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April 15, 2021

U.S. Environmental Protection Agency
EPA Docket Center
Office of Air and Radiation Docket
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Docket ID No. EPA-HQ-OAR-2020-0448

Dear Sir or Madam:

The Tanks Subcommittee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA's) Proposed Rule for E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks, published in the Federal Register on January 19, 2021.¹

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories, and the District of Columbia (States). The Tanks Subcommittee represents the interests of the State regulatory programs responsible for implementing 40 CFR Part 280. Our members ensure that owners and operators of underground storage tank (UST) systems² are following federal and State release prevention requirements to protect human health and the environment.

The comments below are being submitted by the ASTSWMO Tanks Subcommittee and have not been reviewed or adopted by the ASTSWMO Board of Directors. ASTSWMO also encouraged our members to submit formal comments to U.S. EPA on the proposed rule and we request that EPA consider the feedback received from all States.

E15 Compatibility with USTs:

For the proposed rulemaking on compatibility of E15 with USTs, the Tanks Subcommittee foresees several problems due to the current infrastructure of UST systems in the U.S. First, we have concerns about secondary containment appearing to be an adequate substitute for compliance with compatibility requirements based on the proposed rule. Owners of older secondarily contained tanks warranted by the manufacturer to store fuel blends up to E10 may void their warranties by storing E15. Additionally, older tanks and piping that are currently in use may be subject to unknown incompatibility issues since records of the exact equipment installed may not be readily available. Currently, all systems use pipe dopes, sealants, and gaskets, among other things, to create tight systems. The introduction of E15 into these

¹ 86 FR 5094

² A UST system is a tank (or a combination of tanks) and connected underground piping having at least 10 percent of their combined volume underground. The tank system includes the tank, underground connected piping, underground ancillary equipment, and any containment system.

systems could cause degradation of these materials and components that could lead to releases and harm to the environment.

We have additional concerns with the proposed rule requiring all new systems be compatible up to E100. The cost of compatibility could exceed the benefits, especially for diesel systems, which do not very often convert to storage of gasoline. In addition, current compatibility evaluations and approvals by manufacturers and regulators are commonly up to E85 and the rollout of E100 equipment by manufacturers will take several years.

From the cleanup perspective, leaking USTs are a source of contamination to groundwater and drinking water resources. This fact is highlighted in EPA's current [Strategic Plan](#), specifically in Objective 1.3: Revitalize Land and Prevent Contamination, which sets long-term performance goals for completing and reducing leaking USTs cleanups. States have done tremendous work in reducing the backlog of sites with leaking UST cases. As of 2020, 37 States have closed over 90% of their leaking UST sites. Furthermore, there are approximately 63,000 remaining releases in the backlog and approximately 530,000 active tanks with an average age of about 32 years old.^{3,4,5} In exchange for reducing the burden to demonstrate compatibility and lessening barriers for the use of higher ethanol blended fuels, we are concerned that this may lead to an increase in the backlog of releases and potentially increase the risk of currently known contamination from leaking UST releases.

Some of the proposed language relies on secondary containment and release detection to identify releases in the event the secondarily contained UST system is not compatible with the product. Unfortunately, it is common for releases to be discovered during UST removal, rather than through leak detection as expected, which is documented in studies conducted by Florida, California, and New York.^{6,7,8,9}

Furthermore, research of fate and transport of ethanol in the environment has identified the following potential issues that may increase the risk of releases:¹⁰

- The existence of ethanol could increase the concentrations of other chemicals of concern in dissolved phase plumes in groundwater through a cosolvent effect.
- Ethanol is preferentially degraded before petroleum compounds, which may lead to more widespread/extended petroleum dissolved phase plumes in groundwater. One study has shown that benzene groundwater plumes may increase in length by 16-34% when ethanol is present.¹¹
- Ethanol at high concentrations can be toxic to microbes, which may also lead to more widespread/extended groundwater plumes due to decreased biodegradation rates.

³ [20 Years Of Progress Closing LUST Sites](#), US EPA OUST, January 2021.

⁴ [Semiannual Report of UST Performance Measures, End of Fiscal Year 2020](#), US EPA OUST, November 2020.

⁵ [UST Finder: National UST and Releases Web Map](#), US EPA.

⁶ Florida Leak Autopsy Study for Storage Tank Systems. Florida DEP. 2005

⁷ Are Leak Detection Methods Effective in Finding Leaks in Underground Storage Tank Systems? by Shahla Dargahi Farahnak, P.E., and Mary M. Drewry, California State Water Resources Control Board, January 1998.

⁸ Analysis of California UST & LUST Programs and the Impacts of MtBE and Ethanol to California, prepared by Anne Happel for the U.S. Department of State, Office of the Legal Adviser, December 2003, p. 27

⁹ US EPA MTBE Pilot Project – Objective 2 Investigate Potential Sources of MTBE Contamination on Long Island That Could Impact Water Supplies or Environmentally Sensitive Areas, New York State Department of Environmental Conservation, February 2008, p. 5.

¹⁰ [LUSTLine #63, "What Minnesota Is Learning About Denatured Ethanol, E85 Releases, and Methane Gas?"](#)

¹¹ [Impact of Ethanol on Benzene Plume Lengths: Microbial and Modeling Studies](#), by Rula A. Deeb; Jonathan O. Sharp; Andrew Stocking; Shane McDonald; Kimberlee A. West; Maryline Laugier; Pedro J. J. Alvarez; Michael C. Kavanaugh; and Lisa Alvarez-Cohen.

- For releases of high-percentage ethanol fuels, the possibility of explosive levels of methane becomes a major risk driver.

ASTSWMO is also concerned with the impacts that the proposed rule will have on State financial assurance funds for cleanups. As mentioned above, material compatibility issues of secondarily contained systems, piping, other UST system components, pipe dopes, and sealants could cause new releases that will impact these State funds. Releases that may occur would result in increased costs associated with investigation and cleanup of releases. This increased plume length and the costs associated with larger cleanups could lead to additional stress on State cleanup funds.

Finally, the proposed rule would require State Program Approval (SPA) for 38 States and 2 Territories. Since the adoption of the 2015 Federal Regulations, many States have expressed concerns with the time, effort, and financial and administrative resources needed to get through the entire SPA process. Given the process can take some time and the changes for this rulemaking are minimal, the ASTSWMO Tanks Subcommittee asks that the SPA process not be required if revisions in this proposed rule are implemented or that the process be minimized or expedited.

General Comments on Compatibility:

In April 2019, ASTSWMO submitted [comments](#) re: EPA's Modifications to Fuel Regulations to Provide Flexibility for E15, which EPA finalized on May 30, 2019. We are reiterating the following comments provided in April 2019 letter specific to federal compatibility requirements:

40 CFR 280.32 requires owners and operators to use UST systems that are fully compatible with the substance stored in the UST system, no matter the substance being stored. Further, 40 CFR 280.32 requires owners and operators of UST systems who wish to store greater than 10% ethanol demonstrate that the systems are compatible with the substances stored and document compatibility for as long as the UST system is storing the substance. Compatibility must be demonstrated using:

- Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
- Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or¹²
- Another option determined by the State to be no less protective of human health and the environment than the other two options listed.

We encourage owners and operators of UST systems who are considering offering E15 to review *UST System Compatibility with Biofuels (EPA 510-K-15-002)*. This booklet was developed by U.S. EPA's Office of Underground Storage Tanks and explains compatibility requirements for UST systems storing biofuels and biofuel blends and provides references to government and industry educational resources. Owners and operators should also contact their State regulatory agency prior to installing new systems to ensure there are no additional requirements for demonstrating or documenting compatibility in their State. Be advised that the compatibility requirements for UST systems storing ethanol blended fuels over E10 are not limited to newly installed systems, but also apply to all existing systems.

¹² ASTSWMO's Compatibility Tool provides information on UST system components that are compatible with E15: <http://astswmo.org/ust-compatibility-tool/>

E15 Fuel Dispenser Labeling Revisions:

The ASTSWMO Tanks Subcommittee is concerned with the potential removal of the E15 labeling requirement in the proposed rule. Elimination of the labeling could lead to problems for vehicle owners with model year 2000 and older vehicles, as well as increased problems for owners of non-compatible small engines. On January 15, 2021, the American Petroleum Institute (API), American Fuel and Petrochemical Manufacturers (AFPM), Outdoor Power Equipment Institute (OPEI), National Marine Manufacturers Association (NMMA), BoatUS and American Motorcyclists Association (AMA) released a [joint statement](#) opposing the proposed elimination of E15 labeling requirements. The Tanks Subcommittee agrees with their statement.

For the reasons mentioned above, the ASTSWMO Tanks Subcommittee strongly believes the proposed modification to the current labeling requirements or leaving the current requirements in place would be a better approach as valuable information would still be provided to consumers.

Thank you for your consideration of this input. If you have any questions about these comments, please contact me at matthew.jones@des.nh.gov or (603) 271-2986.

Sincerely,



Matthew Jones (NH)
Chair, ASTSWMO Tanks Subcommittee

CC: ASTSWMO Board of Directors
ASTSWMO Tanks Subcommittee
ASTSWMO Release Prevention Task Force
ASTSWMO LUST Task Force
ASTSWMO State Fund-Financial Responsibility Task Force
ASTSWMO Emerging Issues Task Force