

November 7, 2011

EPA Issues Notices of Violation of the RFS to Twenty-Four Parties

The U.S. Environmental Protection Agency (EPA) today issued Notices of Violation of the Clean Air Act to parties who used Renewable Identification Numbers (RINs) generated by Clean Green Fuel LLC to satisfy their compliance obligations (known as “renewable volume obligations” or “RVOs”) under the Renewable Fuel Standard (RFS1 and RFS2). The actions followed an EPA determination that the RINs generated by Clean Green Fuel were invalid, as they did not represent corresponding volumes of biodiesel that the company was purporting to have produced at its Maryland facility.

EPA’s determination with respect to Clean Green Fuel stems from the criminal charges filed by the U.S. Attorney’s Office against Rodney Hailey, owner of Clean Green Fuel, for allegedly selling more than 32 million fraudulent RFS1 (and potentially RFS2) biodiesel RINs. Hailey allegedly registered Clean Green Fuel with the EPA as a producer of biodiesel, but the company never actually produced any renewable fuel. Court documents state that twenty-four obligated parties used these RINs for compliance purposes, and many more companies likely traded the fraudulent RINs.

EPA is asserting that obligated parties to whom it sent notices: (1) violated the RFS by retiring the Clean Green Fuel RINs for compliance purposes and are subject to penalties of up to \$37,500 for every day of violation, plus the economic benefit or savings resulting from each violation; (2) must remove RINs generated by Clean Green Fuels from their 2010 annual compliance reports; and (3) must resubmit amended 2010 annual compliance reports within 14 business days after receipt of the Notice of Violation. Annual compliance reports may be amended in one of two ways: (1) by acquiring and retiring valid 2010 RINs for compliance purposes; or alternatively (2) by carrying a deficit into the 2011 compliance year and satisfying this deficit when the 2011 compliance reports are submitted in February 2012. As part of determining the appropriate course of action, recipients of this letter will likely want to review their commercial documentation with the counterparties from whom they purchased Clean Green Fuel RINs to determine whether there are any commercial remedies available. Recipients of EPA’s notice may request a conference with EPA to discuss the potential violations.

The Energy and Environmental Group at Sutherland has significant experience in representing parties regarding compliance with the RFS and before EPA’s fuels division in enforcement proceedings.



If you have any questions regarding this issue, please feel free to contact any of the attorneys listed below.

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