

## **NOTICE**

This notice is to inform you that your company may own, have transferred, or used potentially invalid renewable identification numbers (RINs) to comply with your Renewable Fuel Standard (RFS) Renewable Volume Obligation (RVO) for one or more compliance years. The majority of these RINs were verified as A-RINs during the RFS Quality Assurance Plan (QAP) program's interim period. This period started on February 21, 2013 and ended on December 31, 2014, but allowed retrospective verification of RINs generated from January 1, 2013. These A-RINs were generated by either Gen-X Energy Group, Inc. (Gen-X), EPA ID 5634, or Southern Resources and Commodities (SRC), EPA ID 4256. The EPA believes these RINs are potentially invalid based on the plea agreement, *United States of America vs. Scott Carl Johnson*, and associated court filings.

Under the regulations, parties are generally prohibited from transferring invalid RINs or using invalid RINs to meet the person's RVO. 40 CFR § 80.1460 (b)(2) and (c)(1). However, companies who used or plan to use potentially invalid A-RINs for compliance with an RVO under § 80.1427, or companies who transferred or plan to transfer potentially invalid A-RINs, may assert an affirmative defense to these actions. Specifically, § 80.1473(a) states that “[a]ny person who engages in actions that would be a violation of the provisions of either § 80.1460(b)(2) or (c)(1), other than the generator of an invalid RIN, will not be deemed in violation if the person demonstrates that the criteria under paragraphs (c), (d), or (e) of this section are met.” Paragraph § 80.1473(c) describes the affirmative defenses applicable to the transfer or use of invalid A-RINs. If your company satisfies the criteria for properly asserting an affirmative defense described under § 80.1473(c), it will NOT have to replace these potentially invalid A-RINs, resubmit any prior compliance reports to make corrections with respect to these potentially invalid A-RINs, or be subject to any civil penalties for the transfer or use of these potentially invalid A-RINs.

This Notice is being sent to those parties who EPA believes may own, have transferred, or used potentially invalid A-RINs as described above. The EPA will separately contact any parties who may own, have transferred, or used potentially invalid Q-RINs or used potentially invalid unverified RINs generated by these companies to explain the process of resolving those potential violations.

### **ACTIONS NEEDED TO ASSERT AN AFFIRMATIVE DEFENSE**

If your company chooses to assert an affirmative defense for a transfer of a potentially invalid A-RIN or use of a potentially invalid A-RIN for compliance (violations of § 80.1460(b)(2) or (c)(1)), then within 30 days of receipt of this email, your company must provide to EPA a written report asserting the elements of an affirmative defense, including:

1. The RINs in question were verified through a quality assurance audit pursuant to § 80.1472 using an approved Option A QAP as defined in §80.1469(a). Please send an email to the EPA Fuels Support Line (below) if you would like to request a list of the RINs your company retired to meet an obligation.

2. The person did not know or have reason to know that the RINs were invalidly generated prior to being verified by the independent third-party auditor. Please have your Responsible Corporate Officer (RCO) provide a signed statement that confirms this or states otherwise.
3. The person did not cause the invalidity. Please have your RCO provide a signed statement that confirms this or states otherwise.
4. The person did not have a financial interest in the company that generated the invalid RINs. Please have your RCO provide a signed statement that confirms this or states otherwise.
5. All other pertinent supporting documentation, demonstrating that the criteria described in § 80.1473(c) were met. This documentation could include, for example, contracts and invoices showing that the RINs were A-RINs.

Any supporting information or documentation must be specific enough to allow the EPA to evaluate that each of the above criteria have been met.

If a written report containing the required supporting information specific to the criteria above is not received within 30 days, or if after review of the written report the EPA finds the elements of the affirmative defense have not been satisfied, the EPA may require your company to replace potentially invalid A-RINs, resubmit any compliance reports involving use of potentially invalid A-RINs, and pay a civil penalty.

#### **HOW TO SUBMIT A WRITTEN REPORT ASSERTING AN AFFIRMATIVE DEFENSE**

Your company may use any written format that best communicates the required supporting information. Submit the written report to the EPA via the Fuels Support Line at [support@epamts-support.com](mailto:support@epamts-support.com). In the title of the email, please state “Assertion of Affirmative Defense – [YOUR COMPANY NAME]”.

#### **SUPPORT**

For more information, please contact Brent Williams via the Fuels Support Line at [support@epamts-support.com](mailto:support@epamts-support.com).