 18 years of age and am competent to give this Declaration. This Declaration is based on personal knowledge.
2. American Coalition for Ethanol ("ACE") is a non-profit grassroots organization that advocates for the domestic ethanol industry. ACE's members include U.S. ethanol biorefineries, investors in biofuel facilities, farmers, and companies that supply goods and services to the U.S. ethanol industry. Among ACE's purposes is representing its members in lawsuits affecting the ethanol industry.
3. I have been employed with ACE since 2004. I am ACE's Chief Executive

Officer and previously served as Executive Vice President. I also have worked as an advisor to U.S. Senator Tim Johnson and for a South Dakota farm organization in support of farmers, ranchers, and renewable fuels. In recent years, I have overseen ACE's regulatory and legislative initiatives, litigation concerning the implementation of the Renewable Fuel Standard ("RFS"), and public and media relations activities. I am also a fourth generation South Dakotan who has helped raise cattle and crops on land that my family has homesteaded for the past century. Throughout my years working for ACE, I have developed an in-depth understanding of the business and operations of the members of ACE, and of the market for ethanol fuel in the United States.

4. Many of ACE's members produce a type of renewable fuel, ethanol, that can be used by obligated parties for compliance with these RFS obligations.

5. Other members grow crops, primarily corn, that are used in the production of renewable fuels.

6. The RFS mandates that refiners and importers of transportation fuel (collectively, "obligated parties") blend a specified volume of renewable fuel into transportation fuel (gasoline and diesel). The statute specifies renewable fuel volume requirements through 2022, but EPA can reduce and has reduced these volumes if certain conditions are met and if EPA satisfies

specified considerations.

7. To comply with the mandates of the RFS, obligated parties can purchase gallons of ethanol to blend with gasoline at their refineries or terminals or purchase renewable identification numbers ("RINs"), which represent physical volumes of renewable fuel, from other parties who have blended renewable fuels with transportation fuel. RINs are attached to the ethanol that ACE's members produce and sell.

8. Obligated parties can also "bank" any RINs they obtained for compliance with their volume obligations. These "Carryover RINs" are credits that are held in inventory by market participants that may be used to meet up to 20 percent of an obligated party's compliance requirements for the following year.

9. Congress has allowed individual "small refineries" to petition the U.S. Environmental Protection Agency ("EPA") for an exemption from compliance with their Renewable Fuel Standard ("RFS") obligations for a given year "for reason of disproportionate economic hardship." 42 U.S.C. § 7545(o)(9)(B)(i).

10. On June 3, 2022, EPA denied 69 petitions for small refinery exemptions ("SREs") for compliance years 2016-2021 (the "June SRE Denial") based on a revised approach to evaluating SRE petitions. Petitioners, the small

refineries whose SRE petitions were denied, have challenged EPA's decision in this case.

11. ACE is moving to intervene in this case to support EPA's June SRE Denial, as this case could impact ACE and its members.

12. When EPA grants SREs, ACE's ethanol producers experience lower revenues resulting from a combination of reduced blending volumes and lower per-gallon prices. Similarly, it is my understanding that lower demand for ethanol reduces demand and prices for renewable fuel feedstocks grown by ACE's agricultural members.

13. If the petitioners' challenge were to succeed and EPA were to grant the 69 exemptions, EPA would retroactively relieve those refineries from their RFS obligations, returning RINS to the refineries that would reflect their newly exempt volumes. These refineries would then be able to use their RINs to meet future compliance obligations in lieu of physical volumes of renewable fuel, thereby decreasing demand for renewable fuel and feedstocks.

14. Decreasing—or even flatlined—ethanol blending levels is only one component of the economic impact to ACE's ethanol producer members. The reduction in ethanol demand attributable to SREs also creates a buyer's market that forces ethanol producers to lower prices in order to compete.

15. These lower prices squeeze margins for ethanol producers and put marginal plants at risk of idling or permanent closure.

16. Because of the foregoing points, ACE and its members will be harmed if the Court finds for the petitioners in this case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based on my personal knowledge.

Executed this 1st day of November 2022.

Brian Jennings

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
CIRCUIT

WYNNEWOOD REFINING COMPANY Petitioners, v. U.S. ENVIRONMENTAL PROTECTION AGENCY Respondent.	Case No. 22-1178 and consolidated cases

DECLARATION OF ROB LAREW

1. My name is Rob Larew. I am over 18 years of age and am competent to give this Declaration. This Declaration is based on personal knowledge. I am submitting this Declaration on behalf of the movants' motion to intervene in the above-captioned matter.

2. I serve as president of the National Farmers Union ("NFU"). NFU represents roughly 200,000 family farmers, ranchers, and rural members. Since 1902, NFU has worked to improve the well-being and quality of life of family farmers, ranchers, and rural communities by advocating for grassroots-driven policy adopted annually by our membership. Among NFU's purposes is representing its members in lawsuits affecting farmers and rural communities.

3. I have served as President of NFU since March 2020. Prior to leading NFU, I served as NFU's Senior Vice President of Public Policy and Communications since fall 2016. Prior to joining NFU, I served over 22 years in Congress and the U.S. Department of Agriculture working on agriculture policy and communication. I graduated from Virginia Polytechnical Institute and State University with a Bachelor of Science in Dairy Science and completed graduate work in Agronomy at Pennsylvania State University. Throughout my entire career I have been working in the agricultural sector and developed an in-depth understanding of the business and operations of the members of NFU, as well as the market for agricultural products.

4. NFU's members include family farmers and growers of crops such as corn and soybeans, which can be used as feedstocks in renewable fuel production.

5. Corn is used to produce most of the non-advanced portion of renewable fuels (convention renewable fuel), and soybeans are used to produce biomass-based diesel. These are both types of renewable fuel required under the Renewable Fuels Standard ("RFS").

6. According to U.S. Department of Agriculture conversion factors, one bushel of corn yields approximately 2.7 gallons of ethanol, a renewable fuel.[1] A bushel of soybeans yields approximately 1.5 gallons of biodiesel.[2]
7. The RFS annual volume requirements define the amount of renewable fuel that must be used in the nation's transportation fuel supply. Thus, the requirements define a guaranteed level of demand for renewable fuel.
8. Under certain limited circumstances, EPA has the statutory power to exempt certain parties covered by the RFS – "small" refineries – from their RFS obligations. Because historically EPA has not required obligated parties to make up the exempt volumes (whether prospectively or retrospectively), the effect of small refinery exemptions has been to reduce the RFS volume requirements gallon-for-gallon. In other words, small refinery exemptions have reduced the demand for renewable fuel.
9. On June 3, 2020, EPA denied 69 petitions for small refinery exemptions for compliance years 2016-2021 (the "June SRE Denial") based on a revised approach to evaluating SRE petitions. Petitioners, the small refineries whose SRE petitions were denied, have challenged EPA's

[1] U.S. Dep't of Agriculture, Documentation-Conversion Factors, https://www.ers.usda.gov/data-products/us-bioenergy-statistics/documentation/ (accessed Oct. 31, 2018).
[2] University of Arkansas, Division of Agriculture, Biodiesel, FSA1050-PD-3-2017RV, https://www.uaex.edu/publications/PDF/FSA-1050.pdf.

decision in this case.

10. NFU is moving to intervene to support EPA's decision because this case could negatively impact NFU and its members.

11. If Petitioners' challenge were to succeed and EPA were to grant the exemptions, those refineries would no longer need to demonstrate compliance with the applicable volumes through those years, which would reduce demand for renewable fuel.

12. Based on my experience since the enactment of the RFS, reducing demand for total renewable fuel would erode demand for agricultural crops including corn and soybeans (just as increasing demand for renewable fuels through the RFS has increased demand for feedstock crops and helped farmers).

13. It is my understanding that reduced demand pushes the price for renewable fuel lower. Based on my experience, lower prices for their products mean that renewable fuel producers will pay less for feedstocks, including corn and soybeans.

14. Because of the foregoing points, NFU and its members will be harmed if the court finds for the petitioners in this case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on my

personal knowledge and information prepared by NFU.

Executed this 1st day of November, 2022 in Washington, D.C.

Rob Larew