

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

GROWTH ENERGY,  
701 8th Street NW, Suite 450  
Washington, DC 20001

Plaintiff,

v.

MICHAEL S. REGAN, in his official  
capacity as Administrator,  
U.S. Environmental Protection Agency,  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

and

ENVIRONMENTAL PROTECTION  
AGENCY,  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Defendants.

Civil Action No. 1:22-cv-00347

**COMPLAINT FOR INJUNCTIVE RELIEF**

Plaintiff Growth Energy brings this action to compel Defendants, the U.S. Environmental Protection Agency and the Honorable Michael S. Regan, in his official capacity as Administrator of the U.S. Environmental Protection Agency (collectively “EPA”), to establish renewable fuel obligations for the 2021 and 2022 compliance years. Continuing its multi-year trend of disregarding statutory deadlines, EPA has ignored the nondiscretionary duty established by Clean Air Act (“CAA”) Section 211(o)(3)(B), 42 U.S.C. § 7545(o)(3)(B), to promulgate the 2021 Renewable Fuel Standards (“RFS”) obligations on or before November 30, 2020, and to promulgate the 2022 RFS obligations on or before November 30, 2021. Plaintiff hereby seeks an

injunction requiring EPA promptly to promulgate renewable fuel obligations for 2021 and 2022.

In support, Plaintiff alleges as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604(a)(2), which authorizes citizen suits concerning EPA’s failure to perform a nondiscretionary act or duty under the CAA. Section 7604(a) grants this Court jurisdiction to order EPA to perform such duty. In addition, this Court has jurisdiction over this action and over the parties pursuant to 28 U.S.C. §§ 1331 and 1361. The relief requested is authorized under 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201, 2202, and 1361.

2. Venue in this Court is proper under 28 U.S.C. § 1391(e)(1) because Defendants are principally located in the District of Columbia, and a substantial part, if not all, of the events or omissions giving rise to the claims asserted herein arose in this District.

### **PARTIES**

3. Plaintiff is a national biofuel trade association. Plaintiff represents producers and supporters of ethanol who are working to bring consumers better choices at the fuel pump, grow America’s economy, and improve the environment for future generations. Plaintiff’s membership represents nearly half of all American ethanol plants, many of the largest and most prominent fuel retailers in the country, and leading businesses that support the ethanol industry.

4. Plaintiff represents its members in judicial, legislative, and administrative forums. In particular, Plaintiff routinely comments on EPA rulemaking proposals to implement the RFS program, and has participated in litigation involving several of EPA’s RFS regulations since the program’s inception.

5. Plaintiff is a “person” as defined in the CAA. See 42 U.S.C. § 7602(e).

6. Defendant Michael S. Regan is the Administrator of the EPA. The Administrator is charged with implementation and enforcement of the CAA, including the CAA's nondiscretionary duty to timely determine and promulgate renewable fuel obligations on an annual basis.

7. Defendant EPA is an executive agency of the federal government charged with implementing the CAA's RFS program.

### **STATUTORY AND REGULATORY BACKGROUND**

8. In the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, Congress amended the CAA to establish the RFS program to increase the quantity of renewable fuels used in gasoline in the United States. Congress expanded that program in 2007 with the Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 142. That law increased the overall annual volumes of renewable fuel required through the year 2022 for four different categories of renewable fuel: renewable fuel, advanced biofuel, biomass-based diesel and cellulosic biofuel. These categories are "nested": biomass-based diesel and cellulosic biofuel are types of advanced biofuel, and advanced biofuel is a type of renewable fuel.

9. The statute specifies minimum, or "applicable," annual volume requirements for renewable fuel, advanced biofuel, and cellulosic biofuel through 2022, and applicable volume requirements for biomass-based diesel for each year through 2012. 42 U.S.C. § 7545(o)(2)(B)(i). Congress's purpose in requiring EPA to establish such annual volumes was "to force the market to create ways to produce and use greater and greater volumes of renewable fuel each year." *Americans for Clean Energy v. EPA*, 864 F.3d 691, 710 (D.C. Cir. 2017).

10. Because the statute's applicable volume requirements increase rapidly over time, Congress equipped EPA with several tools to alter the requirements listed in the statute based on

actual conditions in the marketplace and the national economy. These tools include two provisions requiring or permitting EPA to reduce, or waive, certain requirements. *Id.* § 7454(o)(7).

11. To enable obligated parties to comply with the national volume requirements, EPA must promulgate annual “regulations to ensure that transportation fuel sold or introduced into commerce in the United States . . . , on an annual average basis, contains the applicable volume,” as adjusted through the waiver process, “of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel.” *Id.* § 7545(o)(2)(A)(i). These regulations specify “applicable percentages,” or the “renewable fuel obligation,” that each obligated part must meet. *Id.* § 7545(o)(3).

12. Each year, EPA must “determine and publish” the renewable fuel obligation “[n]ot later than November 30” of the preceding compliance year. *Id.* § 7545(o)(3)(B)(i).

13. Until EPA has fulfilled its obligations for a given year under § 7545(o)(3)(B) and, if applicable, under § 7545(o)(2)(B)(ii), obligated parties may not know their precise obligations and renewable fuel producers may not know the level of demand.

14. The deadlines Congress set for EPA to establish renewable fuel volumes and obligations are intended to inform obligated parties and renewable fuel producers, prior to each compliance year, of the upcoming RFS obligations so they can plan accordingly. As EPA indicated when it promulgated regulations for the expanded RFS program in 2007, “[g]iven the implications of these standards and the necessary judgment that can[no]t be reduced to a formula akin to the [previous RFS program] regulations, we believe it is appropriate to set standards through a notice-and-comment rulemaking process. Thus, for future standards, we intend to issue [a Notice of Proposed Rulemaking] by summer and a final rule by November 30 of each year in

order to determine the appropriate standards applicable in the following year.” *Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program*, 75 Fed. Reg. 14,670, 14,675 (Mar. 26, 2010) (2010 Regulations).

### **FACTUAL BACKGROUND**

15. EPA has repeatedly failed to meet the November 30 statutory deadline for promulgating annual RFS regulations. For example:

- EPA did not promulgate the final 2010 RFS regulations until February 3, 2010, over three months late and into the compliance year, *see 2010 Regulations*, 75 Fed. Reg. 14,670;
- EPA did not promulgate the final 2012 RFS regulations until December 22, 2011, more than three weeks late, *see 2012 Standards for the Renewable Fuel Standard Program: Final Rulemaking*, 77 Fed. Reg. 1,320 (Jan. 9, 2012);
- EPA did not promulgate the final 2013 RFS regulations until August 6, 2013, 247 days late and nearly two-thirds of the way through the compliance year, *see Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards*, 78 Fed. Reg. 49,794 (Aug. 15, 2013);
- EPA did not promulgate the final 2014 RFS regulations until November 30, 2015, two years late and fully past the compliance year, *see Final Renewable Fuel Standards for 2014, 2015 and 2016, and the Biomass-Based Diesel Volume for 2017*, 80 Fed. Reg. 77,420 (Dec. 14, 2015);
- EPA did not promulgate the final 2015 RFS regulations until November 30, 2015, a year late and with only one month of the compliance year remaining, *see id.*

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