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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

CALUMET MONTANA REFINING, LLC,  
Plaintiff,

v.

ANDREW R. WHEELER, in his official  
capacity as the Administrator of the United  
States Environmental Protection Agency.

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR  
INJUNCTIVE RELIEF**

Plaintiff Calumet Montana Refining, LLC (“Calumet”) brings this action against EPA Administrator Andrew R. Wheeler (Wheeler) to enjoin enforcement of the Renewable Fuel Standard program with respect to its Great Falls, Montana refinery. Plaintiff alleges the following facts and claim for relief:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Calumet Montana Refining, LLC, owns a petroleum refinery in Great Falls, Montana.

2. Defendant Andrew R. Wheeler is the Administrator of the United States Environmental Protection Agency (“EPA”).

3. EPA is an agency of the federal government located in Washington, D.C.

4. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 2201. Declaratory and injunctive relief is sought as authorized in 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(1). Defendant is a United States officer sued in his official capacity. Venue is proper under § 1391(e)(1)(C) because Plaintiff resides in this district and no real property is involved in the action. Plaintiff is a resident of Great Falls, Montana. Venue is also proper under § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred here and the refinery that is the subject of the action is situated here.

## **BACKGROUND**

### **The Renewable Fuel Standard Program**

6. Congress created the Renewable Fuel Standard (“RFS”) Program—codified at Clean Air Act Section 211(o), 42 U.S.C. § 7545(o)—as part of the Energy Policy Act of 2005. Pub. L. No. 109-58, § 1501(a), 119 Stat. 594, 1067-74 (2005). The RFS Program requires renewable fuels, such as ethanol and biodiesel, to be blended into petroleum-based transportation fuels (gasoline and diesel) sold in the United States. Congress set annual volumes for nationwide renewable fuel use from 2006 through

2012. *Id.* at 1069. In the Energy Independence and Security Act of 2007, Congress increased the annual renewable fuel volume requirements and extended the RFS Program through 2022. Pub. L. No. 110-140, § 202, 121 Stat. 1492, 1521-28 (2007).

7. “Obligated parties” are responsible for ensuring that the volume targets are met each year. 42 U.S. C. § 7545(o)(3)(B)(ii)(I); 40 C.F.R. §§ 80.1406, 80.1407. An obligated party must meet its Renewable Volume Obligation (“RVO”) each year. 40 C.F.R. § 80.1406(b). To calculate its RVO, an obligated party multiplies EPA’s volume percentage for the year by the volume of transportation fuel the company produced or imported. The statute defines “obligated parties” as “refineries, blenders, distributors, and importers,” *see* 42 U.S.C. §§ 7545(o)(2)(A)(iii)(I), (o)(3)(B)(ii)(I), but EPA has imposed compliance obligations exclusively on refiners and importers, *see* 40 C.F.R. § 80.1406(a)(1). “Refiners” produce petroleum-based fuels and other products from crude oil, whereas “blenders” blend renewable fuel into petroleum-based fuels to create the gasoline and diesel products actually sold to consumers.

### **Renewable Identification Numbers (RINs)**

8. Obligated parties demonstrate their compliance by securing blending credits called Renewable Identification Numbers (“RINs”). *Id.* § 80.1427. A RIN is created when a renewable fuel producer manufactures renewable fuel—ethanol, for example. *Id.* § 80.1426. Until the renewable fuel is blended into petroleum-based

transportation fuel, the RIN remains attached to the physical volume of renewable fuel. *Id.* § 80.1428. The RIN is “separated” when the renewable fuel is blended with transportation fuel. *Id.* § 80.1429. Obligated parties use separated RINs to demonstrate RFS compliance. *Id.* § 80.1427.

9. Obligated parties that do not separate enough RINs to meet their RVOs must buy the RINs in the secondary market. Under the trading system established by EPA, RINs can be traded on a spot market or bought and sold through private contracts. 75 Fed. Reg. 14,670, 14,722 (Mar. 26, 2010). Since the development of the RFS Program, RIN prices have skyrocketed.

10. The marketplace for RINs is necessary because “[m]any obligated parties”—particularly small refineries—“do not have access to renewable fuels or the ability to blend them, and so must use credits to comply.” 72 Fed. Reg. 23,900, 23,904 (May 1, 2007).

### **The Small Refinery Exemption**

11. When Congress created the RFS Program, it recognized that small refineries like Calumet would face disproportionate economic impacts from the new compliance obligations due to the competitive distortion in favor of blending refineries and exempt (non-refining) blenders. Building facilities for blending renewable fuels into petroleum products is capital-intensive and may not be feasible for small refineries, meaning they are forced to purchase RINs from larger refiners

or non-obligated parties that operate blending facilities. Small refineries often sell to limited geographic markets, where acceptance of renewable fuel blends is low. Unlike large, vertically-integrated refiners that can transport their fuels to different markets, small refineries may be forced to limit the extent to which they blend renewable fuels to match what their local markets will accept. As a result, many small refineries are heavily reliant on purchasing RINs to comply with the RFS Program. And if the market price for RINs exceeds the cost of purchasing and blending renewable fuels, compliance with the RFS Program advantages large refineries and disadvantages non-blending small refineries.

12. Congress did not intend to place small refineries at a permanent competitive disadvantage relative to large refineries, so Congress allowed small refineries to petition EPA for an extension of the statutory exemption from RFS compliance “for the reason of disproportionate economic hardship.” 42 U.S.C. § 7545(o)(9)(B)(i). Congress directed EPA, “in consultation with the Secretary of Energy,” to consider the findings of the DOE Study and “other economic factors” when evaluating small refinery hardship petitions. *Id.* § 7545(o)(9)(B)(ii).

13. The Department of Energy, in a 2011 report for Congress, explained that small refineries would be significantly harmed when the RFS volume obligations increase and the price of RINs increases. RINs are now trading at near record highs.

### **Calumet's Hardship Petition to EPA**

14. Calumet owns a petroleum refinery in Great Falls, Montana.
15. Calumet is an "obligated party" under the RFS Program. 40 C.F.R. § 80.1106(a)(1). As an obligated party, Calumet is required to blend renewable fuel with the transportation fuel it produces or buy RINs from other parties that have blended renewable fuel with transportation fuel.
16. Calumet's refinery is a "small refinery" under the RFS Program. 40 C.F.R. § 80.1141(g).
17. Calumet is unable to sell enough blended fuels to meet its RFS obligations, and it faces increasing compliance costs driven by the high price of RINs.
18. Small refineries may petition EPA at any time for relief from RFS compliance based on disproportionate economic hardship. 40 C.F.R. § 80.1441(e)(1).
19. Calumet submitted an application for small refinery hardship relief for the 2019 compliance year on November 1, 2019.
20. Calumet submitted a petition for small refinery hardship relief for the 2020 compliance year on December 18, 2020.
21. EPA has not yet acted on Calumet's petitions for hardship relief for the 2019 and 2020 RFS compliance years.

### **EPA's Ongoing and Unlawful Delay and the Harm to Calumet**

22. Under the Clean Air Act, EPA must act on Calumet's petition within 90 days

of receipt. 42 U.S.C. § 7545(o)(9)(B)(iii); 40 C.F.R. § 80.1141 (e)(2) (“The Administrator shall act on such a petition not later than 90 days after the date of receipt of the petition.”). Thus, EPA is in violation of the Clean Air Act.

23. The current RFS compliance deadline of March 31, 2021, is fast approaching. On January 15, 2021, EPA announced a proposed rule to extend the compliance deadline for RFS compliance for both the 2019 and 2020 compliance years. 86 Fed. Reg. 3928, 3929 (Jan. 15, 2021). The proposed rule sets forth a 2019 RFS compliance deadline of November 30, 2021 and a 2020 RFS compliance deadline of January 31, 2022. *Id.* However, this notice of proposed rulemaking is neither final nor guaranteed to become final at any set point in time.

24. By its failure to timely grant Calumet’s small refinery hardship petitions for the 2019 and 2020 compliance years, EPA could force Calumet to be in violation of the law for failure to comply with the RFS Program if this Court does not enjoin enforcement.

25. This Court has the equitable power to enjoin enforcement of agency action.

### **FIRST CAUSE OF ACTION**

#### **(Equitable relief for unlawful agency action)**

26. This Court may use its equitable powers to enjoin violations of law by federal agencies when a party is irreparably injured and other legal remedies are inadequate. *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 110–11 (1902). “The

Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citations omitted).

27. EPA is already in violation of federal law because it has not issued a decision on Calumet’s petition for hardship relief within 90 days of receipt.

28. As described above, Calumet will be irreparably injured if this Court does not enjoin EPA from enforcing the RFS against Calumet for the 2019 and 2020 compliance years.

29. Other legal remedies are inadequate as there is no relevant final agency action to challenge.

#### **PRAYER FOR RELIEF**

WHEREFORE Plaintiff respectfully requests that the Court enjoin EPA from requiring Calumet to comply with the RFS obligations for the 2019 and 2020 compliance years until such time that EPA has granted Calumet’s petitions for small refinery hardship relief.

Dated this 19<sup>th</sup> day of January, 2020.

BY: /s/ Jean E. Faure  
Jean E. Faure  
FAURE HOLDEN ATTORNEYS AT LAW, P.C.  
Attorneys for Plaintiff



The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
**CALUMET MONTANA REFINING, LLC**

**(b) County of Residence of First Listed Plaintiff** \_\_\_\_\_  
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c) Attorneys (Firm Name, Address, and Telephone Number)** \_\_\_\_\_

**DEFENDANTS**  
**ANDREW WHEELER, Administrator of the United States Environmental Protection Agency**

**County of Residence of First Listed Defendant** \_\_\_\_\_  
*(IN U.S. PLAINTIFF CASES ONLY)*

**NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.**

**Attorneys (If Known)** \_\_\_\_\_

**II. BASIS OF JURISDICTION** *(Place an "X" in One Box Only)*

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question *(U.S. Government Not a Party)*

4 Diversity *(Indicate Citizenship of Parties in Item III)*

**III. CITIZENSHIP OF PRINCIPAL PARTIES** *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

*(For Diversity Cases Only)*

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District *(specify)*

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
 28 U.S.C. §§ 2201 and 2202

Brief description of cause:  
 Equitable relief for unlawful agency action under the Renewable Fuel Standard program with respect to its Montana refinery

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$** \_\_\_\_\_

**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 1/19/2021

SIGNATURE OF ATTORNEY OF RECORD: *Alan J. Faure*

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_