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Vice President Government and Media Affairs
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August 18, 2023

The Honorable Michael S. Regan
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Petition to Delay the Elimination of the Ipsi RVP Waiver for E10 Until the Summer of 2025

INSUFFICIENT SUPPLY OF GASOLINE

Dear Administrator Regan:

Please consider this letter as a formal petition under Section 211(h)(5)(C)(ii)(I) of the Clean Air Act (CAA) to delay the elimination of the Ipsi Reid vapor pressure (RVP) waiver for 10% ethanol blended gasoline until at least the Spring of 2025. A Spring 2024 implementation date will cause gasoline supply shortages in the affected states and other states in the region.

Magellan Midstream Partners, L.P. owns and operates the nation's longest refined petroleum products pipeline system with 54 connected terminals throughout 15 states. Our footprint includes pipeline and terminal assets in all of the Midwestern petitioning states except Ohio. In several petitioning states, the majority of gasoline consumed daily flows through Magellan's pipeline system and is stored in and distributed from our terminals. We also own and operate similar assets in states bordering the petitioning states, including Kansas, North Dakota, Wyoming, Oklahoma, Arkansas, and Colorado. Therefore, we believe we have standing to comment on the need for a one-year extension for this important RVP waiver for E10.

Background

Section 211(h)(5) of the CAA allows a Governor to request elimination of the 1 psi RVP waiver for their state by submitting supporting documentation that it "will increase emissions that contribute to air pollution in any area in the State." The statute requires EPA to extend the effective date if the Administrator determines these regulations "would result in an insufficient supply of gasoline in the State."

On April 28, 2022, eight Governors sent a notice to EPA requesting the elimination of the 1psi RVP waiver for E10 during the summer months. Since this date, the Governors of Ohioⁱ and Missouri joined the request to eliminate the RVP waiver for E10, and the Governors of North Dakota and Kansas opted out of their original request.

Based on our conversations with several Governors and their staff, the request to eliminate the 1psi RVP waiver for E10 was intended to encourage the sale of E15 year-round. However, not all stakeholders have clearly understood that the action requested in the petition is essentially a mandate for two new, boutique grades of gasoline that are not currently available in the affected states. There has been confusion about the supply impact regarding (1) the request to eliminate the summer RVP waiver for E10 versus (2) the emergency RVP waivers granted by EPA during the summer of 2022 and so far in the summer of 2023 – the latter of which does not affect the composition of the base gasoline that is refined, transported, stored, and distributed to retail service stations. Eliminating the 1psi RVP waiver for E10 in the summer months would require the production, transportation, storage, and distribution of two new, lower RVP base gasolines for sale to the ultimate consumer in the petitioning states, creating challenges for refiners and midstream pipeline companies like Magellanⁱⁱ.

EPA’s Proposed Rule / Eight-State Mandate for Boutique Gasoline and the Insufficient Supply of Gasoline

The implementation of EPA’s proposed rule in April 2024 would cause an insufficient supply of gasoline in the petitioning states as well as certain bordering states for the following reasons:

1. Magellan does not currently have adequate infrastructure at the majority of our terminals in petitioning states to accommodate two new grades of CBOB on our system. The timeline for new storage and infrastructure modifications is 24 months or moreⁱⁱⁱ. Without construction of new infrastructure and related logistical modifications, we cannot transport the boutique grades of gasoline north of Oklahoma from Gulf Coast origins on Magellan’s pipeline system. *This will lead to reduced competition and a reduction in the number of suppliers and position holders offering wholesale rack prices at our terminals in the affected states.*
2. If EPA does not delay the implementation beyond 2024, Magellan’s specification for the special grades of CBOB would be reduced to 7.3 psi RVP for a period of time beginning on March 1, 2024. This is necessary for the “blend down” of high RVP winter gasoline to summer gasoline at our terminals. The result would be 7.8 psi RVP CBOB’s at our terminals from May 1st through September 15th, requiring two new, special grades of gasoline for the affected states. These grades of boutique gasoline are not currently available in any of the petitioning states served by Magellan’s pipeline system.

Based on our current market assessment, shippers utilizing the Magellan system may be unable to provide an adequate supply of the new special CBOB to meet demand at our terminals in the petition states and other markets in the region. Reducing the RVP from 9.0 psi to 7.8 psi without adequate lead time to modify their production and logistical operations is likely to cause insufficient supply.

3. The repeal of the 1psi waiver for E10 during the summer months will significantly diminish the fungibility of our common carrier pipeline system. Today, the system operates on an “open stock” basis, allowing us to significantly reduce or eliminate the transit time for

transporting gasoline from various origins to our terminals. In other words, because 9 psi gasoline is the common specification for CBOB for the majority of PADD 2 and many segments of PADD 3, Magellan can provide access to gasoline at any of our terminals once we receive CBOB into our system from a refiner or third-party pipeline without waiting on the physical transit time to move the product from the origin to a terminal^{iv}. This significant efficiency of our common carrier pipeline system would be disrupted by eliminating the 1psi RVP waiver for E10 because it will reduce the fungibility of CBOB across our system serving Missouri, Nebraska, South Dakota, Minnesota, Iowa, Wisconsin and Illinois.

This “bifurcation” of our pipeline system (9.0 psi in OK, AR, KS, ND, WY, and portions of TX compared to 7.8 psi in the petitioning states) before and during EPA’s volatility control period will create additional challenges for Magellan and our shippers. Compared to 9.0 psi CBOB, we expect to receive reduced volumes of the special 7.8 psi CBOB into our system destined for the affected states. This will likely cause a reduction in our ability to transport adequate supplies of diesel fuel due to a shortfall of available CBOB to physically move the products via pipeline to terminal destinations.

Destruction of pipeline efficiencies leads to an insufficient supply of gasoline at our terminals. Increased outages and allocations due to an insufficient supply of gasoline will add to the price motorists pay at the pump.

4. An implementation date in April 2024 is clearly not adequate time to prepare for this significant change. Historically, EPA provides industry with multiple years of lead time^v when making a substantial change to gasoline or diesel fuel specifications.

Nationwide Congressional Solution – Benefits, Challenges, and Uncertainties

As referenced earlier, EPA and the U.S. Department of Energy have the responsibility to delay the repeal of the RVP waiver for E10 in the summer months if the action would result in the insufficient supply of gasoline. While the agencies will review the available supply of the new boutique grades of gasoline required if the RVP waiver is repealed via rulemaking, it is also relevant to determine if there is adequate midstream infrastructure to accommodate the significant change in gasoline specifications. All of this anxiety over EPA’s proposed rule and the insufficient supply of gasoline can be avoided if Congress acts to provide an RVP waiver for E10 and E15 in the summer months.

Magellan supports a nationwide RVP waiver for E15 in the summer months for conventional gasoline markets. However, legislation including an E15 RVP waiver must include some reform of the Renewable Fuels Standard (RFS) to attract the support of key petroleum and agricultural stakeholders. Recently, Senators Fischer (R-NE) and Capito (R-WV) introduced S.2707, the Consumer and Fuel Retailer Choice Act of 2023, which includes (1) a nationwide RVP waiver for E10 and E15 in conventional gasoline markets, (2) the repeal of the Governors’ eight state petition to eliminate the RVP waiver for E10, and (3) some RFS compliance relief for certain small refiners.

The second provision of the bill would repeal the eight Governors' petition upon enactment. This provision creates significant uncertainty for Magellan and other stakeholders. As stated, we do not have adequate infrastructure to accommodate two new grades of boutique gasoline for the affected states. A significant amount of new infrastructure is necessary, which typically takes two years to acquire permits and physically add the pipeline, storage, and other essential modifications. *If we approve infrastructure investments today designed to accommodate the boutique grades of gasoline for the petitioning states, any associated spending would be wasted if Senator Fischer's bill or other similar legislation is enacted into law.*

Although EPA has proposed to delay the repeal of the RVP waiver for E10 until April 2024, Congress granted the agency the authority in the CAA to delay the repeal of the waiver for up to three years. *The current timeline in EPA's proposed rule to repeal the E10 RVP waiver puts Magellan and other industry stakeholders in a position to consider high risk investments which would be stranded if Congressional action does indeed occur to grant a nationwide E15 RVP waiver in the future.*

Please consider this petition to delay the elimination of the 1psi waiver for E10 in the summer months in the affected states at least until 2025. We also encourage EPA to promote the adequate supply of gasoline in 2024 by (1) working with Congress and impacted stakeholders to develop a durable legislative solution to provide market opportunities for E15 year-round and (2) providing emergency 1psi RVP waivers for E15 in the summer of 2024.

If EPA revokes the 1psi RVP waiver for E10 in 2024, we believe this action will create an insufficient supply of gasoline in the petitioning states and certain bordering states in part due to the lack of necessary infrastructure to accommodate new special grades of gasoline.

I welcome the opportunity to meet with you or your staff to discuss our petition.

Sincerely,



Bruce W. Heine

cc: Mr. Joseph Goffman, US EPA
Mr. Paul Machiele, US EPA
Ms. Lauren Michaels, US EPA
Mr. Neelesh Neurkar, US Department of Energy

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ⁱ The Governor of Ohio may delay the repeal of the RVP waiver for E10. [March 31, 2023 letter to Administrator Regan from Governor Mike DeWine]

ii Magellan has filed comments to EPA (attached) regarding the elimination of efficiencies, destruction of product fungibility and our “open stock” system associated with the elimination of the 1psi waiver for E10 in the summer months.

iii Includes typical timeline for permitting and construction.

iv Typical transit time from Gulf Coast refineries to the upper Midwest can be three to four weeks.

v EPA Ultra Low Sulfur Diesel regulations phased in from 2006 to 2010. EPA gasoline sulfur reduction rules generally provided a four-year period before implementation.