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December 1, 2014

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 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 delay in publishing the final rule for the 2015 RFS. 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 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 2015 and 2016, the statutory deadlines for which were November 1, 2013, and November 1, 2014, respectively.

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 notice of proposed rulemaking for the 2015 RFS, and EPA anticipates that it will not issue the



final 2015 RFS before August 2015.¹ Regardless, EPA has already failed to comply with the statutory deadline of November 30, 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
	Number of Days Delayed:*	Number of Days Delayed:*
2010	116	--
2011	9	--
2012	40	--
2013	258	332
2014	366+	761+
2015	?	396+

*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 enormous, and EPA is only adding to the uncertainty with retroactive rules. EPA needs to move as quickly as possible to issue a final 2015 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,

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

cc: Avi Garbow
Christopher Grundler
Paul Argyropoulos

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