

Congress of the United States
House of Representatives
Washington, DC 20515-0529

HENRY A. WAXMAN
29TH DISTRICT, CALIFORNIA

April 23, 2002

Mr. Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Washington, DC 20503

Dear Director Daniels:

One of the first decisions of the Bush Administration was to deny California's request for a waiver from the federal reformulated gasoline oxygenate requirement. This decision was a surprise to many, as it reversed the experts at EPA and ignored the bipartisan support for the waiver from California's delegation. It is expected that this decision will balkanize Western fuel supplies and result in worse air quality and higher gasoline costs for consumers in California.

Although it has not been widely known, the Enron Corporation had a significant financial stake in the MTBE industry, and a recent review of lobbying disclosure records reveals that Enron lobbied on this issue. Details have not yet been released on many of Enron's contacts with the Administration, but Enron's influence within the Administration appears to have been substantial. Additionally, as a member of the Administration's transition team, Enron's CEO Ken Lay was in a prime position to influence early Administration decisions such as this one. I am writing to request that you provide all relevant information regarding whether Mr. Lay or any other representative of Enron had a role in the Administration's decision to deny California's waiver request.

The Waiver Denial

As you know, California Governor Gray Davis in April 1999 requested the waiver of the oxygenate requirement of the reformulated gasoline provisions of the Clean Air Act in order to facilitate California's phase out of the fuel additive methyl tertiary butyl ether (MTBE). He took this action because MTBE has contaminated groundwater throughout California.

The state of California provided exhaustive scientific information in support of the waiver. After a lengthy review, EPA's technical and professional staff concluded that a waiver of the relevant part of the oxygenate standard was indeed technically warranted and legally justified.

In fact, EPA prepared a proposed rule granting the needed partial waiver. EPA stated:

We conclude that compliance with the 2.0 weight percent oxygen content

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requirement . . . would interfere with attainment of the [national ambient air quality standards] for ozone and [particulate matter].¹

EPA stated further that the waiver would allow “the flexibility for the state to achieve the greatest additional NOx reductions possible.”²

California’s request for a waiver had broad bipartisan support within California. On April 6, 2001, every member of the California House delegation requested that the Administration grant California’s waiver request. However, the waiver request was opposed by several industries. The most visible opponent was the ethanol industry. The MTBE industry also opposed the waiver.

On June 12, 2001, the Administration decided to deny the waiver request, reversing EPA’s previous determination that a partial waiver was warranted. This decision imposed large costs on California. The state of California has estimated that denying the waiver would cost the state an additional \$450 million each year.³ In fact, the Governor of California notified Members of Congress on February 26, 2002, that historical evidence indicated that banning MTBE without a waiver of the federal oxygenate mandate could result in a doubling of the price of gasoline.⁴ To avoid this result, the Governor announced a one-year delay in the banning of MTBE on March 14, 2002.⁵

Enron and MTBE

It is well known that the decision by the Bush Administration to deny California’s waiver benefitted the ethanol industry. It is much less known, however, that the decision to deny the waiver also provided a significant benefit to Enron and other MTBE producers. But in fact, this is just what has happened. Once California’s oxygenate waiver was denied, some in industry

¹EPA, *Regulation of Fuel and Fuel Additives: Waiver of the Reformulated Gasoline Oxygen Content Requirement for California Covered Areas, Draft Notice of Proposed Rulemaking* at 16, (Jan. 2001)(available online at http://www.house.gov/reform/min/inves_energy/index.htm).

²*Id.* At 21.

³Statement by Governor Gray Davis on Bush Administration Denial of California’s Oxygenate Waiver Request (June 12, 2001).

⁴Letter from Gov. Gray Davis to Sen. Tom Daschle (Feb. 26, 2002).

⁵Executive Order D-52-02 by the Governor of the State of California (March 14, 2002).

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publicly predicted that California would have no choice but to permit the continued use of MTBE in reformulated gasoline in California.⁶ This prediction turned out to be true, and the pro-MTBE lobby hailed California's decision to continue to allow the use of MTBE for an additional year.⁷

Enron was one of the beneficiaries of the waiver denial because it is involved in many aspects of the MTBE industry. MTBE is made from methanol, which is produced from natural gas. Enron had its roots as a natural gas company, and it also owned methanol plants. For example, Enron owned a plant in La Porte, Texas, with a 400,000 barrel per day capacity for producing methanol.⁸ In addition, Enron's Morgan's Point plant produced MTBE and was, in fact, one of the largest MTBE plants of its type.⁹ Enron also traded MTBE profitably.¹⁰

In July 2001, Enron sold the Morgan's Point MTBE plant and accompanying pipeline to EOTT Energy Partners (whose general partner is a wholly-owned subsidiary of Enron) for approximately \$120 million. EOTT signed a 10-year agreement to sell the production from the MTBE plant to Enron, with a 10-year storage and transportation agreement for the use of the storage facility and pipelines. Under this agreement Enron agreed to provide the feedstock and take the plant's output, paying EOTT a fee for producing the fuel additive. Thus, Enron retained a strong financial interest in the continued use of MTBE.¹¹

Enron's financial interest was threatened by California's phase out of MTBE, as well as efforts in Congress to ban MTBE nationally. According to Chemical Market Associates, Inc. (CMAI), "[i]f the phase-out scenario goes ahead, CMAI expects around 7 [million] tonne/year of MTBE capacity will be shutdown, with inevitable repercussions on the US methanol industry.

⁶*California Could Delay MTBE Deadline*, Chemical Market Reporter (December 17, 2001).

⁷Oxygenated Fuels Association, Press Release, *OFA Welcomes Davis Delay of MTBE Ban* (March 15, 2002).

⁸*Enron Restarts MTBE Plant*, The Oil Daily (April 16, 2001).

⁹*EOTT buys MTBE plant from Enron / Natural gas storage facility, pipelines also part of \$120 million deal*, Houston Chronicle (July 3, 2001).

¹⁰*E.g., Gulf MTBE Prices Hold up as Big Traders Bat Barrels Around*, Oxy-Fuel News (May 21, 2001).

¹¹*EOTT buys MTBE plant from Enron / Natural gas storage facility, pipelines also part of \$120 million deal*, Houston Chronicle (July 3, 2001).

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On-purpose MTBE production will either convert to alternate products or shutdown.”¹²

Enron's MTBE Lobbying

Not only was Enron a significant MTBE producer, it also lobbied vigorously on MTBE issues. According to the *Financial Times*, Enron Clean Fuels Company and other MTBE producers “revived” the Oxygenated Fuels Association (OFA), the principal pro-MTBE lobbying group.¹³ At the time of the denial of California’s waiver request, it was reported that the OFA had lobbied the White House to deny the California waiver.¹⁴

Moreover, Enron itself lobbied on at least thirteen bills addressing MTBE. Most of these would have banned MTBE or allowed states to opt out of the oxygenate requirement, which would have substantially reduced the use of MTBE and allowed it to be phased out.¹⁵ In addition, Enron lobbied on related issues such as tax credits for ethanol and alternative fuel vehicles.

While it is impossible to identify the amounts that Enron spent on MTBE lobbying versus other lobbying activities, Enron reported spending over \$1.5 million on lobbying activities in 2000, and over \$2.9 million in the first six months of 2001.

Requests for Information

In order to understand the role played by Enron in the decision to deny California’s MTBE waiver, I request that you provide the following information:

1. Did you, any other person in your Office, or to your knowledge any other official in the Administration have any communications with Mr. Lay or any other Enron or OFA

¹²*Market put out by shutdowns*, Chemical Market Reporter (April 2, 2001).

¹³*Bills may pave way for rise in ethanol output*, Financial Times (December 20, 2001).

¹⁴*Gas Prices at Stake in State's Ethanol Feud Policy: Agriculture vs. oil as California seeks a waiver on corn-based additive*, Los Angeles Times (May 4, 2001).

¹⁵See Lobbying Reports filed with the Clerk of the House of Representatives for lobbyists retained or employed by Enron for the years 2000 and 2001. Specific bills listed are: S. 2233, H.R. 3536, H.R. 4011, H.R. 4120, S. 1037, S. 2723, H.R. 11, H.R. 1367, H.R. 1368, H.R. 1705, S. 645, H.R. 4303; H.R. 3798. Entities lobbied include: the Council on Environmental Quality; the Department of Energy; the Department of Interior; the Environmental Protection Agency; the U.S. House of Representatives; and the U.S. Senate.

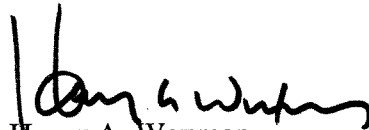
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officials or representatives regarding the issue of California's waiver request or issues relating to MTBE?

2. For each communication identified in question 1, please provide the names of the persons involved, the dates of the communication, the form of communication, a summary of the information exchanged or matters discussed during the communication, and copies of any written materials or electronic communications provided by Enron or OFA or their representatives.

I request that you respond to this letter by May 17, 2002. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman". The signature is written in a cursive style with a large initial "H".

Henry A. Waxman
Member of Congress