

September 23, 2022

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

Delivered electronically to: Regan.Michael@epa.gov

**Re: Petition to Delay Implementation of Stricter RVP Limits in Certain Midwest States**

Dear Administrator Regan:

Nine Midwest state governors requested that the U.S. Environmental Protection Agency (EPA) promulgate a rulemaking to reduce gasoline vapor pressure requirements in their respective states, effective before summer vapor pressure limits take effect on May 1, 2023.<sup>1</sup> The American Petroleum Institute (API)<sup>2</sup> in accordance with provisions available in the Clean Air Act,<sup>3</sup> petition EPA to delay the effective date of the governors' requests to May 1, 2024. If EPA does not delay this action, there will likely be an insufficient supply of gasoline in the summer of 2023 which will negatively impact consumers. EPA should address this petition for a delay at the same time it develops a regulation implementing the governors' requests.

The governors' requested implementation date does not provide adequate lead time to make planning and investment decisions at refineries and in the fuel distribution system that are necessary to reduce gasoline vapor pressure across the region. EPA must address the uncertainty in the marketplace and propose a realistic implementation timeline for the new fuel specification.

EPA limits conventional gasoline vapor pressure to a maximum 9.0 psi Reid Vapor Pressure (RVP) at wholesale from May 1-September 15 in most areas (lower limits apply in some areas to address air quality concerns).<sup>4</sup> Congress directed EPA to allow gasoline blended with 10% ethanol (E10) to exceed this limit by 1.0 psi RVP (i.e., 10.0 psi maximum RVP for E10).<sup>5</sup> E15 cannot be sold in the summer season using the same base gasoline as E10, and lower RVP base fuels suitable for blending E15 in summer are difficult to obtain in many areas. As a result, E15 is not widely available in the summer

<sup>1</sup> IA, NE, IL, KS, MN, ND, SD, WI, and OH. KS subsequently rescinded its letter.

<sup>2</sup> The American Petroleum Institute (API) is the national trade association that represents all aspects of America's oil and natural gas industry. Our nearly 600 corporate members represent all segments of the industry. These companies are producers, refiners, suppliers, marketers, pipeline operators and marine transporters as well as service and supply companies that support all segments of the industry, and they provide most of our Nation's energy.

<sup>3</sup> CAA Sec. 211(h)(5)(C)(ii)(I)

<sup>4</sup> CAA Sec. 211(h)

<sup>5</sup> CAA Sec. 211(h)(4)



months. This situation prompted EPA to use its emergency fuel waiver authority to relax RVP standards for E15 during the 2022 summer season.

Under the Clean Air Act a Governor may notify EPA that the 1.0 psi RVP exceedance allowed for E10 will increase emissions in any area in the state, and within 90 days of receipt of the notification EPA shall promulgate a regulation that rescinds the 1.0 psi waiver for 10 percent ethanol blends.<sup>6</sup> The effective date of EPA's regulation may not be sooner than the later of "(I) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or (II) 1 year after the date of receipt of the notification." Congress provided this minimum lead time to allow the refining sector and the fuel distribution system to make the necessary changes required to meet the lower standards. Congress also recognized that additional lead time may be necessary and included provisions to delay the effective date of the regulation by one year, which may be renewed for up to two additional years.

It is hard to imagine Congress envisioned that governors representing such a large swath of the country would exercise the option to require a lower RVP fuel at the same time, and for reasons other than addressing an air quality concern.<sup>7</sup> The governors' request impacts a vast area and a significant volume of fuel creating significant challenges for the refining and distribution sector. The EPA has recognized in previous rulemaking that refineries, pipelines, and terminals need time to design projects, obtain permits, form the capital necessary for the project, and complete construction in time to comply with the rule. As examples, Tier-2 and Tier-3 gasoline rules and the Ultra-Low Sulfur Diesel rule were phased in over a much longer compliance period than the one year that the governors have requested.

Under any timeline, the impacts of the reduced RVP requirements will be significant. The action will require two new grades (regular and premium) of low vapor pressure gasoline to be produced and distributed to the Midwest region. Refineries across the Midwest region, as well as refiners in some neighboring states and in the Gulf Coast refining system, will need to make infrastructure and operational changes to produce the new fuel while continuing to supply the existing 9.0 psi RVP gasoline to the states outside of the proposed area. Further, refineries often begin manufacturing summer-grade gasoline and shipping it months before the regulatory deadline in order to allow transition at the terminal by the May 1 compliance date. Reducing the RVP to the lower pressure may require refineries to start making the low-RVP product even sooner. We are continuing to develop more detailed analysis of the impacts that would result from the Governor's petitions, and we will look forward to sharing that information with the Agency as they become available.

All the petition states are located within PADD 2, and fuel supplies in PADD 2 are dependent upon receiving and shipping fuel across PADD boundaries. Refiners outside of PADD 2 may opt to not make the required investments and choose to supply other markets, potentially decreasing competition in the region. The addition of two new grades of gasoline will negatively impact pipelines and fuel distributors by disrupting the fungibility and supply efficiency of gasoline in the region. These issues decrease supply reliability to the region, making the area more vulnerable to market volatility, particularly when hurricanes or other emergencies occur that restrict supply.

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<sup>6</sup> CAA Sec. 211(h)(5)

<sup>7</sup> Reynolds, Kim, et al. Received by Michael Regan, 28 Apr. 2022. The letter cites "allowing the year-round sale of E15" as the reason for the notification.



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For these reasons, EPA should not propose the RVP transition to occur on May 1, 2023, but instead delay the implementation until May 1, 2024, recognizing that the major changes needed to accomplish the governors' request may not be able to be achieved by then. Consequently, as allowed by law, it is possible that one or two additional years of delay may be necessary to implement the rule effectively without disrupting gasoline supply.

EPA can provide much needed regulatory certainty by proposing a feasible timeframe to implement refinery and distribution system changes that are necessary to supply a low-RVP gasoline in the Midwest. EPA can protect consumers and ensure supply reliability by evaluating the actual costs and lead-time necessary and propose a May 1, 2024 date.

Sincerely,

A handwritten signature in black ink, appearing to read 'Prentiss Searles'.

cc:

Joseph Goffman, Principal Deputy Assistant Administrator Performing Delegated Duties of Assistant Administrator (Goffman.Joseph@epa.gov)

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