

Big Win for Small Refineries

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On June 25, 2021, the U.S. Supreme Court sided with small oil refineries by making it easier for the companies to win exemptions from the existing mandate that they mix ethanol and other renewable fuels into gasoline and diesel, known as the Renewable Fuel Program (RFP). When these mandates were adopted in 2005 and 2007, Congress granted temporary exemptions to small refineries and authorized those refineries to apply for extensions at any time.

The question in *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Assn.* was whether the U.S. Environmental Protection Agency (EPA) may grant an extension of the hardship exemption to a small refinery that has not received continuous extensions of the initial exemption for every year since 2011. Congress expressly gave small refineries a temporary exemption from complying with the requirement to use increasing amounts of renewable fuel under the RFP, provided they can prove economic harm related to compliance with the RFP.

In a 6-3 decision, the Court overturned the 10th Circuit U.S. Court of Appeals' prior holding that the EPA exceeded its authority in granting dozens of small refineries waivers from the mandate under the RFP. The appeals court found that the EPA had exceeded its authority "because there was nothing for the agency to extend" and held "refineries could receive a waiver only if they already had been granted one and it had been continually renewed."

The case turned on the justices' interpretation of just a few words in the Renewable Fuel Standard law — specifically its provision allowing a small refinery to petition the EPA "at any time" for an "extension" of its initial, automatic exemption. Biofuel producers unsuccessfully argued the law's use of the word "extension" inherently meant refineries can only qualify if they have an existing exemption to prolong.

Justice Neil Gorsuch, authoring the majority opinion, wrote:

"It is entirely natural — and consistent with ordinary usage — to seek an 'extension' of time even after some lapse. ... Think of the forgetful student who asks for an 'extension' for a term paper after the deadline has passed, the tenant who does the same after overstaying his lease, or parties who negotiate an 'extension' of a contract after its expiration. ... The plain meaning of 'extension' does not require unbroken continuity..."

The broader implication of the Court's decision is the potential impact it will have on the EPA when it releases its preliminary 2021 blending mandate in July, 2021. To date, there are 32 pending Small Refinery Exemption petitions (SREs) for 2019, and 18 SREs for 2020, according to the EPA's website. The release of the 2021 blending data may result in a significant uptick in the number of SREs, especially if the EPA decides to increase the amount of ethanol and other renewable fuels otherwise mandated to be blended into refineries' products.

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