UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Whitfield:

Thank you for your letter of July 19, 2013, requesting responses to Questions for the Record following the June 26, 2013, hearing before the Subcommittee on Energy and Power entitled "Overview of the Renewable Fuels Standard: Government Perspectives."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions, please contact me or your staff may contact Cheryl Mackay in the EPA's office of Congressional and Intergovernmental Relations at mackay.cheryl@epa.gov or (202) 564-2023.

Sincerely,

Nichole Distefano
Deputy Associate Administrator
for Congressional Affairs

Enclosure

cc: The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

Questions for the Record
House Subcommittee on Energy and Power
Committee on Energy and Commerce
June 26, 2013, Hearing
"Overview of the Renewable Fuels Standard: Government Perspectives"

The Honorable Michael C. Burgess

1. **How many vehicles have been tested with E-15 gasoline by EPA or DOE?**

The EPA and/or DOE have conducted or participated in eight test programs since the mid-1990s involving more than 100 motor vehicles. The studies were designed to investigate the potential impacts of E15 (a gasoline-ethanol blended fuel that contains greater than 10 and up to 15 volume percent (vol%) ethanol) on motor vehicles. Other, more limited testing involved nonroad vehicles, engines, and equipment. The vehicles were operated for millions of miles on E15 to evaluate its potential impact on exhaust and evaporative emissions, materials compatibility of engine and fuel system components, and drivability. The results of these studies, plus other relevant information obtained from studies conducted by industry, academia, and other government agencies, are thoroughly reviewed in EPA's E15 Partial Waiver Decisions and the E15 Misfueling Mitigation Rulemaking and are also included in the information provided below in response to question 2. Taken together, these studies formed the basis for EPA's decision to approve the E15 waiver request for model year 2001 and newer light-duty motor vehicles.

2. **During the hearing, you indicated that you were willing to provide technical information and/or reports resulting from vehicle testing with E-15, please provide that information.**

Copies of all relevant studies related to vehicle testing with E15 cited in the E15 Partial Waiver Decisions and the E15 Misfueling Mitigation Rulemaking are available in the docket. These studies can be accessed at http://www.regulations.gov by searching under Docket ID number EPA-HQ-OAR-2009-0211 and referring to the Supporting Documents section.

3. **What limit of liability does an independent private retailer have with respect to misfueling?**

Like other EPA fuels regulations, the E15 Misfueling Mitigation Rulemaking specifies which regulated parties can be held liable for violations and allows assertion of defenses to such liability if a party meets specified conditions. A retailer who properly labels fuel dispensers and did not misfuel or cause misfueling would not be held liable for misfueling violations. The E15 Misfueling Mitigation Rulemaking prohibits any person from selling, introducing, causing or permitting the sale or introduction of gasoline containing more than 10 vol% ethanol into certain vehicles and engines. In the preamble to the Misfueling Mitigation Rule, the EPA explained that "[t]he obligation of a retailer is to not misfuel and to not cause misfueling. Misfueling may occur in or as a result of varied circumstances…." The preamble further gave one specific example, that of a marina that sells fuel almost exclusively for use in boats, as a case where a retailer could still be judged as causing or contributing to misfueling despite labeling the pumps appropriately. For the vast majority of retailers, following the misfueling mitigation requirements of the

regulations will be an effective means to prevent misfueling and hence avoid retail liability for misfueling under the Clean Air Act.

The Honorable Robert E. Latta

1. **Could you explain the scope of the affirmative defense built into the quality assurance program for purchasing Renewable Identification Numbers (RINs).**
   a. **What must a RIN buyer do in order to be adequately protected under the quality assurance program?**
   b. **What level of 'due diligence' is required by the buyer?**
   c. **How does the Environmental Protection Agency define 'due diligence'?**
   d. **How will the agency communicate the criteria for due diligence to RIN buyers, so they are adequately protected by the quality assurance program?**

The affirmative defense mechanism described in the RFS Renewable Identification Number Quality Assurance Program (QAP) Proposed Rule would allow any party, other than the generator of an invalid RIN, who holds invalidly generated RINs verified through a QAP, to avoid civil liability for a prohibited act involving the transfer or use of invalid RINs for purposes of fulfilling a renewable volume obligation.

The proposed QAP rule would provide regulated parties a structured way to conduct due diligence and assure that RINs entering commerce are valid through audits of renewable fuel production and RIN generation conducted by independent third parties using quality assurance plans. The proposed QAPs would include validations such as verification of type of feedstocks, verification that volumes produced are consistent with amount of feedstocks processed, and verification that RINs generated are appropriately categorized and match the volumes produced. The proposed program would provide an affirmative defense against liability for civil violations under certain conditions for the transfer or use of invalidly generated RINs, and would specify both the conditions under which invalid RINs must be replaced with valid RINs, and by whom. The proposed program is voluntary, and would be available to RIN buyers who wish to take advantage of it. The agency is currently reviewing the comments received on the proposed rule and is working on the final rule.

The Honorable H. Morgan Griffith

On July 25, 2011, EPA published in the Federal Register a final rule, 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 (40 CFR Part 80). In testimony before the House Energy and Commerce Subcommittee on Energy and Power on June 26, 2013, Mr. Christopher Grundler summarized that under this rule retailers who wish to offer E15 for sale must submit to EPA a misfueling mitigation plan, affix to their dispensers EPA required labels

that inform the consumer of appropriate and prohibited uses of the fuel, and submit to a survey to assist EPA in tracking the availability and sale of E15.

I have learned from fuel retailers that they are concerned about potential liability under the Clean Air Act in the event a self-service customer introduces E15 into a vehicle for which it is not approved. These retailers express concern that even if they are compliant with the requirements of the above referenced misfueling mitigation regulation, they may be found in violation of the Clean Air Act and possibly fined by the EPA or sued by a private party exercising their rights under the Act, if a consumer misfuels with E15.

If a retailer complies with the misfueling mitigation requirements of 40 CFR Part 80, and a person other than the retailer or the retailer's appointed agent introduces E15 into a vehicle or engine for which it has not been approved:

1. **Is that retailer in violation of the Clean Air Act?**
2. **Is that retailer guilty of misfueling?**
3. **Will that retailer be subject to enforcement actions by the EPA for violating a control or prohibition of the Clean Air Act?**

A retailer who properly labels fuel dispensers and did not misfuel or cause misfueling would not be held liable for misfueling violations. The E15 Misfueling Mitigation Rulemaking prohibits any person from selling, introducing, causing or permitting the sale or introduction of gasoline containing more than 10 vol% ethanol into certain vehicles and engines. In the preamble to the Misfueling Mitigation Rule, the EPA explained that "[t]he obligation of a retailer is to not misfuel and to not cause misfueling. Misfueling may occur in or as a result of varied circumstances...." The preamble further gave one specific example, that of a marina that sells fuel almost exclusively for use in boats, as a case where a retailer could still be judged as causing or contributing to misfueling despite labeling the pumps appropriately. For the vast majority of retailers, following the misfueling mitigation requirements of the regulations will be an effective means to prevent misfueling and hence avoid retail liability for misfueling under the Clean Air Act.

4. **Will that retailer be subject to the private right of action provisions of the Clean Air Act?**

Under section 304(a) of the Clean Air Act, federal district courts have jurisdiction to hear lawsuits claiming that a person has violated or is in violation of an emission standard or limitation. The phrase "emission standard or limitation" is defined in section 304(f), for purposes of section 304(a), as including "a control or prohibition respecting a motor vehicle fuel or fuel additive . . . ." In this case, EPA's E15 Misfueling Mitigation Rulemaking adopted various controls on the distribution and sale of the motor vehicle fuel E15. Beyond noting the jurisdictional provision in section 304, the EPA is not in a position to comment on the validity of any claim that might be filed under this citizen suit provision.