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December 15, 2014

**VIA CERTIFIED MAIL AND EMAIL**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

Re: Notice of Intent To File Citizen Suit

Dear Administrator McCarthy:

The American Petroleum Institute (“API”) hereby submits this Notice of Intent To Sue pursuant to section 304(b)(2) of the Clean Air Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54. After the expiration of 60 days from the date of this letter, API intends to consider its legal options, including filing suit in U.S. District Court, to address EPA’s failure to meet the following non-discretionary deadlines:

- the 90-day deadline prescribed by 42 U.S.C. § 7545(o)(7)(B), with respect to the waiver petition submitted by API on August 13, 2013;
- the deadlines prescribed by 42 U.S.C. §§ 7545(o)(2)(B)(ii) and (o)(3)(B)(i), with respect to biomass-based diesel and renewable fuel requirements for calendar year 2014; and
- the deadlines prescribed by 42 U.S.C. §§ 7545(o)(2)(B)(ii) and (o)(3)(B)(i), with respect to biomass-based diesel and renewable fuel requirements for calendar year 2015.

API is a national trade association representing more than 600 member companies involved in all aspects of the oil and natural gas industry. API’s members include the obligated parties under the Renewable Fuel Standards (“RFS”) – refiners and importers of fuel – who are adversely affected by EPA’s failure to meet the deadlines identified above. Our members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers. Since 2000, the oil and gas industry has invested over \$3 trillion in capital projects in the United States to advance all forms of energy, including alternatives.

The statute states that EPA “shall approve or disapprove a petition for a waiver of [RFS] requirements . . . within 90 days after the date on which the petition is received by the Administrator.” 42 U.S.C. § 7545(o)(7)(B). Although API petitioned for a partial waiver of the 2014 RFS requirements sixteen months ago, on August 13, 2013, *see* EPA, *Notice of Receipt of Petitions for a Waiver of the Renewable Fuels Standard*, 78 Fed. Reg. 71,607 (Nov. 29, 2013), EPA has not approved or disapproved the petition. A ruling on that petition is now nearly 400 days overdue.



The statute also requires EPA to set biomass-based diesel volume requirements no later than 14 months before the applicable requirement will apply. 42 U.S.C. § 7545(o)(2)(B)(ii); EPA, *Regulation of Fuels and Fuel Additives: 2013 Biomass-Based Diesel Renewable Fuel Volume; Final Rule*, 77 Fed. Reg. 59,458, 59,460 (Sept. 27, 2012). EPA has not set the biomass-based diesel requirements for 2014, 2015, or 2016, the statutory deadlines for which were November 1, 2012, November 1, 2013, and November 1, 2014, respectively. Because of these missed deadlines, EPA may not increase the biomass-based diesel requirements for the 2014, 2015, and 2016 compliance years. API previously notified EPA of these violations in letters dated October 17, 2013, and December 1, 2014.

The statute further requires EPA to set renewable fuel standards for the following year no later than November 30. 42 U.S.C. § 7545(o)(3)(B)(i); EPA, *Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards; Final Rule*, 78 Fed. Reg. 49,794, 49,799 (Aug. 15, 2013). EPA has not yet issued a final rule for the 2014 RFS, and recently announced that the final rule will not be forthcoming until 2015. EPA, *Delay in Issuing 2014 Standards for the Renewable Fuel Standard Program*, 79 Fed. Reg. 73,007, 73,008 (Dec. 9, 2014). Likewise, EPA has not issued a notice of proposed rulemaking for the 2015 RFS, and anticipates that it will not issue the final rule before August 2015.<sup>1</sup> In both instances, EPA has already failed to comply with the relevant statutory deadline. API previously notified EPA of these violations in letters dated October 17, 2013, and December 1, 2014.

EPA’s pattern of repeated delays in promulgating the annual RFS mandates is set forth in the table below:

Year	EPA Failed to Meet CAA Statutory Deadline to Determine:	
	Renewable Volume Obligations by 11/30 of the Prior Year	Biomass-based Diesel Requirements 14 months in Advance
	Number of Days Delayed:*	Number of Days Delayed:*
2010	116	--
2011	9	--
2012	40	--
2013	258	332
2014	380+	775+
2015	15+	410+

\*Determined using the date of publication of the applicable final rule in the *Federal Register*.

EPA’s continual tardiness has real, adverse effects on industry. Obligated parties need this information ahead of the compliance year – as the Clean Air Act clearly requires – to make operational, logistical, and investment decisions. Furthermore, the uncertainties created by the ethanol blendwall are

<sup>1</sup> <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=2060-AS22>



enormous, and EPA is only adding to the uncertainty with retroactive rules. EPA needs to move as quickly as possible on the waiver petition and rulemaking responsibilities described above.

Please feel free to contact me or Erik Baptist in the Office of General Counsel (202-682-8250) should you have any questions or concerns regarding this Notice.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "SL", is written over a faint, light blue circular watermark or background.

Stacy Linden  
Vice President, General Counsel  
& Corporate Secretary  
American Petroleum Institute

cc: Avi Garbow  
Christopher Grundler  
Paul Argyropoulos