

February 2, 2012

EPA Issues Notice of Violation of the Renewable Fuel Standard for Generation of 48 Million Fraudulent RINs Worth Approximately \$62 Million

On February 2, 2012, the U.S. Environmental Protection Agency (EPA) issued a Notice of Violation of the Clean Air Act's Renewable Fuel Standard to Absolute Fuels, LLC, for generating and selling 48,147,974 Renewable Identification Numbers (RINs) (currently worth approximately \$62 million) on biodiesel that was never actually produced by Absolute Fuels. Under the Renewable Fuel Standard, RINs are generated on each gallon of renewable fuel produced. U.S. gasoline and diesel refiners, importers and blenders (known as "obligated parties") are required to purchase and submit these RINs for compliance purposes.

Obligated parties who submit invalid RINs for compliance are potentially liable for significant penalties and fines under the Clean Air Act, even if such parties undertook best efforts to determine the validity of the RINs. At this time EPA is not sending Notices of Violation to the individual obligated parties (i.e., gasoline and diesel refiners, importers and blenders) who retired RINs generated by Absolute Fuels to satisfy their compliance obligations, but will do so in a few weeks if such parties have not contacted EPA about resolving any potential violations. This is a different approach than EPA previously took when it issued Notices of Violation to twenty-four parties who used invalid RINs generated by Clean Green Fuel LLC to satisfy for compliance. Nonetheless, EPA has made it clear that all invalid RINs must be replaced if used for compliance, and that EPA will still consider penalties even if Notices of Violation are not issued to obligated parties who use these RINs for compliance.

The Energy and Environmental Group at Sutherland has significant experience in representing parties regarding compliance with the Renewable Fuel Standard 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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