

## Haynes and Boone in Law360: EPA Can't Justify Year-Round Ethanol Fuel Use, DC Circ. Told

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September 18, 2020 Michael Scanlon

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PRACTICES Environmental, Environmental Litigation

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*Law360* featured Haynes Boone in an article about a matter involving firm client, the Small Fuel Retailers Coalition (SRC), which was part of a coalition that claimed the U.S. Environmental Protection Agency (EPA) flouted the clear language and intent of the Clean Air Act with its move to allow year-round sales of gasoline made with 15% ethanol.

The SRC is represented by Partner Suzanne B. Murray and Counsel [Michael J. Scanlon](#).

Here is an excerpt:

The EPA has argued that a Clean Air Act waiver allowing blended gasoline known as E15 to be sold throughout the year merely closes a gap that prevented its wide distribution in the summertime and is legally sound. But petroleum industry groups said in a reply brief that the agency's reinterpretation of the CAA's requirements simply can't be squared with the statute's text, structure and history.

Meanwhile, agricultural industry advocates told the D.C. Circuit in a reply brief that the EPA wrongly asserted that they don't have standing to argue for even higher concentrations of ethanol in gasoline, and small fuel retailers insisted the EPA failed to consider how they would be impacted by the E15 waiver in violation of the Regulatory Flexibility Act.

The Small Retailers Coalition, representing small fuel retailing companies, said in its reply brief that it, too, has standing to challenge the EPA's rule. The agency has long said that fuel retailers were "entities likely to be regulated" by a rule dealing with RVP standards and can't justify its about-face in the E15 rule that fuel retailers are only "affected parties."

"Here, the E15 Rule directly regulates fuel retailers, and SRC is a trade organization that represents the interests of small fuel retailers," the SRC said in its brief. "Thus, SRC's standing is self-evident."

"We don't have a preconceived idea of what the [regulatory] analysis has to be, it just has to exist," Haynes Boone Partner Suzanne Murray, who represents SRC, told *Law360* on Monday. "Also, we continue to ask EPA to look at other formulations of this rule and the volumes setting rules that do not economically damage small business."

To read the full article, click [here](#). (Subscription required)