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I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated in the nine worst ozone nonattainment areas beginning January 1, 1995. EPA published final regulations for the RFG program on February 16, 1994 and on August 2, 1994. See 59 FR 7716 and 59 FR 39258. Corrections and clarifications to the final RFG regulations were published July 20, 1994. See 59 FR 36944.

Section 211(k)(10)(D) defines the areas covered by the RFG program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the RFG program.

Any other ozone nonattainment area may be included in the program at the request of the Governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a Governor, EPA shall apply the prohibition against the retail sale of conventional gasoline (gasoline EPA has not certified as reformulated) in any area requested by the Governor which has been classified under subpart 2 of Part D of Title I of the Act as a Marginal, Moderate, Serious or Severe ozone nonattainment area.¹ Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition at the retail level as of the date the Administrator "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some

cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a governor's application in the **Federal Register**. To date, EPA has received and published applications from the Mayor of the District of Columbia and the Governors of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Texas, and Kentucky. Although Vermont has requested to opt-in to the program, states without ozone nonattainment areas, such as Vermont, can not do so.

II. The Governor's Request

EPA received an application from the Honorable Tommy G. Thompson, Governor of the state of Wisconsin, for three moderate ozone non-attainment areas to be included in the RFG program. Governor Thompson later clarified his request in reference to implementation dates with the submission of a second letter of application. Both letters are set out in full below.

A. Initial Letter From Wisconsin's Governor

[State of Wisconsin letterhead]

April 6, 1994.

Carol Browner,
USEPA Administrator,
USEPA Headquarters,
401 M Street, SW (101),
Washington, DC 20460

Dear Ms. Browner: The purpose of this letter is to request that you extend the requirement for reformulated gasoline to the three moderate ozone nonattainment areas in Wisconsin. As you know, Section 211(k)(6) of the Clean Air Act gives the Governor the authority to opt into the reformulated gasoline program for ozone nonattainment areas that are not otherwise required to use reformulated gasoline. I am exercising the opt-in provision of Section 211(k)(6) for the three moderate ozone nonattainment areas in Wisconsin; Kewaunee, Manitowoc and Sheboygan Counties.

Reformulated Gasoline is a significant component of our 15 percent VOC emission reduction plans for our moderate nonattainment areas, supplying about 1/2 of the necessary emission reductions. After evaluating the public input to our 15 percent VOC plan, I am convinced that reformulated gasoline is critical to the success of the 15 percent plan in our moderate ozone nonattainment areas.

Thank you for considering my request. I am looking forward to the successful implementation of our 15 percent emission reduction plan and a good start to achieving

our goals of attainment of the ozone air quality standard in Eastern Wisconsin.

Sincerely,

Tommy G. Thompson,
Governor.

B. Second Letter From Wisconsin's Governor

[State of Wisconsin letterhead]

August 2, 1994.

Carol Browner,
USEPA Administrator,
USEPA Headquarters,
401 M Street, SW (101),
Washington, DC 20460

Dear Ms. Browner: In April of this year I requested that you extend the federal reformulated gasoline program to the three Wisconsin moderate ozone nonattainment counties of Sheboygan, Manitowoc, and Kewaunee. Your staff subsequently notified the state of the need to clarify the requested effective date for the program within those counties. I understand the program in our six severe ozone counties automatically commences January 1, 1995 based on federal regulation.

Given the summer ozone air quality rationale of the program, I request that the three county opt-in become effective for gasoline blended to meet summer season requirements for 1995. Based on staff meetings with the gasoline refining and wholesale/retail distribution industry, I recommend a June 1, 1995 retail level compliance date. The slight start-up delay for the moderate counties will provide suppliers time to respond to the recently altered market structure.

Thank you for your attention in this regard. I hope this overall program will significantly affect air quality improvement in eastern Wisconsin.

Sincerely,

Tommy G. Thompson,
Governor.

cc: Don Theiler, Air Management, WI-DNR,
Richard Rykowski, Motor Vehicle Emission
Lab, USEPA, Ann Arbor, MI 48105

III. Action

Pursuant to the governor's letter and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the Wisconsin moderate² ozone non-attainment areas of Kewaunee, Manitowoc, and Sheboygan counties beginning June 1, 1995. As of that date they will be treated as covered areas for all purposes of the federal RFG program.

The application of the prohibitions of Section 211(k)(5) to the Wisconsin moderate ozone nonattainment areas at the retail level could take effect no later than August 2, 1995 under section 211(k)(6)(A) which stipulates that the effective program date must be no "later

¹ EPA promulgated such designations pursuant to Section 107(d)(4) of the Act (56 FR 56694; November 6, 1991).

² See 56 FR 56764 (November 6, 1991); 57 FR 56762, 56778 (November 30, 1992); and 40 CFR 81.350.