



Harry M. Ng
Vice President, General Counsel
& Corporate Secretary

Office of the General Counsel

1220 L Street, NW
Washington, DC 20005-4070
USA

Telephone: 202-682-8248
Fax: 202-682-8033
Email: ng@api.org
www.api.org

October 17, 2013

VIA FEDEX 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)(1) of the Clean Air Act, 42 U.S.C. § 7604(b)(1), 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 non-discretionary statutory deadlines to set biomass-based diesel and renewable fuel requirements for calendar year 2014.

API is a national trade association representing more than 500 member companies involved in all aspects of the oil and natural gas industry. API’s members include the obligated parties under the Renewable Fuel Standard – refiners and importers of fuel – who will be adversely affected by EPA’s proposed 2013 RFS. Our members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers. Since 2000, they have invested over \$2 trillion in capital projects in the United States to advance all forms of energy, including alternatives.

The statute 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 requirement for 2014, the statutory deadline for which was November 1, 2012.

The statute further requires EPA to set renewable fuel standards (“RFS”) 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 notice of proposed rulemaking for the 2014 RFS, and API therefore anticipates that EPA will not issue the final 2014 RFS in advance of the statutory deadline of November 30, 2013. API thus expects that EPA will have failed to comply with the statutory deadline within 60 days of this Notice.



EPA’s habitual, historical delays in promulgating the annual RFS standards are demonstrated in the table below:

Year	Did EPA Meet the CAA Statutory Deadline (11/30 Prior Year) to:			Did EPA Meet the CAA requirement to issue biomass-based diesel standard 14 months in advance of compliance period?	
	Determine RVO?	Align Cellulosic Mandate with Projections?	# of Days Late*		# of Months Late*
2010	No	No	116	--	--
2011	No	No	9	--	--
2012	No	No	40	--	--
2013	No	No	206+	Yes	11
2014	Unlikely	Unlikely	?	No	9+

*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 EPA to do – to make operational, logistics, and investment decisions. Furthermore, the uncertainties created by the ethanol blendwall are enormous, and EPA is only adding to the uncertainty with retroactive rules. EPA needs to move as quickly as possible to issue a final 2014 RFS.

Please feel free to contact me or Erik Baptist of my staff (202-682-8250) should you have any questions or concerns regarding this Notice.

Sincerely yours,

Harry Ng
 Vice President, General Counsel
 & Corporate Secretary
 American Petroleum Institute

cc: Avi Garbow
 Christopher Grundler
 Paul Argyropoulos