

BRENNA BIRD  
ATTORNEY GENERAL



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IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

January 27, 2023

The Honorable Michael Regan  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, D.C. 20460

The Honorable Shalanda D. Young  
Director  
Office of Management and Budget  
725 17<sup>th</sup> Street N.W.  
Washington, D.C. 20503

**Re: Mandatory Promulgation of Regulations in Response  
to Governors' Notice Requesting Year-Round E15**

Dear Administrator Regan and Director Young,

A bipartisan coalition of Governors requested that Administrator Regan disallow the E10 waiver to the Reid vapor pressure (RVP) limit in advance of the upcoming summer driving season, pursuant to Clean Air Act § 211(h). *See* 42 U.S.C. § 7545(h); Governors' Letters (attached). That statute requires the Administrator to promulgate regulations consistent within 90 days of their request. *See* 42 U.S.C. § 7545(h)(5)(A)–(B). Unfortunately, almost 270 days have passed since the notification, accompanied by supporting documents, sent by the Governors to Administrator Regan. We write to urge you to comply with the law and issue the mandated regulations so that E15 ethanol will be available this summer.

American-produced ethanol is a key component in the domestic energy supply chain. Yet despite the air-quality benefits of gasoline blended with 15 percent ethanol (E15), by default the current regulations promulgated under the Clean Air Act apply a more stringent RVP limitation on E15 than on gasoline blended with 10 percent ethanol (E10) during the high ozone season from June 1 to September 15. That prevents access to E15 during the peak-driving summer months.


On April 28, 2022, a bipartisan group of eight Governors notified the EPA Administrator about the net-improvement to air quality that follows from lowering the RVP standard for E10 such that gasoline blends can accommodate E15. *See* Governors’ Letters (attached); 42 U.S.C. § 7545(h). As required by Section 211(h)(5) of the Clean Air Act, the Governors attached to their letter supporting documentation regarding the positive impact removing the E10 RVP waiver would have on air quality. Additional Governors have since filed similar notifications.

Section 211(h) of the Clean Air Act requires that the Administrator, upon “notification, accompanied by supporting documentation, from the Governor of a State that” the RVP limit will increase emissions that contribute to air pollution, shall promulgate alternative regulations lowering the RVP for *all* gasoline sold. 42 U.S.C. § 7545(h)(5)(A)–(B). Given the popularity and price of E10 gasoline, that will require gasoline producers to supply gasoline with a lower RVP such that, when blended to create E10, will satisfy that more stringent standard. As E10 and E15 have almost identical RVP, that gasoline with a lower RVP will also allow sale of E15.

The Clean Air Act also states that the Administrator “shall” promulgate its amended regulation within 90 days—here, no later than July 27, 2022. Yet the Administrator still has not taken that required action. On January 17, 2023—almost 270 days from the Governors’ request—Governor Reynolds sought clarity on EPA’s delay. Without prompt action, there is a risk that E15 gasoline will not be available during the 2023 summer driving season and vehicle emissions will be higher than if EPA followed its obligations under the Clean Air Act.

Given the importance of this issue, the undersigned Attorneys General call on the Administrator and the Office for Management and Budget to promulgate regulations as required by the Clean Air Act by the end of January. That deadline will allow each of the undersigned states to enjoy the cost and air-quality benefits of year-round E15 through the 2023 summer driving season.

Sincere regards,



Brenna Bird  
Attorney General of Iowa



Kwame Raoul  
Attorney General of Illinois



Mike Hilgers  
Attorney General of Nebraska



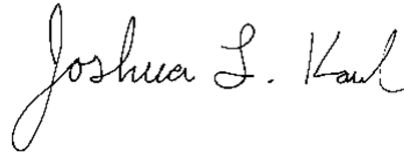
Keith Ellison  
Attorney General of Minnesota



Marty Jackley  
Attorney General of South Dakota



Andrew Bailey  
Attorney General of Missouri



Josh Kaul  
Attorney General of Wisconsin



April 28, 2022

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Regan,

We are writing to thank you and the U.S. Environmental Protection Agency (EPA) for exercising your emergency waiver authority to waive the 9-psi Reid vapor pressure (RVP) limitation for gasoline blended with 15 percent ethanol (E15) for the 2022 summer ozone control season. This action will help provide relief, flexibility, and certainty in the fuel market as we are seeing record high gasoline prices in our states and around the country.

While this emergency RVP waiver will deliver economic relief and energy security benefits in the near term, a permanent solution allowing the year-round sale of E15 is also needed for long-term certainty. Accordingly, we are notifying the EPA, pursuant to Section 211(h)(5) of the Clean Air Act, that the RVP limitation established by Section 211(h)(4) increases emissions that contribute to air pollution in our states. Therefore, we respectfully request that EPA promulgate a regulation applying, in lieu of the RVP limitation established by Section 211(h)(4), the RVP limitation established by Section 211(h)(1) to all fuel blends containing gasoline and 10 percent ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in Iowa, Nebraska, Illinois, Kansas, Minnesota, North Dakota, South Dakota, and Wisconsin beginning with the 2023 summer ozone control season.

According to a Health Effects Institute Panel on the Health Effects of Traffic-Related Air Pollution, “High gasoline vapor pressure causes high evaporative emissions from motor vehicles and is therefore a priority fuel quality issue. ... Reductions in fuel volatility will significantly reduce evaporative emissions from vehicles. A reduction in vapor pressure is one of the more cost effective of the fuel-related approaches available to reduce hydrocarbon emissions.”<sup>1</sup>

The emissions benefits of lowering gasoline vapor pressure by 1-psi were modeled for each of our states (see attachment). The analysis concluded that a 1-psi RVP reduction would be beneficial to air quality, as emissions of carbon monoxide (CO), oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs) would be reduced.

<sup>1</sup> Health Effects Institute. HEI Panel on the Health Effects of Traffic-Related Air Pollution. (2010) “Special Report 17: Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects.”

Supporting documentation for this request is attached. We urge swift action to help lower fuel prices across the country, restore energy independence, and increase consumer access to our nation's homegrown biofuels. We appreciate your consideration of our request.

Sincerely,



Kim Reynolds  
Governor of Iowa



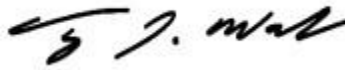
Pete Ricketts  
Governor of Nebraska



JB Pritzker  
Governor of Illinois



Laura Kelly  
Governor of Kansas



Tim Walz  
Governor of Minnesota



Doug Burgum  
Governor of North Dakota



Kristi Noem  
Governor of South Dakota



Tony Evers  
Governor of Wisconsin

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*Michael L. Parson*

GOVERNOR  
STATE OF MISSOURI

December 21, 2022

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Regan,

We appreciated the U.S. Environmental Protection Agency's use of its emergency waiver authority to allow uninterrupted sales of gasoline blended with 15 percent ethanol (E15) during the 2022 summer ozone control season. Allowing E15 sales to continue this past summer helped extend tight fuel supplies and provided Missouri drivers with lower-priced options at the pump during a period of record high fuel prices and turmoil in the world energy market.

However, it is clear that relying on emergency waivers for year-round sales of E15 is not a long-term solution for Missouri's fuel retailers, farmers and ethanol producers, consumers, or the environment. Thus, I am joining other Midwest states in seeking a permanent solution to allow year-round E15 and further reduce emissions.<sup>1</sup>

With this letter I am notifying EPA that, pursuant to Section 211(h)(5) of the Clean Air Act, the Reid vapor pressure (RVP) limitation established by Section 211(h)(4) increases emissions that contribute to air pollution in our state. Therefore, I respectfully request that EPA promulgate a regulation applying, in lieu of the RVP limitation established by Section 211(h)(4), the RVP limitation established by Section 211(h)(1) to all fuel blends containing gasoline and 10 percent ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in Missouri beginning with the 2023 summer ozone control season.

According to a Health Effects Institute Panel on the Health Effects of Traffic-Related Air Pollution, "High gasoline vapor pressure causes high evaporative emissions from motor vehicles and is therefore a priority fuel quality issue. ... Reductions in fuel volatility will significantly reduce evaporative emissions from vehicles. A reduction in vapor pressure is one of the more cost effective of the fuel-related approaches available to reduce hydrocarbon emissions."<sup>2</sup>

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<sup>1</sup> Letter to Michael Regan, Administrator, U.S. Environmental Protection Agency, from Govs. Kim Reynolds (Iowa), Pete Ricketts (Nebraska), JB Pritzker (Illinois), Laura Kelly (Kansas), Tim Walz (Minnesota), Doug Burgum (North Dakota), Kristi Noem (South Dakota), and Tony Evers (Wisconsin). April 28, 2022. See also letter to Michael Regan, Administrator, U.S. Environmental Protection Agency, from Gov. Mike DeWine (Ohio). June 10, 2022.

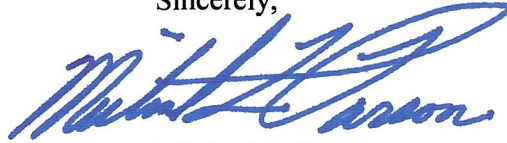
<sup>2</sup> Health Effects Institute. HEI Panel on the Health Effects of Traffic-Related Air Pollution. (2010) "Special Report 17: Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects."



The emissions benefits of lowering gasoline vapor pressure by 1-pound per square inch (psi) were modeled for the state of Missouri (see attachment). The analysis concluded that a 1-psi RVP reduction would be beneficial to air quality, as emissions of carbon monoxide (CO), oxides of nitrogen (NOx) and volatile organic compounds (VOCs) would be reduced.

Supporting documentation for this request is attached. If you have any questions, please contact Jamie Birch at [Jamie.birch@governor.mo.gov](mailto:Jamie.birch@governor.mo.gov) or (573) 751-2937.

Sincerely,



Michael L. Parson  
Missouri Governor

Attachment



**MIKE DEWINE**  
**GOVERNOR OF OHIO**

Administration  
Office 614.644.4357

77 S. High St., 30<sup>th</sup> Floor  
Columbus, OH 43215  
[www.governor.ohio.gov](http://www.governor.ohio.gov)

June 10, 2022

The Honorable Michael Regan, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue  
NW Washington, DC 20460

Dear Administrator Regan,

Thank you and the U.S. Environmental Protection Agency (EPA) team for using your emergency waiver authority to waive the 9-psi Reid vapor pressure (RVP) limitation for gasoline blended with 15 percent ethanol (E15) for the 2022 summer ozone control season. Ohio is working diligently to provide our citizens with access to E15 during this busy summer driving season and time of record high fuel prices. Your emergency waiver has provided uninterrupted access to E-15 this summer.

However, it is clear to me that relying on annual emergency waivers for year-round sales of E15 is not a permanent solution for Ohio's fuel retailers, consumers, or the environment. My administration will offer a long-term fix.

Please consider this letter notification to the EPA, pursuant to Section 211(h)(5) of the Clean Air Act, that the RVP limitation established by Section 211(h)(4) increases emissions that contribute to air pollution in our state. Therefore, I respectfully request that EPA promulgate a regulation applying, in lieu of the RVP limitation established by Section 211(h)(4), the RVP limitation established by Section 211(h)(1) to all fuel blends containing gasoline and 10 percent ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in Ohio beginning with the 2023 summer ozone control season.

According to a Health Effects Institute Panel on the Health Effects of Traffic-Related Air Pollution, "High gasoline vapor pressure causes high evaporative emissions from motor vehicles and is therefore a priority fuel quality issue. ... Reductions in fuel volatility will significantly reduce evaporative emissions from vehicles. A reduction in vapor pressure is one of the more cost effective of the fuel-related approaches available to reduce hydrocarbon emissions."



The emissions benefits of lowering gasoline vapor pressure by 1-psi have been modeled for Ohio (see attachment). The analysis concluded that a 1-psi RVP reduction would be beneficial to air quality, as emissions of carbon monoxide (CO), oxides of nitrogen (NOx) and volatile organic compounds (VOCs) would be reduced.

Supporting documentation for this request is attached. Action from the EPA now will ensure Ohio drivers have permanent, year-round access to Ohio-produced fuels.

I appreciate your consideration of my request.

Very respectfully yours,

A handwritten signature in blue ink that reads "Mike DeWine". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Mike DeWine  
Governor



KIM REYNOLDS  
GOVERNOR

**OFFICE OF THE GOVERNOR**

ADAM GREGG  
LT GOVERNOR

January 17, 2023

The Honorable Michael Regan  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, D.C. 20460

The Honorable Shalanda D. Young  
Director  
Office of Management and Budget  
725 17<sup>th</sup> Street N.W.  
Washington, D.C. 20503

Dear Administrator Regan and Director Young,

I write today to urge the U.S. Environmental Protection Agency to expeditiously implement long overdue regulatory action to remove the 1-psi volatility waiver for gasoline-ethanol blends in Iowa, as formally requested nearly nine months ago. With the 2023 summer driving season just around the corner, action is needed *now* to provide certainty and clarity to the marketplace.

On April 28, 2022, I formally notified you that I am using the Clean Air Act authority provided to State Governors to remove the 1-psi volatility waiver, which would improve air quality and allow for the year-round sale of gasoline containing 15% ethanol (E15) in Iowa.

Section 211(h)(5)(B) of the Clean Air Act statute states that the Administrator "shall promulgate regulations" effectuating this action "...not later than 90 days after the date of receipt of a notification from a Governor..." Thus, I expected the removal of the 1-psi waiver would be officially completed no later than July 27, 2022, providing the marketplace with ample lead time to adjust to the changes before the summer volatility control season begins for retail fuel stations on June 1, 2023. I do not understand how or why EPA has missed this non-discretionary statutory deadline, but it is now causing confusion and uncertainty in the marketplace.

It is my understanding that the White House Office of Management and Budget may still be reviewing this action. I urge you to work together to swiftly finalize and release this action no later than the end of January 2023, so that consumers in Iowa can enjoy the economic and environmental benefits of year-round E15 in 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Reynolds".

Kim Reynolds  
Governor of Iowa