No. 23-1229

IN THE

Supreme Court of the United States

ENVIRONMENTAL PROTECTION AGENCY,

Petitioner,

v.

CALUMET SHREVEPORT REFINING, L.L.C., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF COUNTRYMARK REFINING AND LOGISTICS, LLC AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

Countrymark Refining and Logistics, LLC ("CountryMark") is a farmer-owned cooperative founded in 1919.[1] Governed by a Board of Directors comprising farmers, its profits are annually distributed back to its members through the cooperative system. CountryMark is owned by more than 140,000 farmers. It is headquartered in Indiana.

CountryMark has a significant interest in this appeal because, while small refineries (rightly) prevailed in the recent *Sinclair Wyoming* decision in the D.C. Circuit, CountryMark did not get its own day in court to specifically and fully address the disproportionate economic hardship that is suffers. CountryMark's case was improperly consolidated with those of 25 other small refineries. *See Sinclair Wyoming Refin. Co. LLC v. EPA*, 101 F.4th 871 (D.C. Cir. 2024). As a result, CountryMark's particular economic circumstances were mentioned in just two sentences in the briefs before the D.C. Circuit. It had no chance to fully and fairly explain how denial of its hardship petitions could jeopardize its ability to continue operating.

The demise of CountryMark would significantly harm the rural region in which it operates. CountryMark employs nearly 500 workers, concentrated in the rural economy of southwest Indiana and southeast Illinois.

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1. No counsel for a party authored this brief in whole or in part. No such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amicus curiae, its members, or its counsel, made such a monetary contribution.

In Posey County, Indiana, a county with only 25,000 residents, CountryMark provides over $30 million in wages and benefits each year. In 2024, it purchased over $800 million of crude oil primarily from the Illinois Basin, and those purchases provided income to the 40,000 royalty owners in the Illinois Basin. Its products are also sold and distributed through its branded dealer network, providing employment throughout rural communities in its area.

CountryMark is the only farmer-owned integrated oil company in the United States, and it is recognized in Indiana as a leader in the distribution of biodiesel and ethanol. Its refinery, which uses 100% American crude oil, processes 35,000 barrels of crude per day. It supplies over 70% of agricultural market fuels and 50% of school district fuels in Indiana. Although CountryMark is a critical participant in its regional market, it operates as a small refinery relative to its peers, with a capacity that is merely one-tenth the size of the average refinery in its region.

CountryMark is precisely the type of small refinery Congress envisioned when enacting Small Refinery Exemptions ("SRE"). For CountryMark, SREs are not a mechanism to avoid compliance with Congressional mandates; rather, they are vital tools to sustain economic viability while advancing renewable fuel adoption—an effort CountryMark has championed since before such mandates existed.

CountryMark is an Obligated Party under the Renewable Fuel Standard ("RFS"). Despite its early adoption of renewable fuels, CountryMark's customers are unable or unwilling to blend sufficient renewable

fuels to meet the company's annual RFS obligations. While CountryMark has invested significantly in blending infrastructure, the continued escalation of Renewable Volume Obligations ("RVOs"), combined with rising Renewable Identification Number ("RIN") prices, renders compliance financially unsustainable without relief through SREs.

To address the economic hardship imposed by the RFS, CountryMark has sought SREs under the Clean Air Act ("CAA"). By statute, these exemptions must be determined based on the applicant's individual economic circumstances. When the Environmental Protection Agency ("EPA") denied CountryMark's RFS hardship petitions, CountryMark sought judicial review in its regional circuit. But, on EPA's motion, the cases were transferred to the D.C. Circuit and consolidated with other refineries' petitions, denying CountryMark its statutory right to review of its particular economic hardships by its regional circuit. CountryMark thus has significant interest in this Court's affirmance of the Fifth Circuit's determination that the proper venue for review of EPA's decisions on SRE petitions is the small refinery's regional circuit.

SUMMARY OF ARGUMENT

The Fifth Circuit correctly determined that the proper venue for judicial review of EPA's decision on SRE petitions is the regional circuit of the petitioning small refinery. The specific economic circumstances of the small refinery and the area in which it operates are the statutorily required and exclusive bases for EPA determinations of RFS hardship applications. A small

refinery is almost by definition a local or regional concern. *See* 42 U.S.C. § 7545(o)(1)(K). Thus, the SRE applicant's regional circuit is best suited to address the application and the local economic realities that should underlie EPA's decision.

Congress concluded that localized EPA decisions should be reviewed by local jurisdictions. 42 U.S.C. § 7607(b)(1). That is a rational division of labor for at least three reasons.

First, local jurisdictions are best equipped to render decisions based on local economic realities. Indeed, in large measure, that is the very purpose of having regional courts of appeals. EPA, along with supporting *amici* from trade associations that represent non-obligated entities, wrongly assume that fuel prices are generally set in the context of a national market. All states and regions have different fuel prices, which are driven by the supply and demand in local markets. Anyone who travels regularly can attest that fuel prices in Indiana, California, and Louisiana differ widely—driven by local or regional supply and demand. Fuel prices in Posey County in southern Indiana are noticeably different from those of Chicago-adjacent Lake County, Indiana. CountryMark, which is an Obligated Party, operates wholesale terminals in several markets and experiences these local economic differences every day. This reinforces the need for review of EPA decisions in the SRE applicant's regional circuit.

Second, distributing localized EPA actions among the regional circuits ensures that petitioners get the individualized review that the CAA contemplates. The CAA directs EPA to evaluate "a" hardship petition based on whether the particular petitioner would face

a "disproportionate economic hardship" if required to comply with renewable fuel standards. 42 U.S.C. § 7545(o)(9)(B)(i-ii). It naturally follows that the denial of an SRE hardship petition will also get individualized attention in the appropriate court of appeals. But in the joint opening brief in *Sinclair Wyoming*, CountryMark's unique circumstances got just two sentences—totaling 60 words. And CountryMark was not mentioned at all in the joint reply brief. CountryMark has a greater opportunity to discuss its economic hardship in this amicus brief than it had to explain them in *Sinclair Wyoming*, where it was a party and its own petition was reviewed.

Third, individual petitioners are more likely to get the timely review required by the CAA if the workload is dispersed among the regional circuits. The CAA directs EPA to act on an SRE hardship petition within 90 days of receipt. 42 U.S.C. § 7545(o)(9)(B)(iii). As Respondents explain, EPA ignored that deadline and deprived many SRE petitioners of their right to timely review. *See* Respondents Br. 17, 25-26, 39-40 (Jan. 21, 2025). That delay was exacerbated by the consolidation of dozens of petitions in the D.C. Circuit. The Fifth Circuit handled its petitions for review months before the D.C. Circuit adjudicated its bundle of consolidated cases.

EPA is wrong to assert that venue lies exclusively in the D.C. Circuit for every petitioner seeking appeal of an SRE hardship petition ruling. EPA is wrong about the fuel market: fuel prices are local and regional rather than national. And EPA is wrong about the process here. Venue should not shift to the D.C. Circuit merely because EPA bundled quintessentially local SRE hardship petitions together.

ARGUMENT

1. CountryMark's local market conditions dictate whether it can meet the federal renewable fuels mandate.

The individualized nature of SRE hardship petitions makes regional circuits the "appropriate circuit[s]" under the CAA's venue provision, 42 U.S.C. § 7607(b)(1). Indiana-based CountryMark's SRE petitions should be reviewed in the Seventh Circuit. Sending them to the D.C. Circuit undermines the statutory framework of the CAA. This brief focuses on the practical effects that the venue decision has on a small refinery like CountryMark.

CountryMark is a quintessential small refinery. It is a farmer-owned cooperative that was advancing the use of renewable fuels even before it was subject to a federal law mandate. However, it faces disproportionate economic hardship compared to other refineries—even other small refineries—because of circumstances specific to its ownership and marketplace.

CountryMark has invested in fuel blending infrastructure that remains capable of blending enough renewable fuels to meet its annual obligation. But despite CountryMark's infrastructure and a customer base that embraced renewable fuels early, CountryMark's customers simply do not want—and thus will not purchase—the higher renewable fuel blends required for CountryMark's compliance with EPA mandates.

Customers select the percentage of renewable fuels to be blended into their gasoline and diesel when they choose which fuel mix to purchase. The customer's preferences

in CountryMark's market are specific to CountryMark and are not "national" in any sense. In CountryMark's marketplace, demand remains low for higher blends. For example, E85 (a fuel product typically containing 85% ethanol and 15% gasoline) is not widely accepted by CountryMark's consumers regardless of price because it has less energy per gallon compared to E10 (10% ethanol; 90% gasoline).[2] That low demand is essentially immune to price changes. These local retail economics impact CountryMark's ability to sell fuel blends in sufficient quantities to achieve CountryMark's RVO compliance levels.

CountryMark's blend percentages are below the federal government's CAA mandate because of its customers' preferences. They purchase less of the higher fuel blends, resulting in CountryMark's achieving lower blending percentages than the mandate requires. CountryMark must then purchase RINs (compliance credits) to achieve RFS compliance. The combination of mandated RVO increases above CountryMark's marketplace's demand, plus increasing RIN prices, makes continued compliance practically impossible, and SREs vital. Without SREs, CountryMark's long-term viability is threatened.

Another economic circumstance specific to CountryMark is its disproportionate blending of diesel

2. *Ethanol*, U.S. Dep't of Energy, https://www.fueleconomy.gov/feg/ethanol.shtml (last visited Jan. 27, 2025) ("Due to ethanol's lower energy content, [flex fuel vehicles] operating on E85 get roughly 15% to 27% fewer miles per gallon than when operating on regular gasoline, depending on the ethanol content. Regular gasoline typically contains about 10% ethanol.").

versus gasoline. CountryMark first blended biodiesel in 2006, and it is today considered a leader of biodiesel blending in Indiana.[3] Unsurprisingly, its farmer members and their rural customers require more diesel fuel than gasoline.

CountryMark consequently operates its refinery to maximize diesel fuel production to meet the requirements of its diesel-centric farmer members and customers. Because of CountryMark's local customer demand, CountryMark sells more diesel fuel through its member retail network than it can produce at its refinery, so it must purchase diesel from other suppliers to meet customer demand.

Even though biodiesel helps meet this demand, customers strongly disfavor it, and therefore buy much less of it. This results in a disproportionate economic hardship for CountryMark compared to other refiners. And to preclude all doubt, the Department of Energy has recognized that high diesel production is a criteria for disproportionate economic harm in its small refinery exemption study.[4] This is exacerbated for CountryMark.

CountryMark's customers are integrated with the agricultural community, and they are knowledgeable users of renewable fuels—both ethanol and biodiesel. Importantly, CountryMark's customers are aware

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3. Meggie Foster, *CountryMark Debuts New Brand, Re-energized Vision*, Farm World (Jun. 20, 2007), http://www.farmworldonline.com/news/ArchiveArticle.asp?newsid=4377.

4. U.S. Dep't of Energy, Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship 33 (Mar. 2011), https://www.epa.gov/sites/default/files/2016-12/documents/small-refinery-exempt-study.pdf.

that biodiesel does not work well in cold temperatures, for which Indiana winters are well known. This is an acute concern for agricultural consumers because they frequently store diesel fuel on-site, year-round. Consequently, CountryMark can sell less than 2% of biodiesel on an annual average basis as a percentage of all diesel sales. Contrast this with non-obligated parties like large truck stops who sell to on-road truckers. Truck stops can routinely blend 20% biodiesel in their product because on-road truckers immediately consume the fuel, and thus do not have to worry about exposing that diesel fuel to the elements in longer-term storage.

These local marketplace factors preclude CountryMark's opportunity to blend biodiesel into diesel fuel, as compared to blending ethanol into gasoline. Even if CountryMark were to try to force a 5% biodiesel blend on customers, that would not be enough to meet CountryMark's RFS obligations. Since higher biodiesel blends are not as accepted in the market, CountryMark does not sell as many biodiesel blends at 10% or higher.

Without having the ability to sell higher renewable blends in diesel fuel, CountryMark is structurally disadvantaged compared to other refineries. By favoring the production of diesel fuel to meet the needs of its regional agricultural market, CountryMark does not produce enough gasoline for ethanol blending at any percentage that would eliminate the need to purchase high-priced RINs.

CountryMark operates in a volatile fuel market and its disproportionate economic hardship is structural. CountryMark produces more diesel fuel than a typical

refinery to serve its farmer-owners, and it is located in an extremely competitive market with multiple refineries, pipelines, and terminals.

As a result, EPA needs to reevaluate each year whether the exemption should be extended to CountryMark, just as Congress directed. When EPA gets the SRE determination wrong, CountryMark should be heard individually, not bundled with other geographically dispersed SRE petitioners. And its statutory venue is the Seventh Circuit, its regional court of appeals.

2. CountryMark lost its opportunity for individualized judicial review of the denial of its SRE hardship petition.

CountryMark filed a petition for review of EPA's denial of its hardship petition for 2018 in the Seventh Circuit in May 2022.[5] In this petition, CountryMark sought to bring before its regional circuit its unique and local economic factors. Instead of consideration by the Seventh Circuit of these CountryMark-centric economics factors, the case was transferred to the D.C. Circuit on EPA's motion.[6]

CountryMark also filed a petition for review of EPA's denial of its hardship petitions for 2019, 2020, and 2021 in the Seventh Circuit in August 2022.[7] As with the May

5. *See* Petition for Review, *Countrymark Refin. and Logistics, LLC v. EPA*, No. 22-1878 (7th Cir. May 18, 2022).

6. *See* Order Granting EPA's Motion to Transfer, *Countrymark Refin. and Logistics, LLC v. EPA*, No. 22-1878 (7th Cir. Jul. 20, 2022); *Countrymark Refin. and Logistics, LLC v. EPA*, No. 22-1165 (D.C. Cir.).

7. *See* Petition for Review, *Countrymark Refin. and Logistics, LLC v. EPA*, No. 22-2368 (7th Cir. Aug. 3, 2022).

petition for review, the August petition was transferred to the D.C. Circuit on EPA's motion.[8] CountryMark's petitions for review were consolidated with 25 other small refineries into an omnibus case in the D.C. Circuit. *See Sinclair Wyoming Refin. Co. LLC, et al. v. EPA*, No. 22-1073 (D.C. Cir.).

In the small refinery petitioners' joint opening brief in *Sinclair Wyoming*, CountryMark's unique economic circumstances got two sentences—just 60 words in an opening brief of 23,970 words.[9] And in the joint reply brief there was no room to mention CountryMark's specific, local economics at all.[10] Owing to the consolidated nature of the case, CountryMark could spend just two sentences explaining why millions of dollars of compliance costs under the RFS created disproportionate hardship for CountryMark and threatened its continued financial viability.

It is hard to see how CountryMark's appeal could receive the individualized attention it is entitled to within just 0.025% of the opening brief—and none of the reply. If CountryMark had remained in the Seventh

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8. *See* Order Granting EPA's Motion to Transfer, *Countrymark Refin. and Logistics, LLC v. EPA*, No. 22-2368 (7th Cir. Sep. 8, 2022); *Countrymark Refin. and Logistics, LLC v. EPA*, No. 22-1238 (D.C. Cir.).

9. *See* Final Joint Opening Brief of Petitioner-Appellants at 17, 81, *Sinclair Wyoming Refin. Co. LLC, et al. v. EPA*, No. 22-1073 (D.C. Cir., Jun. 15, 2023).

10. *See generally* Final Joint Reply Brief of Petitioner-Appellants, *Sinclair Wyoming Refin. Co. LLC, et al. v. EPA*, No. 22-1073 (D.C. Cir., Jan. 9, 2024).

Circuit, it would have had 14,000 words in the opening brief—and 7,000 in the reply—to discuss its individual economic reality and its disproportionate hardship under the RFS.[11] If CountryMark's case had remained in the Seventh Circuit, it would have had that court's full attention. CountryMark would have been able to explain its particular operations, customers, and market factors. Its hardships would have been fully and fairly considered by judges in CountryMark's regional circuit, as Congress intended.

3. CountryMark lost its opportunity for timely judicial review of the denial of its SRE hardship petition.

Congress recognized that the CAA's fuel mandates could pose an existential threat to smaller refineries, hence the exemption system for refiners facing "disproportionate hardship." A smaller refinery facing this existential threat needs timely review of its SRE hardship petition. So the CAA directs EPA to act on an SRE hardship petition within 90 days of receipt. 42 U.S.C. § 7545(o)(9)(B)(iii). Needless to say, if EPA denies a hardship petition, the small refinery also needs timely adjudication of its petition for review of that decision; vindication delivered months, and in some cases, years, too late is small comfort.

The dozens of SRE petitioners, including CountryMark, who were bundled together in the D.C. Circuit in *Sinclair Wyoming* filed SRE hardship petitions as early as 2016, received denials from EPA in April and June 2022, and were given judicial decisions in the D.C. Circuit in July

11. Seventh Circuit Local Rule 32(c).

2024. *Sinclair Wyoming Refin. Co. LLC v. EPA*, 114 F.4th 696, 704 (D.C. Cir. 2024). That means that for more than half of the existence of the renewable fuel mandate, small refineries like CountryMark have operated in regulatory uncertainty that threatened their very existence. *See* 42 U.S.C. § 7545(o)(9)(A)(i) (directing that the renewable fuel mandate will apply to small refineries beginning in 2011). It is true that much of the delay is attributable to EPA's failure to act on the petitions in a timely fashion.[12] But not all.

Venue mattered. The Fifth Circuit declined to transfer its petitions to the D.C. Circuit. It resolved both the venue dispute and the merits of those petitions eight months before the D.C. Circuit adjudicated the dozens of petitions bundled together in the April and June 2022 denials. *See Calumet Shreveport Refin., LLC v. EPA*, 86 F.4th 1121 (5th Cir. 2023). The distributed workload designed by Congress is better suited for timely adjudication of SRE hardship petitions. Delayed decision-making leads to greater economic uncertainty. Along with the threats of increasing RVOs and rising RIN prices, delay undermines CountryMark's ability to plan for the future and maintain its economic viability for its 140,000 farmer-owners and their customers.

12. Respondents ably explain why EPA should not be allowed to use that unlawful delay to turn dozens of local decisions into one or two "national" ones. Respondents Br. 17, 25-26, 39-40 (Jan. 21, 2025).

CONCLUSION

CountryMark exemplifies the localized challenges faced by small refineries. Its operations are deeply embedded in the region within which it operates. These unique regional dynamics are best understood and adjudicated within CountryMark's regional circuit.

The Fifth Circuit's venue ruling should be upheld to ensure that EPA's actions on SRE applicants' petitions are reviewed within the applicants' regional circuits. This approach respects the individualized nature of SRE determinations, reinforces statutory compliance, and preserves the rights of small refineries like CountryMark to operate within a fair and sustainable regulatory framework.

Respectfully submitted,

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