



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB - 3 2014

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Via Email and Certified Mail

Richard Moskowitz
General Counsel
American Fuel & Petrochemical Manufacturers
1667 K Street, NW
Suite 700
Washington, DC 20006

RE: EPA's Second Interim Enforcement Response Policy for Invalid RINs

Dear Mr. Moskowitz:

I am writing in response to your letter dated December 20, 2013. In that letter you requested that the United States Environmental Protection Agency (EPA) extend its *Second Interim Enforcement Response Policy – Violations Arising from the Use of Invalid Renewable Identification Numbers* (Second IERP) to apply to invalid renewable identification numbers (RINs) generated prior to the effective date of the final rule implementing a RIN Quality Assurance Program (QAP Rule).¹ You also requested that the EPA modify the Second IERP to eliminate the requirement to replace invalid RINs generated prior to 2012. For the reasons enumerated below, the EPA believes it is appropriate to extend the Second IERP to apply to invalid RINs that were generated and verified prior to the effective date of QAP Rule. We do not believe, however, it is appropriate to eliminate the requirement to replace invalid RINs.

The EPA recognizes that invalid RINs have raised concerns for many participants in the RIN market. The proposed QAP Rule is designed to address these concerns and provide regulated parties with a structured way to evaluate the validity of RINs. The EPA issued the Second IERP to encourage early implementation of independent third party quality assurance plans. In order to continue to encourage the early implementation of third party quality assurance plans, the EPA agrees that it would be appropriate to continue to apply the basic approach set forth in the Second IERP until the effective date of the QAP Rule. Our intention is to publish soon a revision of the Second IERP to address this issue and provide further specific guidance on this matter.

The EPA does not agree with the American Fuel & Petrochemical Manufacturers' assertion that there is just cause to eliminate the requirement to replace invalid RINs generated prior to 2012. As you know, Congress adopted the Energy Independence and Security Act of 2007 to reduce our nations' dependence

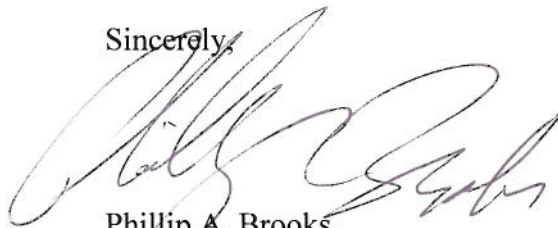
¹ See 78 Fed. Reg. 12158 (February 21, 2013).

on foreign oil, help grow our nation's renewable energy industry, and achieve significant greenhouse gas emissions reductions. In order to achieve these goals, the EPA is charged with developing the Renewable Fuel Standard (RFS) program and enforcing its requirements. The Energy Independence and Security Act of 2007 and the RFS regulations provide the EPA with clear authority to require parties who used invalid RINs to replace them with valid RINs. From the inception of the RFS program, the EPA has made clear that it is the responsibility of obligated parties and renewable fuel exporters to ensure that they use valid RINs to demonstrate compliance and that there would be no safe harbor provisions with regard to invalid RINs. When invalid RINs are used for compliance, it undermines Congress' goals in creating the program, creates market uncertainty, and is a violation of law.

Although the EPA is not approving AFPM's request to modify the Second IERP to eliminate the requirement that obligated parties replace invalid RINs, please be assured that we will continue to monitor the impact of invalid RINs on the obligated parties and RFS program.

Finally, you asked the EPA extend the scope of the Second IERP to include other RINs, in addition to biomass-based diesel RINs. The EPA will consider this request if and when we allege that a company generated invalid RINs that are not biomass-based diesel RINs. Thank you for providing us with your concerns and recommendations to improve the RFS program.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip A. Brooks", is written over the typed name below.

Phillip A. Brooks,
Director
Air Enforcement Division
Office of Civil Enforcement