California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards

Terry Tamminen
Agency Secretary

Arnold Schwarzenegger
Governor

February 2, 2004

The Honorable Michael O. Leavitt
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Leavitt:

On January 28, 2004, Governor Arnold Schwarzenegger wrote a letter to you to reiterate California's support of our request that U.S. Environmental Protection Agency's (U.S. EPA) reconsider and approve a waiver of the minimum oxygen requirements now in effect in most areas of California pursuant to Section 211(K)(B) of the Clear Air Act. In that letter the Governor indicated that I would be providing detailed information support of the waiver request. This letter transmits that information.

As you may know, California has been seeking this consideration for some time. On July 17, 2003, a three-judge panel of the Ninth Circuit Court of Appeals granted the petition for review filed by the Governor of California and the California Air Resources Board (ARB). That petition challenged the U.S. EPA's June 12, 2001, denial of California's request for a waiver of the minimum oxygen requirements for federal Reformulated Gasoline (RFG).[1] The Court vacated the Administrator's June 12, 2001, denial of California's waiver request and remanded the matter to the U.S. EPA with instructions to review the request with full consideration of the effects of a waiver on both the ozone and particulate matter (PM) national ambient air quality standards (NAAQS). On August 6, 2003, California's Governor wrote a letter to U.S. EPA requesting that your agency act expeditiously in complying with the Court's order. On October 2, 2003, U.S. EPA petitioned the Court to reconsider its decision. On October 30, 2003, the Court rejected U.S. EPA's request.

Once again, California is requesting that the U.S. EPA promptly comply with the Court order to reconsider the Agency's June 12, 2001, decision and that you approve our waiver request. Given the Court's direction to consider PM impacts and the latest evidence now available on ozone effects, we believe the case for granting a waiver is overwhelming. The enclosures to this letter clearly demonstrate that the analyses already conducted by the U.S. EPA, supplemented with new data we have developed since we last had the opportunity to submit information, meet the Clean Air Act criteria

[1] *Davis v. United States Environmental Protection Agency*, 336 F.3d 965 (July 17, 2003).

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for a waiver. Together, they provide more than sufficient reason for U.S. EPA to grant the waiver in response to the Court's remand.

The five principal elements of our updated and expanded waiver request are as follows:

- First, we briefly describe the U.S. EPA's rationale for refusing to consider whether the federal RFG requirement prevents or interferes with attainment of the PM NAAQS in California, and the Court's conclusion that this approach constituted an abuse of discretion.

- Second, we explain why attaining and maintaining the NAAQS for particulate matter with a nominal diameter of 10 microns or less (PM_{10}) and particulate matter with a nominal diameter of 2.5 microns or less ($PM_{2.5}$) is vital to the health and welfare of Californians in our federal RFG areas.

- Third, we show that the U.S. EPA has already determined that the federal RFG oxygen requirement results in substantial increases in oxides of nitrogen (NOx) emissions in California, that those NOx emissions increase ambient concentrations of PM_{10} and $PM_{2.5}$ in the state, and that the net effect of the federal RFG requirement on all pollutants is an increase in ambient PM_{10} and $PM_{2.5}$.

- Fourth, we demonstrate that the substantial net increases in PM resulting from the federal oxygen requirement, coupled with the current PM nonattainment status of most federal RFG areas in the state, produce a situation where the federal RFG oxygen requirement prevents or interferes with the attainment of the NAAQS for PM_{10} and $PM_{2.5}$.

- Finally, we demonstrate, in light of now available data and new analyses regarding commingling and permeation, that the U.S. EPA's prior conclusion that a waiver of the federal RFG oxygen requirement could hinder attainment of the ozone standard can no longer be justified.

In responding to the Court's remand, it is simple and straightforward. We do not believe it is necessary for your Agency to take a considerable amount of time or engage in additional complex analyses. The U.S. EPA has already conducted most of the work needed to conclude that California's waiver request merits approval. We have provided the rest for your consideration.

We once again urge the U.S. EPA to take expeditious action to implement the Court's direction and grant the waiver. California's waiver request represents a virtually unique situation in which U.S. EPA's single act of issuing a waiver to implement the directives

of the Clean Air Act would simultaneously improve air quality in California and save California motorists hundreds of millions of dollars each year. Under these circumstances, it is imperative that the U.S. EPA approach action on the waiver request with urgency.

If you have any questions or comments, please contact me at (916) 323-2514 or Ms. Catherine Witherspoon, Executive Officer, California Air Resources Board, at (916) 445-4383.

Thank you for your consideration of this important matter.

Best regards,

Terry Tamminen
Agency Secretary

Enclosures

cc: Dr. Alan Lloyd
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