



THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

July 9, 2012

TO: Members, Subcommittee on Oversight and Investigations

FROM: Subcommittee on Oversight and Investigations Staff

RE: Hearing on “RIN Fraud: EPA’s Efforts to Ensure Market Integrity in the Renewable Fuels Program”

On Wednesday, July 11, 2012, at 10:00 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled “RIN Fraud: EPA’s Efforts to Ensure Market Integrity in the Renewable Fuels Program.” This hearing will examine Environmental Protection Agency (EPA) handling of fraud in the production and trade of Renewable Identification Numbers, or “RINs,” which serve as credits for the production and blending of renewable fuels and are used for compliance purposes under EPA’s Renewable Fuel Standard (RFS) regulations.

I. WITNESSES

Panel 1

Jennifer Case
Co-Founder and CEO
New Leaf Biofuel

Andy Sprague
Owner/Operator
Union County Biodiesel Co. LLC

Thomas Paquin
President
VicNRG, LLC

J.P. Fjeld-Hansen
Managing Director
Musket Corporation

Joe Jobe
Chief Executive Officer
National Biodiesel Board

Charles Drevna
President
American Fuel & Petrochemical Manufacturers

Panel 2

Byron Bunker
Acting Director, Compliance Division
Office of Transportation and Air Quality
Environmental Protection Agency

Accompanied by
Phillip Brooks
Director, Air Enforcement Division
Office of Enforcement and Compliance
Assurance

II. BACKGROUND

EPA is responsible for developing and implementing regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel, also known as biofuel, pursuant to the Renewable Fuel Standard (RFS). The Renewable Fuel Standard was created under the Energy Policy Act of 2005, which established a renewable fuel volume mandate to be blended into the gasoline supply. Under the Energy Independence and Security Act (EISA) of 2007, a revised RFS – known as RFS2 – superseded and expanded the biofuels blending mandate to include diesel fuel, in addition to gasoline, to increase the volumes and categories of renewable fuels mandated to be blended into transportation fuels, and to institute lifecycle greenhouse gas performance standards that the biofuels must meet.

In accordance with RFS2, EPA calculates annual volume requirements for the four separate, but nested, biofuel categories – conventional renewable fuel (corn-based ethanol), biomass-based diesel, cellulosic biofuels, and advanced biofuels (which include imported sugarcane ethanol, among other fuels) – to meet a total renewable fuel requirement.¹ These requirements apply to refiners and importers of gasoline and diesel fuels -- the “obligated parties” -- and are used to determine each individual company’s renewable volume obligation (RVO). Producers and importers of renewable fuels must register with EPA and provide information to demonstrate that they produce qualified renewable fuels.

To track renewable fuel use and facilitate compliance with blending requirements, while taking into consideration regional differences in biofuels production and availability, EPA established a system of tradeable renewable identification numbers, or RINs. RINs serve as credits for specific amounts of renewable fuels produced and blended into the fuel supply, consistent with statutory requirements. Each gallon of qualifying renewable fuel is assigned its own unique RIN. Obligated parties use the RINs to demonstrate compliance with their renewable fuel blending obligations. When the biofuel is blended into transportation fuel or meets certain other conditions, RINs can be separated from the underlying fuel and traded, much like currency, ultimately to facilitate the obligated parties’ compliance efforts.

To help ensure the integrity of the market that has been developing under the renewable fuels program, EPA created under RFS2 an electronic system to register and track renewable fuels transactions and required producers and importers to supply third-party engineering reports verifying facility capability to produce qualifying fuel. EPA maintains that it does not certify or validate the fuel produced and registered in its system and that obligated parties are responsible for conducting their own due diligence when participating in the market and conducting RINs transactions.

Over the course of the past year, the production of and trade in fraudulent or invalid RINs has emerged as a significant problem within the market for biomass-based diesel (biodiesel) fuels,

¹ For more information on the Renewable Fuel Standard in general and EPA’s regulatory requirements more specifically, see Randy Schnepf and Brent D. Yacobucci, Congressional Research Service, R40155, “Renewable Fuel Standard (RFS): Overview and Issues” (2012), available at <http://www.crs.gov/Products/R/PDF/R40155.pdf>.

which by volume is second in size only to conventional ethanol fuels production.² Unlike ethanol RINs, which trade for around 2 cents each, biodiesel RINs have traded for upwards of \$1.50 each and have served to help make the biodiesel market economically viable and competitive, especially for smaller producers and biodiesel blenders, such as truck stops. Yet the relatively high price for RINs has also attracted fraud.

As recently as June 25, 2012, a Federal jury in Maryland found Rodney Hailey, of Clean Green Fuels, guilty of selling \$9 million worth of fraudulent biodiesel RINs to brokers, oil companies and producers and then using the money to purchase luxury cars and high-end jewelry, among other activity.³ These RINs were supposed to represent 21 million gallons of actual fuel produced, but Clean Green had no facilities to make biofuels and all of its RINs were invalid. On November 7, 2011, when Clean Green was initially charged with fraud, EPA sent 24 Notices of Violation (NOVs) to refiners, distributors, and other obligated parties who were purchasers of these invalid RINs.

On February 2, 2012, EPA issued Absolute Fuels, LLC a NOV alleging that the company, from at least August 2010 to October 2011, generated over 48 million invalid biodiesel RINs without actually producing any qualifying fuel. On April 30, 2012, EPA issued Green Diesel, LLC a NOV alleging that the company, from at least July 2010 through July 2011, generated more than 60 million invalid biodiesel RINs without producing any qualifying fuel. In both cases, these companies allegedly sold these invalid RINs to others.⁴ Additional, and more sophisticated, instances of fraud involving potentially tens of millions more RINs are presently being investigated.

In the wake of the announcements of this fraud, and related enforcement actions by EPA to require obligated parties to replace the invalid RINs, the market for biodiesel RINs has tightened dramatically, according to industry participants. Prices for RINs have plummeted from \$1.50 to less than \$1.10 per gallon, reducing the margins necessary to make biodiesel competitive with conventional diesel fuels. Most affected appear to be small producers and other biodiesel marketers who are having difficulty selling RINs to obligated parties, which have backed away from transacting with all but the largest and most-well known biodiesel producers.

As part of the Committee's ongoing investigation into EPA's handling of RIN fraud, this hearing will take testimony from different marketplace participants and the EPA with the aim of identifying the impacts of fraud on small producers, marketers, refiners and blenders; examining efforts to address the problems identified with EPA's current regulatory approach to ensuring market integrity; and identifying longer term challenges, risks, and solutions to fraud in the renewable fuels program.

² In 2011, for example, 1.575 billion bio-mass based diesel RINs were produced, compared with 13.5 billion ethanol RINs, according to EPA [production data](#).

³ Ann E. Marimow, "Maryland Man Convicted in Biodiesel Scam," *The Washington Post* (June 25, 2012), http://www.washingtonpost.com/local/crime/md-man-convicted-in-biodiesel-scam/2012/06/25/gJQA1q3j2V_story.html.

⁴ See EPA's Civil Enforcement of the RFS Program [web page](#).

III. ISSUES

The following issues may be examined at the hearing:

- What have been the market impacts of biodiesel RIN fraud and EPA actions to respond to the fraud?
- What is necessary to address these impacts, especially the impacts on small producers, marketers and biofuel blenders?
- What is the status of EPA and affected stakeholders' efforts to resolve identified concerns and ensure the integrity of renewable fuels transactions and compliance?
- What other challenges threaten the integrity of renewable fuels transactions and compliance?

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Peter Spencer or Sam Spector with the Subcommittee on Oversight and Investigations staff at (202) 225-2927.