

volume of cellulosic biofuel—a type of renewable fuel—that would be used in commerce in the United States during calendar year 2013, pursuant to its authority under a provision of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 495 (2005), as amended by the Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492 (2007). See 42 U.S.C. § 7545(o)(7)(D). Among other determinations, the 2013 RFS Rule also sets forth EPA’s decision whether or not to reduce the 2013 “applicable volumes” established by statute for other types of renewable fuel under 42 U.S.C. § 7545(o)(7)(D)(i), as well as EPA’s determination of percentage-based standards for each type of renewable fuel (including cellulosic biofuel) for calendar year 2013, with which obligated parties must comply.

3. As part of this rulemaking, EPA also established a discrete regulatory provision that constitutes the cellulosic biofuel standard for 2013. See 40 C.F.R. § 80.1405(a)(4)(i), as set forth in 78 Fed. Reg. at 49,830.

4. Two of the Petitioners in this case, the American Petroleum Institute (“API”) and American Fuel and Petrochemical Manufacturers (“AFPM”), filed petitions for administrative reconsideration of the 2013 RFS Rule raising a number of objections to EPA’s methodology for determining the cellulosic biofuel volume for 2013 and the resulting percentage standard for cellulosic biofuel (for convenience, such objections collectively are referred to hereinafter as objections

“to the 2013 cellulosic biofuel standard”). These petitions asserted, in part: that notice of this methodology had not been provided to the public; that EPA had relied on data on which the public had no chance to comment; that new information that became available after issuance of the final rule justified reconsideration; and that the cellulosic biofuel requirement for 2013 is arbitrary and capricious.

5. The EPA Administrator signed letters on January 23, 2014, determining that, with respect to the objections concerning the 2013 cellulosic biofuel standard, both API’s and AFPM’s petitions meet the statutory criteria for reconsideration.¹

6. EPA subsequently moved for an order severing the judicial challenges to the 2013 cellulosic biofuel standard from the remainder of the litigation concerning the 2013 RFS Rule, and holding this severed portion of the litigation in abeyance pending administrative reconsideration. The Court granted this motion by order dated March 11, 2014. Under the Court’s order, EPA is directed to file a status report on March 28, 2014, and at 60-day intervals thereafter until EPA takes a final action on reconsideration of the 2013 cellulosic biofuel standard. The

¹ EPA’s letters and the petitions for administrative reconsideration all were attached to the motion described in Paragraph 6 below.

parties are further directed to file a motion or motions to govern further proceedings within 30 days of the conclusion of the Agency's proceedings.

7. EPA filed its second status report on June 5, 2014. There, EPA indicated that a direct final rule with a parallel proposal revising the 2013 cellulosic biofuel standard was published in the Federal Register on May 2, 2014. See 79 Fed. Reg. 25,025 (direct final rule); 79 Fed. Reg. 25,074 (parallel proposal). The direct final rule set the revised 2013 cellulosic biofuel standard at 0.0005% based on actual cellulosic biofuel production in 2013. 79 Fed. Reg. at 25,025, 25,027-29. The direct final rule also provides for a refund of any excess cellulosic biofuel waiver credits obtained by obligated parties for compliance in 2013. Id. at 25,027.

8. The period for comment on the parallel proposal closed on June 2, 2014. Id. at 25,025. EPA received three comments on the parallel proposal. None of these comments were adverse. Accordingly, the direct final rule became effective on July 1, 2014 without further notice, concluding the Agency's reconsideration proceedings in this matter. Id.

9. Pursuant to Clean Air Act section 307(b), 42 U.S.C. § 7607(b), a petition for review challenging the May 2, 2014 direct final rule must be filed by July 1, 2014. No such petition has been filed.

10. By order dated July 25, 2014, the Court granted EPA's unopposed motion to extend the deadline to file motion or motions to govern further proceedings to August 14, 2014.

11. Pursuant to the Court's order, the Parties now submit that the Agency's final action on reconsideration, which did not receive adverse comments and has not been challenged in court, has fully resolved this matter. Accordingly, pursuant to Federal Rule of Appellate Procedure 42(b), the Parties hereby move for voluntary dismissal of this petition for review, with each party to bear its own costs and attorneys' fees.

12. By the electronic signatures of counsel below, each Party in this case for which a signature block is set forth below has authorized counsel for EPA to file this joint motion on its behalf.

13. Respondent-Intervenor National Biodiesel Board does not join this motion, but has confirmed through counsel that it does not oppose the motion.

14. The remaining Petitioner, Monroe Energy LLC ("Monroe"), did not indicate its position on the motion prior to EPA's electronic submission of the filing to the Court.

Respectfully submitted,

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Dated: August 14, 2014

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Motion for Voluntary Dismissal has been filed with the Clerk of the Court this 14th day of August 2014, using the CM/ECF System. True and correct copies were sent to each of the following counsel by electronic service through the appellate CM/ECF system:

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