

106TH CONGRESS
2D SESSION

S. 2962

To amend the Clean Air Act to address problems concerning methyl tertiary butyl ether, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2000

Mr. SMITH of New Hampshire 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 address problems concerning methyl tertiary butyl ether, 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 “Federal Reformulated
5 Fuels Act of 2000”.

6 **SEC. 2. WAIVER OF OXYGEN CONTENT REQUIREMENT FOR**
7 **REFORMULATED GASOLINE.**

8 Section 211(k)(1) of the Clean Air Act (42 U.S.C.
9 7545(k)(1)) is amended—

1 (1) by striking “Within 1 year after the enact-
2 ment of the Clean Air Act Amendments of 1990,”
3 and inserting the following:

4 “(A) IN GENERAL.—Not later than No-
5 vember 15, 1991,”; and

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

7 “(B) WAIVER OF OXYGEN CONTENT RE-
8 QUIREMENT.—

9 “(i) AUTHORITY OF THE GOV-
10 ERNOR.—

11 “(I) IN GENERAL.—Notwith-
12 standing any other provision of this
13 subsection, a Governor of a State,
14 upon notification by the Governor to
15 the Administrator during the 90-day
16 period beginning on the date of enact-
17 ment of this subparagraph, may waive
18 the application of paragraphs (2)(B)
19 and (3)(A)(v) to gasoline sold or dis-
20 pensed in the State.

21 “(II) OPT-IN AREAS.—A Gov-
22 ernor of a State that submits an ap-
23 plication under paragraph (6) may, as
24 part of that application, waive the ap-
25 plication of paragraphs (2)(B) and

1 (3)(A)(v) to gasoline sold or dispensed
2 in the State.

3 “(ii) TREATMENT AS REFORMULATED
4 GASOLINE.—In the case of a State for
5 which the Governor invokes the waiver de-
6 scribed in clause (i), gasoline that complies
7 with all provisions of this subsection other
8 than paragraphs (2)(B) and (3)(A)(v) shall
9 be considered to be reformulated gasoline
10 for the purposes of this subsection.

11 “(iii) EFFECTIVE DATE OF WAIVER.—
12 A waiver under clause (i) shall take effect
13 on the earlier of—

14 “(I) the date on which the per-
15 formance standard under subpara-
16 graph (C) takes effect; or

17 “(II) the date that is 270 days
18 after the date of enactment of this
19 subparagraph.

20 “(C) MAINTENANCE OF TOXIC AIR POL-
21 LUTANT EMISSION REDUCTIONS.—

22 “(i) IN GENERAL.—As soon as prac-
23 ticable after the date of enactment of this
24 subparagraph, the Administrator shall—

1 “(I) promulgate regulations con-
2 sistent with subparagraph (A) and
3 paragraph (3)(B)(ii) to ensure that
4 reductions of toxic air pollutant emis-
5 sions achieved under the reformulated
6 gasoline program under this section
7 before the date of enactment of this
8 subparagraph are maintained in
9 States for which the Governor waives
10 the oxygenate requirement under sub-
11 paragraph (B)(i); or

12 “(II) determine that the require-
13 ment described in clause (iv)—

14 “(aa) is consistent with the
15 bases for a performance standard
16 described in clause (ii); and

17 “(bb) shall be deemed to be
18 the performance standard under
19 clause (ii) and shall be applied in
20 accordance with clause (iii).

21 “(ii) PERFORMANCE STANDARD.—The
22 Administrator, in regulations promulgated
23 under clause (i)(I), shall establish an an-
24 nual average performance standard based
25 on—

1 “(I) compliance survey data;

2 “(II) the annual aggregate reduc-
3 tions in emissions of toxic air pollut-
4 ants achieved under the reformulated
5 gasoline program during calendar
6 years 1998 and 1999, determined on
7 the basis of the volume of reformu-
8 lated gasoline containing methyl ter-
9 tiary butyl ether that is sold through-
10 out the United States; and

11 “(III) such other information as
12 the Administrator determines to be
13 appropriate.

14 “(iii) APPLICABILITY.—

15 “(I) IN GENERAL.—The perform-
16 ance standard under clause (ii) shall
17 be applied on an annual average refin-
18 ery-by-refinery basis to all reformu-
19 lated gasoline that is sold or intro-
20 duced into commerce by the refinery
21 in a State for which the Governor
22 waives the oxygenate requirement
23 under subparagraph (B)(i).

24 “(II) MORE STRINGENT RE-
25 QUIREMENTS.—The performance

1 standard under clause (ii) shall not
2 apply to the extent that any require-
3 ment under section 202(l) is more
4 stringent than the performance stand-
5 ard.

6 “(III) STATE STANDARDS.—The
7 performance standard under clause
8 (ii) shall not apply in any State that
9 has received a waiver under section
10 209(b).

11 “(IV) CREDIT PROGRAM.—The
12 Administrator shall provide for the
13 granting of credits for exceeding the
14 performance standard under clause
15 (ii) in the same manner as provided in
16 paragraph (7).

17 “(iv) STATUTORY PERFORMANCE
18 STANDARD.—

19 “(I) IN GENERAL.—Subject to
20 subclause (III), if the regulations
21 under clause (i)(I) have not been pro-
22 mulgated by the date that is 270 days
23 after the date of enactment of this
24 subparagraph, the requirement de-
25 scribed in subclause (II) shall be

1 deemed to be the performance stand-
 2 ard under clause (ii) and shall be ap-
 3 plied in accordance with clause (iii).

4 “(II) TOXIC AIR POLLUTANT
 5 EMISSIONS.—The aggregate emissions
 6 of toxic air pollutants from baseline
 7 vehicles when using reformulated gas-
 8 oline shall be 27.5 percent below the
 9 aggregate emissions of toxic air pol-
 10 lutants from baseline vehicles when
 11 using baseline gasoline.

12 “(III) SUBSEQUENT REGULA-
 13 TIONS.—The Administrator may mod-
 14 ify the performance standard estab-
 15 lished under subclause (I) through
 16 promulgation of regulations under
 17 clause (i)(I).”.

18 **SEC. 3. SALE OF GASOLINE CONTAINING MTBE.**

19 Section 211(c) of the Clean Air Act (42 U.S.C.
 20 7545(c)) is amended—

21 (1) in paragraph (1)(A)—

22 (A) by inserting “fuel or fuel additive or”
 23 after “Administrator any”; and

1 (B) by striking “air pollution which” and
2 inserting “air pollution, or water pollution,
3 that”;

4 (2) in paragraph (4)(B), by inserting “or water
5 quality protection,” after “emission control,”; and

6 (3) by adding at the end the following:

7 “(5) DETERMINATION BY THE ADMINISTRATOR
8 WHETHER TO BAN USE OF MTBE.—

9 “(A) IN GENERAL.—Not later than 4 years
10 after the date of enactment of this paragraph,
11 the Administrator shall ban use of methyl ter-
12 tiary butyl ether in gasoline unless the Adminis-
13 trator determines that the use of methyl ter-
14 tiary butyl ether in accordance with paragraph
15 (6) poses no substantial risk to water quality,
16 air quality, or human health.

17 “(B) REGULATIONS CONCERNING PHASE-
18 OUT.—The Administrator may establish by reg-
19 ulation a schedule to phase out the use of meth-
20 yl tertiary butyl ether in gasoline during the pe-
21 riod preceding the effective date of the ban
22 under subparagraph (A).

23 “(6) LIMITATIONS ON SALE OF GASOLINE CON-
24 TAINING MTBE.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), if the Administrator makes the de-
3 termination described in paragraph (5), for the
4 fourth full calendar year that begins after the
5 date of enactment of this paragraph and each
6 calendar year thereafter—

7 “(i) the quantity of gasoline sold or
8 introduced into commerce during the cal-
9 endar year by a refiner, blender, or im-
10 porter of gasoline shall contain on average
11 not more than 1 percent by volume methyl
12 tertiary butyl ether; and

13 “(ii) no person shall sell or introduce
14 into commerce any gasoline that contains
15 more than a specified percentage by vol-
16 ume methyl tertiary butyl ether, as deter-
17 mined by the Administrator by regulation.

18 “(B) REGULATIONS CONCERNING TRAD-
19 ING.—

20 “(i) IN GENERAL.—The Administrator
21 may promulgate regulations that provide
22 for the granting of an appropriate amount
23 of credits to a person that refines, blends,
24 or imports, and certifies to the Adminis-
25 trator, gasoline or a slate of gasoline that

1 has a methyl tertiary butyl ether content
2 that is less than the maximum methyl ter-
3 tiary butyl ether content specified in sub-
4 paragraph (A)(i).

5 “(ii) USE OF CREDITS.—The regula-
6 tions promulgated under clause (i) shall
7 provide that a person that is granted cred-
8 its may use the credits, or transfer all or
9 a portion of the credits to another person,
10 for the purpose of complying with the max-
11 imum methyl tertiary butyl ether content
12 requirement specified in subparagraph
13 (A)(i).

14 “(iii) MAXIMUM ANNUAL LIMITA-
15 TION.—The regulations promulgated under
16 clause (i) shall ensure that the total quan-
17 tity of gasoline sold or introduced into
18 commerce during any calendar year by all
19 refiners, blenders, or importers contains on
20 average not more than 1 percent by volume
21 methyl tertiary butyl ether.

22 “(C) TEMPORARY WAIVER OF LIMITA-
23 TIONS.—

24 “(i) IN GENERAL.—If the Adminis-
25 trator, in consultation with the Secretary

1 of Energy, finds, on the Administrator's
2 own motion or on petition of any person,
3 that there is an insufficient domestic ca-
4 pacity to produce or import gasoline, the
5 Administrator may, in accordance with sec-
6 tion 307, temporarily waive the limitations
7 imposed under subparagraph (A).

8 “(ii) DURATION OF REDUCTION.—

9 “(I) IN GENERAL.—A waiver
10 under clause (i) shall remain in effect
11 for a period of 15 days unless the Ad-
12 ministrator, in consultation with the
13 Secretary of Energy, finds, before the
14 end of that period, that there is suffi-
15 cient domestic capacity to produce or
16 import gasoline.

17 “(II) EXTENSION.—Upon the ex-
18 piration of the 15-day period under
19 subclause (I), the waiver may be ex-
20 tended for an additional 15-day period
21 in accordance with clause (i).

22 “(iii) DEADLINE FOR ACTION ON PE-
23 TITIONS.—The Administrator shall act on
24 any petition submitted under clause (i)

1 within 7 days after the date of receipt of
2 the petition.

3 “(iv) INAPPLICABILITY OF CERTAIN
4 REQUIREMENTS.—Section 307(d) of this
5 Act and sections 553 through 557 of title
6 5, United States Code, shall not apply to
7 any action on a petition submitted under
8 clause (i).

9 “(v) STATE AUTHORITY.—At the op-
10 tion of a State, a waiver under clause (i)
11 shall not apply to any area with respect to
12 which the State has exercised authority
13 under any other provision of law (including
14 subparagraph (D)) to limit the sale or use
15 of methyl tertiary butyl ether.

16 “(D) STATE PETITIONS TO ELIMINATE USE
17 OF MTBE.—

18 “(i) IN GENERAL.—A State may sub-
19 mit to the Administrator a petition re-
20 questing authority to eliminate the use of
21 methyl tertiary butyl ether in gasoline sold
22 or introduced into commerce in the State
23 in order to protect air quality, water qual-
24 ity, or human health.

1 “(ii) DEADLINE FOR ACTION ON PETI-
2 TIONS.—The Administrator shall grant or
3 deny any petition submitted under clause
4 (i) within 180 days after the date of re-
5 ceipt of the petition.”.

6 **SEC. 4. CONVENTIONAL GASOLINE.**

7 (a) IN GENERAL.—Section 211(k)(1) of the Clean
8 Air Act (42 U.S.C. 7545(k)(1)) (as amended by section
9 2) is amended by adding at the end the following:

10 “(D) CONVENTIONAL GASOLINE.—

11 “(i) IN GENERAL.—Not later than Oc-
12 tober 1, 2007—

13 “(I) the Administrator shall de-
14 termine whether the use of conven-
15 tional gasoline during the period of
16 calendar years 2005 and 2006 re-
17 sulted in a greater volume of emis-
18 sions of criteria air pollutants listed
19 under section 108, and precursors of
20 those pollutants, determined on the
21 basis of a weighted average of those
22 pollutants and precursors, than the
23 volume of such emissions during the
24 period of calendar years 1998 and
25 1999; and

1 (1) by striking “may also” and inserting “shall,
2 on a regular basis,”; and

3 (2) by striking subparagraph (A) and inserting
4 the following:

5 “(A) to conduct tests to determine poten-
6 tial public health and environmental effects of
7 the fuel or additive (including carcinogenic,
8 teratogenic, or mutagenic effects); and”.

9 **SEC. 6. COMPREHENSIVE FUEL STUDY.**

10 Section 211 of the Clean Air Act (42 U.S.C. 7545)
11 is amended—

12 (1) by redesignating subsection (o) as sub-
13 section (p); and

14 (2) by inserting after subsection (n) the fol-
15 lowing:

16 “(o) COMPREHENSIVE FUEL STUDY.—

17 “(1) IN GENERAL.—Not later than 5 years
18 after the date of enactment of this paragraph and
19 every 5 years thereafter, the Administrator shall
20 submit to Congress a report—

21 “(A) describing reductions in emissions of
22 criteria air pollutants listed under section 108,
23 or precursors of those pollutants, that result
24 from implementation of this section;

1 “(B) describing reductions in emissions of
2 toxic air pollutants that result from implemen-
3 tation of this section;

4 “(C) in consultation with the Secretary of
5 Energy, describing reductions in greenhouse gas
6 emissions that result from implementation of
7 this section; and

8 “(D)(i) describing regulatory options to
9 achieve reductions in the risk to public health
10 and the environment posed by fuels and fuel
11 additives—

12 “(I) taking into account the produc-
13 tion, handling, and consumption of the
14 fuels and fuel additives; and

15 “(II) focusing on options that reduce
16 the use of compounds or associated emis-
17 sion products that pose the greatest risk;
18 and

19 “(ii) making recommendations concerning
20 any statutory changes necessary to implement
21 the regulatory options described under clause
22 (i).

23 “(2) LIFE CYCLE EMISSIONS ANALYSIS.—In de-
24 termining criteria air pollutant and greenhouse gas
25 emission reductions under paragraph (1), the Ad-

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

2 “(B) NONCLASSIFIED AREAS.—

3 “(i) IN GENERAL.—In accordance
4 with section 110, a State may submit to
5 the Administrator, and the Administrator
6 may approve, a State implementation plan
7 revision that provides for application of the
8 prohibition specified in paragraph (5) in
9 any portion of the State that is not a cov-
10 ered area or an area referred to in sub-
11 paragraph (A)(i).

12 “(ii) PERIOD OF EFFECTIVENESS.—
13 Under clause (i), the State implementation
14 plan shall establish a period of effective-
15 ness for applying the prohibition specified
16 in paragraph (5) to a portion of a State
17 that—

18 “(I) commences not later than 1
19 year after the date of approval by the
20 Administrator of the State implemen-
21 tation plan; and

22 “(II) ends not earlier than 4
23 years after the date of commencement
24 under subclause (I).”.

1 **SEC. 8. LEAKING UNDERGROUND STORAGE TANKS.**

2 (a) USE OF LUST FUNDS FOR REMEDIATION OF
3 MTBE CONTAMINATION.—Section 9003(h) of the Solid
4 Waste Disposal Act (42 U.S.C. 6991b(h)) is amended—

5 (1) in paragraph (7)(A), by striking “para-
6 graphs (1) and (2) of this subsection,” and inserting
7 “paragraphs (1), (2), and (12),”; and

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

9 “(12) REMEDIATION OF MTBE CONTAMINA-
10 TION.—

11 “(A) IN GENERAL.—The Administrator
12 and the States may use funds made available
13 under subparagraph (B) to carry out corrective
14 actions with respect to a release of methyl ter-
15 tiary butyl ether that presents a risk to human
16 health, welfare, or the environment.

17 “(B) APPLICABLE AUTHORITY.—Subpara-
18 graph (A) shall be carried out—

19 “(i) in accordance with paragraph (2);
20 and

21 “(ii) in the case of a State, in a man-
22 ner consistent with a cooperative agree-
23 ment entered into by the Administrator
24 and the State under paragraph (7).

25 “(C) AUTHORIZATION OF APPROPRIA-
26 TIONS.—There is authorized to be appropriated

1 from the Leaking Underground Storage Tank
2 Trust Fund to carry out subparagraph (A)
3 \$200,000,000 for fiscal year 2001, to remain
4 available until expended.”.

5 (b) RELEASE PREVENTION.—Subtitle I of the Solid
6 Waste Disposal Act (42 U.S.C. 6991 et seq.) is
7 amended—

8 (1) by redesignating section 9010 as section
9 9011; and

10 (2) by inserting after section 9009 the fol-
11 lowing:

12 **“SEC. 9010. RELEASE PREVENTION.**

13 “(a) IMPLEMENTATION OF PREVENTATIVE MEAS-
14 URES.—The Administrator (or a State pursuant to section
15 9003(h)(7)) may use funds appropriated from the Leaking
16 Underground Storage Tank Trust Fund for—

17 “(1) necessary expenses directly related to the
18 implementation of section 9003(h);

19 “(2) enforcement of—

20 “(A) this subtitle;

21 “(B) a State program approved under sec-
22 tion 9004; or

23 “(C) State requirements regulating under-
24 ground storage tanks that are similar or iden-
25 tical to this subtitle; and

1 “(3) inspection of underground storage tanks.

2 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
3 are authorized to be appropriated from the Leaking Un-
4 derground Storage Tank Trust Fund to carry out sub-
5 section (a)—

6 “(1) \$50,000,000 for fiscal year 2001; and

7 “(2) \$30,000,000 for each of fiscal years 2002
8 through 2005.”.

9 (c) TECHNICAL AMENDMENTS.—

10 (1) Section 1001 of the Solid Waste Disposal
11 Act (42 U.S.C. prec. 6901) is amended by striking
12 the item relating to section 9010 and inserting the
13 following:

“Sec. 9010. Release prevention.

“Sec. 9011. Authorization of appropriations.”.

14 (2) Section 9001(3)(A) of the Solid Waste Dis-
15 posal Act (42 U.S.C. 6991(3)(A)) is amended by
16 striking “sustances” and inserting “substances”.

17 (3) Section 9003(f)(1) of the Solid Waste Dis-
18 posal Act (42 U.S.C. 6991b(f)(1)) is amended by
19 striking “subsection (c) and (d) of this section” and
20 inserting “subsections (c) and (d)”.

21 (4) Section 9004(a) of the Solid Waste Disposal
22 Act (42 U.S.C. 6991c(a)) is amended in the first
23 sentence by striking “referred to” and all that fol-

1 lows and inserting “referred to in subparagraph (A)
2 or (B), or both, of section 9001(2).”.

3 (5) Section 9005 of the Solid Waste Disposal
4 Act (42 U.S.C. 6991d) is amended—

5 (A) in subsection (a), by striking “study
6 taking” and inserting “study, taking”;

7 (B) in subsection (b)(1), by striking
8 “relevent” and inserting “relevant”; and

9 (C) in subsection (b)(4), by striking
10 “Environmental” and inserting “Environ-
11 mental”.

○