

107TH CONGRESS
1ST SESSION

S. 950

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

MAY 24, 2001

Mr. SMITH of New Hampshire (for himself and Mr. REID) 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 2001”.

6 **SEC. 2. LEAKING UNDERGROUND STORAGE TANKS.**

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

10 (1) in paragraph (7)(A)—

1 (A) by striking “paragraphs (1) and (2) of
 2 this subsection” and inserting “paragraphs (1),
 3 (2), and (12)”; and

4 (B) by inserting “and section 9010(a)” be-
 5 fore “if”; and

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

7 “(12) REMEDIATION OF MTBE CONTAMINA-
 8 TION.—

9 “(A) IN GENERAL.—The Administrator
 10 and the States may use funds made available
 11 under section 9011(1) to carry out corrective
 12 actions with respect to a release of methyl ter-
 13 tiary butyl ether that presents a threat to
 14 human health, welfare, or the environment.

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

17 “(i) in accordance with paragraph (2);

18 and

19 “(ii) in the case of a State, in accord-
 20 ance with a cooperative agreement entered
 21 into by the Administrator and the State
 22 under paragraph (7).”.

23 (b) RELEASE PREVENTION AND COMPLIANCE.—Sub-
 24 title I of the Solid Waste Disposal Act (42 U.S.C. 6991

1 et seq.) is amended by striking section 9010 and inserting
2 the following:

3 **“SEC. 9010. RELEASE PREVENTION AND COMPLIANCE.**

4 “Funds made available under section 9011(2) from
5 the Leaking Underground Storage Tank Trust Fund may
6 be used for conducting inspections, or for issuing orders
7 or bringing actions under this subtitle—

8 “(1) by a State (pursuant to section
9 9003(h)(7)) acting under—

10 “(A) a program approved under section
11 9004; or

12 “(B) State requirements regulating under-
13 ground storage tanks that are similar or iden-
14 tical to this subtitle; and

15 “(2) by the Administrator, acting under this
16 subtitle or a State program approved under section
17 9004.

18 **“SEC. 9011. AUTHORIZATION OF APPROPRIATIONS.**

19 “In addition to amounts made available under section
20 2007(f), there are authorized to be appropriated from the
21 Leaking Underground Storage Tank Trust Fund—

22 “(1) to carry out section 9003(h)(12),
23 \$200,000,000 for fiscal year 2002, to remain avail-
24 able until expended; and

25 “(2) to carry out section 9010—

1 “(A) \$50,000,000 for fiscal year 2002; and

2 “(B) \$30,000,000 for each of fiscal years

3 2003 through 2007.”.

4 (c) TECHNICAL AMENDMENTS.—

5 (1) Section 1001 of the Solid Waste Disposal

6 Act (42 U.S.C. prec. 6901) is amended by striking

7 the item relating to section 9010 and inserting the

8 following:

“Sec. 9010. Release prevention and compliance.

“Sec. 9011. Authorization of appropriations.”.

9 (2) Section 9001(3)(A) of the Solid Waste Dis-

10 posal Act (42 U.S.C. 6991(3)(A)) is amended by

11 striking “sustances” and inserting “substances”.

12 (3) Section 9003(f)(1) of the Solid Waste Dis-

13 posal Act (42 U.S.C. 6991b(f)(1)) is amended by

14 striking “subsection (c) and (d) of this section” and

15 inserting “subsections (c) and (d)”.

16 (4) Section 9004(a) of the Solid Waste Disposal

17 Act (42 U.S.C. 6991c(a)) is amended in the second

18 sentence by striking “referred to” and all that fol-

19 lows and inserting “referred to in subparagraph (A)

20 or (B), or both, of section 9001(2).”.

21 (5) Section 9005 of the Solid Waste Disposal

22 Act (42 U.S.C. 6991d) is amended—

23 (A) in subsection (a), by striking “study

24 taking” and inserting “study, taking”;

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

3 (C) in subsection (b)(4), by striking
4 “Evironmental” and inserting “Environ-
5 mental”.

6 **SEC. 3. AUTHORITY FOR WATER QUALITY PROTECTION**
7 **FROM FUELS.**

8 (a) IN GENERAL.—Section 211(c) of the Clean Air
9 Act (42 U.S.C. 7545(c)) is amended—

10 (1) in paragraph (1)(A)—

11 (A) by inserting “fuel or fuel additive or”
12 after “Administrator any”; and

13 (B) by striking “air pollution which” and
14 inserting “air pollution, or water pollution,
15 that”;

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

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

19 “(5) BAN ON THE USE OF MTBE.—Not later
20 than 4 years after the date of enactment of this
21 paragraph, the Administrator shall ban use of meth-
22 yl tertiary butyl ether in motor vehicle fuel.”.

23 (b) NO EFFECT ON LAW REGARDING STATE AU-
24 THORITY.—The amendments made by subsection (a) have
25 no effect on the law in effect on the day before the date

1 of enactment of this Act regarding the authority of States
 2 to limit the use of methyl tertiary butyl ether in gasoline.

3 **SEC. 4. WAIVER OF OXYGEN CONTENT REQUIREMENT FOR**
 4 **REFORMULATED GASOLINE.**

5 Section 211(k)(1) of the Clean Air Act (42 U.S.C.
 6 7545(k)(1)) is amended—

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

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

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

13 “(B) WAIVER OF OXYGEN CONTENT RE-
 14 QUIREMENT.—

15 “(i) AUTHORITY OF THE GOV-
 16 ERNOR.—

17 “(I) IN GENERAL.—Notwith-
 18 standing any other provision of this
 19 subsection, a Governor of a State,
 20 upon notification by the Governor to
 21 the Administrator during the 90-day
 22 period beginning on the date of enact-
 23 ment of this subparagraph, or during
 24 the 90-day period beginning on the
 25 date on which an area in the State be-

1 comes a covered area by operation of
2 the second sentence of paragraph
3 (11)(D), may waive the application of
4 paragraphs (2)(B) and (3)(A)(v) to
5 gasoline sold or dispensed in the
6 State.

7 “(II) OPT-IN AREAS.—A Gov-
8 ernor of a State that submits an ap-
9 plication under paragraph (6) may, as
10 part of that application, waive the ap-
11 plication of paragraphs (2)(B) and
12 (3)(A)(v) to gasoline sold or dispensed
13 in the State.

14 “(ii) TREATMENT AS REFORMULATED
15 GASOLINE.—In the case of a State for
16 which the Governor invokes the waiver de-
17 scribed in clause (i), gasoline that complies
18 with all provisions of this subsection other
19 than paragraphs (2)(B) and (3)(A)(v) shall
20 be considered to be reformulated gasoline
21 for the purposes of this subsection.

22 “(iii) EFFECTIVE DATE OF WAIVER.—
23 A waiver under clause (i) shall take effect
24 on the earlier of—

1 “(I) the date on which the per-
2 formance standards under subpara-
3 graph (C) take effect; or

4 “(II) the date that is 270 days
5 after the date of enactment of this
6 subparagraph.

7 “(C) MAINTENANCE OF TOXIC AIR POL-
8 LUTANT EMISSION REDUCTIONS.—

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

12 “(I) promulgate regulations con-
13 sistent with subparagraph (A) and
14 paragraph (3)(B)(ii) to ensure that
15 reductions of toxic air pollutant emis-
16 sions achieved under the reformulated
17 gasoline program under this section
18 before the date of enactment of this
19 subparagraph are maintained in
20 States for which the Governor waives
21 the oxygenate requirement under sub-
22 paragraph (B)(i); or

23 “(II) determine that the require-
24 ment described in clause (iv)—

1 “(aa) is consistent with the
2 bases for performance standards
3 described in clause (ii); and

4 “(bb) shall be deemed to be
5 the performance standards under
6 clause (ii) and shall be applied in
7 accordance with clause (iii).

8 “(ii) PADD PERFORMANCE STAND-
9 ARDS.—The Administrator, in regulations
10 promulgated under clause (i)(I), shall es-
11 tablish annual average performance stand-
12 ards for each Petroleum Administration for
13 Defense District (referred to in this sub-
14 paragraph as a ‘PADD’) based on—

15 “(I) the average of the annual
16 aggregate reductions in emissions of
17 toxic air pollutants achieved under the
18 reformulated gasoline program in each
19 PADD during calendar years 1999
20 and 2000, determined on the basis of
21 the 1999 and 2000 Reformulated
22 Gasoline Survey Data, as collected by
23 the Administrator; and

1 “(II) such other information as
2 the Administrator determines to be
3 appropriate.

4 “(iii) APPLICABILITY.—

5 “(I) IN GENERAL.—The perform-
6 ance standards under this subpara-
7 graph shall be applied on an annual
8 average importer or refinery-by-refin-
9 ery basis to reformulated gasoline that
10 is sold or introduced into commerce in
11 a State for which the Governor waives
12 the oxygenate requirement under sub-
13 paragraph (B)(i).

14 “(II) MORE STRINGENT RE-
15 QUIREMENTS.—The performance
16 standards under this subparagraph
17 shall not apply to the extent that any
18 requirement under section 202(l) is
19 more stringent than the performance
20 standards.

21 “(III) STATE STANDARDS.—The
22 performance standards under this
23 subparagraph shall not apply in any
24 State that has received a waiver under
25 section 209(b).

1 “(IV) CREDIT PROGRAM.—The
2 Administrator shall provide for the
3 granting of credits for exceeding the
4 performance standards under this
5 subparagraph in the same manner as
6 provided in paragraph (7).

7 “(iv) STATUTORY PERFORMANCE
8 STANDARDS.—

9 “(I) IN GENERAL.—Subject to
10 subclause (IV), if the regulations
11 under clause (i)(I) have not been pro-
12 mulgated by the date that is 270 days
13 after the date of enactment of this
14 subparagraph, the requirement de-
15 scribed in subclause (III) shall be
16 deemed to be the performance stand-
17 ards under clause (ii) and shall be ap-
18 plied in accordance with clause (iii).

19 “(II) PUBLICATION IN FEDERAL
20 REGISTER.—Not later than 30 days
21 after the date of enactment of this
22 subparagraph, the Administrator shall
23 publish in the Federal Register, for
24 each PADD, the percentage equal to
25 the average of the annual aggregate

1 reductions in the PADD described in
2 clause (ii)(I).

3 “(III) TOXIC AIR POLLUTANT
4 EMISSIONS.—The annual aggregate
5 emissions of toxic air pollutants from
6 baseline vehicles when using reformu-
7 lated gasoline in each PADD shall be
8 not greater than—

9 “(aa) the aggregate emis-
10 sions of toxic air pollutants from
11 baseline vehicles when using
12 baseline gasoline in the PADD;
13 reduced by

14 “(bb) the quantity obtained
15 by multiplying the aggregate
16 emissions described in item (aa)
17 for the PADD by the percentage
18 published under subclause (II)
19 for the PADD.

20 “(IV) SUBSEQUENT REGULA-
21 TIONS.—Through promulgation of
22 regulations under clause (i)(I), the
23 Administrator may modify the per-
24 formance standards established under
25 subclause (I) to require each PADD

1 to achieve a greater percentage reduc-
 2 tion than the percentage published
 3 under subclause (II) for the PADD.”.

4 **SEC. 5. PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS**
 5 **OF FUELS AND FUEL ADDITIVES.**

6 Section 211(b) of the Clean Air Act (42 U.S.C.
 7 7545(b)) is amended—

8 (1) in paragraph (2)—

9 (A) by striking “may also” and inserting
 10 “shall, on a regular basis,”; and

11 (B) by striking subparagraph (A) and in-
 12 serting the following:

13 “(A) to conduct tests to determine poten-
 14 tial public health and environmental effects of
 15 the fuel or additive (including carcinogenic,
 16 teratogenic, or mutagenic effects); and”;

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

18 “(4) ETHYL TERTIARY BUTYL ETHER.—

19 “(A) IN GENERAL.—Not later than 2 years
 20 after the date of enactment of this paragraph,
 21 the Administrator shall—

22 “(i) conduct a study on the effects on
 23 public health, air quality, and water re-
 24 sources of increased use of, and the feasi-

1 bility of using as substitutes for methyl
2 tertiary butyl ether in gasoline—

3 “(I) ethyl tertiary butyl ether;
4 and

5 “(II) other ethers, as determined
6 by the Administrator; and

7 “(ii) submit to the Committee on En-
8 ergy and Commerce of the House of Rep-
9 resentatives and the Committee on Envi-
10 ronment and Public Works of the Senate a
11 report describing the results of the study.

12 “(B) CONTRACTS FOR STUDY.—In car-
13 rying out this paragraph, the Administrator
14 may enter into 1 or more contracts with non-
15 governmental entities.”.

16 **SEC. 6. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

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

19 (1) by redesignating subsection (o) as sub-
20 section (p); and

21 (2) by inserting after subsection (n) the fol-
22 lowing:

23 “(o) ANALYSES OF MOTOR VEHICLE FUEL CHANGES
24 AND EMISSIONS MODEL.—

25 “(1) ANTI-BACKSLIDING ANALYSIS.—

1 “(A) DRAFT ANALYSIS.—Not later than 4
2 years after the date of enactment of this sub-
3 section, the Administrator shall publish for pub-
4 lic comment a draft analysis of the changes in
5 emissions of air pollutants and air quality due
6 to the use of motor vehicle fuel and fuel addi-
7 tives resulting from implementation of the
8 amendments made by the Federal Reformulated
9 Fuels Act of 2001.

10 “(B) FINAL ANALYSIS.—After providing a
11 reasonable opportunity for comment but not
12 later than 5 years after the date of enactment
13 of this subsection, the Administrator shall pub-
14 lish the analysis in final form.

15 “(2) EMISSIONS MODEL.—For the purposes of
16 this subsection, as soon as the necessary data are
17 available, the Administrator shall develop and final-
18 ize an emissions model that reasonably reflects the
19 effects of fuel characteristics or components on emis-
20 sions from vehicles in the motor vehicle fleet during
21 calendar year 2005.”.

22 **SEC. 7. ELIMINATION OF ETHANOL WAIVER.**

23 Section 211(h) of the Clean Air Act (42 U.S.C.
24 7545(h)) is amended—

25 (1) by striking paragraph (4); and

1 (2) by redesignating paragraph (5) as para-
2 graph (4).

3 **SEC. 8. ADDITIONAL OPT-IN AREAS UNDER REFORMU-**
4 **LATED GASOLINE PROGRAM.**

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

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

9 “(6) OPT-IN AREAS.—

10 “(A) CLASSIFIED AREAS.—

11 “(i) IN GENERAL.—Upon”;

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

14 “(ii) EFFECT OF INSUFFICIENT DO-
15 MESTIC CAPACITY TO PRODUCE REFORMU-
16 LATED GASOLINE.—If”;

17 (3) in subparagraph (A)(ii) (as so redesign-
18 nated)—

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

21 (B) in the second sentence, by striking
22 “this paragraph” and inserting “this subpara-
23 graph”; and

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

25 “(B) NONCLASSIFIED AREAS.—

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

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

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

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

1 **SEC. 9. MTBE MERCHANT PRODUCER CONVERSION ASSIST-**
2 **ANCE.**

3 Section 211(c) of the Clean Air Act (42 U.S.C.
4 7545(c)) (as amended by section 3(a)(3)) is amended by
5 adding at the end the following:

6 “(6) MTBE MERCHANT PRODUCER CONVER-
7 SION ASSISTANCE.—

8 “(A) IN GENERAL.—The Administrator
9 may make grants to merchant producers of
10 methyl tertiary butyl ether in the United States
11 to assist the producers in the conversion of eli-
12 gible production facilities described in subpara-
13 graph (B) to the production of other fuel addi-
14 tives that—

15 “(i) will be consumed in nonattain-
16 ment areas;

17 “(ii) will assist the nonattainment
18 areas in achieving attainment with a na-
19 tional primary ambient air quality stand-
20 ard;

21 “(iii) will not degrade air quality or
22 surface or ground water quality or re-
23 sources; and

24 “(iv) have been registered and tested
25 in accordance with the requirements of this
26 section.

1 “(B) ELIGIBLE PRODUCTION FACILI-
2 TIES.—A production facility shall be eligible to
3 receive a grant under this paragraph if the pro-
4 duction facility—

5 “(i) is located in the United States;
6 and

7 “(ii) produced methyl tertiary butyl
8 ether for consumption in nonattainment
9 areas during the period—

10 “(I) beginning on the date of en-
11 actment of this paragraph; and

12 “(II) ending on the effective date
13 of the ban on the use of methyl ter-
14 tiary butyl ether under paragraph (5).

15 “(C) AUTHORIZATION OF APPROPRIA-
16 TIONS.—There is authorized to be appropriated
17 to carry out this paragraph \$250,000,000 for
18 each of fiscal years 2002 through 2004.”.

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