

**Congress of the United States**  
Washington, DC 20510

June 6, 2018

The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Ave, N.W.  
Washington, DC, 20460

We write to you to ensure that EPA abides by all legal and regulatory requirements when considering allowing the year-round sale of gasoline with 15 percent ethanol by volume (E15). Currently, E15 must meet the volatility specification for conventional gasoline control areas of 9.0 pound per square inch (psi) during the summer (June 1 to September 15). The current summertime restrictions limiting gasoline volatility are intended to lower evaporative emissions to control the formation of ground-level ozone and to protect human health.

We are concerned with recent press reports that President Trump has directed the EPA to allow year-round E15 sales during closed door negotiations over the Renewable Fuels Standard (RFS) held at the White House with industry stakeholders and Members of Congress. Previously, EPA has publicly concluded that it does not have the statutory authority to issue such a waiver, and the reported decision to reverse this conclusion appears to be driven by political considerations, rather than scientific or legal analysis. Legal and policy uncertainty around the RFS coming from these private White House negotiations can disrupt fuel markets, provide opportunities for financial speculators, and undermine the investment in second generation biofuels that reduce carbon pollution, a key goal of the RFS.

The Clean Air Act limits the volatility (measured by the Reid Vapor Pressure or RVP) of summertime gasoline, meaning the rate at which it evaporates into the air. Volatility is a significant contributor to ground-level ozone pollution, or smog, which has serious impacts to public health, including heart and respiratory effects. The Act further grants a one pound “RVP” waiver for the use of 10 percent gasoline ethanol blends (E10).<sup>1</sup> In 1991, EPA explicitly clarified that the one pound waiver was limited to ethanol blends between nine and ten percent.<sup>2</sup> Given the basis for the current statutory limit, we are very concerned that an arbitrary waiver of the volatility for E15 above the standard will lead to higher evaporative emissions, leading to even more negative human health effects.

In the context of the 2010 E15 partial waiver decision and the 2011 Misfueling Mitigation Rule, EPA again reviewed the policies related to the one pound RVP waiver and determined that it

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<sup>1</sup> “For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one psi greater than the applicable Reid vapor pressure limitations established under paragraph (1).” 42 U.S.C. § 7545(h)(4).

<sup>2</sup> 56 FR 64704, 64708

should not be extended to E15. In 2010, EPA's partial waiver for E15 explicitly based its evaporative emissions analysis on the fact that E15 would not receive the one pound waiver during the summer. In the 2011 Final Misfueling Rule, EPA explained that the CAA section 211(h)(4) should be interpreted "as limiting the 1.0 psi waiver [that the section provides] to gasoline-ethanol blends that contain 10 vol% ethanol, including limiting the provision concerning 'deemed to be in full compliance' to the same 10 vol% gasoline-ethanol blends." EPA also explained that the EPA "implements CAA section 211(h)(4) through 40 CFR 80.27(d), which provides that gasoline ethanol blends that contain at least 9 vol% ethanol and not more than 10 vol% ethanol qualify for the 1.0 psi waiver of the applicable RVP standard."<sup>3</sup>

The plain reading of the Clean Air Act and EPA's long-standing interpretation strongly suggest that EPA lacks authority to unilaterally allow year-round sales of E15 with the extension of a 1.0 psi waiver. The reported basis for this change in position, directed by the White House, lack any scientific or legal explanation to the public. We are very concerned that career EPA officials may be being directed to reverse over 25 years of the agency's position to manufacture legal and scientific justifications for a politically-directed decision on E15.

In order to address these concerns, we seek responses to the following questions about both the statutory authority and the technical and public health analysis to extend the one pound waiver to E15 gasoline-ethanol blends.

1. Given the Clean Air Act's language and EPA's long-standing interpretation under both Democratic and Republican administrations about having legal authority for an RVP waiver only for E10, what legal analysis has the agency done to support application of the one pound waiver to E15 blends?
2. Were EPA staff directed to reverse the previous legal conclusion on this question, and if so, by whom?
3. The current restrictions limiting gasoline volatility are intended to protect human health and the environment by lowering evaporative emissions to control the formation of ground-level ozone. What scientific entities or experts is the EPA consulting within and outside the agency? Will stakeholders and interested parties have the opportunity to submit technical information or studies for EPA's consideration?
4. A change in the RVP waiver would potentially have major impacts on fuel markets and emissions of EPA regulated pollutants, and require a change to existing regulations, meaning the Administrative Procedures Act (APA) process requiring public notice and opportunity for comment must apply. What is the public and regulatory process EPA plans to follow regarding granting an RVP waiver to E15 blends?
5. Given the significant legal and public health questions and the regulatory requirements covered by the APA, there would appear to be a long road ahead. What is the EPA's

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<sup>3</sup> 75 FR 68061, 68081

proposed timeline for conducting this legal, technical and scientific, and regulatory process?

In light of the public reports and statements that the President has directed EPA to grant an E15 waiver following private meetings in the White House, we request that EPA answer these questions for Congress and the public as soon as possible, and no later than July 9, 2018.

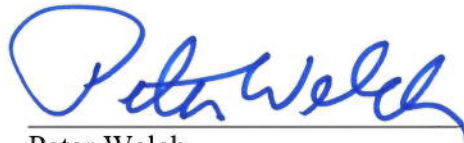
In addition, we urge you in the strongest possible terms to resist directives from the White House to make major policy changes that lack legal or scientific basis or would increase harmful air pollution that contributes to health and environmental concerns to the public. And, we urge you to engage in a robust and transparent regulatory process for any E15 RVP waiver.

Sincerely,

A handwritten signature in blue ink that reads "Tom Udall". The signature is written in a cursive style with a large, sweeping initial "T".

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Tom Udall  
United States Senator

A handwritten signature in blue ink that reads "Peter Welch". The signature is written in a cursive style with a large, sweeping initial "P".

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Peter Welch  
Member of Congress