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10

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 \_\_\_\_\_ )  
14 UNITED STATES OF AMERICA )  
15 999 18<sup>th</sup> Street, South Terrace, Suite 370 )  
16 Denver, Colorado 80202 )

17 Plaintiff, )

18 v. )

19 CHEMOIL CORPORATION )  
20 4 Embarcadero Ctr., Ste. 3400 )  
21 San Francisco, California 94111-4106 )

22 Defendant. )  
23 \_\_\_\_\_ )

Civil Case No. 16-5538

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

24 The United States of America (“United States” or “Plaintiff”), by the authority of the  
25 Attorney General and acting at the request of the Administrator of the United States Environmental  
26 Protection Agency (“EPA”), files this Complaint and alleges the following:  
27  
28

1 **NATURE OF THE ACTION**

2 1. This is an action for civil penalties and injunctive relief brought by the United States  
3 against Chemoil Corporation (“Chemoil” or “Defendant”) pursuant to Sections 205(b) and 211(d)  
4 of the Clean Air Act (“CAA” or “the Act”), as amended, 42 U.S.C. §§ 7524(b) and 7545(d), for  
5 Chemoil’s violations of Section 211(o) of the CAA, 42 U.S.C. § 7545(o), and the regulations  
6 prescribed thereunder at 40 C.F.R. Part 80, Subpart M (the “Renewable Fuel Standard  
7 Regulations”).  
8

9 **JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the subject matter of this action under Sections 205  
11 and 211 of the CAA, 42 U.S.C. §§ 7524 and 7545, and 28 U.S.C. §§ 1331, 1345, and 1355.

12 3. Under Cal. Civ. Proc. Code § 410.10 (West), this court has personal jurisdiction  
13 over the Defendant because the Defendant is incorporated in California and resides and does  
14 business at 4 Embarcadero Center, 34<sup>th</sup> Floor, San Francisco, CA 94111.  
15

16 4. Under Sections 205(b) and 211(d) of the CAA, 42 U.S.C. §§ 7524(b) and 7545(d),  
17 this Court is authorized to assess civil penalties for every day of each violation of Section 211(o)  
18 of the CAA and the Renewable Fuel Standard Regulations, and the amount of economic benefit  
19 or savings resulting from each violation. *See* U.S.C. § 7545(o).  
20

21 5. Under Section 211(d)(2) of the CAA, 42 U.S.C. § 7545(d)(2), this Court is  
22 authorized to restrain and award other appropriate relief for violations of 211(o) of the CAA, 42  
23 U.S.C. § 7545(o), and the Renewable Fuel Standard Regulations.  
24

25 6. Because Defendant is incorporated in California and resides and does business in  
26 this District, venue in this District is appropriate. *See* 42 U.S.C. § 7524(b) and 28 U.S.C. §§  
27 1391(b), (c), and (d).  
28

1 **INTRADISTRICT ASSIGNMENT**

2 7. Intradistrict assignment to the San Francisco Division is proper pursuant to Civil  
3 Local Rule 3-2(c) because Defendant is incorporated in California and resides and does business  
4 at 4 Embarcadero Center, 43th Floor, San Francisco, CA 94111.  
5

6 **AUTHORITY**

7 8. Authority to bring this action on behalf of the United States is vested in the United  
8 States Department of Justice by Section 305 of the Act, 42 U.S.C. § 7605, and 28 U.S.C. § 516.  
9

10 **THE PARTIES**

11 9. Plaintiff, the United States of America, is acting on behalf of the Administrator of  
12 the EPA.

13 10. Defendant, Chemoil, is a corporation in good standing organized under the laws of  
14 the State of California. At all times relevant to this Complaint, Defendant sold marine, aviation,  
15 diesel, renewable fuels, and residual oil products.  
16

17 11. The Defendant is a “person” as that term is defined in Section 302(e) of the CAA,  
18 42 U.S.C. § 7602(e).  
19

20 **CLEAN AIR ACT RENEWABLE FUEL STATUTORY PROVISIONS AND**

21 **APPLICABLE RENEWABLE FUEL REGULATIONS**

22 12. “Renewable fuel” is a fuel that is (i) produced from renewable biomass; (ii) used to  
23 replace or reduce the quantity of fossil fuel present in transportation fuel, heating oil, or jet fuel;  
24 and (iii) has lifecycle greenhouse gas emissions that are at least 20 percent less than baseline  
25  
26  
27  
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1 lifecycle greenhouse gas emissions, subject to certain exceptions. *See* 42. U.S.C. § 7545(o)(1)(J)  
2 and 40 C.F.R. § 80.1401<sup>1</sup> (definitions of “Renewable fuel”).

3           13. “Biomass-based diesel” is a renewable fuel that has lifecycle greenhouse gas  
4 emissions that are at least 50 percent less than baseline lifecycle greenhouse gas emissions and  
5 meets all of the following requirements: (i) is a transportation fuel, transportation fuel additive,  
6 heating oil, or jet fuel; (ii) meets the definition of either biodiesel or non-ester renewable diesel;  
7 (iii) is registered as a motor vehicle fuel or fuel additive under 40 C.F.R. Part 79, if the fuel or fuel  
8 additive is intended for use in a motor vehicle. *See* 42. U.S.C. § 7545(o)(1)(D) and 40 C.F.R. §  
9 80.1401 (definitions of “Biomass-based biodiesel”).  
10

11           14. “Biodiesel” is a mono-alkyl ester that meets American Society for Testing and  
12 Materials (“ASTM”) D 6751-09 specifications. *See* 40 C.F.R. §§ 80.1401 (definition of  
13 “Biodiesel”) and 80.1468(b)(4) (incorporating by reference ASTM D 6751).  
14

15           15. For “ethanol” to be considered a renewable fuel it must be denatured as required  
16 and defined in 27 C.F.R. Parts 19 through 21.  
17

18           16. The Energy Policy Act of 2005 amended the CAA to add a renewable fuel standard  
19 that required the EPA to promulgate regulations ensuring that gasoline sold or introduced into  
20 commerce in the continental United States, on an annual average basis, contains the applicable  
21 volume of renewable fuel designated in the Energy Policy Act of 2005. *See* Energy Policy Act of  
22 2005, Pub. L. No. 109-58, 119 Stat. 594 (codified at Section 211(o) of the CAA, 42 U.S.C. §  
23 7545(o)). The Energy Policy Act of 2005 further required the EPA to establish a credit trading  
24

25  
26  
27 <sup>1</sup> All citations to the Code of Federal Regulations in this Complaint are to the version in effect July 1,  
28 2011, unless otherwise noted.

1 program to help effectuate the renewable fuel mandate. *See* 42 U.S.C. § 7545(o)(5). In May 2007,  
2 the EPA implemented Section 211(o) of the CAA by promulgating the renewable fuel standards  
3 at 40 C.F.R. Part 80, Subpart K (renewable fuel regulations now known as “RFS1”).

4  
5 17. The Energy Independence and Security Act of 2007 (“EISA”) amended CAA  
6 Section 211(o) to increase the amount of renewable fuels used in motor vehicles in the United  
7 States to 36 billion gallons by 2022. EISA also required the EPA to amend the RFS1 regulations  
8 to establish four separate categories of renewable fuels (cellulosic biofuel, biomass-based diesel,  
9 advanced biofuel, and general renewable fuel) each with its own separate volume mandate and  
10 each with a specific lifecycle greenhouse gas emission threshold in comparison to the petroleum  
11 fuels they displace. *See* 40 C.F.R. § 80.1405. EISA further expanded the scope of the RFS1  
12 program by allowing credits to be generated for renewable fuel for use in non-road fuel, home  
13 heating oil, and jet fuel (in addition to motor vehicle fuel). To implement EISA, EPA promulgated  
14 additional renewable fuel standards which became effective on July 1, 2010 (known as “RFS2”).  
15 *See* 40 C.F.R. Part 80, Subpart M and 75 Fed. Reg. 14670 (March 26, 2010).

16  
17  
18 18. Congress expanded the renewable fuel program to (i) significantly reduce Green  
19 House Gas (“GHG”) emissions; (ii) move the United States toward greater energy independence  
20 and security, including reducing the nation’s dependence on foreign oil; (iii) encourage the  
21 blending of renewable fuels into our nation’s motor vehicle fuel supply; (iv) grow the nation’s  
22 renewable fuel industry; and (v) protect consumers. *See* Energy Independence and Security Act  
23 of 2007, Pub. L. No. 110-140, 121 Stat. 1492.

24  
25 19. Renewable fuel produced in or imported into this country is tracked by Renewable  
26 Identification Numbers (“RINs”) that are generated by renewable fuel producers and importers.  
27 The Renewable Fuel Standard Regulations define a RIN as “a unique number generated to  
28

1 represent a volume of renewable fuel pursuant to [40 C.F.R.] §§ 80.1425 and 80.1426.” *See* 40  
2 C.F.R. § 80.1401 (definition of “Renewable Identification Number”).

3  
4 20. The Renewable Fuel Standard Regulations allow biodiesel producers and importers  
5 to generate 1.5 RINs for each gallon of qualifying biodiesel that they produce or import. *See* 40  
6 C.F.R. § 80.1415(b)(2). The Renewable Fuel Standard Regulations allow renewable fuel producers  
7 and importers to generate 1.0 RIN for each gallon of qualifying denatured ethanol that they produce  
8 and import. *See* 40 C.F.R. § 80.1415(b)(1).

9  
10 21. The Renewable Fuel Standard Regulations designate each category of renewable  
11 fuel by a separate D code. The D code for biomass-based diesel is D4 and the D code for general  
12 renewable fuel (including qualifying denatured ethanol) is D6. *See* 40 C.F.R. §§ 80.1425(g)(2)  
13 and (4) 80.1426(f), Table 1.

14  
15 22. The Renewable Fuel Standard Regulations require refiners who produce gasoline  
16 or diesel fuel within the 48 contiguous states or Hawaii, those who import such fuel into that area  
17 (collectively “Obligated Parties”), and any exporter of renewable fuel, to register with the EPA  
18 and to obtain EPA-issued registration numbers prior to engaging in any transaction involving  
19 RINs. *See* 40 C.F.R. §§ 80.76, 80.1450(a) and 80.1406(a)(1).

20  
21 23. Beginning July 1, 2010, each time any party engages in a transaction involving  
22 RINs, that party must submit certain information to the EPA via the EPA Moderated Transaction  
23 System within five (5) business days. This information includes: (i) the submitting party’s name  
24 and EPA registration number; (ii) the generation year of the RINs; (iii) the RIN assignment  
25 information (assigned or separated); (iv) the RIN type, or D code; (v) transaction type (*i.e.*, RIN  
26 buy, RIN sell, RIN separation, RIN retire); (vi) transaction date as per § 80.1453(a)(4), for an  
27 assigned RIN purchase or sale and the renewable fuel volume associated with the same; (vii)  
28

1 quantity of RINs involved in a transaction; (viii) the per gallon RIN price or the per-gallon price  
2 of renewable fuel with RINs included; and (ix) the reason for retiring RINs, separating RINs,  
3 buying RINs, or selling RINs. *See* 40 C.F.R. § 80.1452(c).

4  
5 24. The Renewable Fuel Standard Regulations require Obligated Parties (gasoline and  
6 diesel refiners and importers) to meet Renewable Volume Obligations (“RVOs”). An RVO is an  
7 annual renewable fuel use obligation based upon a percentage of the volume of the gasoline and  
8 diesel fuel that an Obligated Party produces or imports into the United States. *See* 40 C.F.R. §§  
9 80.1406(a) and (b) and 80.1407.

10  
11 25. For the purposes of the RFS2, an Exporter is “[a] person that transfers any  
12 renewable fuel from a location within the contiguous 48 states or Hawaii to a location outside the  
13 contiguous 48 states and Hawaii.” *See* 40 C.F.R. § 80.1401 (definition of “Exporter”).

14  
15 26. Once exported, renewable fuel is no longer available for use in the United States.  
16 Therefore, any exported renewable fuel cannot be used to fulfill the renewable fuel volume  
17 mandates established by Congress. For that reason, Exporters of renewable fuel are also required  
18 to calculate and meet an exporter RVO that is based upon the type and volume of renewable fuel  
19 exported from the United States. *See* 40 C.F.R. § 80.1430(a) and (b).

20  
21 27. All exported renewable fuel must be accounted for. For that reason, when  
22 renewable fuel is blended with non-renewable fuel, the Exporter must determine its RVO for  
23 biomass-based diesel in accordance with a formula based on the “discrete volume ... of exported  
24 renewable fuel that is biodiesel.” *See* 40 C.F.R. § 80.1430(b)(2). “For renewable fuels that are in  
25 the form of a blend with gasoline or diesel at the time of export” there are three acceptable methods  
26 parties may use to calculate the applicable RVO for the portion of exported biodiesel fuel. *See* 40  
27 C.F.R. § 80.1430(e).

1           28.     The Renewable Fuel Standard Regulations allow Obligated Parties to comply with  
2 their RVOs by producing renewable fuel themselves. The Renewable Fuel Standard Regulations  
3 also include a credit trading program that allows Obligated Parties and Exporters to comply with  
4 their RVOs through the purchase, sale, and retirement of RINs. *See also* 42 U.S.C. § 7545(o)(5).  
5

6           29.     An Exporter must demonstrate compliance with its RVOs annually through the  
7 acquisition and retirement of the appropriate type and quantity of RINs for each calendar year.  
8 *See* 40 C.F.R. §§ 80.1427(a), 80.1430(a), (b), and (f), and 80.1451(a)(1). Under certain  
9 conditions, an Exporter may carry an RVO deficit forward for one additional year. *See*  
10 40 C.F.R. §§ 80.1427(b) and 80.1430(b).  
11

12           30.     An Exporter demonstrates compliance by submitting annual compliance reports to  
13 EPA containing all relevant information required by 40 C.F.R. § 80.1451. *See* 40 C.F.R. §§  
14 80.1427(a), 80.1430, and 80.1430(f). An Exporter's annual compliance reports for each calendar  
15 year must be submitted to EPA by February 28 of the following year or by March 1 for the 2013  
16 compliance year. *See* 40 C.F.R. § 80.1451(a)(1) (2012), and 40 C.F.R. § 80.1451(a)(1) (2014).  
17

18           31.     The Renewable Fuel Standard Regulations apply to all RVOs and compliance  
19 periods starting January 1, 2010. *See* 40 C.F.R. § 80.1400. Under the Renewable Fuel Standard  
20 Regulations an Exporter is, among other things, required to: (i) determine its RVOs from the  
21 volumes of renewable fuel exported [40 C.F.R. § 1430(b), (d), and (e)]; (ii) report its RVOs to the  
22 EPA for the reporting year, including any deficit RVOs carried over from the previous year and  
23 deficit RVOs carried into the subsequent year, and all current-year and prior-year RINs retired for  
24 compliance [40 C.F.R. § 80.1451(a)(1)(vi) – (xii)]; (iii) acquire sufficient RINs to comply with or  
25 meet its RVOs [40 C.F.R. §§ 80.1430(a) and 80.1460(c)(1)]; (iv) retire for compliance purposes  
26 sufficient RINs to satisfy, comply with, or meet its RVOs [40 C.F.R. §§ 80.1427(a), 80.1430(f),  
27  
28



1 and 80.1460(f)]; and (v) demonstrate compliance with its RVOs [40 C.F.R. § 80.1427(a),  
2 80.1430(f), and 80.1460(f)].

3           32.     40 C.F.R. § 80.1460(c)(1), among other things, prohibits an obligated party from  
4 failing to acquire sufficient RINs to meet that party's RVO(s) under 40 C.F.R. § 80.1427 and, via  
5 the express provisions of 40 C.F.R. § 80.1427, also prohibits an exporter from failing to acquire  
6 sufficient RINs to meet its RVO(s).

7           33.     40 C.F.R. § 80.1461(a)(1) provides that any person who violates a prohibition under  
8 40 C.F.R. § 80.1460(a) through (d) is liable for a violation of that prohibition. Any person who is  
9 liable for a violation under 40 C.F.R. § 80.1461(a) is subject to a civil penalty under Sections  
10 205(b) and 211(d) of the CAA, 42 U.S.C. §§ 7524(b) and 7545(d), for every day of each violation  
11 during the compliance period and the amount of economic benefit or savings resulting from each  
12 violation. *See* 40 C.F.R. § 80.1463(a) and (b).

13           34.     40 C.F.R. § 80.1460(f) provides that no person shall fail to meet any requirement  
14 that applies to that person under 40 C.F.R. Part 80, Subpart M. This requirement prohibits parties  
15 from: failing to determine their RVOs from the volumes of renewable fuel exported; failing to  
16 report their RVOs to the EPA; failing to acquire and retire sufficient RINs to meet their RVOs;  
17 and failure to demonstrate compliance with their RVOs. 40 C.F.R. § 80.1461(b) provides that any  
18 person who fails to meet these requirements is liable for a violation of that provision. Any person  
19 who is liable for such violations under 40 C.F.R. § 80.1461(b) is subject to a civil penalty as  
20 specified in sections 205(b) and 211(d) of the CAA, 42 U.S.C. §§ 7524(b) and 7545(d), for a  
21 separate day of violation for each day each requirement remains unfulfilled plus the amount of  
22 economic benefit or savings resulting from each violation. *See* 40 C.F.R. § 80.1463(a) and (c).



**FIRST CAUSE OF ACTION**

**2011, 2012, and 2013 – Biodiesel Shipments**

**Chemoil Failed to Retire Sufficient D4 RINs to Meet Its Biomass-Based Diesel Exporter RVO under 40 C.F.R. §§ 80.1427 and 80.1430(b) in Violation of 40 C.F.R. §§ 80.1430(f), and 80.1460(c) and (f)**

43. Paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

44. In 2011, on multiple occasions, Chemoil physically transferred, or caused another to physically transfer fuel from facilities located in the United States into the holds of various foreign-flagged vessels. The vast majority of this fuel was biodiesel. As the fuel was loaded onto these vessels for shipment to locations outside the contiguous United States, title to the fuel transferred from Chemoil to various foreign purchasers.

45. Under 40 C.F.R. §§ 80.1401, 80.1427, and 80.1430, Chemoil is the “Exporter” of the biodiesel described in Paragraph 44.

46. For the biodiesel shipments described in Paragraph 44, Chemoil incurred a biomass-based diesel Exporter RVO. Chemoil did not report a biomass-based diesel Exporter RVO to the EPA in 2011 nor did it not retire sufficient D4 RINs in 2011 to comply with its biomass-based diesel Exporter RVO.

47. As a result of failing to retire sufficient RINs in 2011, Chemoil carried forward into 2012 a biomass-based diesel Exporter RVO deficit.

48. In 2012, on multiple occasions, Chemoil physically transferred, or caused another to physically transfer fuel from facilities located in the United States into the holds of various foreign-flagged vessels. The vast majority of this fuel was biodiesel. As the fuel was loaded onto these vessels for shipment to locations outside the contiguous United States, title to the fuel transferred from Chemoil to various foreign purchasers.

1           49.       Under 40 C.F.R. §§ 80.1401, 80.1427, and 80.1430, Chemoil is the “Exporter” of  
2 the fuel described in Paragraph 48.

3           50.       For the biodiesel described in Paragraph 48, Chemoil incurred a biomass-based  
4 diesel Exporter RVO of D4 RINs. Chemoil did not report a biomass-based diesel Exporter RVO  
5 to the EPA in 2012 nor did it retire sufficient D4 RINs in 2012 to comply with its biomass-based  
6 diesel Exporter RVO.  
7

8           51.       As a result of failing to retire sufficient RINs in 2012, Chemoil carried forward into  
9 2013 a biomass-based diesel deficit equivalent to the sum of its 2011 and 2012 Exporter RVO  
10 shortfall.  
11

12           52.       In 2013, on multiple occasions, Chemoil physically transferred, or caused another  
13 to physically transfer fuel from facilities located in the United States into the holds of various  
14 foreign-flagged vessels. The vast majority of this fuel was biodiesel. As the fuel was loaded onto  
15 these vessels for shipment to locations outside the contiguous United States, title to the fuel  
16 transferred from Chemoil to various foreign purchasers.  
17

18           53.       Under 40 C.F.R. §§ 80.1401, 80.1427, and 80.1430, Chemoil was the “Exporter”  
19 of the fuel described in Paragraph 52.

20           54.       For the biodiesel described in Paragraph 52, Chemoil incurred a biomass-based  
21 diesel Exporter RVO. Chemoil did not report any biomass-based diesel Exporter RVO to the EPA  
22 in 2013 nor did it retire sufficient D4 RINs in 2013 to comply with its biomass-based diesel  
23 Exporter RVO.  
24

25           55.       Including the biomass-based diesel Exporter RVO deficits that it carried forward  
26 from 2011 and 2012, at the end of the 2013 compliance period, Chemoil had an unresolved  
27 biomass-based diesel Exporter RVO of at least of 72.7 million D4 RINs.  
28



1 80.1463(a) and (c) for each separate day of each violation for so long as such requirements remain  
2 unfulfilled.

3 61. Pursuant to Sections 205 and 211 of the Act, 42 U.S.C. §§ 7524 and 7545, and 40  
4 C.F.R. § 19.4, Chemoil is liable for: civil penalties of up to \$37,500 per day, per violation, for so  
5 long as each violation remains unresolved; the economic benefit or savings resulting from each  
6 violation; and injunctive relief.  
7

8  
9 **REQUEST FOR RELIEF**

10 WHEREFORE, Plaintiff, United States of America, respectfully requests that this Court enter  
11 judgment against Defendant:

- 12 A. Imposing a civil penalty on Defendant pursuant to Sections 205(b) and 211(d) of the  
13 CAA, 42 U.S.C. §§ 7524(b) and 7545(d), for the violations alleged herein of Section  
14 211(o) of the CAA, 42 U.S.C. § 7545(o), and the Renewable Fuel Regulations, 40  
15 C.F.R. Part 80, Subpart M, of up to \$37,500 per day, per violation, for so long as each  
16 violation remained unresolved, plus the economic benefit or savings resulting from  
17 each violation;  
18  
19 B. Requiring the Defendant to retire a sufficient number of D4 RINs to satisfy its 2011,  
20 2012, and 2013 RVOs;  
21  
22 C. Requiring the Defendant to correct its deficient reporting under 40 C.F.R. § 80.1451;  
23  
24 D. Enjoining Defendant from committing any further violations of Section 211(o) of the  
25 CAA, 42 U.S.C. § 7545(o), and the Renewable Fuel Regulations, 40 C.F.R. Part 80,  
26 Subpart M, the Act; and  
27  
28 E. Granting the United States such other relief as the Court deems just and proper.

Dated this 26<sup>th</sup> day of September, 2016.

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Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he is an employee of the United States Department of Justice and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that he is causing a copy of the following to be served this date upon each of the persons indicated below at the addresses shown:

**COMPLAINT**  
**UNITED STATES OF AMERICA v. CHEMOIL CORPORATION**  
CASE NO. \_\_\_\_\_

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**BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

**CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

**BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be delivered by hand to the person or offices of each addressee above.

**BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to the person or offices of each addressee above.

**BY E-MAIL:** I caused each such document to be sent by e-mail to the person or offices of each address above

**BY FEDERAL EXPRESS**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed September 28, 2016.

  
John N. Moscato  
Attorney for Plaintiff