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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510–6175

December 1, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

Concerns have been raised in regard to recent accounts in the press that several companies generated and sold tens of millions of Renewable Identification Numbers (RINs) without producing accompanying physical volumes of the fuel. EPA considered this scenario while developing the Renewable Fuel Standard (RFS2). The agency, however, adopted a "buyers beware" position in regard to RINs purchases that may lead to fines and penalties of the obligated parties that purchased these invalid RINs in good faith.

The effectiveness of RFS2 is premised upon RINs reliability. More importantly, obligated parties that attempt to comply in good faith should not be penalized for doing so. These penalties could be particularly harmful to smaller businesses. Further, lack of faith in the RIN market may place small renewable fuel producers at a disadvantage as well.

In order to help us understand how EPA is performing oversight of RINs transactions, we request you provide us with detailed answers to the following questions:

1. Who is eligible to register under the program and what does "registered" actually mean?
2. What is the registration process?
3. What factors does EPA use to evaluate applicants and ensure their capability to produce renewable fuel and thus legally generate the accompanying RINs?
4. What components of the program are designed to minimize fraud and protect participants?
5. How does EPA monitor the actions of registered parties?
6. What reviews, audits or checks does EPA perform to ensure the integrity of the program?
7. Does EPA conduct its own internal audits of registered applicants or does it contract out those services? If EPA uses outside contractors, what guidelines does the Agency employ to ensure third party adherence to audit requirements and standards?
8. What actions does EPA take to warn and/or protect potential victims that purchase invalid or fraudulent RINs?

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9. What is the relationship between the Central Data Exchange (CDX) and EPA Moderated Transaction System (EMTS)?
10. Must all RIN transactions be cleared through EMTS? If not, why not?
11. Can only registered CDX parties have RIN transactions recognized on EMTS?
12. EMTS was created by rulemaking in 2010. Why did EPA not seek new public comment on the "buyers beware" principle in the proposed 2011 rule?
13. How long has EPA been aware of and investigating allegations of fraud in the RIN marketplace? Were any concerns about the integrity of the RIN market ever communicated to the obligated party community prior to the issuance of the Notice of Violations (NOV) on November 7, 2011?
14. What percentage of the RINs entered into EMTS in 2011 does EPA believe may be fraudulent or otherwise invalid?
15. Has EPA considered methods to allow obligated parties, or other affected parties, to replace fraudulent/invalid RINs in a manner that would allow the party to remain in compliance without the need to issue an NOV?
16. Is EPA's enforcement policy (with regard to obligated parties that acquired invalid RINs in good faith) consistent with EPA's enforcement policies for other credit programs? Please provide examples of where EPA has initiated enforcement actions against parties that acquired and used credits that were later found to be invalid through no fault of the company using the credits for compliance.
17. What are the obligations and/or liabilities of parties in the transaction chain other than obligated parties that may have purchased and re-sold RINs that were determined to be invalid?
18. Describe the specific due diligence that an obligated party could take to ensure with 100% confidence that RINs are valid. Would such due diligence be an affirmative defense against an NOV for retiring RINs that are subsequently found to be invalid? If the recommended due diligence requires physically inspecting all plants that an obligated party would accept RINs from, would this be practicable for foreign producers of renewable fuel?
19. Can Financial Services Firms participate in RIN markets? If so, what is their role?
20. What is EPA's plan to ensure the future reliability of RIN markets?

If you have any questions regarding this letter please contact J.W. Hackett at 202-224-4764 with the Committee on Environment and Public Works or Stephen Lehrman in the office of Senator Pryor at 202-228-3063. Please respond in writing within 14 days of receiving notice of this letter.

Sincerely,

James M. Inhofe
Ranking Member
Committee on Environment and Public Works

Mark Pryor
United States Senator