

US EPA ARCHIVE DOCUMENT

**Byron Bunker
Acting Director
Compliance Division
Office of Transportation and Air Quality
Office of Air and Radiation
and
Phillip Brooks
Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency**

**Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
July 11, 2012**

Written Statement

Mr. Chairman, Members of the Subcommittee, we appreciate the opportunity to appear today to testify on the EPA's program for renewable transportation fuel.

Biofuels are a critical part of the evolving renewable transportation fuel landscape. As directed by Congress in the Energy Independence and Security Act (EISA) of 2007, the EPA published on March 26, 2010, regulations after public notice and extensive comment to implement revisions to the national renewable fuel standard program, commonly called the RFS program. EISA established new year-by-year specific volume standards for renewable fuel reaching a total of 36 billion gallons by 2022. In addition, EISA established volume standards for new categories of renewable fuel (biomass-based diesel fuel, cellulosic biofuel, and advanced biofuel). The revised statutory requirements include new definitions and criteria for both renewable fuels and the feedstocks used to produce them, including new greenhouse gas emission (GHG) reduction thresholds. The regulatory requirements went into effect on July 1,

2010, and apply to domestic and foreign producers and importers of gasoline and diesel fuel, and renewable fuel used in the United States.

The RFS program will provide both energy security and environmental benefits. The EPA estimated in its 2010 rulemaking that the greater volumes of biofuels required by EISA, if fully implemented, would displace about seven percent of expected annual gasoline and diesel fuel consumption in 2022, decrease oil imports by \$41.5 billion, and result in additional energy security benefits of \$2.6 billion that relate to reducing risk to the economy from oil supply disruptions. The RFS would also reduce GHG emissions from the transportation sector by an average of 138 million metric tons of carbon dioxide equivalent per year when the program is fully implemented in 2022—equivalent to annual emissions produced by 27 million vehicles.

Since the program's inception, there has been a dramatic increase in the production and use of biodiesel fuel. Production out-paced the volume standards required by EISA for 2011 and is on track to meet or even out-pace the 2012 standard of one billion gallons. The market continues to respond to many elements of this important policy, despite the fraudulent conduct of a few bad actors.

As described in greater detail below, the EPA has initiated and continues to pursue criminal investigations and civil enforcement proceedings against the companies suspected of fraud and violations of the Clean Air Act. At the same time, we have settled with and instituted an interim policy to cap the penalties EPA will require from obligated parties who violated the regulations by using invalid RINs to meet their statutory obligations. The regulated community has already taken steps to improve its due diligence and tracking of renewable identification numbers (RINs), including the creation of at least three programs designed to validate the

authenticity of RINs. The EPA is concurrently discussing with all affected parties additional market and regulatory measures that may be taken to ensure these problems do not recur.

Understanding the statutory basis and history of the RFS program is essential to understanding the agency's recent enforcement actions and how the program might be changed and refined in the future. Congress established the RFS program to reduce the nation's reliance on imported petroleum by requiring that transportation fuel sold in the United States contain a minimum volume of renewable fuel. The statute placed the responsibility of achieving the annual minimum volume requirements on petroleum refiners and importers. The EPA developed implementing regulations through extensive collaboration with renewable fuel producers, fuel distributors, petroleum refiners and others to ensure that the new program would work in concert with the existing fuels market and business practices.

The RFS regulations allow obligated parties – the producers and importers of gasoline or diesel fuel – to demonstrate compliance with renewable fuel volume requirements in one of two ways. Obligated parties can demonstrate compliance either by acquiring the required volumes of renewable fuels together with their associated RINs or by acquiring just the RINs without the associated fuel. The EPA instituted these options in response to requests from refiners for flexibility and to implement the statutory provision for a credit program. The EPA also worked closely with refiners and renewable fuel producers to develop a centralized, electronic data transaction system designed to accommodate the new EISA standards. This new system, the EPA Moderated Transaction System, or “EMTS” supports real time submission of RIN transactions (approximately 20,000 per day).

A key factor in the development of the current RFS program and RIN system is that obligated parties are responsible for ensuring their volume obligations are met even if they

procure no renewable fuel volume themselves and comply solely by acquiring RINs. If an obligated party acquires RINs that are invalid because they don't represent actual fuel or RINs that do not represent the proper fuel type, those RINs cannot be used to demonstrate compliance with the obligated party's annual obligations. The use of invalid RINs would undermine the volume requirements established by Congress, which is why the EPA's Office of Enforcement and Compliance Assurance and the Office of Air and Radiation are working together to address issues regarding fraudulent RINs. By enforcing the renewable fuel standard, the EPA is curtailing fraud and abuse, maintaining a level playing field, and protecting legitimate renewable fuel producers and an important program that benefits all Americans.

As the Committee is aware, the EPA recently investigated and pursued a criminal action against Clean Green and the civil enforcement office has issued Notices of Violation alleging the generation of invalid RINs to two producers of fraudulent RINs, Absolute Fuel in Texas, and Green Diesel in Texas. Other enforcement activities continue. While we are not able to discuss the details of these cases because the release of such information could jeopardize ongoing investigations, we can report that on June 25, 2012, the owner of Clean Green was convicted on 42 counts of violations of the Clean Air Act, wire fraud and money laundering. As a part of the recent criminal prosecution, federal law enforcement authorities have seized approximately \$3 million in assets that are believed to represent proceeds of illegal conduct by Clean Green.

While the focus of the EPA's enforcement efforts has been on the parties that actually generated invalid RINs and defrauded purchasers out of significant sums of money, the RFS regulations do not allow invalid RINs for compliance with Renewable Volume Obligations. Buyers and sellers in the market place are under an affirmative obligation to ensure that the credits they use or sell represent real renewable fuel volume. Accordingly, petroleum refiners

and importers are expected to exercise good business judgment and use due diligence when acquiring RINs from third parties.

After the criminal investigation of Clean Green had reached a point where assets had been seized and a public charge had been made, the status of RINs generated by Clean Green had to be addressed. Obligated parties that used the invalid RINs to meet their RFS obligations were in violation of the governing regulations which specifically provide that: “[i]nvalid RINs cannot be used to achieve compliance with the Renewable Volume Obligations (RVO) of an obligated party or exporter, regardless of the party’s good faith belief that the RINs were valid at the time they were acquired [40 CFR 80.1431(b)(2)].” As a result, in November 2011, the EPA notified the obligated parties that used those RINs that they were required to adjust their compliance records by removing the invalid RINs from their RVO compliance accounts and ensure sufficient valid RINs are in the accounts by the regulatory deadlines.

After issuance of the notices, the EPA met at least once with every obligated party that used RINs generated by Clean Green as well as biodiesel producers, brokers and traders. Many parties that we met with urged the EPA to ease market uncertainty by promptly providing guidance on the potential civil penalty exposure related to the use of invalid RINs. In March 2012, to expedite a quick resolution of the matter and bring needed stability to the RIN trading market, the EPA offered each involved obligated party a settlement to resolve its potential civil penalty liability for the use of invalid RINs generated by both Clean Green and Absolute. The settlement had two components. First, the parties needed to replace the invalid RINs to satisfy their RVOs at their own expense. Second, although the regulations place the burden on obligated parties to ensure that RINs they use are valid, based upon all the facts and circumstances the EPA offered to resolve violations arising from the use of invalid RINs for 10 cents per RIN, with

a cap on the maximum penalty of \$350,000. The settlement policy also provided a mechanism to prevent obligated parties from being price gouged by allowing them to replace 2010 or 2011 RINs with RINs generated in 2012. A cost of 20 cents per RIN was established for this option to encourage the use of the appropriate vintage RINs while allowing the obligated party a price relief option if needed.

The EPA's Office of Enforcement and Compliance Assurance simultaneously issued an Interim Enforcement Response Policy (Enforcement Response Policy) to provide a streamlined approach to, among other things, allow parties who used any invalid RINs generated before 2012 to correct their violations without the EPA commencing a formal enforcement action. As of this time, 31 parties have accepted the offer. In the Enforcement Response Policy, the EPA also explained that going forward, it intends to notify the regulated community that it has alleged that RINs are invalid by posting information on its website when the agency has developed what it determines is sufficient proof to warrant a public allegation and determined that such notification will not unduly impair ongoing investigations. We have posted information on our website alleging that Clean Green, Absolute Fuel and Green Diesel have generated invalid RINs.

After the announcement of the recent enforcement actions relating to fraudulent RINs, participants in the biodiesel market undertook substantial new efforts to investigate and otherwise ensure the RINs they acquire represent actual renewable fuel volumes. The EPA is aware of at least three third-party private sector programs that have been developed to help companies involved in the RIN market evaluate the validity of RINs. The agency also has reached out to the oil industry and biodiesel producers to discuss ways to improve the RFS program, and RIN validity in particular. All parties in our discussions share a common goal to improve the RFS program in a way that is fair to all parties, and meets the renewable fuel

volume targets envisioned by the Congress. While the approach to fulfilling this goal is still under consideration, the EPA believes the discussions so far have resulted in a number of promising options for consideration, including a proposal to establish a third party verification system to help industry participants ensure that RINs are valid.

In closing, the EPA understands the seriousness and urgency of the fraudulent RIN issue and has been diligently working with industry to alleviate uncertainties in the renewable fuels market for obligated parties and producers alike. Our goal now is the same as it has always been – successful implementation of the program established by Congress in 2007 under EISA. We are working closely and continuously with industry and other stakeholders to explore all options that could improve implementation of the RFS program. We are committed to taking action to make necessary adjustments to the program in a timely manner.