

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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September 10, 2012

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 6101A
Washington, D.C. 20460

Dear Administrator Jackson,

On August 1st, in a letter exchange (herein "August 1st letter") between the Environmental Protection Agency (EPA) and the American Motorcyclist Association regarding the implementation of the partial waivers for E15, Byron Bunker of the National Vehicle and Fuel Emissions Laboratory indicated that: "...EPA requires that retail stations that own or operate blender pumps either dispense E15 from a dedicated hose and nozzle if able or, in the case of E15 and E10 being dispensed from the same hose, require that at least four gallons of fuel be purchased to prevent vehicles and engines with smaller fuel tanks from being exposed to gasoline-ethanol blended fuels containing greater than 10 volume percent ethanol."¹ Further, the letter stated that retail stations offering E15 blender pumps would have to "use additional labeling to inform consumers about the minimum purchase requirement" and that "some retailers may need to take additional steps." This is reiterated in EPA's "Sample Letter from EPA Approving Misfueling Mitigation Plan Submission" (herein "Sample Letter") as posted on the Agency's website.²

This latest action adds to our growing concerns regarding the EPA's implementation of the partial Clean Air Act waivers for mid-level ethanol blends (E15).³ The EPA has no business telling Americans how much fuel they must purchase. This unprecedented attempt to remedy the consequences of EPA's E15 waivers will not prevent widespread misfueling of millions of vehicles and products already owned by Americans that are not covered by the waiver decisions and introduces an unacceptable intrusion into the daily lives of drivers.

Furthermore, EPA's first-ever fuel purchase requirement appears to have been made outside the normal rulemaking process, seems antithetical to free markets, and highlights the flaws in the

¹ http://sensenbrenner.house.gov/uploadedfiles/eparesponse_e15misfueling.pdf.

² <http://www.epa.gov/OMS/regs/fuels/additive/e15/documents/e15-mmp-approval-letter-sample.pdf>.

³ <http://www.gpo.gov/fdsys/pkg/FR-2010-11-04/pdf/2010-27432.pdf>, and <http://www.gpo.gov/fdsys/pkg/FR-2011-01-26/pdf/2011-1646.pdf>.

Agency's hasty decision to grant partial waivers for E15 prior to comprehensive scientific assessment and evaluation.

The EPA's Misfueling Mitigation Plan is particularly disconcerting in light of the Administration's enthusiastic support for additional blender pumps and the Agency's own press release stating that, "[t]o enable widespread use of E15, the Obama Administration has set a goal to help fueling station owners install 10,000 blender pumps over the next five years."⁴

This unilateral action raises significant concerns. Therefore we ask that you respond to the following questions by September 24, 2012:

1. In granting a partial waiver for only certain vehicle types and model years, your Agency has recognized that the introduction of E15 could "cause or contribute to a failure of any emission control device or system" under Section 211 (f)(4) of the Clean Air Act. The minimum purchase requirement is the EPA's latest attempt at making this short-sighted waiver workable.
 - a. Under what specific statutory authority does EPA have the power to compel consumers to purchase a minimum amount of fuel?
 - b. Please identify all past circumstances in which EPA mandated the purchase of specific amounts of fuel in order to comply with the requirements of the Clean Air Act related to the introduction of new fuels or fuel additives.
2. Other than the August 1st letter to the American Motorcyclist Association and the Sample Letter, it does not appear that EPA subjected this new mandate to the normal rulemaking process or to public comment.
 - a. Did EPA request or accept any public comment on the decision to mandate a four gallon purchase requirement for blender pumps? If not, why not?
 - b. Did EPA request or accept public comment on the new labeling guidelines for the four gallon purchase requirement, which is only described in two brief sentences in the Sample Letter? If not, why not?
3. EPA's Sample Letter briefly describes the Renewable Fuels Association's (RFA) suggestion that blender pumps be mandated to include a four gallon purchase requirement, and states that the Agency "agrees that this approach is suitable for dispensing E15."
 - a. Upon what technical basis did EPA make the determination that a four gallon purchase requirement would alleviate certain blender pump misfueling concerns? Please provide the Agency's technical assessment of RFA's claim.

- b. Did EPA consider prohibiting the sale of E15 in blender pumps? Please provide all documents EPA developed to assess the feasibility of this alternative approach.
 - c. The August 1st letter acknowledged that “[s]ince motorcyclists and ATV users... have relatively small fuel tanks, they should pay careful attention...” Has EPA calculated the number of vehicles or engines with fuel tanks smaller than four gallons?
 - d. In light of EPA’s reliance on Department of Energy’s E15 test program in making the partial waiver decisions, did your Agency consult with DOE or ask for a technical analysis on this four gallon requirement?
 - e. Has EPA provided any guidance on the four gallon minimum purchase requirement labels? Did the Agency conduct a technical analysis to determine if these labels will be sufficient to prevent inadvertent misfueling with E15?
4. In light of the limited information made available regarding the minimum purchase requirement, there are several areas in which we seek additional information:
- a. The Agency has not released a list of companies with EPA approved E15 misfueling mitigation plans since May 31, 2012.⁵ Please provide an updated list of companies with EPA approved E15 misfueling mitigation plans.
 - b. EPA has only released the Sample Letter in response to E15 misfueling mitigation plans, and the letter acknowledges that the “[a]ctual letter language may vary depending on a company’s specific circumstances.” Please provide the Committee with all submitted misfueling mitigation plans along with all EPA approval letters sent to date.
 - c. The August 1st letter further indicates that “some retailers may need to take additional steps to help ensure that consumers heed the minimum purchase requirements.” Please provide a list of all steps EPA required pursuant to this statement.
 - d. A footnote in the Sample Letter states that, “[i]f you believe a lower minimum transaction volume requirement would be appropriate for your E10/E15 nozzle... you may seek EPA approval of a lower volume requirement.” Has EPA received applications for any lower volume requirements? Have you granted approval for any lower volume requirement?
 - e. EPA’s Fact Sheet on misfueling mitigation from June of 2012 fails to mention the four gallon minimum purchase requirement for blender pumps.⁶ Why?

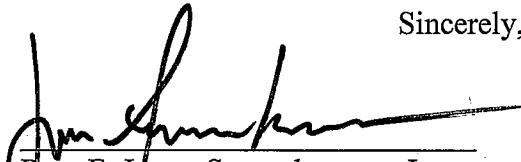
⁵ <http://www.epa.gov/OMS/regs/fuels/additive/e15/documents/e15-nmp-approved-companies-list.pdf>

⁶ <http://www.epa.gov/OMS/regs/fuels/additive/e15/documents/420f12030.pdf>

If you have any questions, please contact Clint Woods with the Committee on Science, Space, and Technology staff at 202-225-8844.

Thank you for your immediate attention to this matter.

Sincerely,



Rep. F. James Sensenbrenner, Jr.
Vice-Chairman



Rep. Chip Cravaack

cc: The Honorable Ralph Hall
Chairman, Committee on Science, Space, and Technology

The Honorable Eddie Bernice Johnson
Ranking Member, Committee on Science, Space, and Technology