



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

JUN 2 2005

THE ADMINISTRATOR

The Honorable George E. Pataki
Governor
State of New York
Albany, NY 12224

Dear Governor Pataki:

On January 6, 2003, the New York Department of Environmental Conservation (DEC) requested a waiver from the oxygen content requirement for federal reformulated gasoline (RFG) in the New York City area. The request was based upon the DEC's claim that emissions of oxides of nitrogen (NO_x) and volatile organic compounds (VOC) will increase, relative to emissions prior to the ban of MTBE in New York State, as a result of ethanol use. DEC claimed that the oxygen content requirement prevents or interferes with attainment of the National Ambient Air Quality Standard (NAAQS) for ozone, and that EPA should waive this requirement under section 211(k)(2)(B) of the Clean Air Act.

EPA responded to DEC's request by letter dated April 1, 2003. EPA stated that DEC's submission failed to address the requirements for a waiver specified in the Clean Air Act, and that without the necessary technical supporting documentation, we would be unable to evaluate the merits of DEC's request. We asked that DEC supplement its submission to correct the noted deficiencies. Specifically, we asked for (1) refinery modeling or comparable analysis that projects fuel quality with and without a waiver; (2) emissions modeling that demonstrates what effect the fuel quality changes associated with a waiver would have on emissions from on-road and nonroad vehicles; and (3) an air quality analysis that indicates the effect of such emission impacts on air quality and attainment of the applicable NAAQS.

DEC acknowledged EPA's April 1, 2003 request for additional information by letter dated December 12, 2003. DEC provided limited information in this correspondence, and also set forth reasons why it did not provide the information that we requested. We have addressed DEC's reasons for not providing the information and analyses that EPA requested in the appendix of the Technical Support Document for today's decision.

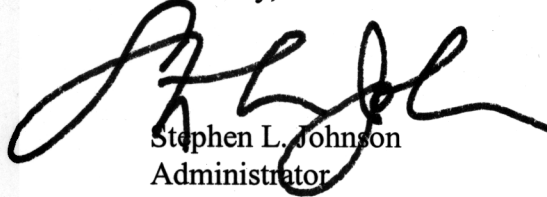
EPA has evaluated the limited information submitted by DEC and has determined that there has been no clear demonstration of what effect a waiver would have on ambient levels of ozone in the New York RFG area. Since New York has not made this threshold demonstration,

EPA is not able to determine whether the RFG oxygen content requirement prevents or interferes with attainment of the ozone NAAQS in this area. Therefore, EPA denies New York's waiver request.

The enclosed document entitled "Analysis of and Action on New York State Department of Environmental Conservation's Request for a Waiver of the Oxygen Content in Federal Reformulated Gasoline" provides further discussion of the reasons for this decision. Additional technical information is available in the enclosed "Technical Support Document: Analysis of New York's Request for Waiver of the Reformulated Gasoline Oxygen Content Requirement for New York Covered Area."

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,

A handwritten signature in black ink, appearing to read "S. Johnson", is written over the typed name and title.

Stephen L. Johnson
Administrator

Enclosures

cc: Acting Commissioner Denise M. Sheehan