

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR  
RUTH VAN MARK, MINORITY STAFF DIRECTOR

January 12, 2012

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Jackson:

Americans spent more of their hard-earned dollars to purchase gasoline in 2011 than in any prior year. With nationwide prices currently averaging \$3.38 per gallon, high energy costs continue to sap our nation's economic strength and represent a significant burden for many of our nation's families and businesses. As we pursue responsible policies in Congress to make energy more affordable, we recognize that another factor – regulations from federal agencies – can also impact the prices that consumers and businesses pay at the pump.

We write to express our concern with one such regulation, Tier 3 standards for gasoline, that EPA is reportedly preparing to propose. With gasoline prices already high, and with so many Americans already struggling to make ends meet, we urge you to recognize that now is not the time for new regulations that will raise the price of fuel even further.

The current EPA standard for sulfur in gasoline, 30 parts per million (ppm), was phased in from 2004 to 2009 as a part of the Tier 2 emissions standards. The Tier 2 standards lowered sulfur content in gasoline from 300 ppm, equivalent to a 90% reduction. It is our understanding that the Notice of Proposed Rulemaking for the next standard could reduce the content of sulfur in gasoline to as low as 10 ppm.

While we certainly support reducing air pollution, experts suggest it will be expensive to remove additional and de minimis amounts of sulfur from fuel. In fact, a recent study conducted by Baker & O'Brien, a professional consulting firm, estimates that capital and annual operating costs associated with implementing a standard of 10 ppm per year could be up to \$17 billion and \$13 billion respectively. Depending on the stringency of the proposed rule, that could add 12 to 25 cents to each gallon of gasoline. At the same time, the study found that several fuel manufacturers will not likely be able to comply, which will force plant closures – resulting in both direct and indirect job losses.

The potential economic impacts of the Tier 3 standards will be aggravated by the suite of other air quality regulations being pushed by the Administration. These rules include pending Maximum Achievable Control Technology (MACT) requirements and New Source Performance

Standards (NSPS). Additional requirements for particulate matter (PM) and nitrogen oxides (NOX) may also be imposed under increasingly stringent ambient air quality standards. Collectively, these rules would add tens of billions of dollars to fuel manufacturers' operational and capital costs – and those firms will pass much or all of those costs on to consumers in the form of higher gasoline prices.

The Clean Air Act (CAA) generally allows EPA to alter the content of gasoline if its emissions are found to either “endanger the public health or welfare” or “impair to a significant degree the performance of any emission control device or system.” But there is no strict requirement to lower the sulfur content in gasoline. The language of 42 USC 7545(c) is discretionary, not mandatory.

In setting these standards, the relevant sections of the CAA require consideration of all available scientific and economic data, including a cost-benefit analysis. We understand that EPA is now compiling this information. However, we believe the Agency should first allow for a thorough public examination of existing rules and the costs associated with new Tier 3 requirements – as well as potential consequences for fuel production, reliability, and deliverability – before moving forward with a proposed rulemaking.

There are multiple requirements governing the content of our nation's gasoline supply. The effect each of these standards has on emissions is complex and cannot be considered in a vacuum. One example is the Renewable Fuel Standard Program (RFS2), which requires increasing amounts of renewable biofuel to be blended into the nation's fuel supply. We believe the public should be allowed to consider the results of the anti-backsliding study required under the Energy Independence and Security Act of 2007 (EISA) before new Tier 3 standards are adopted. Congress intended for this study to evaluate the impact of the RFS2 on air quality. Although your office has testified that this study will be completed in conjunction with the proposed Tier 3 standards, we maintain that EPA cannot thoughtfully analyze its results while simultaneously proposing a new rule. Moreover, the public should be allowed to review the results of this analysis before a new rulemaking is initiated.

We also encourage EPA to study whether Tier 3 standards could conflict with other rules your agency is implementing. For example, the Baker & O'Brien study found that compliance with Tier 3 standards would require additional hydrotreating, which increases other currently regulated emissions. If fuel-producing facilities are forced to comply by operating those technologies, they could run afoul of other rules that EPA is developing related to greenhouse gas emissions. This would amount to a form of regulatory double jeopardy, and the higher costs it entails would be followed by higher energy prices.

In the end, this is about people and communities. There are 147 refineries located across the country, from Alaska and Washington to Montana and Pennsylvania. They supply well paying manufacturing jobs for their surrounding communities. If plants close as a result of this or other EPA rules, workers will lose their jobs, local and small businesses will lose their customers, and state and local governments will lose tax revenue. Likewise, if EPA does not proceed carefully with its regulations, the nationwide price of fuel could increase to the further detriment of consumers and businesses.

For these reasons, we urge EPA to reconsider the timing of Tier 3 standards for gasoline. We also ask you to provide Congress and the public with as much notice as possible in advance of any formal proposal. We support clean air, but EPA should provide adequate scientific justification for all aspects of the proposed rule, thoughtfully reflect on the results of the yet-to-be completed anti-backsliding study, and understand the cumulative effects of all existing and pending air regulations on families and workers.

We thank you for your consideration of these concerns.

Sincerely,

James M. Clyburn

Paul Begala

Joe Scarborough

Mary F. Gansin

Paul Vitter

John Barrasso