April 20, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20469

Docket ID No. EPA-HQ-OAR-2022-0513

Sent via Federal eRulemaking Portal *<u>www.regulations.gov</u>*

RE: Request from States for Removal of Gasoline Volatility Waiver

Dear Administrator Regan:

On behalf of the members of the American Coalition for Ethanol (ACE), I appreciate the opportunity to comment on EPA's proposal to remove the 1-pound per square inch (psi) Reid vapor pressure (RVP) volatility waiver in eight states, specifically Illinois, Iowa, Nebraska, Minnesota, Missouri, Ohio, South Dakota, and Wisconsin.

ACE is a grassroots advocacy organization, powered by rural Americans from all walks of life who have built an innovative industry that delivers homegrown biofuel and food for a growing world. Our 500 members include U.S. ethanol biorefineries, investors in biofuel facilities, farmers, and companies that supply goods and services to the U.S. ethanol industry.

<u>Background</u>
On April 28, 2022, the governors of several Midwest states notified EPA pursuant to Section 211(h)(5) of the Clean Air Act (CAA) that the RVP limitation established by Section 211(h)(4) increases emissions which contribute to air pollution in their states. Therefore, these governors petitioned EPA to promulgate a regulation which would apply the RVP limit established by Section 211(h)(1) to <u>all</u> fuel blends containing gasoline and 10 percent ethanol beginning April 28, 2023. This would remove the 1-psi waiver for E10 during the summer driving season by requiring the same gasoline blendstock to be used for the sale of E10 and E15 in these states, essentially allowing for the sale of E15 year-round. Additional governors filed identical Section 211(h)(5) petitions with the Agency following the April 28, 2022 letter – demonstrating like the governors before them that the 1-psi waiver increases emissions in their states.

E15 is a clean, safe, high-octane (88 AKI) fuel which can be used in nearly 100 percent of light-duty vehicles on the road. Most vehicles under warranty today were built to operate on E15 and it typically costs 5 to 15 cents per gallon less than E10 and 40 to 75 cents per gallon less than non-ethanol gasoline. Allowing its sale year-round would give consumers the option to buy a higher quality fuel and save significant money at the pump, savings consumers benefited from during the record-high gas prices set during 2022.

Section 211(h)(5) of the CAA provides that "Upon notification by the Governor of a State, with supporting documentation, that implementation of the waiver in section [211(h)(4)], would increase emissions that contribute to air pollution in any area of the state, the Administrator shall, by regulation, apply the volatility limit under section [211(h)(1)]." CAA section 211(h)(1) limits gasoline volatility to 9.0 psi during the high ozone "summer driving" season, so a regulatory action under CAA section 211(h)(5) would remove the 1-psi waiver from E10 allowing for the sale of E15 year-round.

The CAA also states that the Administrator "shall" promulgate its amended regulation "not later than 90 days after the date of receipt of a notification from a governor." In other words, by statute, EPA was required to take action in response to the governors' April 28, 2022 petitions before August 1, 2022. EPA failed to comply with the statutory deadline. Instead, EPA took nearly 365 days to respond. As a consequence of failing to follow the law, the Agency is proposing to postpone the effective date for these eight states to April 28, 2024, which is exactly two years from when EPA received the initial request. Beyond just delay, EPA's inaction will result increased air pollution in these states in 2023 as well as impact to the rural economy.

Summary of ACE Comments to EPA

We appreciate EPA is finally taking action on the governors' petitions and proposing a regulation to allow E15 year-round beginning April 28, 2024 in Illinois, Iowa, Nebraska, Minnesota, Missouri, Ohio, South Dakota, and Wisconsin. However, in response to the Agency's request for comment on a summer 2023 effective date, we prefer the Agency finalize a regulation removing the volatility waiver in these states for the 2023 summer driving season, consistent with the governors' 2022 request and the statute.

If EPA chooses not to implement a 2023 implementation date, the Agency's legally questionable delay to 2024 will force millions of people in conventional gasoline areas of the U.S. to suffer from worse air quality while also paying much more at the pump during this year's summer driving season – on the heels of last year's record high gasoline prices and continued inflationary pressure on American families.

Given the pressing need for consumers in conventional gasoline areas of the country to have access to the lowest-cost fuel available to most vehicles on the road this summer, we strongly urge EPA to take emergency steps pursuant to Section 211(c)(4)(C)(ii) to allow E15 for the 2023 summer driving season, similar to the steps taken by yourself and President Biden last year.

Conditions Justify Nationwide Emergency E15 Waivers for 2023

We recognize EPA is taking comment specifically on the petitions from eight states to remove the 1-pound psi RVP waiver for gasoline-ethanol blends, but the sense of urgency about the fast-approaching June 1, 2023 summer driving season and market access for E15 in all areas of the country, including conventional gasoline areas, necessitates our request for emergency steps in these comments.

Section 211(c)(4)(C)(ii) of the CAA enables EPA to waive, on a temporary basis, the 9.0 psi RVP limit for ethanol-gasoline blends during the summer ozone season in conventional areas of the country to address "extreme and unusual fuel supply conditions." This statutory authority was invoked last year in response to the extreme and unusual fuel supply conditions caused by Russia's invasion of Ukraine. President Biden traveled to an Iowa ethanol facility on April 12, 2022 to announce that he was directing you to initiate temporary waivers to enable E15 to be sold in conventional gasoline areas of the country for the 2022 summer driving season. As you know, over the course of last summer, in response to volatile fuel supply and price concerns, you issued these rolling 20-day waivers which ensured E15 market access through September 15.

The conditions used by the administration to justify invoking this emergency statutory authority last year persist today – in fact some market indicators are more concerning today. Russia's ongoing war against Ukraine continues to negatively impact both global and domestic fuel supplies and markets. Inventories of crude oil and petroleum supplies in the U.S. are lower today than they were in April of last year when EPA began issuing emergency waivers in response to Russia's invasion of Ukraine. What's more, OPEC+ announced on April 2 its intention to begin cutting oil production by more than 1 million barrels per day beginning on May 1, cuts which the cartel expects to run through the end of 2023. Crude oil prices climbed to more than $80 per barrel following the OPEC+ announcement. These ongoing threats are causing "extreme and unusual" conditions including gasoline prices on the rise just as the summer driving season approaches. Some analysts are warning last summer's record-high pump prices may return for 2023, and history shows E15 can save consumers significant money.

E15 is playing a critical role in mitigating higher gasoline prices in 2023. On April 19, the Renewable Fuels Association released pricing data from 1,520 user submissions to a website allowing drivers to report prices they paid for E10 and E15 on the same day from the same retail site. The data covered January 1, 2022 to April 13, 2023. The average discount for E15 was 27 cents per gallon at these sites, with even stronger price discounts for E15 reported from Pennsylvania (88 cents per gallon less than E10), Ohio (65 cents per gallon less than E10), and North Carolina (61 cents per gallon less than E10). These savings will be lost if EPA does not use its emergency waiver authority in the coming days.

<u>Evidence Proves Removing 1-psi Waiver to Allow E15 Year-Round would Reduce Emissions</u>
In order to justify removal of the 1-psi waiver, the eight governors were required to demonstrate to EPA the use of E15 during the June 1 to September 15 high ozone (summer driving) season would reduce emissions in their states.

Each of the petitioning states' submissions demonstrated reductions in emissions of carbon monoxide (CO), nitrogen oxide (NOx), and volatile organic compounds (VOCs). According to EPA's own assessment, "the supporting documentation provided by the petitioning states finds that the modeling results submitted to the EPA demonstrate a reduction in emissions of multiple pollutants upon removal of the 1-psi waiver for E10, as required under CAA section 211(h)(5)."

We agree with the Agency the eight states provided sufficient evidence to fulfill the statutory requirements to lift the 1-psi waiver and allow E15 during the high ozone season, evidence which will be as true for the 2023 driving season (if approved by EPA) as it will be for 2024.

EPA's 2024 Effective Date Favors Refiners Over the Environment, Consumers and Retailers
Refiners have historically exercised excessive control over the fuel market and erected barriers to protect their status-quo market share, limiting the volume of ethanol in a gallon of gasoline at the expense of consumers and the environment. This anticompetitive behavior and other market conditions helped refiners post record profits during the 2022 calendar year. According to a January 24, 2023 Bloomberg piece, refiner profit margins reached "eye watering levels" in 2022.

This historical context makes it challenging to accept that the majority of EPA's proposal is devoted to parroting so-called concerns and challenges identified by refiners regarding cost impacts related to removing the 1-psi waiver in the eight petitioning states. Further, EPA shows sympathy to refiner concerns about coordination between parties in the supply chain relative to storage and distribution and already low gasoline inventories related to gasoline production but does not acknowledge the fact that refiners historically make seasonal adaptations without complaint or delay.

Policymakers such as Congress and/or EPA have over the years taken action in response to refiner anticompetitive behavior with legislation and/or regulatory steps requiring refiners to adapt in the interest of consumers and the environment. Certainly, one notable example is Congressional passage of the Renewable Fuel Standard (RFS) to require refiners to blend increasing volumes of renewable fuels which reduce lifecycle greenhouse gas (GHG) emissions and make the U.S. more energy secure. EPA is no stranger to regulatory actions requiring refiners to adapt in the interests of consumers, retailers or the environment. For example, in the late 1980s refiners were unwilling to provide a suitable blendstock for E10 to meet RVP restrictions, so EPA was prompted to allow E10 to receive the 1-psi waiver.

Today, refiners refuse to provide sufficient volumes of low-RVP conventional blendstock before oxygenate blending (CBOB) to make E15 while still meeting the 9-psi RVP standard for gasoline in the high ozone summer season. But at the same time, many of these same refiners supply a suitable blendstock for reformulated gasoline (RFG) areas for E15; renewable blendstock before oxygenate blending (RBOB). Refiners could make RBOB to blend with E15 or, as EPA's proposal acknowledges "…it is highly likely that refineries that supply gasoline to petitioning states will adjust their refinery processes to reduce the RVP of their CBOB…" Whether they produce a lower RVP CBOB or RBOB, clearly refiners are capable of adapting for E15 blending. Therefore, we encourage EPA to review the veracity of the 2023 compliance timeline concerns raised by refiners.

We have already stated the consumer savings possible with E15 year-round, but retailers also have a stake in this issue. Retailers who have offered E15 in 2020, 2021, 2022, and who will be able to offer the fuel in 2024 will now have to quit selling E15 for three-and-a-half months because of EPA foot-dragging. Retailers will have increased costs from having to clean out and switch fuels in their tanks twice, those with blender pumps will incur service charges to adjust products blended twice, and pump decals will need to be changed twice. These concerns were not properly weighed in the proposed rule.

Conclusion

If there are real concerns related to the gasoline supply chain relative to a 2023 implementation date, they are problems of EPA's own making. Indeed, if the Agency had responded to the eight petitioning states within the statutorily required 90 days there would be no need to fret about refiner concerns with timing. Refiners have been on notice for about a year that E15 could be approved for summer use in 2023 given the governors' petitions. They should not be rewarded for failing to prepare for this outcome, especially since refiners had to meet those standards in 2022. EPA should balance the interests and side with consumers, retailers and the environment instead of with refiners by finalizing a regulation removing the volatility waiver in these states for the 2023 summer driving season, consistent with the governors' 2022 request and the statute.

Thank you for your time and consideration of our comments.

Sincerely,

Brian Jennings, CEO
American Coalition for Ethanol