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FIFTH DISTRICT, WISCONSIN

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May 12, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

Section 211(h)(1) of the Clean Air Act (CAA) restricts the Reid Vapor Pressure (RVP) of gasoline sold during summer months in the United States to 9.0 pounds per square inch (psi)[1]. The CAA grants a one pound per square in waiver for gasoline containing 10 percent ethanol.[2]

The EPA has consistently stated that the CAA only grants the one pound waiver for gasoline containing 10 percent ethanol. When the EPA authorized the introduction "of gasoline that contains greater than 10 volume percent ethanol and no more than 15 volume percent ethanol (E15),"[3] it stated that "EPA interprets the 1.0 psi waiver in CAA section 211(h) as being limited to gasoline-ethanol blends that contain 10vol% ethanol."[4] In January 2011, the EPA reaffirmed its interpretation stating that "EPA has historically implemented CAA section 211(h)(4) through 40 CFR 80.27(d), which provides that gasoline-ethanol blends that contain at least 9vol% ethanol and not more than 10vol% ethanol qualify for the 1.0 psi waiver of the applicable RVP standard."[5]

When the EPA authorized the introduction of E15 into the marketplace it worked closely with the Renewable Fuels Association (RFA) on regulatory issues and a strategy to mitigate the possibility of misfueling. The agency provided specific conditions that the RFA has compiled into the "E15 Retailer Handbook," which the EPA provides a link to on its website. The E15 Retailer Handbook states that "E15 may not exceed a maximum RVP of 9.0 psi during the summer volatility seasons (June 1-September 15). It also addresses misfueling concerns by providing a photo of the EPA approved E15 label and states that "the EPA encouraged industry to develop a public outreach and education program."[6]

Despite these statements from the EPA and the RFA, some retailers have relabeled their E15 pumps as flex-fuel during the summer months to avoid abiding by EPA's interpretation of the CAA's RVP limits.[7]

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[1] 42 U.S.C. § 7545(h)(1).
[2] 42 U.S.C. § 7545(h)(4).
[3] 75 Federal Register 68094
[4] 75 Federal Register 68149
[5] 76 Federal Register 4675
[6] http://ethanolrfa.3cdn.net/d7f6b590dcc0254053_nam62w7f1.pdf
[7] Jessen, Holly. "E15 Supporters Speak Up." *Ethanol Producer Magazine* August 5, 2013 http://ethanolproducer.com/blog/article/2013/08/e15-supporters-speak-up (accessed May 7, 2015)

The EPA classifies E15 as gasoline. Retailers, however, have placed labels on their pumps that state that E15 is not gasoline (see photo 1). These are not the EPA's approved E15 label (see photo 2 for EPA approved E15 label) that the RFA has made available free of charge to E15 marketers.[8]

Given these facts, please address the following questions by June 1, 2015:

- Is it legal to sell, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP in excess of 9.0 psi during summer volatility seasons (June 1-September 15) in the 48 contiguous states?
- Is the RFA "E15 Retailer Handbook" correct that the EPA requires E15 pumps to have an EPA approved label?
- Photo evidence suggests that retailers are using an unapproved label for E15 pumps. Does Photo 1 or Photo 2 show the EPA approved E15 label?
- Does the EPA know who provided the E15 label to retailers shown in Photo 1?
- Could these signs be confusing to consumers and lead to misfueling?
- How will the EPA address the potential for misfueling?
- Does the Clean Air Act authorize a 1.0 psi RVP waiver for gasoline containing more than 10 percent ethanol?
- Has the EPA provided a waiver 1.0 psi RVP waiver for E15?
- How is EPA enforcing the federal E15 pump label?
- How is EPA enforcing E15's summer RVP?

Thank you for addressing these questions.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Member of Congress

[8] http://ethanolrfa.3cdn.net/d7f6b590dcc0254053_nam62w7f1.pdf

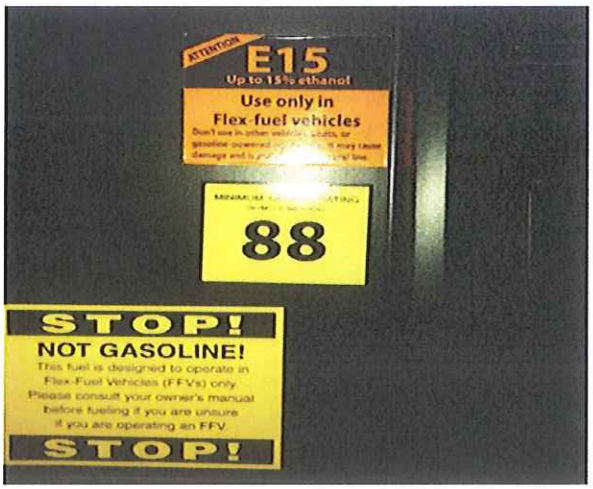

Photo 1.

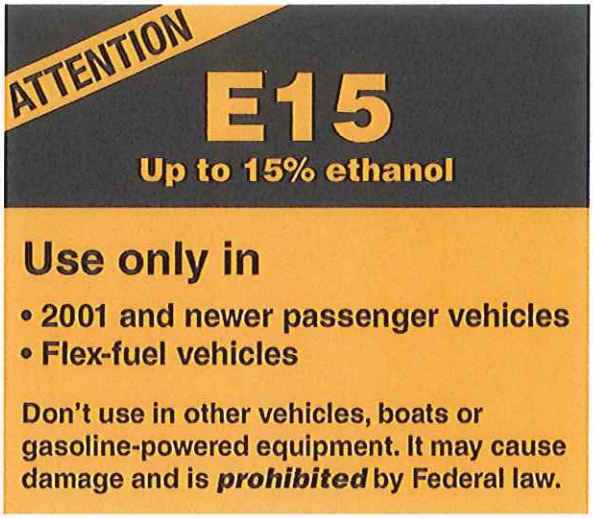

Photo 2.