Bob Slaughter
President

NPRA

National Petrochemical & Refiners Association

1899 L Street, NW
Suite 1000
Washington, DC
20036.3896

202.457.0480 voice
202.457.0486 fax
bslaughter@npra.org

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Mr. William Werhum
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency (Mail Code: 6101A)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Draft SIP Boutique Fuels List, 71 FR 32532
Docket ID No. EPA-HQ-OAR-2006-0340

Dear Administrator Werhum:

NPRA, the National Petrochemical & Refiners Association, appreciates the opportunity to submit the enclosed comments on the draft SIP Boutique Fuels List. NPRA is a national trade association with 450 members, including those who own or operate virtually all U.S. refining capacity, as well as most of the nation's petrochemical manufacturers with processes similar to those of refiners. Our members will be significantly affected by any changes in fuel specifications.

NPRA believes it is possible to enjoy reliable and affordable fuel supplies while maintaining and advancing the nation's environmental progress. However, this goal can only be achieved if the costs and benefits of new regulatory requirements are carefully weighed in the context of their impact on energy supplies. Continued failure to consider and balance supply implications with air quality impacts and fuel choices risks making the current transportation fuels market situation worse in the future.

A great deal of attention has been directed to national maps detailing the varied gasoline specifications required across the nation. Those maps were prepared to explain two things: 1) the logistical considerations in serving gasoline markets, and 2) the fact that certain areas have chosen a special fuel offering the most environmentally sound, economically justifiable approach to their specific clean air and consumer needs. With the agreement of stakeholders, i.e., regulators, public interest groups, and refiners, these fuels were selected over the more costly and potentially problematic option of federal reformulated gasoline (RFG).

NPRA supports the EPA preemption review process and the expansion of the scope of this analysis in section 1541 of last year's energy bill. Clean Air Act section 211(c)(4)(C) was amended by the Energy Policy Act of 2005 to make it the joint responsibility of EPA and DOE to review motor fuel control choices by states and require that both agencies consider the regional supply implications of such requests. Before granting a waiver of federal preemption, the Administrator of EPA is required, after consultation with the Secretary of Energy and after notice and comment, to find that the fuel control choice will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas. NPRA strongly supports this analysis of supply-side impacts.

New state biofuel mandates are not currently subject to the requirement that they be examined by EPA for their impact on fuel production and the fuel distribution system. NPRA believes that they should be. If there is no mechanism to assess the impact of these state mandates on fuel supply and distribution, NPRA believes that the Clean Air Act should be amended by Congress explicitly to preempt these programs.

EPA explains the merits of federal preemption in the preamble for the federal RFG and anti-dumping final rules, which includes the following statements:

> *The regulations proposed here will affect virtually all of the gasoline in the United States. As opposed to commodities that are produced and sold in the* same *area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution suggests that federal rules should preempt State action to avoid an inefficient patchwork of potentially conflicting regulations.* 59 FR 7809.

To summarize NPRA's position on this matter, the federal preemption provisions in the Clean Air Act preserve a rational motor fuel supply by precluding states from unilateral adoption of unique specifications unless EPA grants a waiver. The Agency should also be required to grant a waiver for any new state biofuel regulation after consultation with the Secretary of Energy, with notice and comment requirements, and after making a finding that the fuel control choice will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas. Otherwise, such programs should be preempted.

Furthermore, the Agency should align NAAQS attainment deadlines with the schedule of Federal mobile source controls, specifically the heavy-duty highway and nonroad diesel sulfur and tailpipe emissions standards. With additional time to comply with NAAQS, states can obtain credit for existing federal mobile source requirements that will significantly reduce emissions and avoid unnecessary local controls and costs.

Sincerely yours,

Bob Slaughter
President

cc: Margo Oge (EPA, OTAQ)
Anne Pastorkovich (EPA, OTAQ)
Docket ID No. EPA-HQ-OAR-2006-0340

COMMENTS OF NPRA

THE NATIONAL PETROCHEMICAL & REFINERS ASSOCIATION

ON

EPA'S DRAFT SIP BOUTIQUE FUELS LIST (71 FR 32532)
Docket ID No. EPA-HQ-OAR-2006-0340

A. Use of the "Fuel Type Interpretation" in the final SIP Boutique Fuels List

NPRA supports the Agency's selection of the "Fuel Type Interpretation." This concept follows Congressional intent and establishes a reasonable framework. NPRA also agrees with EPA's reasoning that the total number of states that have adopted a specific fuel type within a PADD is not an important factor. Rather, it is only important that the specific fuel type adopted was in an EPA-approved SIP as of September 1, 2004.

B. Consultation with DOE

Section 1541(b) of the Energy Policy Act of 2005 requires the Agency to consult with the Secretary of Energy to determine the total number of fuels. NPRA suggests that the results of these discussions, if initiated, be made part of the official record. If this consultation has not taken place, NPRA suggests that it be conducted without further delay.

C. Summer 9.0 psi RVP gasoline should not be counted as a SIP boutique fuel.

NPRA supports EPA's decision to exclude summer 9.0 psi RVP gasoline from the list of SIP boutique fuels (71 FR 32534). This is a federal Phase II RVP fuel and, as such, can not be considered as a boutique fuel under the current definition.

D. Federal Phase II 7.8 psi RVP gasoline should not be counted as a SIP boutique fuel.

NPRA supports EPA's decision to exclude summer 7.8 psi RVP gasoline required by the federal Phase II RVP rule (see 40 CFR 80.27) from the list of SIP boutique fuels (i.e., Charlotte, Greensboro, Winston-Salem, Raleigh, and Durham, NC; Nashville and Memphis, TN; and many parishes in Louisiana). This is a federal fuel and, as such, is not a boutique fuel under the current definition.

E. The SIP Boutique Fuels List significantly limits state options.

There are few motor fuel options (other than federal RFG) available for future SIP revisions. Using EPA's proposed list, there is only one option in PADD 4 and three options in PADDs 1, 2, 3, and 5:

SIP BOUTIQUE FUELS LIST

PADD	Options
1	summer 7.0 psi RVP gasoline
1	summer 7.0 psi RVP gasoline with sulfur provisions
1	summer 7.8 psi RVP gasoline
2	summer 7.0 psi RVP gasoline
2	summer 7.2 psi RVP gasoline
2	summer 7.8 psi RVP gasoline
3	summer 7.0 psi RVP gasoline
3	summer 7.8 psi RVP gasoline
3	Texas low emission diesel
4	summer 7.0 psi RVP gasoline (default)
5	summer 7.0 psi RVP gasoline
5	AZ Cleaner-burning Gasoline
5	winter NV Cleaner-burning Gasoline

This list includes summer 7.0 psi RVP gasoline in PADD 4 because "the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid Vapor Pressure of 7.0 psi." See Clean Air Act section 211(c)(4)(C)(v)(V). Therefore, this default option is always available in all PADDs.

The Energy Policy Act of 2005 restricts (caps) the available choices of SIP boutique fuels by PADD because EPA can approve a SIP boutique fuel only if it is already on the official list in the same PADD (see CAA section 211(c)(4)(C)(v)(V)). If EPA finalizes the above list, there is only one SIP boutique fuel option in PADD 4 and three SIP boutique fuel options in PADDs 1, 2, 3 and 5.

In making the required reviews of potential supply impacts when considering any state SIP proposal for a fuel control, EPA should recognize that this list of SIP boutique fuels is only a subset of a larger list of fuel types existing due to federal and state requirements for air quality improvement or agricultural supports. Fuel fungibility and distribution issues are raised not just by the SIP boutique fuels, but by this other larger universe of boutique fuels as well, either alone or in conjunction with the SIP boutique fuels. Among other fuels that can impact fuel fungibility and distribution are federal and CARB RFG, winter oxygenated gasoline program fuels, the federal Phase II 7.8 psi RVP gasoline program, and current and projected state biofuel mandates.

Considering these other non-SIP fuel types increases the actual number of fuel blends. The potential for fuel fungibility and distribution conflicts should be of concern. This situation particularly occurs during periods of supply strain or disruption when alternative sources of supply are needed to meet a shortfall in a local area in which one of this larger universe of fuel types is required. This fact was underscored last year because a significant number of the waivers needed to address the aftermath of Hurricanes Katrina and Rita were federal RFG waivers, not SIP boutique fuel waivers.

F. The procedures for the addition of a new fuel should be clarified.

If EPA's final SIP Boutique Fuels List matches this proposed Fuel Type Interpretation list, the official number of boutique fuels will be 7, and 7 will be the maximum number of boutique fuels. The legislation explicitly prohibits the Agency from reducing the number of boutique fuels from the original official list.

Each of these 7 fuels will remain on the official list as long as it remains in at least one EPA-approved SIP. EPA will remove a fuel from this list of 7 if it ceases to be included in at least one EPA-approved SIP. The second way the Agency can remove a fuel is "if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, . . ." (see CAA section 211(c)(4)(C)(v)(III)).

If any particular fuel is removed, then EPA can approve a new fuel that is not on the original official list. Using a hypothetical example, assume that "summer 7.0 psi RVP gasoline with sulfur provisions" is removed from the list. Then the revised list has 6 fuels and one new fuel could be approved. Since "summer 7.0 psi RVP gasoline with sulfur provisions" was only used in PADD 1, can a new fuel only be used in PADD 1, or can it be used in any PADD? Could a state in PADD 3, for example, offer a new fuel to replace "summer 7.0 psi RVP gasoline with sulfur provisions"? If a state in PADD 3 was allowed to offer a new fuel to replace "summer 7.0 psi RVP gasoline with sulfur provisions," would this violate the PADD cap as outlined in the CAA section 211(c)(4)(C)(v)(V)?

> *"The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least one State implementation plan in the applicable Petroleum Administration for Defense District."*

If a state in PADD 3, for example, was allowed to offer a new fuel to replace "summer 7.0 psi RVP gasoline with sulfur provisions" in PADD 1, then states in PADD 3 would have a new alternative and states in PADD 1 would lose an alternative. Does EPA believe that Congress intended that the number of options in a PADD could increase or decrease?

EPA will face a difficult task if one fuel is removed from the approved list and more than one new fuel is proposed as its replacement. What criteria will the Agency employ to determine which competing application will be accepted? As EPA addresses this potential conflict, NPRA suggests that fuel supply should not be taken for granted. Last year's energy bill requires that "the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, such control or prohibition respecting a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas." CAA section 211(c)(4)(C)(v)(IV). Although this review is necessary, it may not be sufficient to select a new fuel when two or more are proposed. When only one fuel is removed from the list and more than one new fuel is proposed, other factors (i.e., air quality impacts, cost-effectiveness and consumer costs) should also be considered.

G. New state ethanol and biodiesel mandates should be expressly preempted.

NPRA is concerned about the proliferation of new state ethanol and biodiesel mandates. Congress did not anticipate this activity when it passed the Energy Policy Act of 2005. EPA and the Administration should support Clean Air Act amendments that expressly state that new state ethanol and biodiesel mandates are preempted. At the very least, new state ethanol and biodiesel mandates should be subject to the same fuel supply, distribution and producibility review which is required for changes in local gasoline and diesel standards. Congress and the Administration should not take a pass on considering the potentially serious impacts of politically popular but otherwise economically and environmentally detrimental additional new ethanol and biodiesel mandates. Without such a requirement, the result will undoubtedly be a proliferation of fuel requirements with negative impact on supply and considerable interference with implementation of the federal Renewable Fuel Standard (e.g., credit trading, averaging, banking credits, identifying liable parties).

H. EPA should align NAAQS deadlines.

Key drivers for future boutique fuel proliferation are the 8-hour ozone NAAQS and the PM2.5 NAAQS. Some areas will doubtless seek to add motor fuel controls as they develop SIPs to demonstrate attainment, especially where stationary source options are limited or can not be implemented quickly. Thus, states locked into unreasonable timeframes due to unrealistic NAAQS classifications will look to short-term localized fuel controls to meet these unnecessarily compressed NAAQS attainment deadlines. These NAAQS deadlines are not aligned with other Federal controls, either existing or in stages of implementation (i.e., Tier 2 gasoline sulfur and vehicle tailpipe emissions

standards, heavy-duty highway and nonroad diesel sulfur and tailpipe emissions standards, etc.). This situation not only prevents states from counting real and significant emissions reductions in the time required for NAAQS compliance, but also adds considerable and unnecessary cost to NAAQS compliance. States need more time to demonstrate attainment or to obtain credit for existing federal regulatory requirements, such as ULSD and CAIR programs, that will deliver substantial emissions reductions over time.