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

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. W. Thomas Jennings
Senior Staff Counsel
Office of Legal Affairs
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Dear Mr. Jennings:

This letter is in response to the California Air Resources Board's (CARB) December 8, 2004 request that the United States Environmental Protection Agency (EPA) extend the enforcement discretion that it granted on December 24, 2003, relating to California Phase 3 gasoline (Phase 3 CaRFG).

Under EPA's reformulated gasoline (RFG) regulations, at 40 C.F.R. § 80.81, gasoline produced according to the requirements for California Phase 2 gasoline for use in California is exempt from many of the federal RFG enforcement provisions.

On August 3, 2000, California adopted the Phase 3 CaRFG standards that were to go into effect on December 31, 2002. CARB asked EPA to amend 40 C.F.R. § 80.81 to extend the enforcement exemptions to cover Phase 3 CaRFG. In addition, and as a result of an early compliance option included in the California rule, CARB asked EPA to exercise enforcement discretion to apply these exemptions pending the EPA rulemaking.

As a result, on June 7, 2001, EPA issued an enforcement discretion letter to apply the 40 C.F.R. § 80.81 exemptions to Phase 3 CaRFG pending the EPA rule change, but not beyond April 30, 2002. In addition, EPA initiated a rulemaking to amend 40 C.F.R. § 80.81 to apply to Phase 3 CaRFG.

However, the effective date for the Phase 3 CaRFG standards was delayed, until December 31, 2003. As a result, the amendment to 40 C.F.R. § 80.81 also was delayed, and EPA extended the enforcement discretion regarding the enforcement exemptions through December 31, 2004.

As a result of this timing of the California rule and the subsequent federal regulatory review process, the amendment to 40 C.F.R. § 80.81 will not be completed until after December 31, 2004, when the current enforcement discretion letter expires.

The considerations justifying the earlier enforcement discretion letters are still applicable, including the conclusion that there would be no adverse environmental impact from granting this enforcement discretion. Therefore, I am extending the enforcement discretion of the December 24, 2003 letter that applies the exemptions in 40 C.F.R. § 80.81 to Phase 3 CaRFG, until the effective date of the EPA rulemaking, or through December 31, 2005, whichever occurs first.

If you have any questions about this matter, please call Erv Pickell, Fuels Team Leader, Mobile Source Enforcement Branch, at (303) 236-9506.

Sincerely,

Thomas V. Skinner
Acting Assistant Administrator