

**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.*

16. Under 42 U.S.C. § 7545(o)(3)(B)(i), EPA was obligated to promulgate the 2021 RFS regulations on or before November 30, 2020, and was obligated to promulgate the 2022 RFS regulations on or before November 30, 2021.

17. EPA has not promulgated final RFS rules for 2021 or 2022. EPA noticed *proposed* rulemaking to establish the 2021 and 2022 RFS regulations on December 7, 2021. *See Renewable Fuel Standard (RFS) Program: RFS Annual Rules*, <https://www.epa.gov/sites/default/files/2021-12/documents/rfs-2020-2021-2022-rvo-standards-nprm-2021-12-07.pdf>; 86 Fed. Reg. 72,436 (Dec. 21, 2021) (official publication in Federal Register). EPA noticed this *proposed* rulemaking over a year after when Defendants were required by statute to promulgate a *final* rule for 2021, and after when Defendants were required to promulgate a *final* rule for 2022.

18. EPA has thus failed to meet the statutory deadlines for promulgating the 2021 and 2022 RFS regulations. These failures violate the clear, mandatory duties and deadlines imposed on EPA by CAA Section 211(o), 42 U.S.C. § 7545(o) and harm Plaintiff's members, as described below.

INJURIES RESULTING FROM EPA'S FAILURE TO ACT

19. Plaintiff's members are biofuels producers whose fuel products are purchased by obligated parties to comply annually with their renewable volume obligations set under the RFS program, as described above. EPA's regulations setting applicable renewable fuel volumes directly dictate the level of national demand for renewable fuels—including ethanol, biomass-based diesel, and cellulosic biofuels—produced by Plaintiff's members.

20. Plaintiff's members have therefore suffered and continue to suffer economic injury due to EPA's failure to timely promulgate the final 2021 and 2022 RFS fuel obligations.

EPA's delay in taking those actions negates any ability for Plaintiff's members to plan and, if necessary, adjust their operations to assure appropriate levels of production to match obligated parties' compliance obligations with annual RFS requirements. This uncertainty and inability to plan future production directly affects Plaintiff's members' bottom lines.

21. Specifically, since 2021 is now over, Plaintiff's members are unable to change their production levels and therefore were denied the ability to accurately predict the demand for their products in 2021, contrary to the requirements of the RFS. Given EPA's now inevitable delay in promulgating the 2022 RFS obligations until well into 2022 (at best), Plaintiff's members will be similarly constrained with respect to at least a substantial portion of 2022.

22. Additionally, when EPA fails to meet its statutory deadlines, it often retroactively sets standards for the missed periods to match the actual levels of renewable fuel use that occurred in the absence of the RFS's market-forcing standards. *See Final Renewable Fuel Standards for 2014, 2015 and 2016, and the Biomass-Based Diesel Volume for 2017*, 80 Fed. Reg. 77,420, 77,426-27 (Dec. 14, 2015) (after missing deadlines, retroactively setting 2014 and 2015 obligations to levels of actual use). Indeed, EPA has proposed to do precisely that for 2021, *Renewable Fuel Standard (RFS) Program: RFS Annual Rules*, 86 Fed. Reg. 72,436, 72,438-39 (Dec. 21, 2021), and EPA's past practice suggests it could do the same for 2022. This approach causes direct monetary harm to Plaintiff's members by lowering the ultimate demand for the renewable fuels they produce in comparison to what would have been demanded had the RFS's standards been timely adopted to fulfill their core purpose of spurring increased renewable fuel use.

23. And the effects of these delays will be felt by Plaintiff's members in future years. As EPA has recognized, the actual market effects of the RFS standards and actual compliance

activity are mediated through the “bank” of carryover RINs, that is, leftover compliance credits from a prior year that are available for compliance in a future year.

24. These injuries are the direct result of EPA’s failure to timely comply with the statutory deadlines prescribed by the CAA.

25. These injuries are irreparable. Once an opportunity to plan supply or to sell renewable has passed, it cannot be regained; the transportation fuel will have already been sold and used by the consumer without Plaintiff’s renewable fuel. And Plaintiff cannot obtain compensatory damages from EPA for its unlawful actions.

NOTICE

26. Sixty days prior to bringing an action “where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator,” 42 U.S.C. § 7604(a)(2), the plaintiff must give notice to the Administrator, *id.* § 7604(b)(2).

27. On December 1, 2020, Plaintiff provided notice of its intent to sue Defendants pursuant to Section 304(b)(2) of the CAA, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. part 54 to enforce EPA’s nondiscretionary duty to promulgate the 2021 RFS regulations on or before November 30, 2020. A copy of this letter is attached hereto as Exhibit A.

28. On November 2, 2021, Plaintiff provided notice of its intent to sue Defendants pursuant to Section 304(b)(2) of the CAA, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. part 54 to enforce EPA’s nondiscretionary duty to promulgate the 2022 regulations on or before November 30, 2021. A copy of this letter is attached hereto as Exhibit B.

29. On December 1, 2021, Plaintiff provided further notice of its intent to sue Defendants pursuant to Section 304(b)(2) of the CAA, 42 U.S.C. § 7604(b)(2), and 40 C.F.R.

part 54 to enforce EPA’s nondiscretionary duty to promulgate the 2022 regulations on or before November 30, 2021. A copy of this letter is attached hereto as Exhibit C.

30. EPA timely received Plaintiff’s notice letters, as demonstrated by the fact that EPA posted copies on its webpage entitled “Notices of Intent to Sue the U.S. Environmental Protection Agency (EPA),” <https://www.epa.gov/ogc/notices-intent-sue-us-environmental-protection-agency-epa>.

31. More than sixty days have passed since Plaintiff served these notice letters on EPA regarding EPA’s failure to meet statutory deadlines for promulgating the 2021 and 2022 RFS regulations.

CLAIMS FOR RELIEF

COUNT I: Failure to Perform a Nondiscretionary Act or Duty to Promulgate the 2021 RFS Regulations

32. CAA Section 211(o)(3)(B)(i), 42 U.S.C. § 7545(o)(3)(B)(i), requires EPA to determine, and publish in the Federal Register, the renewable fuel obligations for a given calendar year “[n]ot later than November 30 of” the preceding calendar year. 42 U.S.C. § 7545(o)(3)(B)(i).

33. For calendar year 2021, EPA was required to determine and publish the renewable fuel obligations by November 30, 2020.

34. EPA failed to determine and publish the renewable fuel obligations for 2021 by November 30, 2020—and still has not done so.

35. EPA’s failure to timely promulgate the 2021 RFS regulations in accordance with 42 U.S.C. § 7545(o) constitutes a failure “to perform any act or duty . . . which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2).

36. EPA's failure has harmed and continues to harm Plaintiff's members by impairing their ability to meaningfully plan their production and by reducing the demand for their products.

**COUNT II: Failure to Perform a Nondiscretionary Act or Duty
to Promulgate the 2022 RFS Regulations**

37. CAA Section 211(o)(3)(B)(i), 42 U.S.C. § 7545(o)(3)(B)(i), requires EPA to determine, and publish in the Federal Register, the renewable fuel obligations for a given calendar year "[n]ot later than November 30 of" the preceding calendar year. 42 U.S.C. § 7545(o)(3)(B)(i).

38. For calendar year 2022, EPA was required to determine and publish the renewable fuel obligations by November 30, 2021.

39. EPA failed to determine and publish the renewable fuel obligations for 2022 by November 30, 2021—and still has not done so.

40. EPA's failure to timely promulgate the 2022 RFS regulations in accordance with 42 U.S.C. § 7545(o) constitutes a failure "to perform any act or duty . . . which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2).

41. EPA's failure has harmed and continues to harm Plaintiff's members by impairing their ability to meaningfully plan their production and by reducing the demand for their products.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare that Defendants have failed to perform nondiscretionary acts or duties under 42 U.S.C. § 7545(o) to promulgate the 2021 and 2022 RFS regulations;

B. Order EPA to promulgate final 2021 and 2022 RFS regulations promptly under 42 U.S.C. § 7545(o), pursuant to an expeditious deadline established by this Court;

- C. Retain jurisdiction to ensure compliance with the Court's order;
- D. Award Plaintiff the costs of its participation in this action, including reasonable attorneys' fees; and
- E. Grant such other relief as the Court deems just and proper.

February 8, 2022

Respectfully submitted,

/s/ Seth P. Waxman

Seth P. Waxman (D.C. Bar No. 257337)
David M. Lehn (D.C. Bar No. 496847)
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6800
seth.waxman@wilmerhale.com

Counsel for Growth Energy

EXHIBIT A



701 8th Street, NW, Suite 450, Washington, D.C. 20001

PHONE 202.545.4000 FAX 202.545.4001

GrowthEnergy.org

December 1, 2020

VIA CERTIFIED MAIL

Hon. Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460

Re: Notice of Intent to Sue for Failure to Issue the 2021 Renewable Fuel Obligations

Dear Administrator Wheeler:

Growth Energy hereby provides notice of its intent to sue the Environmental Protection Agency (“EPA”) under section 304(a)(2) of the Clean Air Act to enforce EPA’s non-discretionary duty under section 211(o)(3) of the Act to issue by November 30, 2020, the renewable fuel obligations that ensure that the Renewable Fuel Standard (“RFS”) volume requirements for 2021 are met.

Growth Energy is the country’s leading association of ethanol producers. With its members, Growth Energy works to bring consumers better choices at the fuel pump, grow America’s economy, and improve the environment. Growth Energy’s members’ operations depend directly on the annual RFS obligations issued by EPA.

Under the Clean Air Act, “EPA must by November 30 of each year calculate and promulgate ‘renewable fuel obligations that’ will ‘ensure that the Program’s requirements ... are met’ in the upcoming year.”¹ Accordingly, EPA was required to issue the renewable fuel obligations for 2021 by November 30, 2020.

¹ *American Fuel & Petrochemical Manufacturers v. EPA*, 937 F.3d 559, 570 (D.C. Cir. 2019) (quoting 42 U.S.C. § 7545(o)(3)(B)(i)); *accord id.* at 571 (“EPA must promulgate annual percentage standards by November 30 each year”); *Alon Ref. Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 637 (D.C. Cir. 2019) (“The statute calls on EPA to publish the percentage standards not later than November 30 ...”); *Americans for Clean Energy v. EPA*, 864 F.3d 691, 699 (D.C. Cir. 2017) (“By statute, EPA is required to promulgate the percentage standards for a given year no later than November 30 of the preceding calendar year.”).

EPA has failed to perform this mandatory, non-discretionary duty. As of today, EPA has not issued the renewable fuel obligations for 2021. In fact, EPA has not even issued a notice of the proposed obligations for 2021. Consequently, EPA appears likely to issue the obligations many months after the November 30, 2020, deadline. Such extreme delay not only violates EPA's statutory duty, but also undermines the RFS program's purpose of "for[cing] the market to create ways to produce and use greater and greater volumes of renewable fuel each year"² and deprives market participants of the "market certainty" that is "so critical to the long term success of the Renewable Fuel Program."³

Therefore, Growth Energy urges EPA to promptly issue the renewable fuel obligations for 2021 as statutorily required. Should EPA fail to do so within 60 days of this notice, we reserve our right to sue for relief,⁴ including an order compelling EPA to issue the obligations promptly.⁵

If you have any questions concerning this notice, please contact me at 202-545-4025.

Respectfully submitted,



Joseph Kakesh
General Counsel
Growth Energy

cc: David Fotouhi
Anne (Idsal) Austin

² *Americans for Clean Energy*, 864 F.3d at 710; *accord American Fuel & Petrochemical Manufacturers*, 937 F.3d at 568.

³ *Americans for Clean Energy*, 864 F.3d at 715 (quotation marks omitted).

⁴ See 42 U.S.C. § 7604(b)(2) ("No action may be commenced ... under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Administrator").

⁵ See 42 U.S.C. § 7604(a)(2) ("any person may commence a civil action ... against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator"); 5 U.S. Code § 706(1) ("The reviewing court shall ... compel agency action unlawfully withheld or unreasonably delayed").

EXHIBIT B



701 8th Street, NW, Suite 450, Washington, D.C. 20001

PHONE 202.545.4000 FAX 202.545.4001

GrowthEnergy.org

November 2, 2021

VIA CERTIFIED MAIL

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

Re: Notice of Intent to Sue for Failure to Issue Requirements Under Renewable Fuel Standard Program

Dear Administrator Regan:

Growth Energy hereby provides notice of its intent to sue the Environmental Protection Agency (“EPA”) under section 304(a)(2) of the Clean Air Act to enforce EPA’s mandatory, non-discretionary duties under section 211(o) of the Act to issue renewable fuel obligations for 2022 and to establish applicable volumes for 2023 for the Renewable Fuel Standard program (“RFS”).

Growth Energy is the country’s leading association of ethanol producers. With its members, Growth Energy works to bring consumers better choices at the fuel pump, grow America’s economy, and improve the environment. Growth Energy’s members’ operations depend directly on the annual RFS obligations issued by EPA.

Under the Clean Air Act, “EPA must by November 30 of each year calculate and promulgate ‘renewable fuel obligations that’ will ‘ensure that the Program’s requirements ... are met’ in the upcoming year.”¹ Accordingly, EPA is required to issue the renewable fuel obligations for 2022 by November 30, 2021. As of today—28 days before the statutory deadline—EPA has not even issued a notice of proposed rulemaking to establish those obligations. “Administrative agencies usually provide a

¹ *American Fuel & Petrochemical Manufacturers v. EPA*, 937 F.3d 559, 570 (D.C. Cir. 2019) (quoting 42 U.S.C. § 7545(o)(3)(B)(i)); *accord id.* at 571 (“EPA must promulgate annual percentage standards by November 30 each year”); *Alon Ref. Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 637 (D.C. Cir. 2019) (“The statute calls on EPA to publish the percentage standards not later than November 30”); *Americans for Clean Energy v. EPA*, 864 F.3d 691, 699 (D.C. Cir. 2017) (“By statute, EPA is required to promulgate the percentage standards for a given year no later than November 30 of the preceding calendar year.”).

comment period of thirty days or more”²; historically, EPA has provided more than 40 days—and usually more than 50 days—to comment on proposed RFS rules. Additionally, EPA is barred from issuing the final rule until at least 30 days have passed since the closure of the comment period.³ Consequently, at this point, it is impossible for EPA to issue the 2022 renewable fuel by the statutory deadline.

Additionally, the Clean Air Act requires that, “for calendar years after the calendar years specified in the [statutory] tables,” EPA “promulgate rules establishing the applicable volumes no later than 14 months before the first year for which such applicable volume will apply.”⁴ Accordingly, EPA must establish the applicable volumes for 2023 by November 1, 2021—yesterday. But EPA has not done so, in violation of the statutory deadline. (In fact, EPA has not even issued a notice of proposed rulemaking to establish those applicable volumes.)

EPA’s failure to timely perform these mandatory, non-discretionary duties not only violates the Clean Air Act, but also undermines Congress’s intention that the RFS program “force the market to create ways to produce and use greater and greater volumes of renewable fuel each year”⁵ and deprives market participants of the “market certainty” that is “so critical to the long term success of the Renewable Fuel Program.”⁶

Therefore, Growth Energy urges EPA to promptly issue the renewable fuel obligations for 2022 and the applicable volumes for 2023. Should EPA fail to do so within 60 days of this notice, we reserve our right to sue for relief,⁷ including an order compelling EPA to perform these mandatory, non-discretionary duties promptly.⁸

If you have any questions concerning this notice, please contact me at 202-545-4025.

Respectfully submitted,



Joseph Kakesh
General Counsel
Growth Energy

² *Hollingsworth v. Perry*, 558 U.S. 183, 192 (2010) (quotation marks omitted)

³ 42 U.S.C. § 7607(d)(5) (EPA “shall keep the record of such proceeding open for thirty days after completion of the proceeding”).

⁴ 42 U.S.C. § 7545(o)(2)(B)(ii).

⁵ *Americans for Clean Energy*, 864 F.3d at 710; *accord American Fuel & Petrochemical Manufacturers*, 937 F.3d at 568.

⁶ *Americans for Clean Energy*, 864 F.3d at 715 (quotation marks omitted).

⁷ See 42 U.S.C. § 7604(b)(2) (“No action may be commenced ... under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Administrator ...”).

⁸ See 42 U.S.C. § 7604(a)(2) (“any person may commence a civil action ... against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator”); 5 U.S. Code § 706(1) (“The reviewing court shall ... compel agency action unlawfully withheld or unreasonably delayed”).

cc: Joseph Goffman
Melissa Hoffer
Alejandra Nuñez

EXHIBIT C



701 8th Street, NW, Suite 450, Washington, D.C. 20001

PHONE 202.545.4000 FAX 202.545.4001

GrowthEnergy.org

December 1, 2021

VIA CERTIFIED MAIL

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

Re: Notice of Intent to Sue for Failure to Issue Requirements Under Renewable Fuel Standard Program

Dear Administrator Regan:

By letter dated November 2, 2021 (attached), Growth Energy provided notice of its intent to sue the Environmental Protection Agency (“EPA”) under section 304(a)(2) of the Clean Air Act to enforce EPA’s mandatory, non-discretionary duties under section 211(o) of the Act to issue renewable fuel obligations for 2022 and to establish applicable volumes for 2023 for the Renewable Fuel Standard program (“RFS”). Now that the statutory deadline to issue renewable fuel obligations for 2022 has passed, Growth Energy writes to reinforce its notice of intent to sue EPA regarding that failure.

Growth Energy is the country’s leading association of ethanol producers. With its members, Growth Energy works to bring consumers better choices at the fuel pump, grow America’s economy, and improve the environment. Growth Energy’s members’ operations depend directly on the annual RFS obligations issued by EPA.

Under the Clean Air Act, “EPA must by November 30 of each year calculate and promulgate ‘renewable fuel obligations that’ will ‘ensure that the Program’s requirements ... are met’ in the upcoming year.”¹ Accordingly, EPA was required to issue the renewable fuel obligations for 2022 by November 30, 2021. In its November 2 letter, Growth Energy explained that that was already impossible.

¹ *American Fuel & Petrochemical Manufacturers v. EPA*, 937 F.3d 559, 570 (D.C. Cir. 2019) (quoting 42 U.S.C. § 7545(o)(3)(B)(i)); *accord id.* at 571 (“EPA must promulgate annual percentage standards by November 30 each year”); *Alon Ref. Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 637 (D.C. Cir. 2019) (“The statute calls on EPA to publish the percentage standards not later than November 30 ...”); *Americans for Clean Energy v. EPA*, 864 F.3d 691, 699 (D.C. Cir. 2017) (“By statute, EPA is required to promulgate the percentage standards for a given year no later than November 30 of the preceding calendar year.”).

The inevitable has now materialized: EPA has indeed failed to issue renewable fuel obligations for 2022 by the November 30 statutory deadline.

EPA's failure to timely perform this mandatory, non-discretionary duty not only violates the Clean Air Act, but also undermines Congress's intention that the RFS program "force the market to create ways to produce and use greater and greater volumes of renewable fuel each year"² and deprives market participants of the "market certainty" that is "so critical to the long term success of the Renewable Fuel Program."³

Therefore, Growth Energy urges EPA to promptly issue the renewable fuel obligations for 2022 (as well as the applicable volumes for 2023, which EPA still has not issued, or even proposed, despite its statutory duty to issue them by November 1, 2021). If EPA fails to do so within 60 days of this notice, we reserve our right to sue for relief,⁴ including an order compelling EPA to perform this mandatory, non-discretionary duty promptly.⁵

If you have any questions concerning this notice, please contact me at 202-545-4025.

Respectfully submitted,



Joseph Kakesh
General Counsel
Growth Energy

cc: The Honorable Merrick B. Garland
Melissa Hoffer
Joseph Goffman
Alejandra Nuñez

Attachment

² *Americans for Clean Energy*, 864 F.3d at 710; *accord American Fuel & Petrochemical Manufacturers*, 937 F.3d at 568.

³ *Americans for Clean Energy*, 864 F.3d at 715 (quotation marks omitted).

⁴ See 42 U.S.C. § 7604(b)(2) ("No action may be commenced ... under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Administrator").

⁵ See 42 U.S.C. § 7604(a)(2) ("any person may commence a civil action ... against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator"); 5 U.S. Code § 706(1) ("The reviewing court shall ... compel agency action unlawfully withheld or unreasonably delayed").



701 8th Street, NW, Suite 450, Washington, D.C. 20001

PHONE 202.545.4000 FAX 202.545.4001

GrowthEnergy.org

November 2, 2021

VIA CERTIFIED MAIL

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

Re: Notice of Intent to Sue for Failure to Issue Requirements Under Renewable Fuel Standard Program

Dear Administrator Regan:

Growth Energy hereby provides notice of its intent to sue the Environmental Protection Agency (“EPA”) under section 304(a)(2) of the Clean Air Act to enforce EPA’s mandatory, non-discretionary duties under section 211(o) of the Act to issue renewable fuel obligations for 2022 and to establish applicable volumes for 2023 for the Renewable Fuel Standard program (“RFS”).

Growth Energy is the country’s leading association of ethanol producers. With its members, Growth Energy works to bring consumers better choices at the fuel pump, grow America’s economy, and improve the environment. Growth Energy’s members’ operations depend directly on the annual RFS obligations issued by EPA.

Under the Clean Air Act, “EPA must by November 30 of each year calculate and promulgate ‘renewable fuel obligations that’ will ‘ensure that the Program’s requirements ... are met’ in the upcoming year.”¹ Accordingly, EPA is required to issue the renewable fuel obligations for 2022 by November 30, 2021. As of today—28 days before the statutory deadline—EPA has not even issued a notice of proposed rulemaking to establish those obligations. “Administrative agencies usually provide a

¹ *American Fuel & Petrochemical Manufacturers v. EPA*, 937 F.3d 559, 570 (D.C. Cir. 2019) (quoting 42 U.S.C. § 7545(o)(3)(B)(i)); *accord id.* at 571 (“EPA must promulgate annual percentage standards by November 30 each year”); *Alon Ref. Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 637 (D.C. Cir. 2019) (“The statute calls on EPA to publish the percentage standards not later than November 30”); *Americans for Clean Energy v. EPA*, 864 F.3d 691, 699 (D.C. Cir. 2017) (“By statute, EPA is required to promulgate the percentage standards for a given year no later than November 30 of the preceding calendar year.”).

comment period of thirty days or more”²; historically, EPA has provided more than 40 days—and usually more than 50 days—to comment on proposed RFS rules. Additionally, EPA is barred from issuing the final rule until at least 30 days have passed since the closure of the comment period.³ Consequently, at this point, it is impossible for EPA to issue the 2022 renewable fuel by the statutory deadline.

Additionally, the Clean Air Act requires that, “for calendar years after the calendar years specified in the [statutory] tables,” EPA “promulgate rules establishing the applicable volumes no later than 14 months before the first year for which such applicable volume will apply.”⁴ Accordingly, EPA must establish the applicable volumes for 2023 by November 1, 2021—yesterday. But EPA has not done so, in violation of the statutory deadline. (In fact, EPA has not even issued a notice of proposed rulemaking to establish those applicable volumes.)

EPA’s failure to timely perform these mandatory, non-discretionary duties not only violates the Clean Air Act, but also undermines Congress’s intention that the RFS program “force the market to create ways to produce and use greater and greater volumes of renewable fuel each year”⁵ and deprives market participants of the “market certainty” that is “so critical to the long term success of the Renewable Fuel Program.”⁶

Therefore, Growth Energy urges EPA to promptly issue the renewable fuel obligations for 2022 and the applicable volumes for 2023. Should EPA fail to do so within 60 days of this notice, we reserve our right to sue for relief,⁷ including an order compelling EPA to perform these mandatory, non-discretionary duties promptly.⁸

If you have any questions concerning this notice, please contact me at 202-545-4025.

Respectfully submitted,



Joseph Kakesh
General Counsel
Growth Energy

² *Hollingsworth v. Perry*, 558 U.S. 183, 192 (2010) (quotation marks omitted)

³ 42 U.S.C. § 7607(d)(5) (EPA “shall keep the record of such proceeding open for thirty days after completion of the proceeding”).

⁴ 42 U.S.C. § 7545(o)(2)(B)(ii).

⁵ *Americans for Clean Energy*, 864 F.3d at 710; *accord American Fuel & Petrochemical Manufacturers*, 937 F.3d at 568.

⁶ *Americans for Clean Energy*, 864 F.3d at 715 (quotation marks omitted).

⁷ See 42 U.S.C. § 7604(b)(2) (“No action may be commenced ... under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Administrator ...”).

⁸ See 42 U.S.C. § 7604(a)(2) (“any person may commence a civil action ... against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator”); 5 U.S. Code § 706(1) (“The reviewing court shall ... compel agency action unlawfully withheld or unreasonably delayed”).

cc: Joseph Goffman
Melissa Hoffer
Alejandra Nuñez

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS Growth Energy (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>D.C.</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS Michael S. Regan, in his official capacity as Administrator, and Environmental Protection Agency COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) Seth P. Waxman and David M. Lehn Wilmer Cutler Pickering Hale & Dorr LLP 1875 Pennsylvania Ave. NW Washington, DC 20006 202-663-6800	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	<input type="radio"/> F. Pro Se General Civil
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<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi-district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge
 ☐ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Failure to perform mandatory, non-discretionary duties under 42 U.S.C. 7545(o); cause of action under 42 U.S.C. 7604(a)

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 02/08/2022	SIGNATURE OF ATTORNEY OF RECORD s/ Seth Waxman
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT

for the

District of Columbia



Growth Energy

Plaintiff(s)

v.

Michael S. Regan, in his official capacity as
Administrator, and Environmental Protection Agency

Defendant(s)

Civil Action No. 1:22-cv-00347

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Michael S. Regan
 Administrator
 U.S. Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W.
 Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Seth P. Waxman and David M. Lehn
 Wilmer Cutler Pickering Hale & Dorr LLP
 1875 Pennsylvania Ave. NW
 Washington, DC 20006
 202-663-6800
 seth.waxman@wilmerhale.com
 david.lehn@wilmerhale.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia



Growth Energy

Plaintiff(s)

v.

Michael S. Regan, in his official capacity as
Administrator, and Environmental Protection Agency

Defendant(s)

Civil Action No. 1:22-cv-00347

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Seth P. Waxman and David M. Lehn
Wilmer Cutler Pickering Hale & Dorr LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006
202-663-6800
seth.waxman@wilmerhale.com
david.lehn@wilmerhale.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Columbia



Growth Energy

Plaintiff(s)

v.

Michael S. Regan, in his official capacity as
Administrator, and Environmental Protection Agency_____
Defendant(s)

Civil Action No. 1:22-cv-00347

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Merrick B. Garland
 Attorney General of the United States
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Seth P. Waxman and David M. Lehn
 Wilmer Cutler Pickering Hale & Dorr LLP
 1875 Pennsylvania Ave. NW
 Washington, DC 20006
 202-663-6800
 seth.waxman@wilmerhale.com
 david.lehn@wilmerhale.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Columbia

Growth Energy

Plaintiff(s)

v.

Michael S. Regan, in his official capacity as
Administrator, and Environmental Protection Agency*Defendant(s)*

Civil Action No. 1:22-cv-00347

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Matthew M. Graves
 United States Attorney for the District of Columbia
 United States Attorney's Office
 555 4th Street, NW
 Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Seth P. Waxman and David M. Lehn
 Wilmer Cutler Pickering Hale & Dorr LLP
 1875 Pennsylvania Ave. NW
 Washington, DC 20006
 202-663-6800
 seth.waxman@wilmerhale.com
 david.lehn@wilmerhale.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: