January 3, 2011

Environmental Working Group
1436 U. St., N.W.
Suite 100
Washington, DC 20009

Air and Radiation Docket
Docket ID No. EPA–HQ–OAR–2010–0448
Environmental Protection Agency
Mailcode: 6102T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Re: Comments on EPA's E15 Misfueling Rule (40 CFR Part 80 on November 4, 2010)

Dear Administrator Jackson:

We appreciate the opportunity to express our concerns about the introduction of 15 percent ethanol (E15) into our nation's fuel supply. We take particular issue with EPA's proposed misfueling rule. Various studies, including EPA's own analyses, have demonstrated that E15 will: (1) contribute to higher nitrous oxide and evaporative emissions; (2) cause corrosion of vehicle components and service station pump parts; (3) is incompatible with current storage and pipeline infrastructure; and (4) will damage small engines and older motor vehicles leading to potential engine failure and other severe issues.[1] We are deeply concerned about the effects of misfueling on consumer safety, public health and the environment – areas that our organization has been committed to addressing for almost two decades.

Despite these concerns, the following comments are primarily focused on the labeling provisions of the E15 misfueling rule. Our comments proceed in the same order in which the proposed E15 misfueling rule presented them except for the first section.

General Comments

Our major concern about the misfueling rule is consumer confusion over the labeling provision. We do not believe that a label will be sufficient to mitigate all misfueling, but we do support stronger and more detailed language on each ethanol label. Stronger and

[1] "Regulation to Mitigate the Misfueling of Vehicles and Engines With Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs; Proposed Rule." Federal Register Notice - 40 CFR Part 80. 4 November 2010. Environmental Protection Agency. Accessed online 15 December 2010 at http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b80c65.

more detailed labels seem to us to be the next best solution to our preferred option — denying the E15 waiver altogether.

First and foremost, some consumers do not take the time to read or understand labels at the pump. Hence, we urge EPA to require labels that have prominent warning language, bright colors, and large text designed to effectively alert consumers about the potential for each ethanol blend to damage each vulnerable engine type. Each label should also be prominently placed and in the same location where Ultra-Low Sulfur Diesel (ULSD) labels reside. Moreover, consumers will be confused if an E10 blend does not have a label while E15 does; as we detail below, each ethanol blend should have an accompanying label with consistent text.

Finally, EPA must ensure that the labeled blend percentage accurately reflects that actual blend percentage that consumers are being sold. Retailers making only marginal profits on their gasoline/ethanol sales have an incentive to vary the percent of ethanol blended with gasoline to maximize their profit margins. E85's ethanol percentage, for example, currently can range from 70 to 85 percent ethanol. The E85 label, however, obviously leads consumers to believe that the blend contains 85 percent ethanol. Various engines, especially older or small engines, can be severely damaged by higher ethanol blends. Since chemical properties can also vary extensively between different blends, a change from E70 to E85 can lead to drastically different effects on tank corrosion and engine capabilities. Similarly, studies have shown that differences between E10, E15, and E20 are significant, especially in their effects on tank and pump corrosion and the probability of leakage. The E20 blend is the least compatible of these three blends with current infrastructure. It is essential that EPA ensure that actual blend percentage is very close to the labeled blend percentage to help mitigate misfueling, consumer confusion and other negative effects. These are only a few of the many points of consumer confusion that we will point out in our comments.

Specific Comments on Proposed Labels

Consistency in Labeling

The proposed E15 misfueling rule states that, "The Agency is not aware of any State rules or laws that would be preempted by today's proposed rule if adopted. States have not controlled ethanol volumes in gasoline for purposes of motor vehicle emission control. Also, our rule would not require States to change their existing labels."
First and foremost, we believe that EPA *should* require States to use the same labels to ensure consistency across state lines and to ensure that consumers are well-informed every time they fuel their motor vehicle or other engines. EPA's labeling rule should preempt state labeling laws as well, as some states do not require labels designating a fuel's ethanol content. Without consistency of labeling, consumers are likely to be confused when fueling across state lines, or will not be informed in any way about the ethanol content in fuel.

Additionally, we would point out that Minnesota recently passed legislation requiring 20 percent ethanol (E20) to be used on August 30, 2013, unless 20 percent of gasoline volume is replaced by ethanol by December 30, 2010, or EPA declines a 211 (f)(4) waiver application to certify E20 as "gasoline."[2]

Misfueling Mitigation Measures, Legal Warning Component, Additional Fuel Pump Labeling Requirements

In choosing between the two labeling alternatives, we urge EPA to ensure that consumers are aware of exactly what percentage of ethanol is blended into gasoline. Absent such knowledge, consumers cannot make the informed choices required to mitigate misfueling. This can be accomplished by modifying EPA's proposed "option 2", which is listed below.

EPA should ensure that for each blend offered, the percentage of actual ethanol content does not vary by more than 2.5 percent in either direction from the stated ethanol content. So, for E10, the percentage of ethanol allowed in the blended fuel could range from 7.5 percent to 12.5 percent. Currently, and particularly with E85, the ethanol percentage can vary by 15 percentage points.

> **EPA's Proposed Label – "Option 2" (listed for comparison purposes only):**
>
> EXX
> (Contains up to XX% Ethanol)
> For use in flex-fuel vehicles.
> WARNING
> Federal law prohibits use in all other
> vehicles and engines
> May damage these vehicles and engines.

Proposed E15 Label:

Rather than ethanol labels stating that a blend "contains up to XX% Ethanol," EWG feels the label should read "contains between XX% and XX% Ethanol and XX% to XX% regular gasoline." The E15 label, then, should include the following text:

> "E15. Contains between 12.5% and 17.5% ethanol and between 82.5% and 87.5% regular gasoline. WARNING: ONLY to be used in 2007 and newer gasoline cars, light-duty trucks, medium-duty passenger vehicles, and flex-fuel vehicles. Federal law prohibits use in all other vehicles and engines."

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[2] Groschen, Ralph. Minnesota Department of Agriculture. 3 October 2006. Accessed online 15 December 2010 at http://www.mda.state.mi.us/renewablefuels/documents/MN_E-20_Program%20%5BRead-Only%5D.pdf.

Additionally, given the wide range of potential consumer engines, we feel the notation "This fuel might damage other vehicles or engines," should read, "This fuel should not be used in: older vehicles; engines such as all motorcycles; all heavy-duty engines such as school buses, transit buses, and delivery trucks; boat motors; all off-road vehicles such as boats and snowmobiles; all engines in off-road equipment such as lawnmowers and chain saws; all model year 2000 and older cars, light-duty trucks, and SUVs; and all 2001-2006 cars, light-duty trucks, and medium-duty passenger vehicles."

This more detailed statement will ensure that when owners are fueling older vehicles or any of the numerous small engines subject to failure from ethanol fuels that they are made aware of all potential consequences of using E15 by language on the label. Contrary to industry comments, more information, not less, is the most effective way to prevent misfueling.

Other Labels:

All ethanol blends should be required to display the exact percentage of ethanol in the fuel, in addition to specifically indicating which engines would be affected by the use of ethanol. The proposed labels for other ethanol blends, including zero percent ethanol, are listed below.

Proposed E0 Label:

"E0. This fuel contains 0% ethanol (100% regular gasoline). Use in ANY gasoline car, light-duty truck, motorcycle, motor boat or small yard equipment."

Proposed E10 Label:

"E10. This fuel contains between 7.5% and 12.5% ethanol and between 87.5% and 92.5% regular gasoline. WARNING: Use ONLY in gasoline cars, light-duty trucks and motorcycles. Federal law prohibits use in all other vehicles and engines. This fuel might damage other engines in boats, small vehicles, or yard equipment. " This counters EPA's recommendation for the E10 label, which states that it should only read, "E10: (Contains up to 10% Ethanol). For use in all gasoline vehicles and engines." Experience from the past decade has demonstrated that even E10 can have negative effects on small engines, particularly boating equipment.

Proposed E85 Label:

"E85. This fuel contains between 82.5% and 87.5% ethanol and between 12.5% and 17.5% regular gasoline. WARNING: Use ONLY in flex fuel vehicles. Federal law prohibits use in all other vehicles and engines. Check the label on your gas tank lid or your owner's manual to be certain your vehicle is flex fuel or refer to the US Environmental Protection Agency. This fuel WILL damage nearly all other engines."

Retail Fuel Dispenser Label and Fuel Ethanol Content Survey

We would recommend that the "Retail Fuel Dispenser Label and Fuel Ethanol Content Survey" cover a larger percentage of service stations (a minimum of 20 percent) to ensure compatibility with fuel regulations, as opposed to a set number of 7,500 samples taken each year. This would ensure that an adequate proportion of fueling stations are surveyed before and after the total number of stations dispensing E15 reaches or exceeds 7,500. We would also recommend that survey results be made available to the public via an EPA website to ensure full information disclosure.

Regarding Survey Option 1 or 2, we would recommend a new "Option 3" in which EPA or state government agencies survey individual obligated parties to ensure that an unbiased third-party regulator collects information about ethanol content and compliance with labeling requirements. Allowing regulated parties to form their own consortium and hire their own independent survey association could undermine the independent nature of the survey. Given the potential financial and human costs of consistent mislabeling, direct testing should be completed on-site by EPA or state government regulators. If a regulated party is found to be out of compliance, the entity should be fined accordingly.

Regarding EPA's concern of being unaware of new areas or fueling stations offering E15 blends, a solution might be that each entity offering E15 could register with an online database. This would ensure that EPA and state government agencies are aware of new entities that would be subject to sampling for the E15 label and ethanol content survey.

Program Outreach

EPA should serve as the primary point of contact for fuel/ethanol labels, not an industry organization. EPA's online Green Vehicle Guide could be used as a basis for consumer information on fueling their vehicles, with a separate page for non-road engines. This website - http://www.epa.gov/greenvehicles/Index.do - should be listed on the respective labels rather than that of an industry organization's website or phone number. The guide could be easily altered to clearly indicate if each engine is able to run on E0, E10, E15, or E85 blends, etc. Currently, the fueling section for each vehicle is vague as it states that, for example, a 2008 Chevrolet Impala 6-cylinder/3.9L engine, can receive "Ethanol/Gasoline" but does not indicate which blends are appropriate, for instance E10 or E85. Engine warranty information could also be linked through this website so that owners can easily access their vehicle or other engine's warranty and liability information. In addition, an EPA-designated phone number with information on ethanol blends should also be listed on the fuel/ethanol labels.

The proposed misfueling rule points out that with the introduction of Ultra Low Sulfur Diesel (ULSD), an alliance was formed between public and private organizations to "ensure a smooth program transition by providing comprehensive information and technical coordination." Another alliance like this should be formed for the introduction of higher ethanol blends but with representation from environmental groups and consumer advocacy organizations as well. This alliance could work with government

officials to ensure that unbiased, specific and straightforward information is provided to the public through the website and phone number mentioned above.

Other Measures to Ensure Compliance – RVP and E15 Underground Storage Tank Transition

We are deeply concerned that underground storage tanks and current fuel distribution infrastructure are not prepared to handle ethanol blends higher than 10 percent. Higher blends of ethanol may result in tank corrosion, which in turn can lead to ground water contamination. Double-walled storage tanks are being installed as older single-walled tanks are replaced. Since many service stations do not have adequate funding to quickly update their infrastructure, more leaks will occur as ethanol blends are introduced into older infrastructure that was not designed to store higher ethanol blends.

The EPA seeks comments on ways to reduce these outcomes. We recommend that EPA conduct thorough testing of E15 with both old and new underground storage tanks, both single- and double-walled tanks, various piping and pump infrastructure, and analyze short-term and long-term effects, among others. After these analyses have taken place, fundamental questions about the future of higher ethanol blends can then be examined, especially regarding limitations of our current infrastructure and related environmental impacts. For instance, E15 should not be allowed to be stored in a tank unless it is double-walled and is compliant with testing at least once every three years, per current government regulations. Government follow-up with cases of current leaking underground storage tanks should also be completed and associated funding should be fully allocated to ensure proper closure of these older tanks.

Conclusion

In conclusion, we urge EPA to implement clear, consistent, unbiased and detailed labels to avert misfueling of ethanol blends. These labels should cover all ethanol blends and should preempt state laws. All consumers will benefit from additional and consistent information. We also strongly urge EPA to determine what effect using E15 will have on current fueling infrastructure, such as fueling pumps and underground storage tanks, before allowing a full waiver.

Again, thank you for the opportunity to express our concerns about the introduction of E15 to our nation's fuel supply and the related misfueling rule. If you have any questions, please contact Sheila Karpf, EWG's Legislative and Policy Analyst, at skarpf@ewg.org or 202-939-9153.

Sincerely,

Kenneth A. Cook
President

Environmental Working Group