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February 12, 2004

The Honorable Michael Leavitt
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Leavitt:

I am writing to urge the Environmental Protection Agency (EPA) to expeditiously approve California's January 28, 2004 amended request for a waiver from the Federal minimum oxygen requirement in reformulated gasoline (RFG).

Currently, California refiners are beginning the difficult process of transitioning from winter to summer-grade gasoline. In 2004, due to the Federal oxygen requirement, and the State ban on methyl tertiary-butyl ether (MTBE), which became effective January 1, 2004, California will be subjected to an unwarranted *de facto* ethanol mandate. This mandate is unnecessary given that California refiners are capable of producing gasoline that is as clean or cleaner than gasoline comprised of 2 percent ethanol by weight.

Moreover, this ethanol mandate will further strain refineries and gasoline infrastructures, which are already operating at or near capacity, and will reduce California's gasoline supply by 10 percent at a time when demand for gasoline within the State is growing. Together, these factors will greatly reduce the flexibility of California's gasoline market, thereby causing more frequent and intense gasoline price spikes. Additionally, this mandate may hinder the State's efforts to meet and maintain EPA's national ambient air quality standards (NAAQS) for ozone and particulate matter and may pose a threat to California's already limited water supply.

During the 107th and 108th Congresses, the House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, which I chair, held three hearings on ethanol production and use in the United States. The most recent, held on July 2, 2003, explicitly addressed the transition from MTBE to ethanol in California's gasoline market. This hearing not only considered the economic effects of the transition on consumers and industry but also examined the environmental repercussions of increasing ethanol use in California. At the hearing, Dr. Lynne Kiesling, Director of Economic Policy of the Reason Foundation, described

many of the risks posed by ethanol to air and water quality. She also argued that neither MTBE nor ethanol is necessary to produce Federal RFG. Of particular interest is the fact that Dr. Kiesling cited EPA's own 1999 Blue Ribbon Panel report to support both of her assertions. If EPA's own data suggest that refiners are capable of producing non-oxygenated gasoline that is as clean or cleaner than ethanol-blended gasoline and that ethanol may pose a risk to groundwater, why has EPA, to date, refused to approve California's waiver request?

In addition to conducting these hearings, I also requested that the Energy Department's Energy Information Administration (EIA) conduct a study on the precise causes of the March 2003 gasoline price increases in California. EIA released its preliminary report in May 2003 and its final report in November 2003. Both reports determined that the transition from MTBE to ethanol was a factor in the gasoline price spikes in California in March, June, and August of 2003. More importantly, both reports emphasized the fact that blending ethanol with gasoline in California will reduce gasoline production by 10 percent for 8 months of the year. This means that California refiners will need to import more foreign oil and gasoline additives this year to make the same amount of gasoline they made before widespread ethanol blending began in the State. Clearly, this outcome is not economically or environmentally beneficial to California, or to the United States as a whole.

California has sought a waiver from the Federal minimum oxygen requirement for nearly five years. During this time, California submitted seven letters to the Administration (one to President Bush and six to EPA) seeking approval of its waiver request, and provided EPA with ample scientific data to support the use of non-oxygenated gasoline within the State. Despite these submissions, EPA has not yet approved California's waiver request. However, on February 2, 2004, EPA issued a proposed rule that would allow New Hampshire to opt-out of the Federal RFG program due to water contamination risks posed by MTBE (69 FR 4903-08). Under this plan, New Hampshire's refiners would not be required to blend their gasoline with 2 percent oxygen by weight; yet, they would be required to maintain the emission reductions realized from the use of MTBE-blended gasoline. If this plan is appropriate and scientifically sound for New Hampshire, why would California be denied the same opportunity?

At present, EPA is under court order (*Davis v. U.S. EPA*, 348 F.3d 772, 9th Cir. Cal., 2003, rehearing denied) to re-review California's request with full consideration of the effects that a waiver would have on EPA's NAAQS for both ozone and particulate matter. I request that EPA carefully consider the data presented in California's recent updated and expanded waiver request. These data clearly demonstrate that continued use of ethanol in California may potentially inhibit current State efforts to attain and maintain the NAAQS for ozone and particulate matter. I strongly urge EPA to promptly complete its review of California's waiver request.

California has been an environmental leader for many years, consistently setting the most stringent environmental quality standards and goals in the country. In seeking a waiver from the Federal oxygen requirement, California is attempting to continue this important tradition. Accordingly, I urge EPA to promptly approve California's waiver request. Doing so will not only save Californians millions of dollars but will also enable them to enjoy cleaner air and water.

Thank you for your attention to this request. If you have any questions about this letter, please contact Professional Staff Member Melanie Tory at 226-4376.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs

cc The Honorable Tom Davis
The Honorable John Tierney