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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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July 29, 2010

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson:

Some in Congress believe that renewable fuels can play a role in improving our energy security. However, these fuels can only play this role if they are introduced in a manner that adequately protects consumers. They must be integrated into the fuel system in a way that does not damage people's cars, trucks, lawn mowers, boats, or other non-road equipment.

We are writing to request information about what plans, if any, the Environmental Protection Agency (EPA) has developed to ensure that increasing the permissible level of ethanol in gasoline is accomplished in a way that does not present any potential harm to air quality, consumers' investments in cars, trucks, and other engines and equipment, or small business owners' investments in gas stations.

In particular, EPA is currently considering a petition from ethanol producers to allow the sale of gasoline that contains up to 15 percent ethanol (E15). As you consider this petition, we believe it is important that you protect the investments the American people have made in their cars, trucks, boats, lawn mowers, and other engines and equipment, and the investments that many small business owners have made in their gas stations. While E15 may work well in some types of vehicles, preliminary information raises significant questions about whether, in other types of vehicles or engines, E15 may cause durability or operability problems, or increased air

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pollution.<sup>1</sup> An organization that includes engine and vehicle manufacturers has warned that fueling certain “non-road and on-road equipment with fuels with ethanol content higher than 10% could cause serious, permanent damage to millions of legacy products, emission-related failures, and increased operating hazards for millions of consumers.”<sup>2</sup> We believe that EPA should not approve the use of E15 until the agency has sufficient test results to allow you to assure consumers that use of E15 will not harm their vehicles or engines.

Congress’ desire to balance increased use of renewable fuels with the protection of consumers’ vehicles and engines was reflected in the Energy Independence and Security Act of 2007 (EISA). In recognition of the potential benefits of renewable fuels, section 202 of EISA increased the amount of renewable fuel that oil companies must sell, ultimately requiring 36 billion gallons a year in 2022. This was balanced with section 251 of EISA, in which Congress amended section 211(f)(4) of the Clean Air Act such that it prevents the sale of E15 unless the agency makes an affirmative determination that increasing the permissible concentration of ethanol in gasoline would result in a fuel that is compatible with existing cars and trucks, and with non-road equipment (such as boats, lawn mowers, chain saws, etc.). Prior to 2007, under section 211(f)(4), a request to increase the permissible concentration level for ethanol would have been deemed granted unless EPA denied the request within 180 days of its receipt.

Although section 211(f)(4), as amended, requires EPA to make a decision within 270 days of receiving an application, the applicant has the burden of proving compatibility; EPA does not have an obligation in the 270-day period to conduct tests to support the applicant’s request. Given the important potential benefits of renewable fuels and the need to protect existing vehicles and engines, we support the Department of Energy’s efforts to conduct the necessary compatibility testing and your decision to await those test results.

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<sup>1</sup> California’s Air Resources Board (CARB) staff warned that two studies with match blended gasoline showed increased NOx emissions from on-road engines with increasing ethanol content. CARB Letter Submitted via Email to the EPA Docket ID No. EPA-HG-OAR-2009-0211 (July 16, 2009). The Alliance for Automobile Manufacturers, after noting that vehicles “commonly remain in use for over 20 years,” stated that two studies raise concerns about durability impacts and that one of these studies showed catalyst deterioration after 50,000 miles. Letter to the Honorable Lisa Jackson, et al., from the Alliance of Automobile Manufacturers (Mar. 31, 2009).

<sup>2</sup> Alliance for a Safe Alternative Fuels Environment (ALLSAFE) and The Outdoor Power Equipment Institute (OPEI), *Comments before the Environmental Protection Agency on the Notice of Receipt of a Clean Air Act Waiver Application To Increase the Allowable Ethanol Content of Gasoline to 15 Percent*, Docket ID No.: EPA-HQ-OAR-2009-0211 (July 20, 2009) at p. 4.

EPA has said that if E15 is compatible with some vehicles and engines, but not others, EPA may grant a partial approval of E15 (allowing the use of E15 in certain vehicles and engines, but not in others). Assuming that EPA has authority to grant a partial waiver, EPA should have a well-thought-out and well-executed plan for avoiding misfueling. Without appropriate safeguards, a partial approval could pose major problems for consumers with vehicles or engines that are not compatible with E15. Based on the experience with the transition from leaded to unleaded gasoline, a significant amount of accidental or intentional misfueling would be likely.<sup>3</sup> If such misfueling led to operability or durability problems, or increased repair costs, a significant number of consumers could be adversely affected. Public perception of problems with a new fuel formulation can cause a backlash against the fuel formulation and government regulation, as was demonstrated by the introduction of reformulated gasoline in several markets.<sup>4</sup>

Allowing the sale of renewable fuel in a way that damages equipment, shortens its life, or requires costly repairs will likely cause a backlash against renewable fuels. It could also seriously undermine the agency's credibility in addressing fuel and engine issues in the future.

To assist the Committee in better understanding these issues, we ask that you answer the enclosed questions.

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<sup>3</sup> In 1982, twelve years after the initial phase-down of leaded gasoline, an EPA study found that 13.5% of the vehicles designed for unleaded fuel were being misfueled with leaded fuel even though vehicles designed for unleaded gasoline had small fuel inlets that did not accommodate the larger diameter pump nozzles used for leaded gasoline. EPA, *Regulation of Fuels and Fuel Additives: Lead Phase Down, Proposed Rule*, 49 Fed. Reg. 31032, 31034 (Aug. 2, 1984).

<sup>4</sup> Congressional Research Service, *Implementation of the Reformulated Gasoline Program*, CRS Report 95-850 (Aug. 1, 1995).

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Please feel free to contact either of us regarding this letter, or have your staff contact Lorie Schmidt of the Committee on Energy and Commerce Majority Staff at 202-225-4407, or Amanda Mertens Campbell of the Committee on Energy and Commerce Minority Staff at 202-225-3641. Thank you for your attention to this matter.

Sincerely,



Henry A. Waxman  
Chairman



Joe Barton  
Ranking Member



Edward J. Markey  
Chairman  
Subcommittee on Energy and Environment



Fred Upton  
Ranking Member  
Subcommittee on Energy and Environment

Enclosure

**QUESTIONS REGARDING THE EFFECT OF E15 ON CONSUMERS' CARS,  
TRUCKS, AND OTHER ENGINES**

- (1) For 2007 and later model year passenger vehicles designed to run on gasoline, can you currently assure consumers that E15 will not adversely affect the vehicles' operability, durability, safety, and pollution control equipment?
  - (a) If so, please list the studies or other information that form the basis for your assurance.
  - (b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.
  - (c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2007 and later model year vehicles.
  - (d) What percent of the existing gasoline-powered passenger vehicle fleet is comprised of 2007 and later model year vehicles?
  
- (2) For 2001 through 2006 model year passenger vehicles designed to run on gasoline, can you currently assure consumers that E15 will not adversely affect the vehicles' operability, durability, safety, and pollution control equipment?
  - (a) If so, please provide the studies or other information that form the basis for your assurance.
  - (b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.
  - (c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2001 through 2006 model year vehicles.
  - (d) What percent of the existing gasoline-powered motor vehicle fleet is comprised of 2001 through 2006 model year vehicles?
  
- (3) For 2000 model year and earlier passenger vehicles designed to run on gasoline, can you currently assure consumers that E15 will not adversely affect the vehicles' operability, durability, safety, and pollution control equipment?
  - (a) If so, please provide the studies or other information that form the basis for your assurance.
  - (b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.
  - (c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2000 and earlier model year vehicles.
  - (d) What percent of the existing gasoline-powered passenger vehicle fleet is comprised of 2000 and earlier model year vehicles?
  
- (4) For non-road engines designed to run on gasoline (including boats, lawn mowers, chain saws, and line trimmers), can you currently assure consumers that E15 will not adversely affect the engines' operability, durability, safety, and pollution control equipment?
  - (a) If so, please provide the studies or other information that form the basis for your assurance.
  - (b) If not, please describe your current understanding of what effect the use of E15 would have on non-road engines.

- (c) Please describe any testing that is being conducted with respect to E15 usage in non-road engines.
- (5) Is the testing that the Department of Energy is conducting with respect to E15 sufficient to fully identify the potential risks of increased ethanol blends in vehicles and engines?
- (6) Under what Clean Air Act authority does EPA propose to grant partial, as opposed to universal, approval of E15? In your answer, please explain how EPA interprets the word “any” in section 211(f)(4).
- (7) Before using any study as a basis for any final decision on E15, will you make the study results public and provide an opportunity for comment on them before finalizing your decision? If not, why not?
- (8) If EPA were to permit E15 for use in some vehicles and engines, but not in others, would the warranty be voided if consumers were to use E15 in existing cars, trucks, and non-road engines designed to run on gasoline? In answering this question, please explain whether warranty coverage issues depend on whether EPA has approved a waiver for E15.
- (9) What changes in mileage should a consumer expect for any particular vehicle operated on E15 instead of 100 percent gasoline? Instead of E10?
- (10) If EPA were to grant partial approval of E15, could a state or locality ban the sale of E15? If so, under what circumstances? In your answer, please address the impact of *Rocky Mountain Farmers Union v. Goldstene*, No. CV-F-09-2234 LJO DLB, slip op. (E.D. Cal. June 16, 2010).
- (11) Is EPA developing a plan to avoid (or minimize) misfueling of E15 if EPA were to grant partial approval of E15?
- (a) If so, what is the plan?
  - (b) Will EPA provide public notice and opportunity for comment before finalizing the plan?
  - (c) Will EPA allow the sale of E15 prior to the effective date of such a plan?
  - (d) When Assistant Administrator McCarthy briefed our Committee on the status of the E15 waiver request, she said that the Agency was considering a labeling rule and a public outreach effort to minimize misfueling with E15. Have other options been proposed to EPA? If so, please describe them and state whether they are under consideration.
  - (e) How effective does EPA believe a labeling rule would be in avoiding (or minimizing) misfueling?
- (12) Please describe the extent to which EPA is working with private stakeholders (such as ethanol producers, oil companies, auto manufacturers, engine manufacturers, non-road equipment manufacturers, gas station owners, state and local governments, and

environmentalists) to develop a plan to avoid misfueling of E15 in the event that EPA grants a partial waiver.

- (13) What kind and how many existing gas pumps and tanks can be used for E15 without increasing the risk of leaks or other equipment failure?
  - (a) How many installed tanks and pumps are certified for the use of E15?
  - (b) What are the consequences for gas station owners if they use E15 in a tank or pump that is not certified for E15?
- (14) In section 209 of the EISA, Congress gave EPA 18 months to complete a study of the air quality effects of meeting the renewable fuel standard contained in that law. When will EPA complete that study?
- (15) Please describe the effect of E15 on vehicle and engine evaporative and tailpipe emissions of volatile organic compounds, nitrogen oxides, and air toxics for each of the following types of vehicles and engines:
  - (a) 2007 and later model year cars and trucks designed to operate on gasoline.
  - (b) 2001 through 2006 model year cars and trucks designed to operate on gasoline.
  - (c) 2000 model year and earlier cars and trucks designed to operate on gasoline.
  - (d) non-road engines and vehicles designed to operate on gasoline.
- (16) Has EPA conducted any modeling to determine whether an approval of E15 would affect states' abilities to attain and maintain the national ambient air quality standards?
  - (a) If so, what does the modeling show?
  - (b) If not, does EPA plan to conduct such modeling?