THE ADMINISTRATOR
WASHINGTON, D.C. 20460

June 26, 2024

Re: June 30, 2024, E15 Reid Vapor Pressure Fuel Waiver

Dear Governors:

By this letter the U.S. Environmental Protection Agency is issuing a temporary waiver under Clean Air Act (CAA) Section 211(c)(4)(C)(ii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(I), to address extreme and unusual fuel supply circumstances caused by a confluence of events including the ongoing war in Ukraine and conflict in the Middle East that are affecting all regions of the Nation.

The CAA and the implementing regulations at 40 C.F.R. Part 1090 require the use of low volatility gasoline during the summer months in order to limit the formation of ozone pollution. These regulations are found at 40 C.F.R. § 1090.215. *See also* https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure. These gasoline volatility regulations apply to retailers and wholesale purchaser-consumers beginning on June 1, 2024, and to all other persons beginning May 1. Specifically, the regulations require parties upstream of retailers and wholesale purchaser-consumers to turn over their storage tanks to low volatility summer gasoline and stop selling higher volatility winter gasoline by May 1 so that retailers and wholesale purchaser-consumers can meet the applicable low volatility gasoline standards by June 1.

Russia's unjustified, unprovoked, and unconscionable war against Ukraine, and its ongoing destructive military campaign, has had a profound impact on global and domestic energy markets for several years now. More recently, conflict in the Middle East has put additional pressure on global energy supply chains. Attacks by Houthi militants on dozens of cargo vessels transiting the Red Sea forced crude tankers and other vessels to alter their shipping routes to avoid the Bab el-Mandeb Strait, increasing delivery time for crude shipments to the U.S. from the region. As a result, the global supply of crude oil has been disrupted and remains volatile.

Additionally, OPEC+ continues to implement cuts to oil production, further constraining global oil supply. OPEC+ cuts of 2.2 million barrels per day will extend into the second quarter of 2024, for a total reduction of about 5.86 million barrels per day since late 2022, or about 5.7 percent of daily world demand.[1]

In the March 2024 Short Term Energy Outlook (STEO), the Energy Information Administration (EIA) notes that "[a]s a result of OPEC+ extending crude oil production cuts, we have reduced our forecast for global oil production growth in 2024. The lower growth contributes to significant global oil

[1] *See* https://www.reuters.com/business/energy/some-opec-members-agree-extend-voluntary-cuts-q2-sources-2024-03-03/#:~:text=The%20total%20OPEC%2B%20pledged%20cuts,saying%20it%20was%20%22likely%22.

inventory declines in our forecast for the second quarter of 2024 (2Q24)."[2] In general, even small, sudden reductions in supply can have an outsized impact on global markets and lead to an imbalance of supply and demand.

Refining capacity in the U.S. is also lower than it was several years ago due to refinery closures across the country due to low demand during the COVID-19 pandemic, damage from hurricanes, and accidents. As of January 2024, U.S. operable refining capacity was 550,000 barrels per day lower than it was in January 2020, even accounting for approximately 368,000 barrels per day of refining capacity added in 2023. Overall, lower refining capacity in recent years provides less cushion for disruptions to refinery operations or sudden increases in customer demand.

As of May 30, 2024, U.S. total gasoline stocks were approximately 1 percent below the 5-year average and within the 5-year range for this time of year.[3] However, gasoline stocks are still lower than forecast for the time of year as a result of lower production at refineries in the first quarter of 2024. In the March 2024 STEO, EIA states:

> "Refinery outages are also reducing motor gasoline production and inventories. We estimate combined East Coast and Gulf Coast inventories ended February about 5 percent below the five-year (2019–2023) average. The lower inventories in the East Coast and Gulf Coast have an outsized impact on total U.S. gasoline availability and prices because together they make up the largest gasoline producing and consuming region of the United States."[4]

Additionally, U.S. gasoline demand remains strong. The four-week rolling average of "U.S. product supplied of finished motor gasoline," which represents gasoline demand, for March 29, 2024, was approximately 1 percent above the 5-year seasonal average.[5] The summer driving season has also arrived, with likely higher demand for gasoline in the coming months. Low gasoline stocks limit the cushion available for the U.S. to absorb temporary disruptions to the fuel supply chain, increasing the possibility of supply shortages. Pressure on U.S. markets, including production and distribution of gasoline and other petroleum products due to decreased refining capacity and increased domestic demand, will continue for the foreseeable future. The EPA has concluded, with DOE's concurrence, that it is in the public interest to take action to address the supply circumstances that prevent distribution of an adequate supply of gasoline to consumers.

The Clean Air Act provides the EPA with the authority to temporarily waive a control or prohibition if the Administrator makes certain determinations. CAA § 211(c)(4)(C)(ii)(I-III), 42 U.S.C. § 7545(c)(4)(C)(ii)(I-III). In particular, the statute authorizes the EPA to determine there are "extreme and unusual fuel [ ] supply circumstances" that prevent the distribution of an adequate supply of gasoline to consumers. CAA § 21l(c)(4)(C)(ii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(I). Here, the EPA is exercising its statutory discretion to identify a lack of an "adequate fuel supply" under these unique circumstances where there has been a particularly unexpected and extreme form of disruption. This extreme and unusual fuel circumstance is the result of Russia's ongoing war in Ukraine, conflict in the Middle East, and related global supply issues, events that could not reasonably have been foreseen and are not

[2] https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf.
[3] *See* https://www.eia.gov/petroleum/supply/weekly/
[4] https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf.
[5] https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=WGFUPUS2&f=W.

attributable to a lack of prudent planning on the part of suppliers of the fuel to these areas. CAA § 21l(c)(4)(C)(ii)(II), 42 U.S.C. § 7545(c)(4)(C)(ii)(II).

Furthermore, I have determined that it is in the public interest to grant this waiver. CAA § 21l(c)(4)(C)(ii)(III), 42 U.S.C. § 7545(c)(4)(C)(ii)(III). The Agency in taking this action is seeking to address the extreme and unusual fuel supply circumstances in the market by allowing the continued sale of E15 during the summer driving season. Absent this action, retailers that currently sell E15 (gasoline with 85 percent petroleum gasoline content) would need to stop selling the fuel and instead only sell E10 (gasoline with 90 percent petroleum gasoline content). This switch, from E15 to E10, would increase the demand for petroleum-based gasoline at the very time that the Agency has concluded that a fuel supply issue persists due to the ongoing war in Ukraine and conflict in the Middle East. The Agency's waiver action here will eliminate the need for retailers to shift to E10 and in the process will prevent the increased demand for petroleum gasoline that would otherwise occur.

Since E15, allowed under this waiver, is required to meet the same volatility standard as E10, no overall change in evaporative emissions impacts are projected to occur as a result of this action. This is because it is the volatility of the gasoline blend that drives evaporative emissions, not the ethanol content. The EPA has similarly found in comparing exhaust emissions between E10 and E15 that some criteria pollutants would have relatively small increases (NOx) and others have similar decreases (VOC and CO) while still others are less certain (PM). In the E15 CAA Section 211(f)(4) partial waivers, we determined that effects of this magnitude were too small to cause or contribute to model year 2001 and newer light duty motor vehicles to exceed the vehicles' certified exhaust emissions standards.[6] After weighing the societal benefits of an incrementally higher volume of gasoline being made available to the public, and considering that no significant change in air pollution is projected to occur as a result of this action, the EPA concludes that this action is in the public interest.

In addition, I have determined that this waiver applies to the smallest geographic area necessary to address the fuel supply circumstances described in this action. CAA § 21l(c)(4)(C)(iii)(I), 42 U.S.C. § 7545(c)(4)(C)(iii)(I). In determining the geographic scope of this action to include all states and regions within states which currently have the 1 psi waiver for E10 (about two-thirds of US gasoline), the EPA has sought to maximize the increase in fuel volumes by maintaining the availability of E15. In areas of the country where the 1 psi increase for E10 is not allowed through state or EPA regulations (e.g., in reformulated gasoline areas), E15 can already be sold in the summer and no action is needed to continue to allow the sale. Hence, the geographic extent of the waiver represents the smallest geographic area necessary to continue to allow E15 sales and through that ensure the largest increase in gasoline volume possible without extending the waiver into regions of the country where it is not necessary.

Therefore, to minimize or prevent disruptions of the supply of gasoline, I am waiving the condition in CAA Section 211(h)(4), 42 U.S.C. § 7545(h)(4) that allows "fuel blends containing gasoline and 10 percent denatured anhydrous ethanol" to exceed the applicable RVP standard by 1 psi for fuel blends containing gasoline and between 9 and 15 percent denatured anhydrous ethanol (El5) that is distributed and sold in areas within the contiguous United States where the 1 psi waiver applies to

[6] Modifications to Fuel Regulations to Provide Flexibility for El5; Modifications to RFS RIN Market Regulations 84 Fed. Reg. 26,980 (10, 2019).

E10.[7] Under this temporary waiver, regulated parties may produce, sell, and distribute summer gasoline that exceeds the applicable RVP standard at 40 C.F.R. § 1090.215(a)(l) and (2) by 1 psi if the fuel blend is E15. This waiver is effective on June 30, 2024, and will continue for 20 days. It is the Agency's intention to issue new waivers effectively extending (renewing) this waiver until such time as the extreme and unusual fuel supply circumstances described in this action are no longer present.

Gasoline that does not meet the applicable RVP requirements may not be introduced into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in the designated states after July 19, 2024, unless the EPA renews the waiver. Any gasoline meeting the conditions of this waiver that is stored in terminal storage tanks for distribution to retail outlets and wholesale purchaser-consumers may be distributed and sold in subject areas in the designated states until the supply is depleted. Likewise, retailers and wholesale purchaser-consumers in these areas may continue selling or dispensing gasoline that meets the conditions of this waiver after July 19, 2024, until supplies in their E15 storage tanks are depleted.

This waiver applies only to the applicable federal requirements cited above. Regulated parties who produce, sell, and distribute E15 must continue to comply with all applicable requirements and conditions that do not relate to RVP requirements in 40 C.F.R. Part 1090 and in the EPA's decisions under CAA Section 211(f)(4), 42 U.S.C. § 7545(f)(4), to allow the introduction into commerce of E15 for use in model year 2001 and newer light-duty motor vehicles.[8] Other state or local requirements or restrictions related to this matter may need to be addressed by the appropriate authorities.[9] The EPA recognizes that this is an evolving situation that is causing rapid changes to fuel supply dynamics. Should conditions warrant, this waiver may be modified, terminated, or renewed as appropriate. The effective date of this decision is June 30, 2024, and, pursuant to 40 C.F.R. § 23.3, on that date, it will be deemed issued for purposes of judicial review.

If you have questions, you are welcome to contact me, or your staff may contact Michelle Marchello, EPA's Senior Advisor for State and Local Governments, at Marchello.Michelle@epa.gov or 771-474-5377.

Sincerely yours,

Michael S. Regan

cc: Secretary of Energy Jennifer M. Granholm

[7] As described above, EPA is limiting this waiver to the areas where it anticipates the waiver will increase availability of E15 by allowing for use of existing blendstock. Thus, this waiver does not apply to reformulated gasoline (RFG) covered areas because the 1.0 psi allowance for RVP standards as specified in CAA Section 21l(h)(4), 42 U.S.C. § 7545(h)(4), does not apply to RFG. This waiver also does not apply in areas where EPA has approved a regulation into a state implementation plan (SIP) that limits the applicability of the 1.0 psi allowance. For example, several states including New York, Vermont, and Maine do not allow the use of the 1.0 psi allowance statewide. Other states including Texas and Arizona limit the 1.0 psi allowance to specific portions of the state. Some states including Nevada (statewide), Indiana (portion) and Michigan (portion) only allow the 1.0 psi allowance for E10.

[8] *See* 75 Fed. Reg. 68,094 and 76 Fed. Reg 4662.

[9] Several states have adopted regulations for purposes other than motor vehicle emissions control that limit the applicability of the 1.0 psi allowance to E10.