

United States Senate

WASHINGTON, DC 20510

January 12, 2007

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Johnson:

We are writing to you to highlight the many concerns that our state environmental agencies and constituents have raised regarding the Environmental Protection Agency's (EPA's) proposed Mobile Sources Air Toxics rule. As these comments point out, the structure of the proposed rule fails to ensure that the high levels of benzene now present in gasoline in our region will be significantly reduced.

EPA's own analysis confirms that the Northwest has some of the highest benzene health risks in the U.S. primarily due to high fuel benzene levels. Petroleum Administration Defense District (PADD) 5, which includes the Northwest, has the highest current fuel benzene level of any region at a level three times higher than the proposed national average. These high fuel benzene levels result from the fact that air quality in the Northwest does not require the use of reformulated gasoline, which would otherwise restrict benzene content, and the fact that our refineries rely substantially on Alaskan crude oil which is naturally high in benzene.

Nonetheless, EPA has proposed a regulatory scheme that will not ensure that significant reductions in fuel benzene levels are actually achieved in the Northwest. Indeed, the EPA has proposed a national average standard whereby refiners and fuel importers can achieve compliance through the use of a credit trading program. According to EPA's analysis, six of eight of the refineries in PADD 5 would achieve compliance through the use of credits, with one higher benzene level refinery expected to take no action whatsoever to reduce its fuel benzene levels. (Nationally, EPA projects that half, 57 of 115, of U.S. refineries would use credits to reach compliance with eight higher benzene level refineries taking no action to reduce their benzene levels.) Further, because EPA's proposal establishes no maximum level of benzene, there is no assurance that even the minimal reductions projected for our refineries would actually be made. In fact, benzene levels in our gasoline could theoretically increase under the proposal.

In order to address this potential concern, EPA specifically examined two alternatives that would address this problem: a strict per gallon standard for benzene and a more flexible annual maximum average standard. (As described by the preamble to the rule, numerous benzene control programs include either a per-gallon cap, or an average standard including the standards for gasoline in California or the federal standard for reformulated gasoline.) EPA's subsequent analysis showed that the implementation of a maximum average standard, in addition to the proposed ABT banking and trading

program, could be achieved at a minimal additional national cost of 0.005 cents per gallon. Yet, it summarily rejected the proposal arguing that “(w)ith the addition of a maximum average standard, we expect emission reductions to simply shift from one region of the country to another with no net change to the overall emission reduction.” We believe that is exactly the point.

Using an average maximum cap would ensure, according to EPA’s own analysis, that benzene levels in the two highest fuel benzene regions – PADDs 4 and 5 – would have substantial reductions and result in final levels much closer to the proposed national average. There would be an additional reduction in PADD 1 with minimal increases in PADDs 2 and 3. We would expect that not only will benzene levels decline, but actual human exposure would also be reduced because subject populations in PADDs 1, 4 and 5 are projected by the Census Bureau to have 20 million more inhabitants by 2010 than PADDs 2 and 3. Even more important, because a maximum cap limits the amount of benzene by each refinery or importer, it is certain, and not hypothetical, that these regional reductions will be achieved.

Finally, we are concerned about whether the proposal appropriately meets the requirements of the Clean Air Act. According to the preamble, EPA is promulgating the fuel benzene portion of the rule pursuant to section 211(c)(1)(A) of the Clean Air Act. It is our understanding that this section provides that the Administrator may regulate control or prohibit any fuel or additive, “....if in the judgment of the Administrator 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” Although we understand that EPA may consider additional factors in promulgating such controls, we are hard pressed to understand how the proposal will meet this health-based statutory standard when it does not ensure that those regions with the highest levels of benzene achieve genuine reductions.

Consequently, we would like answers to the following questions concerning EPA’s analysis:

Especially in light of section 211 of the Clean Air Act, what is the basis for allowing significant regional differences in the level of health protection afforded by the proposed standard?

What specific risk analysis did EPA perform to support its conclusion that imposition of a maximum average standard would not produce any greater level of protection to at-risk populations than the proposed standard, e.g. it would simply shift risk from one region to another with no commensurate benefit?

Given the demonstrated effectiveness and prevalence of maximum-per-gallon types of standards in controlling fuel benzene levels, what is the basis for not applying such standards to refineries and importers?

Given the small incremental cost per gallon of implementing a maximum average annual benzene standard at 1.3% by volume, how did EPA reach the conclusion that it was not cost effective to impose such a standard?

If you or your staff have any questions concerning this letter please contact David Berick with Senator Wyden at 202-224-5244, Valerie West with Senator Smith at 202-224-3753, Jamie Shimek with Senator Murray at 202-224-2621, and Amit Ronen with Senator Cantwell at 202-224-3441.

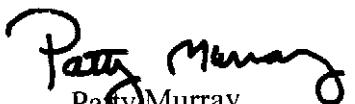
Sincerely,



Ron Wyden
United States Senator



Gordon H. Smith
United States Senator


Patty Murray
United States Senator
Maria Cantwell
United States Senator