

# BRACEWELL

March 23, 2021

**BY FEDEX AND ELECTRONIC MAIL**

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Notice of Intent to Sue EPA for Its Failure to Reinstate RINs after Granting Sinclair's Small Refinery Hardship Exemption Petitions for 2018 and 2019

Dear Mr. Regan:

I am writing on behalf of Sinclair Wyoming Refining Company and Sinclair Casper Refining Company (collectively "Sinclair"). Sinclair owns two small refineries that are entitled to receive extensions of their small-refinery exemptions from the Renewable Fuel Standards ("RFS") program upon showing that they face "disproportionate economic hardship" from compliance with the program.

On January 14, 2021, EPA extended three RFS hardship exemptions to Sinclair—one exemption for each refinery for 2019 and one belated exemption for 2018. Minutes after these exemptions became public, the Renewable Fuels Association (RFA) challenged them in court and asked the court for a stay pending review to prevent EPA from reinstating the Renewable Identification Numbers (RINs) that Sinclair was entitled to receive as a result of these exemptions. The DC Circuit immediately issued a temporary administrative stay that prevented EPA from reinstating Sinclair's RINs until after the Court ruled on RFA's motion for a stay pending review.

RFA later refiled its challenge in the Tenth Circuit along with a motion for a stay pending review and a request for an administrative stay. After the Tenth Circuit granted an administrative stay, the DC Circuit dissolved its administrative stay and held that case in abeyance.

In responding to RFA's motion for a stay pending review, EPA stated that it did not oppose a stay as long as "the Court is otherwise satisfied that [RFA] has satisfied the requisite factors for a stay." On March 5, 2021, the Tenth Circuit dissolved the administrative stay and denied RFA's motion for a stay pending review, deciding that RFA had *not* satisfied the requisite factors for a stay.

Thus, on March 5, 2021, the 2018 and 2019 small refinery exemptions that EPA granted to Sinclair on January 14, 2021 became effective and EPA had a legal obligation to reinstate the RINs that Sinclair

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had been unlawfully forced to retire for the 2018 and 2019 compliance years. Sinclair has repeatedly requested that EPA reinstate these RINs, pointing out that it is legally entitled to receive them. EPA has never disputed the fact that it has a legal obligation to reinstate these RINs. Despite numerous requests to both EPA and DOJ, EPA has never explained its legal basis for refusing to reinstate these RINs. It has simply refused to do so.

Section 304 of the Clean Air Act authorizes civil actions against the Administrator to compel him or her to perform any act or duty that is not discretionary under the Clean Air Act. 42 U.S.C. § 7604(a)(2). In accordance with section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), this letter shall serve as formal notice of Sinclair's intent to file suit against EPA for the Agency's failure to perform its mandatory duty under the Clean Air Act to reinstate the RINs that Sinclair is entitled to receive as a result of the small refinery exemptions that EPA granted on January 14, 2021. Such action may be filed sixty (60) days from the date of this letter. *Id.* § 7604(b)(2). If Sinclair finds it necessary to file any such action, it will seek all appropriate relief, including injunctive, declaratory, monetary, and any other relief as may be awarded by a court of competent jurisdiction.

We also note that Sinclair may have other causes of action that do not require a 60-day notice letter, and it reserves the right to pursue these causes of action at any time.

Very truly yours,



Jeffrey R. Holmstead  
Bracewell LLP

cc: Melissa Hoffer, EPA Office of General Counsel (via electronic mail)  
Susan Stahle, EPA Office of General Counsel (via electronic mail)  
Joseph Goffman, EPA Office of Air and Radiation (via electronic mail)  
Sarah Dunham, EPA Office of Transportation and Air Quality (via electronic mail)