Message

From: Morrison, Matthew W. [matthew.morrison@pillsburylaw.com]
Sent: 3/18/2021 11:27:47 PM
To: Dertke, Daniel (ENRD) [Daniel.Dertke@usdoj.gov]
CC: Hengst, Benjamin [Hengst.Benjamin@epa.gov]; Stahle, Susan [Stahle.Susan@epa.gov]
Subject: RE: Sinclair Sues EPA for Not Providing the RINs from its SRE

Thanks, Dan – please call my cell – Ex. 6 Personal Privacy (PP) I will send an invite, but more for myself. Will Sue and/or Ben be able to join us? They are welcome, of course.

Matt

From: Dertke, Daniel (ENRD) <Daniel.Dertke@usdoj.gov>
Sent: Thursday, March 18, 2021 6:48 PM
To: Morrison, Matthew W. <matthew.morrison@pillsburylaw.com>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Susan Stahle <Stahle.Susan@epa.gov>
Subject: RE: Sinclair Sues EPA for Not Providing the RINs from its SRE

Great, I'll call you at 9:45. Should I use your (202) office number or your [redacted] mobile?

From: Morrison, Matthew W. <matthew.morrison@pillsburylaw.com>
Sent: Thursday, March 18, 2021 2:21 PM
To: Dertke, Daniel (ENRD) <DDertke@ENRD.USDOJ.GOV>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Susan Stahle <Stahle.Susan@epa.gov>
Subject: RE: Sinclair Sues EPA for Not Providing the RINs from its SRE

Thanks, Dan – tomorrow morning would be great if that's good for you. I'm fairly open any time after 9:30.

Best,

Matt

From: Dertke, Daniel (ENRD) <Daniel.Dertke@usdoj.gov>
Sent: Thursday, March 18, 2021 1:23 PM
To: Morrison, Matthew W. <matthew.morrison@pillsburylaw.com>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Susan Stahle <Stahle.Susan@epa.gov>
Subject: Re: Sinclair Sues EPA for Not Providing the RINs from its SRE

*** EXTERNAL EMAIL ***

Hi Matt - I can talk today or tomorrow.

Sent from my iPhone

On Mar 18, 2021, at 12:06 PM, Morrison, Matthew W. <matthew.morrison@pillsburylaw.com> wrote:

Hi Ben and Dan,

I'm sure you've seen the news of Sinclair's new petition, but I wanted to see if you have a few minutes later today (other than 2-4), tomorrow, or early next week to touch base. RFA has not decided whether it might intervene, and for all we know this action may be consolidated with the action currently held in abeyance. But whether we jump in also depends in large part on how the government plans to respond to Sinclair's petition.

Thanks very much,

Matt

Refiner files 10th Circuit suit over EPA's RFS waiver response

March 17, 2021

A Wyoming refiner is suing EPA over the Trump administration's 11th-hour response to the company's petition seeking renewable fuel standard (RFS) waivers for two of its facilities, pursuing the case in the U.S. Court of Appeals for the 10th Circuit that previously issued a ruling significantly limiting EPA's power to issue such waivers.

The March 15 suit challenges a Jan. 14 decision signed by former Trump agency Administrator Andrew Wheeler on the company's request to grant RFS compliance extensions to the Sinclair Wyoming Refining Company for the 2018 and 2019 RFS, and a waiver for the Sinclair Casper Refining Company for the 2019 RFS.

Although Wheeler signed the response, it was never published in the Federal Register, which would start a 60-day clock for filing suit over the decision. But Sinclair argues that the rule became a final agency action subject to judicial review on Jan. 28 under the terms of a 1985 Register notice on the timing of an EPA administrator's actions under the Clean Air Act. The policy says that unless an administrator explicitly provides the time and date of promulgation for a rule in the Register, the action at issue becomes final two weeks after it is signed.

Sinclair does not say whether EPA approved or rejected its petition, and Wheeler's response -- attached as an exhibit to the suit -- includes a large amount of redacted text beyond the agency's description of recent background regarding its RFS waiver program.

EPA can grant waivers to small refiners if they can demonstrate "disproportionate economic hardship" from having to comply with the RFS, through which the agency sets annual biofuels production goals.

But the agency has yet to act on a host of pending RFS waiver requests following a 10th Circuit ruling from January 2020 in HollyFrontier Cheyenne v. Renewable Fuels Association, which effectively bars the agency from issuing RFS waivers -- a ruling the Biden EPA recently said it now supports. Refiners are appealing that ruling to the Supreme Court, which will hear oral argument in the case on April 27.

In a related development, the 9th Circuit on March 15 ordered EPA to quickly provide an explanation for its decision to return RFS credits to a California refiner when it granted the

company's request for an RFS compliance waiver. The agency's response in the case is due before the justices will likely have ruled.

Matthew W. Morrison | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006

t +1.202.663.8036 | f +1.202.663.8007 | m + Ex. 6 Personal Privacy (PP)

matthew.morrison@pillsburylaw.com | website bio

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Service Desk at Tel: 800-477-0770, Option 1, immediately by telephone and delete this message, along with any attachments, from your computer. Nothing in this message may be construed as a digital or electronic signature of any employee of Pillsbury Winthrop Shaw Pittman. Thank you.

<2021.03.15 Sinclair Petition for Review, 21-9528.pdf>

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Service Desk at Tel: 800-477-0770, Option 1, immediately by telephone and delete this message, along with any attachments, from your computer. Nothing in this message may be construed as a digital or electronic signature of any employee of Pillsbury Winthrop Shaw Pittman. Thank you.

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Service Desk at Tel: 800-477-0770, Option 1, immediately by telephone and delete this message, along with any attachments, from your computer. Nothing in this message may be construed as a digital or electronic signature of any employee of Pillsbury Winthrop Shaw Pittman. Thank you.