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February 22, 2006

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Administrator Johnson:

Last summer, the Congress completed the conference on the Energy Policy Act of 2005, and the President signed it into law on August 8, 2005 (P.L. 109-58). Title XV, Subtitle B of the Energy Policy Act of 2005, dramatically increased the authorization for the Environmental Protection Agency Leaking Underground Storage Tank (LUST) program to $605 million annually. This was necessary to support increased cleanups of leaking underground storage tanks and provide funding to States to carry out new inspection, operator training, delivery prohibition, and secondary containment/financial responsibility requirements.

Much of the debate in Congress on this subject over the past few years centered on the escalating costs to cleaning up contamination of drinking water supplies from methyl tertiary butyl ether (MTBE) with the most widely cited estimate being $29 billion. According to the Environmental Protection Agency (EPA) 2006 Annual Performance Plan and Congressional Justification, MTBE contamination can increase cleanup costs from 25 percent to more than 100 percent. This debate led Congress to authorize $400 million per year from the LUST Trust Fund to fund petroleum and MTBE cleanups to minimize the continuing impacts on drinking water supplies and the environment (Section 9014 2(A) & (B) of the Solid Waste Disposal Act).

The President's budget acknowledges that there is a national backlog of over 119,000 confirmed releases in need of cleanup. In addition, the budget documents indicate that new confirmed releases averaged 10,844 annually between FY1999 and FY2005. We also note that completed cleanups nationwide will fall dramatically from 18,518 in FY2003 to the target of 13,000 set forth in the President's FY2007 Budget request.

We also note that the Energy Policy Act of 2005 extended until 2011 the 0.1 cent per gallon tax on motor fuels that all motorists in America pay. According to the budget documents, revenues from this tax were $189 million in FY2005 and are estimated to climb to $194 million in FY2006 and $196 million in FY2007.

The tax revenues are dedicated to the LUST Trust Fund, which will increase from $2.349 billion in FY2005 to an estimated $2.764 billion in FY2007. However, with over $2.7 billion in a dedicated LUST Trust Fund and over $190 million in revenues for FY2007, the President is only requesting $72.8 million – a slight reduction from his FY2006 budget request and less than the enacted level from FY2006. The following table shows the budget requests and enacted levels for the past four Fiscal Years:

LEAKING UNDERGROUND STORAGE TANKS
(For cleanup)
(Millions)

Budget Request		**Enacted**	
FY2004	$75.5	FY2004	$75.6
FY2005	$72.5	FY2005	$69.4
FY2006	$73.0	FY2006	$76.2
FY2007	$72.8	FY2007	

The President's budget request for FY2007 ignores the clear Congressional intent, demonstrated by a $400 million annual authorization in the Energy Policy Act of 2005, to increase funding for cleanup of leaking underground storage tanks. Why did the President support and sign into law an additional approximate $1 billion in taxes on U.S. motorists if he is not willing to request that the money be spent for the specific purpose for which it is collected?

On December 9, 2005, a coalition of State officials, gasoline marketers, convenience store owners, and major environmental organizations joined together to request that you and Office of Management and Budget, Director Joshua Bolten change the "minimal annual budget requests and appropriations levels..." Their letter to you further stated as follows:

> "Clearly, the LUST Trust Fund is being used as a Federal deficit reduction device rather than for the important purpose originally envisioned by Congress -- protection of the environment. This situation must change. We request your assistance in making this change happen as soon as possible..."
>
> The Energy Policy Act of 2005 contained several reforms to the Federal UST [underground storage tank] program that expand the permitted uses of Federal LUST Trust Fund dollars and place substantial new responsibilities on the EPA and State UST agencies. The legislation authorized significant increases in appropriations from the Fund to assure that EPA has the financial resources to implement these reforms, to assure that the new regulatory provisions do not represent an unreasonable burden on the States, and to allow EPA and states to expand their response to UST petroleum releases, including those containing MTBE. If the Administration and Congress do not break with tradition and appropriate significantly higher amounts from the Fund in the coming years, EPA and the States will be unable to implement these important reforms."

This request from State officials who implement the program, tank owners, and public interest groups appears to have fallen on deaf ears. The question is why – particularly since the source of funding for the LUST Trust Fund is a direct tax on the motoring public. We look forward to your response.

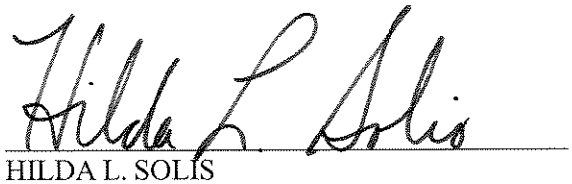
We are also aware that the President's FY2007 budget requests an increase in funding from $11 million to $37.5 million, from the State Tribal Assistance Grant (STAG) account for new inspection, operating training, delivery prohibition, and secondary containment/financial responsibility requirements imposed by the Energy Policy Act of 2005. However, the Energy Policy Act of 2005 authorized $155 million (Section 9014(2)(C) & (D) of the Solid Waste Disposal Act) to carry out these specific prevention activities. The President's budget request is only 24 percent of the authorized amount. By what analysis did you determine that $37.5 million was an adequate amount? How much will each State receive? Please provide any analyses that EPA has conducted concerning the adequacy of the President's budget request to fund these important prevention requirements.

We also note and strongly oppose the President's budget request to cut $35 million from the same STAG account for grants to the States to implement the Clean Air Act, and questions on that requested cut will be the subject of separate correspondence.

Please provide a response by no later than Wednesday, March 8, 2006. If you have any questions concerning this request please have your staff contact Richard A. Frandsen, Senior Minority Counsel to the Committee, at (202) 225-3641.

Sincerely,

JOHN D. DINGELL
RANKING MEMBER
COMMITTEE ON ENERGY AND COMMERCE



HILDA L. SOLIS
RANKING MEMBER
SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Paul E. Gillmor, Chairman
Subcommittee on Environment and Hazardous Materials