

Tom Daschle
South Dakota

Committee
Agriculture

(202) 224-2321
TOLL FREE 1-800-424-9094

Email: Tom_Daschle.@daschle.senate.gov
Internet: <http://www.senate.gov/~daschle>

United States Senate

WASHINGTON, DC 20510-4103

July 28, 1999

320 South First Street, Suite 101
P.O. Box 1636
Aberdeen, SD 57402-1536
(605) 225-8823

816 6th Street
P.O. Box 8168
Rapid City, SD 57709
(605) 348-7551

320 North Main Avenue, Suite B
P.O. Box 1274
Sioux Falls, SD 5711-1274
(605) 334-9590
TDD (605) 334-4632

Governor Bill Graves, Chairman
Governor Tom Vilsack, Vice Chairman
Governors' Ethanol Coalition
P.O. Box 95085
Lincoln, Nebraska 68509-5085

Dear Governors Graves and Vilsack:

For more than 20 years, I have believed that a healthy domestic ethanol industry can contribute to a variety of national policy objectives. Most obviously, it enhances farm income and strengthens our rural economy. But it also improves air quality, reduces oil imports and lowers net budget outlays.

The creation of the Reformulated Gasoline (RFG) program as part of the 1990 Clean Air Act Amendments established a minimum oxygen standard that has significantly increased demand for ethanol and other oxygenates. The benefits of this program for the nation have been impressive. Since taking effect in 1995, the RFG program has exceeded the emissions reduction goals set by Congress, reduced oil imports by over 250,000 barrels per day and increased substantially demand for agricultural and other domestic raw materials.

The presence of MTBE in water supplies in California and elsewhere now poses a serious threat to the RFG program. Questions have been raised about the continued utility of the oxygen requirement, and the suggestion has been made that refiners be granted additional flexibility in making clean-burning RFG.

For ethanol supporters, this debate brings both opportunities and risks. Clearly, the removal of MTBE from RFG could potentially open the door to expanded ethanol usage nationwide. However, that result is not inevitable. In fact, one possible scenario—an MTBE ban, coupled with elimination of the oxygen requirement—could inadvertently return ethanol to the pre-1995 era of fiat growth. In recent months, Senators Feinstein and Boxer have been working with me to explore alternatives to the RFG oxygen requirement that would provide the necessary flexibility for California and other states to address their MTBE water contamination problem, while providing a solid future for ethanol. This process, which is on going, has produced a proposal that addresses the legitimate

concerns that have been raised about MTBE without sacrificing the many proven benefits of oxygenates in cleaner burning gasoline.

In return for allowing states to waive the oxygen requirement, this proposal would establish a renewable fuels standard, applicable to all gasoline sold in the U.S., that would more than double ethanol production over the next ten years. In addition, it would empower EPA and states to regulate MTBE and other fuel components.

This approach would have the following benefits:

- * It would substantially increase domestic corn demand, leading to billions of dollars in additional income for farmers.

- * It would create additional value for ethanol usage in non-RFG areas, like South Dakota, Nebraska, Minnesota and Iowa, by allowing ethanol blenders in those states to gain credits that they could sell to refiners in other parts of the country who choose not to use ethanol.

- * It would provide maximum flexibility in using ethanol in gasoline by allowing the requirement to be met with ethanol blending in those areas and during seasons where it is most cost-effective.

- * It would ensure a certain and growing future for the ethanol industry.

As you undoubtedly know, the debate over the future of the oxygen standard is approaching a critical juncture. The Blue Ribbon Panel established earlier this year by EPA Administrator Carol Browner recently recommended ways to provide additional flexibility to the RFG program. While acknowledging the value of domestic renewable fuels like ethanol in our nation's fuel supply, the panel recommended repeal of the RFG oxygen requirement.

The attached draft proposal is the product of months of consultation with experts in both the public and private sectors and draws upon the deliberations of EPA's Blue Ribbon Panel as well as valuable input from many of my colleagues in the Congress. Again, it was developed in response to concern about MTBE water contamination and is designed to provide states with the flexibility they need to deal with this problem without sacrificing the many benefits ethanol and other oxygenates provide.

I recognize you are extremely busy. However, I value your input, and things are moving very quickly here in Washington on this issue. Consequently, I would appreciate it if you would review these materials and let me know your reaction to the proposal as soon as possible. Should you have any questions about any of this, please feel free to call my Legislative Director, Eric Washburn, at 202/224-2321.

Thank you in advance for your consideration. I look forward to working with you to build upon our past achievements.

Sincerely,

Tom Daschle
United States Senate
TAD/ew

106TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. Daschle introduced the following bill; which was read twice and referred to the Committee on

--

A BILL

To amend the Clean Air Act to authorize States to ban harmful fuel additives and to require fuel to contain fuel made from renewable resources, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1.

SHORT TITLE. This Act may be cited as the "_____ Act of 1999".

SEC. 2. STATE PETITIONS FOR DELEGATION OF AUTHORITY TO CONTROL OR PROHIBIT USE OF OXYGENATES.

Section 211(c) of the Clean Air Act (42 U.S.C.7545(c)) is amended--

(1) in paragraph (1)(A), by striking "any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare," and inserting "the fuel or fuel additive causes, or contributes, to air or water pollution that may reasonably be anticipated to endanger the public health or welfare or the environment,";

(2) in paragraph (2)--

(A) in subparagraph (A)--

(i) by striking "(2)(A) No" and inserting the following:

"(2) REQUIRED CONSIDERATIONS PRIOR TO CONTROL OR PROHIBITION--

"(A) Public HEALTH AND WELFARE--

"(i) CONTROL OR PROHIBITION BY THE ADMINISTRATOR-- NO"; and

(ii) by adding at the end the following:

"(ii) CONTROL OR PROHIBITION BY A STATE--An oxygenate may not be controlled or prohibited under paragraph (1)(A) by a State to which a delegation of authority has been granted under paragraph (5)--

"(l) except after consideration of all relevant medical and scientific evidence available to the State, including consideration of other technologically or economically feasible means of achieving emission standards under section 202; and

"(II) in the case of an oxygenate that is a water pollutant, unless the State has taken measures to restrict or eliminate the presence of gasoline or that pollutant in water resources.";

(B) in subparagraph (B)--

(1) in the first sentence, by inserting ", or, in the case of an oxygenate, by a State to which a delegation of authority has been granted under paragraph (5)," after "Administrator"; and

(ii) in the second sentence, by inserting ", or a Governor of a State exercising delegated authority referred to in the preceding sentence," after "Administrator"; and

(C) in subparagraph (C), by inserting ", or, in the case of an oxygenate, by a State to which a delegation of authority has been granted under paragraph (5)," after "Administrator";

(3) in paragraph (4)--

(A) in subparagraph (A), by inserting "or any related public health or environmental impact" after "emission control";

(B) in subparagraph (B)--

(i) by striking "Any State" and inserting "Notwithstanding subparagraph (A) and paragraph (5), any State"; and (ii) by inserting "or water quality protection" after "emission control"; and (C) in subparagraph (C).

(i) in the first sentence, by inserting "or any related public health or environmental impact" after "emission control";

(ii) in the second sentence--

(I) by striking "only if he" and inserting "if the Administrator"; and

(II) by inserting before the period at the end the following: "or is otherwise necessary to protect public health or the environment"; and (iii) in the third sentence--

(I) by inserting "or to protect public health or the environment" after "that standard"; and

(II) by inserting "or protection" after "timely attainment"; and

(4) by adding at the end the following:

"(5) STATE PETITIONS FOR DELEGATION OF AUTHORITY TO CONTROL OR PROHIBIT USE OF AN OXYGENATE--

"(A) IN GENERAL-- In accordance with this paragraph, the Administrator may delegate to a State the authority of the Administrator under this subsection to enforce a control or prohibition on an oxygenate.

"(B) PETITION-- A State seeking to enforce a control or prohibition on an oxygenate under this subsection shall, in addition to making the appropriate revisions to the State implementation plan, submit a petition to the Administrator for delegation of authority to enforce the control or prohibition.

"(C) REQUIRED ELEMENTS OF PETITION-- A petition submitted under subparagraph (B) shall. "(i) include information sufficient to meet the requirements of paragraph (2); and

"(ii) demonstrate that the authority is necessary to achieve the national. primary or secondary ambient air quality standard or is otherwise necessary to protect public health or the environment.

"(D) ACTION BY THE ADMINISTRATOR-- Not later than 180 days after the date of receipt of a petition submitted under subparagraph (B), the Administrator shall grant or deny the petition.

"(E) CRITERIA. FOR GRANTING OF PETITION-- The Administrator shall grant a petition submitted under subparagraph (B) for delegation of authority to enforce a control or prohibition unless the Administrator finds, with respect to the petitioning State and the affected supply area or region, that.

"(i) the petition fails to reasonably demonstrate that the authority is necessary to protect public health or the environment; or

"(ii) the control or prohibition is likely to have a substantial and significant adverse effect on fuel availability or price that clearly outweighs any benefits associated with the control or prohibition.

"(F) EFFECT OF FAILURE OF ADMINISTRATOR TO ACT-- If, by the date that is 180 days after the date of receipt of a petition submitted under subparagraph (B), the Administrator has not proposed to grant or deny the petition under subparagraph (D), the petition shall be deemed to be granted.

"(G) PROCEDURAL REQUIREMENTS. "(i) INAPPLICABILITY OF CERTAIN REQUIREMENTS-- Section 307(d) of this Act and sections 553 through 557 of title 5, United States Code, shall not apply to actions on a petition submitted under subparagraph (B).

"(ii) PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT-- The Administrator shall provide public notice and opportunity for comment with respect to a petition submitted under subparagraph (B).".

SEC. 3. REID VAPOR PRESSURE REQUIREMENTS.

Section 211(h) of the Clean Air Act (42 U.S.C. 7545(h)) is amended--

(1) by redesigning paragraph (5) as paragraph (7); and

(2) by inserting after paragraph (4) the following

"(5) REVISION OF PREDICTIVE AIR QUALITY MODELS--

"(A) REVIEW OF REACTIVITY STUDIES-- The Administrator shall conduct a comprehensive review of scientific studies concerning the reactivity of ozone--forming components of gasoline.

"(B) REVISION OF MODELS-- Based on the review under subparagraph (A), the Administrator shall revise, as appropriate, the predictive air quality models used by the Administrator reflect the reactivity of ozone--forming components of gasoline.

"(6) REPORT ON IMPACTS OF ETIERS-- In consultation with the Secretary of Agriculture, the Secretary of Energy, the Secretary of

the Interior, and appropriate non--Federal interested persons, the Administrator shall--

"(A) conduct research to determine the public health and environmental impacts of ethers used as fuel or fuel additives; and

"(B) not later than 2 years after the date of enactment of this paragraph, submit to Congress a report on the results of the research."

SEC. 4. WAIVER AND TERMINATION OF OXYGEN CONTENT REQUIREMENT.

Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended.

(1) in paragraph (2)(B)--

(A) by striking "The oxygen" and inserting the following:

"(i) IN GENERAL-- The oxygen"; and

(B) by adding at the end the following:

"(ii) WAIVER-- The Administrator shall waive the application of clause (i) for any State. "(I) for which application of section 209(a) has at any time been waive(l under section 209(b) with respect to control of emissions from motor vehicles; or

"(II) to which a delegation of authority has been granted under subsection (c)(5).

"(iii) TERMINATION OF AUTHORITY-- The requirements of this subparagraph terminate on January 1, 2001.";

(2) in paragraph (3)(B).

(A) by striking "Any reduction" and inserting the following:

"(iii) TREATMENT OF GREATER REDUCTIONS-- Any reduction"; and

(B) by adding at the end the following:

"(iv) ANTI--BACKSLIDING PROVISION-- The Administrator shall revise the regulations implementing the performance standards under this subparagraph for reformulated gasoline sold in specified non--attainment areas to ensure that, for 2001 or any year thereafter, the total emissions of toxic air pollutants and criteria air pollutants listed under section 108 in a specified nonattainment area do not exceed the annual average of those emissions in the nonattainment area for 1997 and 1998.";

(3) in paragraph (4)(B)--

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (H), respectively, and indenting appropriately;

(B) by striking "The Administrator" and inserting the following:

"(i) IN GENERAL--The Administrator"; and

(C) by adding at the end the following:

"(ii) CARBON MONOXIDE CREDIT--

"(I) IN GENERAL. In determining whether a fuel formulation or slate of fuel formulations achieves equivalent or greater reductions in emissions of ozone forming volatile organic compounds under clause (i)(II), the Administrator shall consider, as appropriate, any change in the ozone--forming potential of the emissions of the fuel formulation or slate of fuel formulations that results from a change in the quantity of carbon monoxide emissions resulting from an oxygen content in excess of the minimum oxygen content required under paragraph (2)(B).

"(II) PROHIBITION ON DUPLICATE CREDITS-- Any excess -- oxygen content that is taken into consideration in making a determination under subclause (I) may not be used to earn credits under paragraph(7)(A).

"(I) CONSIDERATION IN VOC EMISSION REDUCTIONS-- Subject to guidance issued by the Administrator, any change in the quantity of carbon monoxide emissions determined by the Administrator under subclause (I) may be credited toward the reductions in emissions of volatile organic compounds required under section 182.";

(4) in paragraph (7)(A)--

(A) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and indenting appropriately;

(B) by striking "to a person who refines," and inserting the following; "to

"(1) a person that refines,";

(C) in clause (i) (as so designated)--

(i) in subclauses (II), by striking "or" at the end;

(ii) in subclause (III), by striking the period at the end and inserting "; or"; and

(iii) by adding at the end the following:

"(IV) contains a quantity of fuel made from renewable resources that is greater than the quantity required for fuel under subsection (p); or"; and (D) by adding at the end the following:

"(ii) a fleet operator that acquires clean fuel vehicles that meet, at a minimum, the standards established by the Administrator under section 246(f)(4)."; and

(5) by redesignating paragraph (10) as paragraph (11); and

(6) by inserting after paragraph (9) the following:

"(10) REDUCTION IN USE OF MTBE--

Not later than January 1, 2001, the Administrator shall promulgate regulations to provide for a gradual reduction in the use of methyl tertiary butyl ether in gasoline to--

"(A) the level that existed before implementation of the reformulated gasoline program under this subsection; or

"(B) another appropriate level that the Administrator determines to be protective of public health or the environment."

SEC. 5. RENEWABLE CON. I. ENT OF FUEL.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding at the end the following:

"(p) RENEWABLE CONTENT OF FUEL--

"(1) IN GENERAL--

"(A) REQUIREMENT-- Not later than September 1, 2000, the Administrator shall promulgate regulations to ensure that no person manufactures, sells, supplies, offers for sale or supply, dispenses, transports, or introduces into commerce any fuel that contains a quantity of fuel made from renewable resources that is less than--

"(i) 1.3 percent beginning January 1, 2001;

"(ii) 1.4 percent beginning January 1, 2002;

"(iii) 1.5 percent beginning January 1, 2003;

"(iv) 1.6 percent beginning January 1, 2004;

"(v) 1.7 percent beginning January 1, 2005;

"(vi) 1.8 percent beginning January 1, 2006;

"(vii) 1.9 percent beginning January 1, 2007;

"(viii) 2.0 percent beginning January 1, 2008; and

"(ix) 2.1 percent beginning January 1, 2009.

"(B) DETERMINATION OF QUANTITY-- The quantity of fuel made from renewable resources under subparagraph (A) shall be determined on the basis of volume.

"(C) FUEL SUPPLIERS-- For the purpose of determining compliance with subparagraph (A), a fuel supplier (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) may average the sales of its fuel in any 1 calendar year.

"(D) REPORTS TO CONGRESS-- Not Less often than every 3 years, the Administrator shall submit to Congress a report on--

"(i) reductions in emissions of criteria air pollutants listed under section 108 that result from implementation of this subsection; and

"(ii) in consultation with the Secretary of Energy, greenhouse gas emission reductions that result from implementation of this subsection.

"(2) WAIVERS--

"(A) IN GENERAL-- The Administrator may waive the requirement of paragraph (1)(A) in whole or in part--

"(i) on petition by a State; and

"(ii)(I) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

"(II) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement of paragraph (1)(A).

"(B) PETITIONS FOR WAIVERS-- The Administrator--

"(i) shall approve or deny a State petition for a waiver during the 90-day period beginning on the date of submission of the petition to the Administrator; but

"(ii) may, at the request of the State, extend that period for up to 60 additional days to provide for public notice and opportunity for comment and for consideration of the comments submitted.

"(C) TERMINATION OF WAIVEES-- waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator.

"(3) GUIDANCE FOR LABELING-- The Administrator shall issue guidance to the States for labeling, at the point of retail sale. "(A) the fuel made from renewable resources that is in the fuel sold; and

"(B) the major fuel additive components of the fuel sold."

Back