

**NESTE**  
CANADA INC.

21 January 2000

Commission for Environmental Cooperation  
393, rue St-Jacques Ouest, Bureau 200  
Montreal, Quebec  
Canada  
H2Y 1N9

Attention: Executive Director  
Secretariat

Dear Sirs:

re: **California Underground Storage Tank Laws**

We are writing to express our serious concern with regard to the failure by California regulatory agencies to enforce environmental laws relating to the protection of water resources in that State with particular regard to underground tanks ("USTs") which store gasoline products.

**Introduction**

Neste Canada Inc. ("Neste") is a Canadian corporation which was originally incorporated under the federal laws of Canada on March 5, 1990 and was subsequently continued under the laws of the Province of Alberta, Canada on May 12, 1992. Our mailing address is:

Neste Canada Inc.  
Suite 701, 324 - 8th Avenue S.W.  
Calgary, Alberta  
T2P 2Z2

Neste is a 50% owner of a large plant located at Strathcona, Alberta, near Edmonton, which produces a petrochemical known as methyl tertiary butyl ether ("MTBE"). Our share of MTBE production from the plant is approximately 400,000 tonnes of MTBE per annum. Historically, on average in excess of 95% of our MTBE is exported from Canada and marketed in the State of California. Neste's reliance on California markets continues currently. MTBE is an important component of modern gasolines and serves to reduce harmful air emissions.

As a supplier to gasoline markets in California, Neste has a direct financial interest in ensuring that federal and state environmental laws which affect potential contamination of soil, water and air by gasoline products are properly and consistently enforced. Any failure to enforce these laws and

regulations may have a serious negative effect on the ability of Neste and other suppliers of gasoline additives and products to continue to supply and market their products.

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The Issue**

Neste believes that applicable regulatory agencies in California are not enforcing environmental laws (as that term is defined in the North American Agreement on Environmental Cooperation; the "Agreement") relating to USTs with the result that significant volumes of gasoline continue to leak into and contaminate soil, water and air in that State. Affected environmental laws include:

Safe Drinking Water Act (U.S.)  
U.S. Clean Water Act (U.S.)  
California Water Code (California), and  
Underground Storage Tank Regulations (California)

After reviewing the requirements of the Agreement and the Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the Agreement, we have concluded that we may not, at this time, meet all of the technical requirements to make a formal submission. In particular, we have not exhausted private remedies which might, theoretically be available to us. We observe, however, based on our knowledge of the current political and regulatory environment in California relating to gasoline and MTBE specifically, private remedies appear to be impractical. We believe that the U.S. federal and state agencies know of the concerns of ourselves and other MTBE producers.

**The Submission**

Neste is aware of the particulars of the submission (the "Methanex Submission") made to the Secretariat by Methanex Corporation on October 18, 1999. We believe that the Methanex Submission accurately summarizes the nature and importance of the enforcement issues relating to USTs. Neste has done its own extensive research and investigations and, based on our knowledge of the facts, we submit that the documentary evidence that Methanex has provided to you accurately reflects the current situation.

We are prepared to have you treat this letter as a formal submission if you consider it appropriate to do so. In any event, we wish to confirm to you our full support of the Methanex Submission. In our view it is appropriate and important for the Secretariat to recommend and prepare a factual record on the matter.

**Comments**

Several observations need to be emphasized:

The State of California has repeatedly acknowledged that its own environmental laws are not being properly enforced with regard to the permitting, monitoring, testing, repair and removal of defective USTs. A report of the California State Auditor dated December 17, 1998 criticized State regulators for failing to adequately protect California groundwater and for not taking aggressive action against individuals who permit gasoline and its additives to escape into the groundwater. Even the Executive Order D-5-55 of Governor

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Davis of California, which proposes to phase out the use of MTBE, acknowledges that this action is prompted because of leaking USTs which allow the escape of gasoline (including MTBE as a component) into the environment.

In our view, although there are harmful components and additives in gasoline, MTBE is not carcinogenic or harmful itself. The mere removal of MTBE from gasoline will not, in itself, cause one less gallon of gasoline to escape into the environment. It will simply make detection of the contaminants in groundwater and the environment more difficult. Until the source of the contamination (leaking USTs) is addressed and removed, the problem will remain.

One of the objectives of the Agreement is to avoid creating trade distortions and new trade barriers - Article I(e). In our view, in this instance that objective can be directly achieved by ensuring the due performance of California's UST environmental laws. When properly blended into gasoline and consumed in combustion (rather than leaked), MTBE has significant beneficial effects on the environment through reduced air contamination. When UST leakage is eliminated, there will be no need to ban MTBE and the resulting trade distortions and barriers will be avoided.

**Conclusion**

In conclusion we submit and recommend that a factual record of the matter should be prepared by the Secretariat. As stated, we also support the Methanex Submission.

We would be pleased to meet your representatives and discuss Neste's views on this matter at your convenience. We would also be pleased to share with you additional research and information which Neste has assembled in relation to the issue. Thank you for your consideration and please let us know if we may be of further assistance.

Yours truly,

NESTE CANADA INC.

per: (Original signed)  
Kimmo Rahkamo  
General Manager, Neste MTBE Canada

**TELEPHONE: 403-299-9777 FAX: 403-299-9773**