

April 30, 2012

EPA Issues Notice of Violation of the Renewable Fuel Standard (RFS2) to Green Diesel, LLC for Generating 60 Million Invalid RINs Worth \$84 Million

On April 30, 2012, the U.S. Environmental Protection Agency (EPA) issued a Notice of Violation (NOV) of the Clean Air Act's Renewable Fuel Standard (RFS2) to Green Diesel, LLC of Houston, Texas for generating and selling 60,034,033 Renewable Identification Numbers (RINs) (currently worth approximately \$84 million) on biodiesel that was never actually produced by Green Diesel. 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 penalties and fines under RFS2, even if such parties undertook best efforts to determine the validity of the RINs. At this time EPA is not sending NOVs to the individual obligated parties (i.e., gasoline and diesel refiners, importers and blenders) who retired RINs generated by Green Diesel to satisfy their compliance obligations, but expects that any such company will follow EPA's Interim Enforcement Response Policy by replacing the RINs, paying corresponding penalties for use of the RINs and developing a "RIN Integrity Report."

EPA's invalidation of the RINs generated by Green Diesel comes on the heels of two prior actions in which EPA invalidated at least 80 million RINs, worth at least \$100 million. In November 2011, EPA invalidated 32 million RINs generated by Clean Green Fuels, LLC, of Maryland. Then in February 2012, EPA invalidated 48 million RINs generated by Absolute Fuels, LLC, of Lubbock, Texas. Earlier this month, EPA entered into settlement agreements with 31 obligated parties who used the RINs generated by Clean Green and Absolute Fuels for compliance with the Renewable Fuel Standard, collecting a combined total of approximately \$3.7 million in penalties from these companies and requiring that they acquire replacement RINs.

Sutherland Asbill & Brennan's Energy and Environmental Group has significant experience representing obligated parties in EPA enforcement proceedings for alleged violations of the Renewable Fuel Standard based on possible use of invalid RINs.



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

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