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

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 a request by the California Air Resources Board (CARB) that certain enforcement exemptions in the federal reformulated gasoline (RFG) rules that apply to California Phase 2 gasoline (Phase 2 CaRFG) be extended to California Phase 3 gasoline (Phase 3 CaRFG). EPA received this request in a letter from CARB dated March 27, 2002.

As you know, under EPA's regulations, gasoline produced according to the requirements of Phase 2 CaRFG for use in California is exempt from many of the federal RFG enforcement provisions (see 40 CFR § 80.81). However, such gasoline is not exempt from the content and performance standards of the federal RFG program. By letter of March 21, 2001, CARB had previously requested that the enforcement exemptions be extended, through EPA rulemaking, to cover Phase 3 CaRFG. In that same letter, CARB, and by a separate letter dated April 24, 2001, the Western States Petroleum Association, also requested that EPA exercise enforcement discretion to extend the enforcement exemptions of § 80.81 to Phase 3 CaRFG pending EPA rulemaking. This was to assist the California fuels program by allowing refiners the option, as permitted by the Phase 3 CaRFG regulations, of complying with the Phase 3 CaRFG standards prior to the mandatory implementation date of December 31, 2002.

In its March 21, 2001 letter, CARB indicated that the Phase 3 CaRFG standards are at least as effective in maintaining emissions benefits as the Phase 2 CaRFG standards, and that both Phase 2 CaRFG and Phase 3 CaRFG provide emissions benefits at least equivalent to federal Phase II RFG. Further, one refiner has applied to California for early application of the Phase 3 CaRFG standards to its gasoline, and that application has since been approved.

In response to the concerns raised in the above letters, EPA initiated a rulemaking to extend all the enforcement exemptions applicable to Phase 2 CaRFG under § 80.81 to Phase 3 CaRFG. EPA believes no environmental harm would result from this action since CARB has demonstrated that the Phase 3 CaRFG standards fully achieve the emissions benefits of the Phase 2 CaRFG standards, and that both the Phase 2 and Phase 3 CaRFG standards provide emissions benefits at least equivalent to those of federal Phase II RFG.

As a matter of enforcement discretion, EPA issued a letter on June 7, 2001, stating that it would enforce the federal RFG rules as if all the enforcement exemption provisions for Phase 2 CaRFG under 40 CFR § 80.81 apply to Phase 3 CaRFG. This enforcement discretion was effective June 7, 2001, and was to continue until the date the EPA rulemaking extending these exemptions to Phase 3 CaRFG becomes effective, or until April 30, 2002, whichever is earlier.

The EPA rulemaking referred to above will not be finalized before the April 30, 2002 date that the enforcement discretion referred to above expires. Therefore, by its letter of March 27, 2002, CARB has requested that the enforcement discretion be extended until the EPA rule that would make the enforcement exemptions of § 80.81 apply to Phase 3 CaRFG is completed. Further, the CARB letter indicates that CARB plans to schedule hearings in July, 2002, to consider regulatory amendments that would postpone implementation of the Phase 3 CaRFG standards. As a result, EPA will delay any rulemaking to extend the exemptions of § 80.81 to Phase 3 CaRFG until it is determined whether and in what manner the CaRFG rule will be amended.

We believe that the considerations justifying the original enforcement discretion dated June 7, 2001, are still applicable. Moreover, the early use provision of the original Phase 3 CaRFG rule is in effect now, and at least one refiner is producing Phase 3 CaRFG under the early use provision. CARB believes that availability of this option to refiners is important to the success of the program.

Therefore, as a matter of enforcement discretion, I will enforce the federal RFG rules as if all the enforcement exemption provisions for Phase 2 CaRFG under 40 CFR § 80.81 apply to Phase 3 CaRFG. This enforcement discretion is effective immediately, and will continue until the effective date of any EPA rulemaking extending the exemptions of § 80.81 to Phase 3 CaRFG, the effective date of any modifications or changes to the California Phase 3 gasoline standards other than a delay to the mandatory application date of Phase 3 standards, or December 31, 2003, whichever comes earliest.

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

Sincerely,

Sylvia K. Lowrance
Acting Assistant Administrator