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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

February 14, 2012

The Honorable Barbara Boxer
Madam Chairman
Senate Committee on Environment and Public Works

Dear Senator Boxer,

Last April, the Committee on Environment and Public Works (EPW) held a bipartisan oversight hearing, Domestic Renewable Fuels: From Ethanol to Advanced Biofuels, to examine the troubles facing our nation's primary renewable fuel policy, the Renewable Fuel Standard Program (RFS2). Recently, there has been a significant amount of fraud within the RFS2 RIN (Renewable Identification Number) trading program, which is causing significant problems for both the renewable fuel producers as well as the obligated parties. As EPW has primary oversight responsibility over EPA, the Agency that administers the program, we should hold a hearing immediately to address these problems, which are indeed far reaching and immense.

On December 1, 2011, Senator Pryor and I wrote to Environmental Protection Agency (EPA) Administrator Lisa Jackson to ask what the agency was doing to address the numerous accounts of fraudulent activity that have been uncovered under EPA's Renewable Fuel Standard (RFS2) program, specifically regarding the program's Renewable Identification Numbers (RINs). On January 19, 2012 EPA Assistant Administrator McCarthy responded but her letter did not satisfactorily address our concerns: from her letter, it appears that EPA is not doing enough to resolve the problem, and is suggesting that the fraud associated with invalid RINs will resolve itself.

Over the past several months, it has become clear that numerous bad actors have participated in the generation of fake RINs. Late last fall we discovered that Clean Green Fuels sold $9 million worth of fraudulent RINs, and just last week we found out that Absolute Fuels sold $62 million worth of fake RINs. Now there are rumors circulating that EPA is investigating a number of other companies as well and we don't really know yet how much this will ultimately cost.

The fallout from this fraud is amplified by the "buyer beware" policy the EPA has implemented, which places responsibility for determining whether a RIN is valid almost entirely on its purchaser. A number of stakeholders raised concerns with this approach during the rulemaking process, but EPA chose to move forward with it proposed scheme.

The "buyer beware" policy does not protect those involved in the RIN process, and if EPA does not revise this policy, obligated parties will likely continue to be subject to significant invalid RIN liability. In addition, smaller producers of renewable fuel may not be able to sell RINs to

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obligated parties due to concerns about their validity. It is not hard to imagine a largely frozen market that does not function well for RIN buyers or sellers.

As the CEO of one such company, Triton Energy, recently noted:

> "With the current approach the EPA has taken of potentially penalizing the obligated parties, obligated parties are understandably primarily purchasing biofuel and RINs from the largest, 'Tier 1' biofuel producers. Hence, causing small producers to idle or shutter their doors after investing time energy and effort…"

Closures and an inability of small biofuel producers to participate in the marketplace will have a negative impact on obligated parties as a lack of competition will likely raise the cost of compliance.

As this quote and other recent events have illustrated, the EPA's current policy has consequences for both obligated parties and renewable fuel producers. This could lead to additional failures within the biofuel industry and higher costs of compliance than are truly necessary. Making matters worse, it will be American consumers who ultimately pay the price as most of the additional costs incurred by industry will be passed on to them in the form of higher prices at the pump due to the tight margins in the motor fuel marketplace. The last thing American families need is more job losses and higher gas prices. It is also important to note that without concrete action, problems in the RIN market could grow larger as RFS2-mandated fuel targets increase sharply over the next decade.

As the RIN trading program is examined through congressional oversight, including by the members of the Energy & Power Subcommittee in the House of Representatives, I hope you will agree that an oversight hearing in our committee on EPA's RIN program is entirely appropriate and even essential. Holding this hearing will be an important step in our efforts to work with EPA to resolve this issue.

Sincerely,



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