



November 4, 2021

The Honorable Michael Regan
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Regan:

Our states lead the nation in the production of low-carbon ethanol, and we have witnessed first-hand the important environmental, economic, and social benefits generated by a healthy and thriving renewable fuels industry. Thus, we were extremely disappointed by the recent D.C. Circuit Court decision overturning the Environmental Protection Agency's 2019 regulation that finally facilitated year-round sales of E15 (gasoline blended with 15% ethanol) in conventional gasoline markets.¹

Fuel marketers and retailers, renewable fuel producers, the U.S. Department of Agriculture, and state governments have invested hundreds of millions of dollars in recent years to expand consumer access to low-cost, clean-burning fuels like E15. Not only does the recent court decision threaten to strand these public and private investments, but it also jeopardizes the progress we've made toward cleaning up our fuel supply and reducing emissions from transportation.

In the wake of the court decision, we are exploring all of our options to ensure retailers are able to sell E15 to consumers all year long without interruption. It is our understanding that the EPA Administrator has the authority under Section 211(h) of the Clean Air Act to promulgate regulations that would put E10 and E15 on equal footing with regard to volatility limitations, thus re-opening the door to unencumbered, year-round sales of both fuels.

Specifically, Section 211(h)(5) of the Act establishes that upon the request from the Governor of a State, the Administrator shall apply volatility limitations to gasoline-ethanol blends that exclude the benefit of the 1-pound per square inch (psi) Reid vapor pressure (RVP) waiver provided to E10

¹ *American Fuel & Petrochemical Manufacturers v. Environmental Protection Agency* (No. 19-1124)

² According to EPA: "Gasoline alcohol blends meeting requirements of 40 CFR 1090.215(b) have a 1.0 psi waiver of applicable RVP standard unless: The state has adopted and enforces a SIP-approved RVP standard that does not provide for the 1.0 psi waiver" <https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure>

³ The high ozone control season begins May 1 (for fuel blenders/terminals) or June 1 (for retailers) and ends September 15.

in Section 211(h)(4). If approved, it is our understanding that such a request would result in a volatility limitation of 9 psi for both E10 and E15 in conventional gasoline areas, thereby establishing a level playing field and allowing retailers to use the same gasoline blendstock for both blends all year long. We understand that some states have already requested, and secured approval, of such action by the Administrator², meaning the recent court decision will not impact the ability of retailers in their states to sell E15 year-round.

Further, we note that Section 211(h)(5) of the Act requires the Administrator to promulgate regulations enacting such a request from a Governor within 90 days of receiving notification from a Governor. Thus, if we were to submit a request for exclusion from the 1-psi ethanol waiver this summer or fall, it is our understanding that the Administrator could promulgate rules acting on the request well before the 2022 summer high ozone season.³

While we are not formally submitting the notification required under Section 211(h)(5)(A) today, we do want to express our interest in potentially pursuing this approach. We would like to open a dialogue with the Agency on this issue and we are respectfully requesting your guidance regarding the process for securing an exclusion from the 1-psi ethanol waiver. Specifically, we seek additional detail from EPA on what “supporting documentation” must be furnished by the Governor of a State to support a request for an exclusion from the waiver, along with any other information that the Agency feels would be helpful as we strongly consider pursuing this option.

Thank you for considering our request. We look forward to speaking with you soon about our options for protecting the substantial investments our states have made in clean fuels, and ensuring consumers in our states can continue to purchase E15 all year long.

Sincerely,



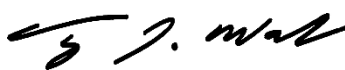
Kim Reynolds
Governor of Iowa



Pete Ricketts
Governor of Nebraska



Doug Burgum
Governor of North Dakota



Tim Walz
Governor of Minnesota



Michael Parson
Governor of Missouri



Kristi Noem
Governor of South Dakota



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