

February 7, 2018

Via Electronic and U.S. Mail

Mr. William Wehrum  
Assistant Administrator  
U.S. Environmental Protection Agency  
Office of Air and Radiation (6103A)  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dear Assistant Administrator Wehrum:

Thank you for meeting recently with representatives of the renewable fuels industry to discuss the legal authority for the Environmental Protection Agency (“EPA”) to extend the 1.0 pound per square inch (“psi”) Reid Vapor Pressure (“RVP”) allowance that currently applies for blends of gasoline and 10 percent ethanol (“E10”) to blends of gasoline and 15 percent ethanol (“E15”). At the meeting, you indicated that EPA was considering several options and would welcome additional explanation of EPA’s authority, including the legislative history of Clean Air Act § 211(h)(4). The enclosed memorandum—structured as a legal brief defending extending the 1.0 psi RVP allowance to all blends containing at least ten percent ethanol, including E15—responds to your request.

As the memorandum explains, we believe EPA may reasonably adopt this interpretation and convincingly defend it against any legal challenge. The statutory history, text, structure, and purpose strongly support it. The principal arguments are as follows:

- **History.** Section 211(h) largely codified preexisting EPA regulatory limitations on RVP, which granted a 1.0 psi RVP allowance for any blend of at least nine percent ethanol, up to the maximum authorized by a waiver under § 211(f)(4). Nothing in the regulations at the time prevented a blend with more than ten percent ethanol from receiving the 1.0 psi RVP allowance if EPA granted that blend a waiver under § 211(f)(4). During the run-up to § 211(h)’s enactment, moreover, the Administration originally proposed a bill that would have explicitly *capped* eligibility for the RVP allowance at ten percent. But both chambers of Congress rejected that proposal.

The Senate bill, which Congress adopted, provided for a 1.0 psi RVP allowance for all blends containing “gasoline and 10 percent denatured anhydrous ethanol,” and it also included a proviso that the allowance would extend to blends with higher ethanol percentages if the blend complied with “its waiver condition under subsection (f)(4).” The House bill would have accomplished the same effect by applying the 1.0 psi RVP allowance to all “gasoline containing at least 10 percent ethanol.”

- **Text.** The first clause of § 211(h)(4) provides a 1.0 psi RVP allowance “[f]or fuel blends containing gasoline and 10 percent ... ethanol.” That language is best read, particularly in light of the statutory structure and purpose described below, to apply to *all* blends

containing ten percent ethanol, including blends containing more than that concentration. E15, for example, contains ten percent ethanol, just as the statute requires, plus an additional five percent. By analogy, consider a labeling regulation providing that any beverage labeled as “juice” must “contain 5% real fruit juice.” A company that marketed as “juice” a beverage containing 10, 50, or 100% real fruit juice would be in compliance with that regulation. So too here for E15.


- **Structure**. The second clause of § 211(h)(4) provides a compliance defense where, among other things, “the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4).” The compliance defense thus references the separate potential ceiling that § 211(f)(4) may impose on ethanol content—a ceiling that exceeded ten percent when EPA granted the waiver for E15. Congress thus contemplated that the RVP allowance would extend to blends containing more than ten percent ethanol.
- **Purpose**. The RVP allowance’s purpose is to permit ethanol blends that do not substantially contribute to ground-level ozone formation to enter the market through blending with standard base gasoline. E15 and other blends containing more than ten percent ethanol have *lower* evaporative emissions than E10, and therefore have less of an impact on ground-level ozone. E15 also produces less *tailpipe* emissions than E10. And of course, E15 contains more ethanol than E10. Extending the RVP allowance to all blends containing at least ten percent ethanol, including E15, thus would further all of EPA’s and Congress’s policy goals.

We appreciate Administrator Pruitt’s commitment to update EPA’s RVP regulations once EPA has evaluated the statutory authorities for such a change. We trust that this memorandum will assist EPA in determining that sufficient authority exists, and we welcome the opportunity to address any additional questions you may have.

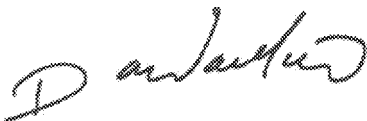
Sincerely,



Bob Dinneen  
President and Chief Executive Officer  
Renewable Fuels Association



Emily Skor  
Chief Executive Officer  
Growth Energy



David VanderGriend  
President  
Urban Air Initiative



Jon Doggett  
Executive Vice President, Public Policy  
National Corn Growers Association

Enclosure