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U.S. Environmental Protection Agency Proposed Rule Addressing E15 Motor Fuels: Energy Marketers of America Comments

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The Energy Marketers of America (“EMA”) submitted April 19th comments on the United States Environmental Protection Agency (“EPA”) proposed rule for E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks.

EPA published the proposed rule in the January 19th Federal Register. See 86 Fed. Reg. 5094.

The proposed rule addresses the sale and distribution of gasoline-ethanol blends containing greater than 10 volume percent ethanol and up to 15 percent volume ethanol.

EPA is co-proposing to either:

- Modify the E15 label; or
- Remove the label entirely and seek comment on whether state and local governments may be preempted from requiring different labels on fuel dispensers

EPA is also proposing to modify the underground storage tank (“UST”) regulations to grant certain allowances for compatibility demonstration for storage of ethanol blends. The federal agency states that its purpose is to facilitate the proper storage of E15 in USTs. Further, it is proposing compatibility requirements for future UST installations or component replacements. This is stated to be an attempt to ensure compatibility with higher blends of ethanol.

Ethanol is commonly blended with gasoline. Such petroleum-biofuel blends are described by a letter representing the first initial of the biofuel. For example, E for ethanol. This is followed by a number that usually describes the approximate biofuel percentage of the overall blend: E10 or E15. While some retail motor fuel outlets sell E15, the number is still generally described as a small percentage of total facilities.

EMA describes itself as a federation of 47 state and regional trade associations representing energy marketers throughout the United States. The Association’s members supply 80 percent of all finished motor and heating fuel products sold nationwide including renewable hydrocarbon biofuels, gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel and lubricating oils. The members own and operate approximately 60,000 retail motor fuel stations nationwide and supply heating fuel to more than 5 million homes and businesses.

EMA states in its April 9th comments that it supports the “twin goals of moving the United States toward greater energy independence and security while increasing the production of clean renewable fuels.” The

organization further expresses willingness to sell any liquid fuel compatible with existing storage and dispensing equipment. It notes that fuel compatibility is:

. . . essential not only for supplying fuel to end users through petroleum storage and distribution infrastructure already in place, but also to meet customer expectations for quality, performance and operability.

The views in EMA's comments include:

- Enabling E10 certified double walled components with interstitial monitoring deemed compatible with higher ethanol blends does not reduce the risk of release from incompatible equipment
- Less than 10 percent of underground storage tank ("UST") systems are likely fully equipped with secondary containment and interstitial monitoring
- Retrofitting the other systems for compatibility purposes will be cost prohibitive for many marketers (particularly small ones)
- Ethanol blends over E10 could be problematic for sealants, gaskets and other materials used to connect piping to tanks and equipment, release detection and other monitoring equipment
- The United States Environmental Protection Agency Office of Underground Storage Tanks in January 2020 noted compatibility issues regarding "pipe dope"
- Concern is expressed about the potential impacts on state UST trust funds if there are a number of significant new releases due to incompatibility
- State Fire Marshals and Occupational Safety and Health Administration requirements for compatibility will remain in place
- Opposition to the potential removal of the E15 labeling requirement is expressed due to the ongoing risk of consumer misfuelling and associated liability issues for retailers
- Support is expressed for changing the notification on the current E15 dispenser label to add language alerting consumers to check the manufacturer warranty in their owner's manual for compatibility with E15 fuel

A copy of the comments can be downloaded [here](#).