



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

FEB 16 2011

CERTIFIED MAIL #
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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Jacob Kingston, PhD.
President/CEO
Washakie Renewable Energy, LLC
7950 West 24000 North
Plymouth, UT 84330

Re: Violation of Clean Air Act § 211(o) Renewable Fuels Standard Program
Notice of Violation: File No. AED/MSEB #

Dear Dr. Kingston:

On October 18 and 19, 2010, authorized representatives of the United States Environmental Protection Agency (EPA) conducted an inspection of Washakie Renewable Energy, LLC's (WRE's) renewable fuel facility located at 7950 West 24000 North, Plymouth, UT 84330. The inspection was conducted to determine compliance with section 211(o) of the Clean Air Act (CAA), 42 U.S.C. § 7545(o), and the renewable fuels regulations issued thereunder at 40 CFR Part 80, Subparts K and M.

Section 211(o) of the Clean Air Act (CAA) was originally enacted as part of the Energy Policy Act of 2005 (EPAAct), and was amended by the Energy Information and Security Act of 2007 (EISA). EPA promulgated the RFS 1 regulations at 40 C.F.R. Part 80, Subpart K to implement EPAAct, and promulgated the RFS 2 regulations at 40 C.F.R. Part 80, Subpart M to implement EISA. EPAAct set a the first national renewable fuel mandate in the United States, and required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012. EISA required EPA to make several important changes to the original renewable fuels regulations, including increasing the volume of renewable fuel required to be blended into transportation fuel to 36 billion gallons per year by 2022. EISA and the RFS 2 regulations also established new categories of renewable fuel with separate volume requirements, and set new greenhouse gas (GHG) emission reduction thresholds for each separate category of renewable fuel.

The RFS 1 and RFS 2 regulations include a credit trading program to facilitate compliance with the renewable fuel standards. These credit trading programs allow obligated parties to comply with the annual renewable fuel standards through the purchase of Renewable

Identification Numbers, or RINs, which are unique numbers generated to represent a volume of renewable fuel. The RFS 2 regulations lay the foundation for achieving significant reductions of greenhouse gas emissions from the use of renewable fuels, for reducing imported petroleum, and encouraging the development and expansion of our nation's renewable fuels sector.

The RFS 1 regulations require renewable fuel producers to register with EPA, and obtain a facility identification number prior to generating any RINs. *See* 40 C.F.R. § 80.1150(b). Pursuant to 40 C.F.R. § 80.1125(d), each RIN must include “the registration number assigned according to § 80.1150 to the facility at which the batch of renewable fuel was produced . . .” *See* 40 C.F.R. § 80.1125(d).

The RFS 2 regulations apply to all renewable fuel produced on or after July 1, 2010, and to all RINs generated on or after July 1, 2010. *See* 40 C.F.R. § 80.1400. Under the RFS 2 program, renewable fuel producers are required to submit information regarding each batch of renewable fuel that they produce on or after July 1, 2010, to EPA via the EPA Moderated Trading System. This information includes the EPA-issued facility identification number for the facility where the renewable fuel was produced. *See* 40 C.F.R. § 80.1452(b)(4).

As a result of information obtained during EPA’s inspection of WRE’s facility and investigation of WRE’s activities, EPA alleges that WRE violated:

1. 40 C.F.R. § 80.1160(b)(2) by creating and/or transferring the invalid RFS 1 RINs identified in Enclosure A. 40 C.F.R. § 80.1131(a)(7) provides that RFS 1 RINs that are improperly generated are invalid. The RFS 1 RINs identified in Enclosure A are invalid because they were generated for renewable fuel that was not produced at WRE’s facility.
2. 40 C.F.R. § 80.1460(b)(2) by creating and/or transferring the invalid RFS 2 RINs identified in Enclosure B. 40 C.F.R. § 80.1431(a)(ix) provides that RFS 2 RINs that are improperly generated are invalid. All of the RFS 2 RINs identified in Enclosure B are invalid because they were generated for renewable fuel that was not produced at WRE’s facility. The first six RFS 2 RINs identified in Enclosure B are also invalid because they were generated for fuel that was produced before the effective date of the RFS 2 regulations.

This Notice of Violation (NOV) is issued to WRE pursuant to Sections 205 and 211 of the CAA, 42 U.S.C. §§ 7524 and 7545, for the violations identified above. Sections 205 and 211 of the CAA authorize EPA to assess a civil penalty of up to \$37,500 for every day for each violation, plus the economic benefit or savings resulting from each violation. In order to determine an appropriate penalty for each violation, EPA considers: the gravity of the violation; the economic benefit or savings (if any) resulting from the violation; the size of your business; your history of compliance with the CAA; actions taken by you to remedy the violation and prevent future violations; the effect of the penalty on your ability to continue in business; and other matters as justice may require. This NOV does not create any rights or waive any of your obligations under the CAA, but rather is for the purpose of notifying you of the violations.

The EPA attorney assigned to this matter is Jeffrey A. Kodish. Please contact him regarding this NOV.

Jeffrey A. Kodish, Attorney-Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
OECA/AED/Western Field Office (8MSU)
1595 Wynkoop Street
Denver, CO 80202-1129

We encourage early settlement of matters such as this. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in Federal district court.

We are offering you an opportunity to confer with us about the violations alleged in this NOV. The conference will give you an opportunity to present information on the alleged violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. You may contact Jeffrey A. Kodish at (303) 312-7153 or by e-mail: Kodish.Jeff@epa.gov to request such a conference. This request should be made as soon as possible, but no later than 10 business days after your receipt of this NOV. Any conference should be held within 30 calendar days of your receipt of this NOV. By offering the opportunity for a conference, or participating in one, EPA does not waive or limit its right to any remedy available under the CAA.

Sincerely yours,



Phillip A. Brooks, Director
Air Enforcement Division