

# EPA Ethanol-Rule Challenge Won't Be Reconsidered, Judges Say

By Tom Schoenberg, Bloomberg, January 15, 2013 10:03 AM PT

A federal appeals court refused to reconsider a decision to throw out a lawsuit challenging an Environmental Protection Agency rule that allows higher concentrations of corn-based ethanol in gasoline.

On the losing side were grocery, auto and oil industry trade groups that sued in 2010, saying using more corn-based ethanol in auto fuel would harm engines and push up the price of food and gasoline. Today's decision upheld a three-judge panel's ruling in August that said the industries couldn't show they had suffered specific harm as a result of the EPA's decision.

Six of seven judges who reviewed the case voted to let stand the earlier decision. U.S. Circuit Judge Brett Kavanaugh said in a five-page dissent that throwing out the case because

the industries lacked standing to sue was mistaken.

The case has "significant economic ramifications for the American food and petroleum industries, as well as for American consumers who will ultimately bear some of the costs," Kavanaugh wrote. He said the EPA would have lost if the court had considered the merits of the arguments.

## August Dissent

Kavanaugh also cast a dissenting vote in the August decision.

The Grocery Manufacturers Association, the American Petroleum Institute and groups representing companies including Tyson Foods Inc. (TSN) and Coca-Cola Co. (KO), challenged two EPA decisions that allowed the introduction of E15, a gasoline

blended with ethanol.

Carmakers have told Congress that vehicle warranties won't cover damage caused by E15.

The EPA in 2010 granted a request from ethanol producers to permit increased concentrations of the corn-based fuel in gasoline to 15 percent from 10 percent for vehicles made for the model year 2007. The new rule was later extended to all cars made after 2001.

Blends of 15 percent ethanol are referred to as E15, while concentrations of 10 percent and 85 percent are called E10 and E85.

The case is Grocery Manufacturers Association v. U.S. Environmental Protection Agency, 10-1380, U.S. Court of Appeals for the District of Columbia Circuit (Washington).

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<http://www.bloomberg.com/news/2013-01-15/epa-ethanol-rule-challenge-won-t-be-reconsidered-judges-say-1-.html>

## Stella Sez, "THE FIGHT OVER MANDATES", JULY 2000

"In a letter sent to the Assistant Administer of the Environmental Protection Agency, Robert Perciasepe, the Renewable Fuels Association (RFA) urged the EPA to deny California's request for a waiver from the federal reformulated gasoline (RFG) oxygen standard, "because their request fails to demonstrate that fuels without oxygenates, like ethanol, improve air quality."

(snip)

"However, it has been reported by the Lake Tahoe "Daily Tribune" that ethanol is polluting Lake Tahoe's groundwater. Earlier this year, ethanol replaced MTBE in all reformulated gasoline sold in and around Lake Tahoe. Ethanol has been detected in Lake Tahoe's groundwater at concentrations as high as 130,000 parts per billion (ppb).

### ***"Is Ethanol A Cancer Risk?"***

*"Unlike MTBE, little is known about the impacts of ethanol releases into groundwater or the environment. However, because ethanol is the primary ingredient of beverage alcohol, which is classified by the California Proposition 65 Committee and other cancer experts as a human carcinogen, many are concerned about the possibility that ethanol may pose a cancer risk. Additionally, independent researchers have determined that ethanol in groundwater can extend plumes of other more potent gasoline carcinogens (benzene, toluene, etc.) up to 25%. In addition, ethanol is less effective than MTBE at fighting air pollution, and due to transportation and supply problems, will likely increase gasoline prices.*

*"Additional reports are concerned about the high sulfur content of gasoline. The auto industry is calling on CARB and EPA to lower sulfur levels. The sulfur content of denatured ethanol is receiving increased attention as politicians and refiners simultaneously attempt to lower MTBE and sulfur levels in the gasoline pool. The topic received considerable attention during a California Air Resources Board (CARB) workshop in April on CaRFG3. CAPP President Charlie Peters attended the workshop and according to a presentation given there, sulfur levels in ethanol, once denatured, are being called into question. CaRFG3 calls for 20 ppm of sulfur. CARB requested samples because reports are that ethanol may contain between 60-160 ppm of sulfur."*

*"Recently, the National Institute for Environmental Health Sciences (NIEHS) released its congressionally mandated report on cancer-causing substances. The report declined to list MTBE as a cancer-causing agent or as an agent likely to cause cancer, however, but did add ethanol-based beverage alcohol to the list of known carcinogens.*

### ***"Super Clean Gasoline***

*"Super Clean Gasoline" is on it's way to many gas stations. This month, a new type of reformulated, smog-reducing gas will be required in Boston, New York, Washington, Philadelphia, Houston, Dallas, Chicago and other major cities. The EPA predicts that the new fuel will cost up to two cents a gallon more than conventional gas to produce, and the costs will be passed on at the pump. But even before this new gasoline is introduced, the battle to delay it's introduction has been waged. The EPA has rejected requests for a temporary waiver from Illinois and Wisconsin. The EPA recently awarded a temporary waiver to St. Louis as pipeline problems restricted supply of the new grade to the area. Does the "new" RFG 2 have MTBE in it, or ethanol? I asked that question of Mr. Donald Bea of the Inspection and Maintenance Review Committee (IMRC). He told me the 2% oxygenate mandate is still in place. He also said the RFG 2 has lower sulfur and lower Reid Vapor Pressure (RVP). Mr. Bea also mentioned that because of the lower RVP required in the Northeast, ethanol may not be used.*

*"In New York, Governor George Pataki signed two major environmental initiatives into law, including a ban on MTBE that has polluted underground water supplies. According to the "New York Times" article, "Mr. Pataki also signed legislation that tries to limit the amount of pollutants that now drift into New York from coal-burning power plants in Midwestern and Southern states, causing acid rain. The measure seeks to stop New York companies from selling pollution allowances. The credits, essentially the right to pollute, are awarded to companies that cut their own emissions below a federal standard. The credits are now sold on the open market, usually to utilities with older power plants that find it cheaper to buy such credits instead of modernizing their plants and cutting their emissions.*

*"The new law calls for the state to seize all proceeds that a New York utility makes from selling its credits to polluters in the Midwest and the South. The law allows state regulators to impose a fine equal to the amount of such a sale; the fine would be used to promote development and the use of nonpolluting energy sources like solar power. The law limiting pollution credits goes into effect immediately, and the ban on MTBE is to take effect in January 2004."*

*(snip)*

<http://clubs.hemmings.com/capp/july.html>

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