

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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Renewable Fuels Association,	)	
American Coalition for Ethanol,	)	
National Corn Growers Association,	)	
and National Farmers Union,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No.: _____
	)	
U.S. Environmental Protection	)	
Agency,	)	
	)	
Respondent.	)	
	)	

**PETITION FOR REVIEW**

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure; the Renewable Fuels Association (“RFA”), American Coalition for Ethanol, National Corn Growers Association, and National Farmers Union (collectively “Renewable Fuels Ad Hoc Coalition,” “Petitioners,” or “Coalition”) hereby petition the United States Court of Appeals for the Tenth Circuit for review of the following final agency actions issued by the Environmental Protection Agency (“EPA”):

1. *Extension of Small Refinery Temporary Exemption Under the Renewable Fuels Standard Program for HollyFrontier Corp.’s Woods Cross, Utah Refinery (May 2017)*<sup>1</sup>;
2. *Extension of Small Refinery Temporary Exemption Under the Renewable Fuels Standard Program for HollyFrontier Corp.’s Cheyenne, Wyoming Refinery (December 2017)*<sup>2</sup>; and
3. *Extension of Small Refinery Temporary Exemption Under the Renewable Fuels Standard Program for Wynnewood Refining Company, LLC’s Wynnewood, Oklahoma Refinery, a subsidiary of CVR Energy, Inc. and CVR Refining, LP (2018)*.<sup>3</sup>

Each of these small refinery exemption determinations is a final agency action subject to judicial review in this Court. *See Sinclair Wyo. Refining Co. v. EPA*, 874 F.3d 1159, 1163 (10th Cir. 2017); 42 U.S.C. § 7607(b)(1). Venue is proper in this circuit because, although each of the determinations challenged here is a “determination of nationwide scope or effect,” EPA did not publish any of them in the Federal Register or by any other means. *See Lion Oil Co. v. EPA*, 792

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<sup>1</sup> *See* Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, HollyFrontier Corporation (Feb. 21, 2018) at 76, attached hereto as Appendix A.

<sup>2</sup> *Id.*

<sup>3</sup> Although CVR Energy would neither confirm nor deny that it applied for or received a small refinery exemption, its first quarter 2018 financials indicate that it has received an economic hardship exemption. On April 26, 2018, CVR Energy acknowledged “a reduction in our estimated Renewable volume obligation” and reported that it expected its 2018 cost of compliance with the RFS to be \$120 million less than the amount it had estimated just two months prior. Jarrett Renshaw and Chris Prentice, [CVR Q1 Income Doubles on Stronger Crack Spreads, Lower Biofuels Cost](#), Reuters, Apr. 26, 2018; Jarrett Renshaw and Chris Prentice, [U.S. EPA Grants Biofuels Waiver to Billionaire Icahn’s Oil Refinery-Sources](#), Reuters, Apr. 30, 2018; attached hereto as Appendix B.

F.3d 978, 980 (8th Cir. 2015) (finding that the § 7607(b)(1) provision for exclusive venue in the District of Columbia Circuit Court of Appeals for review of a locally or regionally applicable agency determination that is nonetheless “of nationwide scope or effect” applies only where such determination is “published”; transmitting final determination to petitioning small refinery did not “publish” the determination within the meaning of the statute). Indeed, EPA did not even provide public notice that it had received or had acted upon any requests for an extension of a small refinery exemption. Instead, the Coalition learned of these exemptions through recent media reports citing EPA sources. Because EPA never published the exemption letters or determinations, in the Federal Register or otherwise, and the Coalition thus does not have actual notice of EPA’s determinations within the meaning of the statute, the 60-day period for filing a petition for review under 42 U.S.C. § 7607(b)(1) did not begin to run and the time period set forth under 40 C.F.R. § 23.3 for unpublished determinations is not applicable to the Coalition.<sup>4</sup> However, out of an abundance of caution, the

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<sup>4</sup> EPA’s regulation setting a 14-day automatic “trigger” of the 60-day period for filing petitions for review in the case of unpublished decisions, 40 C.F.R. § 23.3, applies only to potential litigants having actual notice those decisions. EPA acknowledged in promulgating this rule that parties with no notice were “outside the scope” of the rulemaking. *See* 50 Fed. Reg. 7268, 7269 (Feb. 21, 1985) (“Most potential litigants interested in actions covered by the regulations will have actual notice of non-Federal Register documents. . . . The rule issued today will have the beneficial effect of establishing a fixed trigger for commencing the

Coalition is filing this petition within 60 days of the first news article (April 3, 2018), attached hereto as Appendix C.

To date, EPA has refused to disclose information requested by journalists pursuant to the Freedom of Information Act (“FOIA”) about any specific small refinery exemptions. *See* Appendix C. EPA has likewise refused to disclose information requested by Petitioner RFA in response to RFA’s separate FOIA request to the agency. *See* Appendix D. The Coalition is also aware of an April 12, 2018 letter from a bipartisan group of United States Senators to EPA requesting additional information from EPA regarding small refinery exemptions. *See* Letter from Charles E. Grassley, United States Senator, to Scott Pruitt, EPA Administrator (Apr. 12, 2018), attached as Appendix E (available at <https://www.grassley.senate.gov/sites/default/files/Pruitt%20Small%20Refinery%20Letter%204.12.18.pdf> (last accessed May 29, 2018)). To Petitioners’ knowledge, however, EPA has yet to release this requested information as of the date of this filing.

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judicial review process [for litigants having actual notice]. The commenter’s concern—that someone entitled to seek judicial review, and who has no notice of the action, will later be barred from obtaining review by a preclusive judicial review provision—**addresses a matter not within the scope of this rulemaking.**”) (emphasis added). The Coalition, as potential litigants with no actual notice of the EPA’s determinations, is outside of the scope of the regulation is therefore inapplicable to Petitioners in this case.

In testimony before the House Energy and Commerce Committee on April 26, 2018, Administrator Pruitt neither confirmed nor denied that CVR Refining, a parent company of Wynnewood Refining Corp., LLC received a small refinery exemption. Transcript of House Energy and Commerce Committee, Subcommittee on Environment hearing on Fiscal Year 2019 Environmental Protection Agency Budget at ln. 4144-4156 (April 26, 2018), attached hereto as Appendix F.

Date: May 29, 2018

Respectfully submitted,

/s/ Matthew W. Morrison

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Environmental Protection Agency,	)	
	)	
Respondent.	)	
	)	

**CERTIFICATE OF CORPORATE DISCLOSURE**

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioners prove the following corporate disclosure statement:

The Renewable Fuels Association (“RFA”) is a non-profit trade association. 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 interest 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 is a non-profit trade association. Its members include ethanol and biofuel facilities, agricultural producers, ethanol industry investors, and supporters of the ethanol industry. It operates for the purpose of promoting 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.

The National Corn Growers Association is a non-profit trade association. Its members are corn farmers and supporters of the agriculture and ethanol industries. It operates for the purpose of promoting 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.

The National Farmers Union is a non-profit trade association. Its members are farmers and supporters of the agriculture and ethanol industries. It operates for the purpose of promoting 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.

Date: May 29, 2018

Respectfully submitted,

/s/ Matthew W. Morrison

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*Counsel for Petitioners*

## CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Appellate Procedure 15(c) and 25, and 40 C.F.R. § 23.12(a), I hereby certify that on May 29, 2018, I have taken the following actions to ensure proper service of the foregoing Petition for Review and Corporate Disclosure Statement:

***Service on Respondent:*** I will cause five time-stamped copies of the foregoing Petition for Review and Corporate Disclosure Statement to be delivered by overnight mail on The Clerk of the Clerk of the Court of Appeals of the Tenth Circuit for Service on Respondent, through each of the following individuals:

The Hon. Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Correspondence Control Unit  
Office of General Counsel (2311)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Matthew Z. Leopold  
General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

The Hon. Jeff Sessions  
Attorney General of the United States

U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Jeffrey H. Wood  
Acting Assistant Attorney General  
U.S. Department of Justice  
Law and Policy Section  
Environment and Natural Resources  
Division  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

*Service on parties to the agency proceedings:* I will also cause time-stamped copies of the foregoing Petition for Review and Corporate Disclosure Statement to be delivered by overnight mail upon each of the following individuals:

Wynnewood Refining Company, LLC  
c/o John R. Walter  
Executive Vice President, General Counsel and Secretary  
CVR Refining, LP  
10 E. Cambridge Circle, Suite 250  
Kansas City KS 66103

Scott White  
Vice President & Refinery Manager  
Holly Frontier Corporation  
Woods Cross Refinery  
1070 West 500 South  
West Bountiful, Utah 84087-1442

Jeff Danielson  
Vice President & Refinery Manager  
Holly Frontier Corporation  
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## CERTIFICATE OF DIGITAL SUBMISSION

In accordance with the Court's CM/ECF User's Manual, I hereby certify that:

- 1) All required privacy redactions have been made per Tenth Circuit Rule 25.5;
- 2) Hard copies of this pleading that may be required to be submitted to the Court are exact copies of the ECF filing; and
- 3) The ECF submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Symantec Endpoint Protection version 14.0.2422.0202 and, according to the program, is free of viruses.

Date: May 29, 2018

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