



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 2 2005

THE ADMINISTRATOR

The Honorable Arnold Schwarzenegger
Governor
State of California
State Capitol Building
Sacramento, CA 95814

Dear Governor Schwarzenegger:

On July 17, 2003 the United States Court of Appeals for the Ninth Circuit directed EPA to reconsider our June 12, 2001 decision to deny California's request for a waiver from the oxygen content requirement of the federal reformulated gasoline (RFG) program. On February 2, 2004 California supplemented its waiver request with new data developed by the California Air Resources Board (CARB). We have examined the new information and analyses, and have determined that the information does not support approval of California's waiver request.

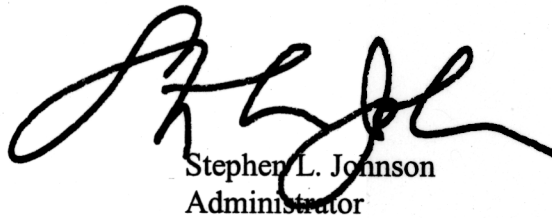
EPA reviewed the information and analyses that CARB, and other stakeholders such as the Renewable Fuels Association, prepared, and has conducted additional technical analysis of the likely impacts of granting an oxygen content waiver in California. EPA concludes that the overall impact on emissions is slight. We found that total volatile organic compound (VOC) and nitrogen oxide (NO_x) emissions are likely to decrease with a waiver while carbon monoxide (CO) emissions are likely to increase.

Having determined that California has clearly demonstrated beneficial impacts of a waiver on ozone and PM, EPA next considered the statutory requirement in the Clean Air Act that a waiver be granted only where the oxygen content requirement prevents or interferes with attainment. EPA interprets these terms as follows. Preventing attainment means compliance with the oxygen content requirement has an impact that clearly stands as an absolute or practical barrier to achieving attainment. Interfering with attainment means compliance with the oxygen content requirement has an impact that clearly leads to achieving attainment at a later date than with a waiver. In light of the focus in the statute of the impact of the oxygen content requirement on the actual achievement of attainment, as well as legislative history indicating that waivers should not be granted lightly, and that the oxygen content requirement was intended to provide potential benefits vis a vis reductions in toxic pollutant emissions, increased energy security and enhancements to the U.S. agricultural economy, EPA has determined that it is appropriate to require waiver applicants to clearly demonstrate that removing the oxygen content requirement would lead to attainment of a primary NAAQS at an earlier date or removes a barrier that prevents the State from achieving attainment. Since California has not provided either of these demonstrations, we are denying California's waiver request at this time.

The statute gives EPA discretion to grant or deny a waiver request even where prevention or interference is demonstrated. Given that granting California's request for a waiver would reduce the level of fossil fuel savings gained from the use of ethanol, and would generate less support for our agricultural and rural economies, EPA would exercise its discretion to deny an oxygen content waiver request where there is no demonstration that granting the waiver would lead to earlier attainment.

We would be pleased to work with you and your staff if you have any questions about this decision or seek further guidance from the Agency on these issues.

Sincerely,



Stephen L. Johnson
Administrator

Enclosure

cc: Secretary Alan Lloyd