

106TH CONGRESS
2D SESSION

S. 2546

To amend the Clean Air Act to prohibit the use of methyl tertiary butyl ether, to provide flexibility within the oxygenate requirement of the reformulated gasoline program of the Environmental Protection Agency, to promote the use of renewable ethanol, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2000

Mr. BOND (for himself, Mr. DURBIN, Mr. GRASSLEY, Mr. ASHCROFT, and Mr. FITZGERALD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Clean Air Act to prohibit the use of methyl tertiary butyl ether, to provide flexibility within the oxygenate requirement of the reformulated gasoline program of the Environmental Protection Agency, to promote the use of renewable ethanol, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Air and Water
5 Preservation Act of 2000”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the oxygenate requirement of the reformu-
2 lated gasoline program under the Clean Air Act (42
3 U.S.C. 7401 et seq.) has proven to be effective in re-
4 ducing emissions of exhaust hydrocarbons, nitrous
5 oxide, and carbon monoxide, which are precursors to
6 smog;

7 (2) methyl tertiary butyl ether (referred to in
8 this Act as “MTBE”), an oxygenate selected by gas-
9 oline refiners to comply with regulations promul-
10 gated under the Clean Air Act (42 U.S.C. 7401 et
11 seq.), has been discovered in water sources through-
12 out the United States;

13 (3) MTBE renders water undrinkable and is
14 considered to be a probable carcinogen by the Envi-
15 ronmental Protection Agency;

16 (4) MTBE is highly soluble in water and slow
17 to degrade;

18 (5) as little as 1 gallon of MTBE can contami-
19 nate 26,000,000 gallons of water;

20 (6) ethanol, an alternative oxygenate, is a
21 biobased product that, as compared with MTBE—

22 (A) produces the same reductions in emis-
23 sions;

24 (B) is not as soluble in water;

25 (C) biodegrades rapidly; and

1 (D) is considered safe for the environment;

2 (7) the oxygenate requirement of the reformu-
3 lated gasoline program requires that 2 percent by
4 weight of an oxygenate be added to gasoline;

5 (8) because ethanol contains approximately
6 twice as much as oxygen as MTBE, supplying the
7 reformulated gasoline program with sufficient eth-
8 anol to replace MTBE would require half the volume
9 of MTBE currently used;

10 (9) the ethanol industry is expanding rapidly;

11 (10) ethanol production capacity in 1998 was
12 estimated at 1,800,000,000 gallons, but new produc-
13 tion facilities that began operation in 1999 have
14 greatly increased that capacity;

15 (11) a recent report completed for the Gov-
16 ernors' Ethanol Coalition concludes that the United
17 States ethanol industry could easily expand ethanol
18 production to more than 3,400,000,000 gallons by
19 2004, which would amply meet the demand for
20 oxygenates created by any MTBE phase-out without
21 causing supply shortages or increased consumer gas-
22 oline costs;

23 (12) the Department of Agriculture estimates
24 that replacing MTBE with ethanol would—

1 (A) increase the demand for corn for eth-
2 anol by more than 500,000,000 bushels each
3 year, improving the price of corn by 14 cents
4 per bushel each year and increasing average
5 total farm cash receipts by \$1,000,000,000
6 each year;

7 (B) create 13,000 new jobs; and

8 (C) increase the average annual United
9 States agricultural net export value by more
10 than \$200,000,000 and reduce the average an-
11 nual United States import value of MTBE by
12 \$1,100,000,000, resulting in an improved
13 United States trade balance of \$1,300,000,000
14 each year;

15 (13) ethanol is an energy-efficient fuel;

16 (14)(A) a 1995 report by the Department of
17 Agriculture estimated that 1 gallon of ethanol pro-
18 vides 25 percent more energy than is required to
19 produce the gallon; and

20 (B) other studies demonstrate that the net en-
21 ergy gain potential of ethanol could exceed 150 per-
22 cent when state-of-the-art agricultural and produc-
23 tion technologies are used;

24 (15) ethanol has been proven to enhance the
25 performance of automobiles, and all vehicle manu-

1 facturers approve the use of 10 percent ethanol-
2 blended fuels;

3 (16) replacing MTBE with ethanol would main-
4 tain the emission reductions obtained through the
5 reformulated gasoline program without the water
6 contamination problems associated with MTBE;

7 (17) in implementing Public Law 101–549 and
8 the amendments made by that Public Law (referred
9 to in this section as the “Clean Air Act Amendments
10 of 1990”), the Environmental Protection Agency re-
11 quires, by regulation, that each gallon of gasoline
12 sold under the reformulated gasoline program con-
13 tain a minimum of 1.5 percent by weight of oxygen-
14 ate;

15 (18) that requirement—

16 (A) was not the intent of Congress in en-
17 acting the oxygenate requirement; and

18 (B) prohibits the most efficient use of
19 oxygenates;

20 (19) rescinding that regulatory requirement
21 would provide—

22 (A) to refiners, more flexibility in com-
23 plying with the reformulated gasoline program;
24 and

1 (B) to consumers of gasoline, a stable sup-
2 ply of high performance gasoline;

3 (20) because increased flexibility in the use of
4 oxygenates could lead to increases in the use of aro-
5 matics (many of which are known carcinogens), and
6 in the emission of toxic air pollutants, a limit on the
7 quantity of aromatics added to gasoline and a prohi-
8 bition on an increase in emissions of toxic air pollut-
9 ants above the level achieved by using reformulated
10 gasoline are necessary to protect human health and
11 the environment;

12 (21) when Congress enacted the Clean Air Act
13 Amendments of 1990, volatile organic compounds
14 were thought to be the principal precursors to ozone
15 formation;

16 (22) the weight of the scientific evidence accu-
17 mulated since the enactment of the Clean Air Act
18 Amendments of 1990 indicates that carbon mon-
19 oxide is an increasingly significant ozone precursor;

20 (23) off-road engines generate high levels of
21 emissions of volatile organic compounds and carbon
22 monoxide relative to on-road engines, because off-
23 road engines are not typically equipped with emis-
24 sion control systems;

1 (24) emissions of volatile organic compounds
2 and carbon monoxide from off-road engines are sig-
3 nificantly reduced when oxygenates are present in
4 the fuel;

5 (25) adding oxygen to gasoline provides unique
6 air quality benefits that exceed those ensured by the
7 performance standards under the Clean Air Act (42
8 U.S.C. 7401 et seq.), including reductions in exhaust
9 hydrocarbons, carbon monoxide, and fine particu-
10 lates; and

11 (26) oxygenates are the only means of reducing
12 emissions from non-catalyst off-road engines that
13 are a major source of ozone pollution in urban areas.

14 **SEC. 3. USE OF MTBE AS A FUEL ADDITIVE.**

15 (a) PROHIBITION ON USE OF MTBE AND OTHER
16 ETHER COMPOUNDS.—Section 211(c) of the Clean Air
17 Act (42 U.S.C. 7545(c)) is amended by adding at the end
18 the following:

19 “(5) PROHIBITION ON USE OF MTBE AND
20 OTHER ETHER COMPOUNDS.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B), the regulations promulgated under
23 paragraph (1) shall prohibit the use of methyl
24 tertiary butyl ether or any other ether com-
25 pound as a fuel additive.

1 “(B) WAIVER.—The Administrator may by
2 regulation waive the prohibition under subpara-
3 graph (A) with respect to an ether compound
4 other than methyl tertiary butyl ether if the Ad-
5 ministrator determines that the use of the ether
6 compound as a fuel additive will not pose a sig-
7 nificant risk to human health or the environ-
8 ment.”.

9 (b) REGULATIONS.—As soon as practicable after the
10 date of enactment of this Act, the Administrator of the
11 Environmental Protection Agency shall revise the regula-
12 tions promulgated under section 211(c)(1) of the Clean
13 Air Act (42 U.S.C. 7545(c)(1)) to conform to the amend-
14 ment made by subsection (a).

15 (c) LABELING.—During the period beginning on the
16 date of enactment of this Act and ending 3 years after
17 that date, the Administrator of the Environmental Protec-
18 tion Agency shall require any person selling at retail gaso-
19 line that contains methyl tertiary butyl ether to promi-
20 nently label the fuel dispensing system for the gasoline
21 with a notice that the gasoline contains methyl tertiary
22 butyl ether.

23 (d) EFFECTIVE DATE.—Subsection (a) takes effect
24 3 years after the date of enactment of this Act.

1 **SEC. 4. CLEANUP GUIDELINES FOR CONTAMINATION OF**
 2 **WATER BY MTBE.**

3 Section 1442 of the Safe Drinking Water Act (42
 4 U.S.C. 300j-1) is amended by adding at the end the fol-
 5 lowing:

6 “(f) CLEANUP GUIDELINES FOR MTBE CONTAMINA-
 7 TION.—The Administrator shall develop technical guide-
 8 lines to assist States in the investigation and cleanup of
 9 methyl tertiary butyl ether in ground water.”.

10 **SEC. 5. OXYGEN AVERAGING UNDER THE REFORMULATED**
 11 **GASOLINE PROGRAM.**

12 (a) IN GENERAL.—Section 211(k) of the Clean Air
 13 Act (42 U.S.C. 7545(k)) is amended—

14 (1) in paragraphs (2)(B) and (3)(A)(v), by in-
 15 serting “averaged on an annual basis” after “2.0
 16 percent by weight” each place it appears; and

17 (2) in paragraph (2)(B), by adding at the end
 18 the following: “The regulations shall not specify a
 19 minimum oxygen content.”.

20 (b) REGULATIONS.—Not later than October 1, 2000,
 21 the Administrator of the Environmental Protection Agen-
 22 cy shall revise the regulations promulgated under section
 23 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) to con-
 24 form to the amendments made by subsection (a).

1 **SEC. 6. ANTI-BACKSLIDING.**

2 Section 211(k)(3)(B) of the Clean Air Act (42 U.S.C.
3 7545(k)(3)(B)) is amended—

4 (1) by striking “Any reduction” and inserting
5 the following:

6 “(iii) TREATMENT OF GREATER RE-
7 DUCTIONS.—Any reduction”; and

8 (2) by adding at the end the following:

9 “(iv) OZONE ANTI-BACKSLIDING PRO-
10 VISION.—

11 “(I) IN GENERAL.—Not later
12 than October 1, 2000, the Adminis-
13 trator shall revise the performance
14 standards under this subparagraph to
15 ensure that the ozone-forming poten-
16 tial, taking into account all ozone pre-
17 cursors (including volatile organic
18 compounds, oxides of nitrogen, and
19 carbon monoxide), of the aggregate
20 emissions during the high ozone sea-
21 son (as determined by the Adminis-
22 trator) from baseline vehicles when
23 using reformulated gasoline does not
24 exceed the ozone-forming potential of
25 the aggregate emissions during the
26 high ozone season from baseline vehi-

1 cles when using reformulated gasoline
2 that complies with the regulations
3 that—

4 “(aa) were in effect on Sep-
5 tember 1, 1999; and

6 “(bb) were applicable to re-
7 formulated gasoline sold in cal-
8 endar year 2000 and subsequent
9 calendar years.

10 “(II) ADJUSTMENT FOR EMIS-
11 SIONS OF CARBON MONOXIDE.—

12 “(aa) IN GENERAL.—In car-
13 rying out subclause (I), the Ad-
14 ministrators shall adjust the per-
15 formance standard for emissions
16 of volatile organic compounds
17 under this subparagraph to ac-
18 count for emissions of carbon
19 monoxide that are greater than
20 or less than the carbon monoxide
21 baseline determined under item
22 (bb).

23 “(bb) CARBON MONOXIDE
24 BASELINE.—The carbon mon-
25 oxide baseline shall be equal to

1 the mass carbon monoxide emis-
2 sions achieved by reformulated
3 gasoline that contains 2 percent
4 oxygen by weight and meets the
5 other performance standards
6 under this subparagraph.

7 “(III) UPDATING OF BASELINE
8 VEHICLES.—Not later than 3 years
9 after the date of enactment of this
10 clause, the Administrator shall revise
11 the performance standards under this
12 subparagraph by redefining the term
13 ‘baseline vehicles’ as used in this
14 clause to mean vehicles representative
15 of vehicles (including off-road vehi-
16 cles) in use as of January 1, 2000.

17 “(v) TOXICS AND PARTICULATE MAT-
18 TER ANTI-BACKSLIDING PROVISION.—

19 “(I) IN GENERAL.—Not later
20 than October 1, 2000, the Adminis-
21 trator shall revise the performance
22 standards under this subparagraph to
23 ensure that the aggregate emissions of
24 precursors of pollutants specified in
25 subclause (II) from baseline vehicles

1 when using reformulated gasoline do
2 not exceed the aggregate emissions of
3 precursors of pollutants specified in
4 subclause (II) from baseline vehicles
5 when using reformulated gasoline that
6 complies with the regulations that—

7 “(aa) were in effect on Jan-
8 uary 1, 2000; and

9 “(bb) were applicable to re-
10 formulated gasoline sold in cal-
11 endar year 2000 and subsequent
12 calendar years.

13 “(II) SPECIFIED POLLUTANTS.—
14 The pollutants referred to in sub-
15 clause (I) are—

16 “(aa) toxic air pollutants, as
17 measured according to their tox-
18 icity;

19 “(bb) PM-10; and

20 “(cc) fine particulate mat-
21 ter.

22 “(vi) AROMATIC CONTENT OF REFOR-
23 MULATED GASOLINE.—

24 “(I) AVERAGE.—Subject to sub-
25 clause (II), the average aromatic hy-

1 drocarbon content of reformulated
2 gasoline shall not exceed the average
3 aromatic hydrocarbon content of re-
4 formulated gasoline sold in covered
5 areas for use in baseline vehicles when
6 using reformulated gasoline during
7 calendar year 2000.

8 “(II) MAXIMUM.—No reformu-
9 lated gasoline shall have an aromatic
10 hydrocarbon content in excess of 30
11 percent.

12 “(vii) OLEFIN CONTENT OF REFOR-
13 MULATED GASOLINE.—

14 “(I) AVERAGE.—Subject to sub-
15 clause (II), the average olefin content
16 of reformulated gasoline shall not ex-
17 ceed the average olefin content of re-
18 formulated gasoline sold in covered
19 areas for use in baseline vehicles when
20 using reformulated gasoline during
21 calendar year 2000.

22 “(II) MAXIMUM.—No reformu-
23 lated gasoline shall have an olefin con-
24 tent in excess of 10 percent.”.

1 **SEC. 7. REVISION OF WAIVER PROVISION.**

2 Section 211(k) of the Clean Air Act (42 U.S.C.
3 7545(k)) is amended—

4 (1) in paragraph (2)(B), by striking the second
5 sentence;

6 (2) by redesignating paragraph (10) as para-
7 graph (11); and

8 (3) by inserting after paragraph (9) the fol-
9 lowing:

10 “(10) TEMPORARY REDUCTION OF OXYGEN
11 CONTENT REQUIREMENT.—

12 “(A) IN GENERAL.—If the Secretary of
13 Energy, with the concurrence of the Secretary
14 of Agriculture, finds that there is an insuffi-
15 cient domestic supply of oxygenates to meet the
16 oxygen content requirement of paragraphs
17 (2)(B) and (3)(A)(v), the Administrator may, in
18 accordance with section 307, promulgate regu-
19 lations temporarily reducing the oxygen content
20 requirement to the extent necessary to ensure
21 an adequate supply of oxygenates.

22 “(B) DURATION OF REDUCTION.—

23 “(i) IN GENERAL.—A temporary re-
24 duction in the oxygen content requirement
25 under subparagraph (A) shall remain in ef-
26 fect for a period of 90 days unless the Sec-

1 retary of Energy finds, before the end of
2 that period, that an adequate supply of
3 oxygenates exists.

4 “(ii) EXTENSION.—Upon the expira-
5 tion of the 90-day period under clause (i),
6 the temporary reduction in the oxygen con-
7 tent requirement may be extended for an
8 additional 90-day period in accordance
9 with subparagraph (A).

10 “(C) MAINTENANCE OF ENVIRONMENTAL
11 BENEFITS.—Regulations promulgated under
12 subparagraph (A) shall ensure that the environ-
13 mental benefits of reformulated gasoline are
14 maintained during the period of the temporary
15 reduction in the oxygen content requirement.”.

16 **SEC. 8. ADDITIONAL OPT-IN AREAS UNDER REFORMU-**
17 **LATED GASOLINE PROGRAM.**

18 Section 211(k)(6) of the Clean Air Act (42 U.S.C.
19 7545(k)(6)) is amended—

20 (1) by striking “(6) OPT-IN AREAS.—(A)
21 Upon” and inserting the following:

22 “(6) OPT-IN AREAS.—

23 “(A) CLASSIFIED AREAS.—

24 “(i) IN GENERAL.—Upon”;

1 (2) in subparagraph (B), by striking “(B) If”
2 and inserting the following:

3 “(ii) EFFECT OF INSUFFICIENT DO-
4 MESTIC CAPACITY TO PRODUCE REFORMU-
5 LATED GASOLINE.—If”;

6 (3) in subparagraph (A)(ii) (as so redesign-
7 nated)—

8 (A) in the first sentence, by striking “sub-
9 paragraph (A)” and inserting “clause (i)”; and

10 (B) in the second sentence, by striking
11 “this paragraph” and inserting “this subpara-
12 graph”; and

13 (4) by adding at the end the following:

14 “(B) NONCLASSIFIED AREAS.—

15 “(i) IN GENERAL.—Upon the applica-
16 tion of the Governor of a State, the Ad-
17 ministrator shall apply the prohibition
18 specified in paragraph (5) in any area in
19 the State that is not a covered area or an
20 area referred to in subparagraph (A)(i).

21 “(ii) PUBLICATION OF APPLICA-
22 TION.—As soon as practicable after receipt
23 of an application under clause (i), the Ad-
24 ministrator shall publish the application in
25 the Federal Register.”.

1 **SEC. 9. ANTI-DUMPING RULES.**

2 The Administrator of the Environmental Protection
3 Agency shall revise the regulations promulgated under sec-
4 tion 211(k)(8) of the Clean Air Act (42 U.S.C.
5 7545(k)(8)) to ensure that this Act and the amendments
6 made by this Act do not result in any increased emissions
7 in areas that are not covered areas (as defined in section
8 211(k)(11) of the Clean Air Act (as redesignated by sec-
9 tion 7(a)(2))).

10 **SEC. 10. STATE REASONABLE FURTHER PROGRESS DEM-**
11 **ONSTRATIONS.**

12 Section 182(c)(2)(B) of the Clean Air Act (42 U.S.C.
13 7511a(c)(2)(B)) is amended by adding at the end the fol-
14 lowing: “In making the demonstration required under this
15 subparagraph, a State may claim as a credit toward the
16 requirement for VOC emission reductions an amount
17 equivalent to the ozone-forming potential of carbon mon-
18 oxide emission reductions attributable to any amount by
19 which the average oxygen content of reformulated gasoline
20 sold in the State exceeds 2 percent.”.

21 **SEC. 11. PREVENTION OF EFFECTS ON HIGHWAY APPOR-**
22 **TIONMENTS.**

23 (a) SURFACE TRANSPORTATION PROGRAM.—Section
24 104(b)(3) of title 23, United States Code, is amended by
25 adding at the end the following:

1 “(C) DETERMINATION OF ESTIMATED TAX
2 PAYMENTS.—For the purpose of determining
3 under subparagraph (A)(iii) the estimated tax
4 payments attributable to highway users in a
5 State paid into the Highway Trust Fund (other
6 than the Mass Transit Account) in a fiscal
7 year, the amount paid into the Highway Trust
8 Fund with respect to the sale of gasohol or
9 other fuels containing alcohol by reason of the
10 tax imposed by section 4041 (relating to special
11 fuels) or 4081 (relating to gasoline) of the In-
12 ternal Revenue Code of 1986 shall be treated as
13 being equal to the amount that would have been
14 so imposed with respect to that sale without re-
15 gard to the reduction in revenues resulting from
16 the application of the regulations promulgated
17 under section 211(c)(5) of the Clean Air Act
18 (42 U.S.C. 7545(c)(5)) and the following provi-
19 sions of the Internal Revenue Code of 1986:

20 “(i) Section 4041(b)(2) (relating to
21 exemption for qualified methanol and eth-
22 anol fuel).

23 “(ii) Section 4041(k) (relating to fuels
24 containing alcohol).

1 “(iii) Section 4041(m) (relating to
2 certain alcohol fuels).

3 “(iv) Section 4081(c) (relating to re-
4 duced rate on gasoline mixed with alco-
5 hol).”.

6 (b) MINIMUM GUARANTEE.—Section 105(f)(1) of
7 title 23, United States Code, is amended—

8 (A) by striking “(1) IN GENERAL.—Be-
9 fore” and inserting the following: “(1) IN GEN-
10 ERAL.—

11 “(A) ADJUSTMENT.—Before”; and

12 (B) by adding at the end the following:

13 “(B) DETERMINATION OF ESTIMATED TAX
14 PAYMENTS.—For the purpose of determining
15 under this subsection the estimated tax pay-
16 ments attributable to highway users in a State
17 paid into the Highway Trust Fund (other than
18 the Mass Transit Account) in a fiscal year, the
19 amount paid into the Highway Trust Fund with
20 respect to the sale of gasohol or other fuels con-
21 taining alcohol by reason of the tax imposed by
22 section 4041 (relating to special fuels) or 4081
23 (relating to gasoline) of the Internal Revenue
24 Code of 1986 shall be treated as being equal to
25 the amount that would have been so imposed

1 with respect to that sale without regard to the
2 reduction in revenues resulting from the appli-
3 cation of the regulations promulgated under
4 section 211(c)(5) of the Clean Air Act (42
5 U.S.C. 7545(c)(5)) and the following provisions
6 of the Internal Revenue Code of 1986:

7 “(i) Section 4041(b)(2) (relating to
8 exemption for qualified methanol and eth-
9 anol fuel).

10 “(ii) Section 4041(k) (relating to fuels
11 containing alcohol).

12 “(iii) Section 4041(m) (relating to
13 certain alcohol fuels).

14 “(iv) Section 4081(c) (relating to re-
15 duced rate on gasoline mixed with alco-
16 hol).”

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