ROBERT MEYERS
ASSOCIATE ASSISTANT ADMINISTRATOR
OFFICE OF AIR AND RADIATION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE COMMITTEE ON ENERGY AND COMMERCE
June 7, 2006

Mr. Chairman, and members of the Committee, I appreciate the opportunity to testify today concerning draft legislation on boutique fuels. As you know, EPA has worked closely with states, industry and other stakeholders to implement a number of federal mobile source programs that will provide cost-effective solutions for states and localities to address air quality. Just last week, the Bush Administration rolled out the first phase of the Ultra Low Sulfur Diesel (ULSD) program with the requirement that refiners begin production of this new clean diesel fuel. ULSD represents a 97 percent reduction in the sulfur content of highway diesel fuel. Once this fuel program and the related emissions standards for heavy-duty diesel trucks and buses is fully implemented, it will reduce 2.6 million tons of nitrogen oxide emissions and 110,000 tons of particulate matter emissions each year.

The Bush Administration has also promulgated rules to reduce air pollutants from off-road vehicles, engines and fuels. These rules will require low-sulfur fuel for off-road engines starting in 2007 to be followed by ULSD in 2010 and fuel requirements for locomotive and marine engines in 2012. These diesel programs follow the implementation of Tier II standards for gasoline, cars and light and heavier duty gasoline trucks which began its phase-in during 2004. EPA has also pioneered a number of voluntary programs as part of its national clean diesel campaign. This effort, in cooperation with state and local partners, includes promoting the reduction in emissions from existing engines through retrofitting, repair and idling reduction. These efforts, along with stationary source programs like the Clean Air Interstate Rule, will provide federal assistance to states as they prepare local plans to meet the National Ambient Air Quality Standards (NAAQS). The attainment benefits are substantial – these programs

will bring most of the country into attainment with the current ozone and PM standards. For areas that will not meet the standards, their burden will be lighter.

My testimony today serves, in part, as a supplement to information that Acting Assistant Administrator William Wehrum shared with this committee at last month's boutique fuels hearing. In this regard, I will first provide an update on the Agency's implementation of certain fuels provisions in the Energy Policy Act of 2005 (EPAct) and our recent action to publish for public comment a draft list of state boutique fuels. I will also address the President's directive to the Agency to convene a Task Force on Boutique Fuels. Against this background of activity, I will then provide some initial analysis of the draft boutique fuels legislation prepared for this hearing, including comparison of the draft bill's provisions to current law.

As a final introductory comment, it is important to note that at the Committee's previous hearing on boutique fuels held on May 10, 2006, Acting Assistant Administrator Wehrum discussed what constitutes a boutique fuel. The simple answer contained in his testimony was that a boutique fuel is a unique fuel specification that is developed by a state or local air pollution control agency and approved by EPA as part of the State Implementation Plan (SIP) for an affected area. In this regard, although states other than California are in many cases preempted from establishing individual fuel standards for purposes of motor vehicle emission control, the Clean Air Act (CAA) has a specific provision, section 211(c)(4)(C), that allows the Agency to approve state fuels as part of a SIP submission if the relevant statutory requirements were met. (Indeed, when Congress provided for a specific subtitle of the Energy Policy Act of 2005 on Boutique Fuels, it was this subparagraph of the CAA that Congress amended). Therefore, boutique fuels do not include other clean fuel requirements that Congress established under other parts of the CAA for other purposes. Boutique fuels do not include the federal reformulated gasoline requirements, the state wintertime oxygenated fuels program, California's clean fuel requirements, and area-specific fuels required by state law for purposes other than air quality (e.g., the State of Minnesota's requirement for a 10% ethanol blend).

Energy Policy Act of 2005

As discussed at last month's hearing, the Agency is implementing the fuel provisions in Subtitle C of Title 15 of the Energy Policy Act of 2005 (EPAct). This subtitle provides new authority for temporary waivers of federal and state fuel and fuel additive requirements. It also amends the CAA provisions governing EPA's consideration and approval of state boutique fuel programs, adding new restrictions on EPA's authority to approve state boutique fuels into State Implementation Plans (SIPs).

Before the EPAct provisions were added, EPA could only approve an otherwise preempted state fuel into the SIP under section 211(c)(4)(C) if the state demonstrated that the fuel was necessary for the timely attainment of a National Ambient Air Quality standard (NAAQS). The state had to show that the emissions reductions from the fuel control would still be needed even after accounting for emissions reductions from all of the reasonable and practicable non-fuel measures available to the state.

EPAct further limits EPA approval of a state fuel control:

- EPA may not approve a state fuel program into the SIP if it would cause an increase in the "total number of fuels" approved into SIPs as of September 1, 2004. That is, EPAct effectively placed a cap on the total number of boutique fuels allowed, based on the number already approved into SIPs as of that date. In order to facilitate the implementation of this cap, EPA is required to publish a list of boutique fuels. Administrator Johnson signed a notice regarding this list last week.

- Second, EPAct allows EPA to remove a fuel from the list under certain circumstances, such as where the state fuel becomes identical to a federal fuel control. EPAct also allows for the approval of new state boutique fuels. However, before EPA can approve another fuel, there must be "room" on the boutique fuel list and EPA has to find that the state boutique fuel will not cause

supply or distribution problems or have significant adverse impacts on fuel producibility in the affected area or areas contiguous to where the fuel would be used.

- Third, EPA can only approve a state fuel if the fuel is currently approved in at least one SIP in the applicable Petroleum Administration for Defense District (PADD). That is, if a fuel does not already exist in any state within a PADD, EPA cannot approve this fuel for any other state within the same PADD.[1] In some ways, as I will discuss more fully below, this is the most significant limitation in the current EPAct provisions. It severely restricts EPA's ability to approve new state fuels.

In addition, EPAct required several studies concerning federal, state and local fuel programs and boutique fuels. One joint EPA/DOE study, addressed by Assistant Administrator Wehrum during his testimony last month, requires a report on boutique fuels by this August. A broader study, contained in section 1509 of EPAct, is due June 1, 2008.

Boutique Fuels List

The first step to implement the new EPAct restrictions on boutique fuels is publication of the boutique fuels list. Administrator Johnson signed this notice on June 1st providing a draft boutiques fuel list for public comment. It will be published in the Federal Register shortly. Prior to this notice, EPA conducted extensive outreach with stakeholders to assist in our deliberations regarding the interpretation of the statutory language. EPA also discussed with stakeholders how such an interpretation would impact the fuels system.

[1] A chart which illustrates both the currently approved state boutique fuels as well as the PADD structure is attached to this testimony.

EPA has proposed a list of "fuel types" that we believe best balances various concerns that have been expressed concerning the boutique fuels program. This results in a list of seven different fuel types. These seven fuel types were approved in 12 different states as of 2004. EPA's notice also discusses ambiguity that is contained in the statute and the terms utilized. Therefore, our boutique fuels list notice invites comment on another possible interpretation which would rely instead on the number of individual state SIP fuel approvals. This interpretation would effectively result in 15 different state fuels. Charts indicating the fuels contained under both interpretations of the statute are attached to this testimony.

EPA believes that seven different fuel types is the more appropriate interpretation of the statute. This interpretation would consist of four different state fuel types (including one diesel program) that are used in only one state and three fuel types (consisting of different controls on summertime gasoline Reid Vapor Pressure, or volatility) which are used in eight different states.

Interested parties are given the opportunity to comment on this list within a 60-day comment period following publication of the notice in the Federal Register. Once the Agency reviews any comments, we intend to quickly act to complete this action. As noted above, under other provisions of EPAct, states seeking approval of new boutique fuels would be limited to fuel types already in existence within the PADD in which the state was located.

Task Force on Boutique Fuels

On April 25th, President Bush directed Administrator Johnson to convene a Boutique Fuels Task Force. All 50 Governors were invited to participate in the Task Force and since the initial May 4 kickoff meeting, EPA and state representatives, with DOE and USDA, have been working to better understand and characterize the current status of state boutique fuels and develop recommendations and findings for the President

from this information. The task force has also heard from a wide range of stakeholders on their views about boutique fuels.

To facilitate public information about the Task Force activities, EPA has developed a web site which includes EPA presentations on relevant technical issues, handouts and information provided by stakeholders, and other information. This collective effort is working under an aggressive schedule, with a report expected to be provided to the President by the end of this month.

We are pleased by the participation we have seen throughout the task force process. States and the stakeholders have been very helpful in characterizing their views on the need, impact and future of state boutique fuel programs. Since deliberations of the task force are ongoing, I am hesitant to project or characterize in any way what final recommendations may result from the work of this group. This being said, task force discussions have mirrored some of the same concerns Congress has reviewed with respect to boutique fuel programs.

For example, there have been concerns expressed regarding the important and cost-effective role of fuels in the achievement and maintenance of air quality standards. There has also been recognition that opportunities may exist to improve the fungibility of the nation's fuel and to avert disruptions in fuel supply. Finally, there has been a general recognition of the need for up-to-date information and technical analysis. Much has transpired since EPA last analyzed this issue in 2001 – such as the removal of the oxygenate standard for RFG, imposition of new gasoline and diesel sulfur rules, market de-selection of MTBE, fleet turnover and operation of fuels in Tier II vehicles, tightened refinery and pipeline capacity margins and experience with the major disruptions in the 2005 hurricane season.

We look forward to working with the task force in the next few weeks to provide additional clarity to the boutique fuel questions. We expect that information from the

Task Force Report will provide useful guidance as DOE and EPA continue to address EPAct requirements.

Boutique Fuels Discussion Draft

The draft legislation, the Boutique Fuels Reduction Act of 2006 that was provided to EPA and other witnesses for today's hearing, makes several changes to existing law affecting fuel waivers and boutique fuels.

With respect to waivers, the legislation clarifies the criteria for granting 20 day waivers of certain Clean Air Act requirements. Under the current law, waivers may be granted for extreme and unusual fuel supply circumstances that are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure or another circumstance that could not reasonably have been foreseen or prevented. The legislation would add to the list of circumstances "unexpected problems with distribution or delivery equipment that is necessary for transportation and delivery of fuel or fuel additives."

As the Committee may be aware, EPA, in coordination with the DOE, utilized the new waiver authority granted by the Energy Policy Act on 30 separate occasions following the occurrence of Hurricanes Katrina and Rita. The legislation would clarify the circumstances that could be the basis for the exercise of this discretionary authority.

With regard to boutique fuels, the legislation would make several significant changes to existing provisions enacted as part of the Energy Policy Act of 2005. First, the legislation amends existing law to include a new requirement that the Environmental Protection Agency reduce the total number of boutique fuels that are authorized to be approved by the Agency under section 211(c)(4)(C) in the event that a boutique fuel ceases to be included in a State Implementation Plan or becomes identical to a federal fuel control. Under current law, EPA is required to revise the boutique fuel list in such circumstances, without changing the cap on the total number of fuels allowed. This theoretically makes room for another fuel as long as the cap on the total number of state

fuels is not violated. The draft legislation would change this by reducing the number of boutique fuels that are authorized to be included on the boutique fuels list. When a fuel is removed, the cap on the total number on fuels is also lowered, leaving no room for addition of another fuel.

This first change in existing law, however, may not result in any practical difference in what boutique fuels may be approved by the EPA in the future. This is because other parts of current law, as described above in my discussion of EPAct, only allow EPA to approve any state boutique fuel if it is already currently approved in a state SIP in an applicable Petroleum Administration for Defense District (PADD). This provision significantly limits the ability of states to add any "new fuels" to the boutique fuels list since the fuel must, in fact, already exist. Thus, current provisions contained in section 1541(b) of EPAct appear to serve as a de facto reduction in the total number of available state boutique fuels.

Second, and more importantly, the draft legislation provides for the current statutory boutiques fuel list and related restrictions to be replaced with an "Approvable State Fuels List." Under the legislation, EPA is required within nine months to complete certain elements of currently required EPAct studies that relate to boutique fuels. The Agency is then required, within 18 months, to promulgate by rule an Approvable State Fuels List based on the information contained in such studies, an analysis of a fuel's ability to reduce emissions, an analysis of other cost-effective options to attain air standards and analyses by the DOE regarding the fuel supply effects and the potential costs and benefits of a fuel. In selecting fuels for the list, EPA is directed to give preference to fuels previously included on the boutique fuels list.

The legislation specifies that the Approvable State Fuels List shall consist of no more than three gasoline fuels with different volatility levels, one of which is specified to have a Reid Vapor Pressure of 7.0 pounds per square inch. This is a change from current law, as previously described, that effectively limits or "freezes" fuels on the boutique fuels list to those previously approved (i.e., the seven different fuel types under EPA's

provisional interpretation of the statutory language). In a further restriction on the approvability of a state fuel, the legislation provides that the EPA Administrator may not approve more than two volatility controlled fuels in any one PADD. This additional restriction is not contained in current law.

The legislation provides that upon promulgation of the new Approvable State Fuels List, previous limitations resulting from the publication of the boutique fuels list would no longer apply. Instead, approval of any boutique fuels by EPA would be limited to those fuels contained on the new list. In addition, a state could only receive approval for a fuel or change from one fuel on the list to another based on an evaluation by EPA, with the DOE, as to whether approval of a state's request would cause fuel supply or distribution disruptions in an area requesting a boutique fuel, contiguous areas or within a region.

A third major change made by the legislation is the requirement that all boutique fuels essentially conform to the fuels on the new Approvable State Fuels List whether or not they were previously approved into a state SIP. To implement this provision, the legislation requires that EPA inform states if previously approved fuels are functionally identical to the fuels included on the list. If a previously approved fuel is not functionally identical, a state must submit a revised SIP within 18 months. This revised SIP can (but is not required to) include one of the fuels contained on the list. The draft legislation provides exceptions to the requirements pertaining to the new Approvable State Fuels List, including the requirement to revise a state SIP, for three state fuels previously approved by EPA.

Finally, the legislation provides the opportunity for a governor to request that EPA either add to the Approvable State Fuel List or replace a fuel on the list as long as certain conditions related to air quality, fuel supply, distribution and producibility are met. Approval of such a fuel, however, cannot result in more than four fuels on the Approvable State Fuels List. As noted above, this would constitute a change to current law that in effect does not allow for the approval of new fuels.

Concluding Remarks

This completes my testimony before the Committee and I am ready to answer any questions. Since the Boutique Fuels Reduction Act is at an early stage in the legislative process and has not been reviewed by our normal interagency procedures, the Administration currently does not have a position on the bill. EPA and the Administration want to thank the committee for undertaking evaluation of legislation in this area and the Agency stands ready to assist the committee in its consideration of any legislation.