



April 19, 2021

Honorable Michael S. Regan
U.S. Environmental Protection Agency
EPA Docket Center, Air Docket
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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

RE: E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks

Dear Administrator Regan:

The Pennsylvania Department of Environmental Protection (DEP) is pleased to offer the following remarks regarding the U.S. Environmental Protection Agency's (EPA) proposed regulations relating to the sale and distribution of gasoline-ethanol blends containing greater than 10 volume percent ethanol and up to 15 volume percent ethanol (E15) and state program approval regulations published in the *Federal Register* on January 19, 2021 (86 *Fed. Reg.* 5094–5104). EPA is co-proposing to either modify the E15 label or remove the label requirement entirely and is seeking comment on whether state and local governments may be preempted from requiring different labels on fuel dispensers. EPA is also proposing to modify the Underground Storage Tank (UST) regulations to grant certain allowances for compatibility demonstration for storage of ethanol blends and proposing compatibility requirements for future UST installations or component replacements that would ensure compatibility with ethanol blends up to and including 100 percent (E100).

DEP applauds efforts to encourage the use of alternative fuels. However, DEP does not support EPA's proposed regulations as these proposals weaken existing EPA and state UST regulations by allowing UST systems to contain regulated substances without any knowledge of compatibility, thereby increasing the risk of UST component failure and subsequent soil and groundwater contamination. DEP also has concerns regarding how these proposals will be specifically implemented as noted below, and the unnecessary effect they may have on facility owners and DEP's ability to manage the increased workload.

For instance, as outlined in the Preamble, EPA intends to promote additional E15 usage by excluding owners of secondarily contained UST systems using interstitial monitoring from the requirement that their UST system has documented compatibility with its storing substance. As currently proposed, this exclusion would apply to not only UST systems storing E15 but also to USTs containing hazardous substances and other regulated substances, which have shown to aggressively deteriorate UST system equipment and components without proper compatibility assurances. In addition, EPA is not requiring compatibility for other UST system equipment and components. UST system components such as spill prevention, overfill prevention, and release

Secretary

Rachel Carson State Office Building | P.O. Box 2063 | Harrisburg, PA 17105-2063 | 717.787.2814 | www.dep.pa.gov

detection equipment, and pipe dope and fittings that are installed in UST systems meeting the secondary containment and release detection requirements previously mentioned, would not have to provide documentation of their compatibility under the current proposal.

It should be noted that during the period October 1, 2019 through September 30, 2020, Pennsylvania recorded that 53% of all releases were due to either a tank or piping failure. 47% percent of the recorded releases were due to a failure of some other part of the UST system such as a dispenser, spill prevention equipment, or submersible turbine pump assembly. Under EPA's proposal, a UST system would not need to demonstrate compatibility information for the components not monitored by release detection. These components accounted for 47% of Pennsylvania's reported releases in federal fiscal year 2020. DEP questions how to determine whether release detection is being properly performed if it is unknown if the equipment used for the release detection method, such as sensors, probes, containment sumps, penetration boots, etc., are compatible with the substance being stored.

During the 2015 federal rulemaking revisions, EPA focused requirements for routine testing of spill prevention, overfill prevention, and release detection equipment. EPA argued that the focus of the 2015 federal rulemaking revisions was to increase the emphasis on the proper operation and maintenance of UST equipment and components to help improve prevention and detection of UST system releases, which remain one of the leading sources of soil and groundwater contamination in the United States. With the current proposed rulemaking, EPA is taking the opposite approach and potentially allowing spill prevention, overfill prevention, and release detection equipment to be installed in UST systems that may not be compatible with the substance being stored. DEP also questions EPA's logic in requiring the installation of UST equipment and components that do not have documented performance under the conditions in which they will operate, and it remains unknown if that equipment will operate properly when exposed to the substance being stored.

DEP disagrees with EPA's assertion that current compatibility requirements are burdensome for the regulated community. EPA states in the Preamble that incompatibility between fuels stored and UST system materials can result in "a release to the environment and possibly a failure to detect the release." EPA also states the UST federal regulations established in 1988 requiring UST systems to be compatible with the substance stored are now burdensome. DEP questions EPA's logic in admitting that incompatibility of fuels can lead to releases while allowing UST systems to operate without proof of compatibility. DEP currently allows either a nationally recognized, independent testing laboratory, the UST system equipment or component's manufacturer, or verification by a Pennsylvania-licensed professional engineer to verify that a UST system component or equipment is compatible with the substance stored. DEP feels this provides a UST owner with viable options to provide proof of compatibility. DEP encourages EPA to continue to require compatibility information be provided and offers its current requirements to include as options.

DEP also strongly objects to EPA's proposal for UST systems storing motor fuel for over-the-road vehicles to ensure that entirely new UST systems or replacement UST system equipment and components on existing UST systems, including pipe dopes and sealants, are compatible with ethanol, blends up to and including E100. The current proposal would apply regardless of whether the UST system currently stores or could possibly store any ethanol blends in the future. EPA's current proposal fails to account for the numerous UST systems that store diesel fuel, the majority of which will never store ethanol blends up to and including E100. EPA asserts that the additional cost of an entirely new fully ethanol compatible system would be relatively minimal as a percentage of total cost of installation. EPA also notes that the replacement of UST system equipment and components on existing UST systems with fully ethanol compatible equipment and components would not cause a cost increase to the tank owner. DEP disagrees with EPA's overall assumption, specifically as it relates to existing UST systems that must upgrade replacement equipment and components to make them compatible with ethanol blends up to and including E100.

By focusing on the replacement equipment and components on existing UST systems, EPA neglects over 60 additional components that may encounter ethanol blends up to and including E100 and whose failure could just as likely cause contamination of soil and groundwater. In addition, adding any additional cost to the UST owner may prevent proactive replacement of equipment and components; thus, this proposal may have an unintended consequence of a UST owner waiting until the equipment and components fail before incurring the additional expense of replacing them.

DEP also disagrees with EPA's assumption that current UST systems will be prepared for future fuels that come to market by focusing only on E100 compatible devices when those devices are replaced. EPA states that the fuel supply in the U.S. is constantly evolving and DEP agrees with this statement. However, EPA's proposal is limited in scope to ethanol blended fuels and specific to only the replacement part. This not only ignores a majority of the UST system, but also ignores the potential that the E100 compatible replacement part may not be compatible with other emerging fuels; thus wasting the UST system owner's valuable time and expense in replacing a component to be compatible with a substance that the UST system may never store. Current emerging fuels include, Biobutanol (Butyl Alcohol), Drop-In Biofuels, Methanol, and Dimethyl Ether (DME). DEP asks if EPA has evidence that a component or equipment that is E100 compatible is also compatible with all the listed emerging fuels? If not, DEP questions why EPA would require a UST owner to replace a component or install equipment that is compatible with a substance that will never be stored in the UST system. DEP recommends EPA pursue regulatory language that has always required UST systems to be compatible with the substance being stored.

EPA's E100 compatibility proposal would only apply to UST systems storing motor fuel for over-the-road vehicles. However, EPA is not clear which UST systems meet the definition of "over-the-road" usage. In previous rulemakings, EPA and DEP have both used terminology of "not for resale" or "consumed on the premises where stored" to classify certain UST systems and associated exclusions from regulatory requirements. In this case, EPA is using a term that

describes the actual item being fueled, such as a car, bus, or truck. A UST system, even systems that are used in a consistent manner, such as not for resale, can fuel several different types of implements. For instance, is a UST system located at a bulk fueling station that only fuels delivery trucks considered a UST system that fuels "over-the-road" vehicles? Likewise, is a UST system located on a farm that stores diesel fuel for farm equipment and that also fuels a diesel truck owned by the farm owner considered a UST system that stores motor fuel for "over-the-road" vehicles? DEP requests that EPA clarify or define the term "over-the-road" as this term is new to the UST regulations and it applies to the actual vehicle use and not the UST system's use. In addition, EPA fails to consider the difficulty and time involved in verifying that new UST systems or replacement UST system equipment and components on existing UST systems, including pipe dopes and sealants, are compatible with ethanol blends up to and including E100. In order to maintain state program approval, DEP would be required to adopt EPA's proposed rule regarding the requirement that new UST systems or replacement UST system equipment and components on existing UST systems storing motor fuel used in over-the-road vehicles, including pipe dopes and sealants, are compatible with ethanol blends up to and including E100. Currently, DEP requires all UST systems to be compatible with the substance stored; however, DEP only requires UST systems storing greater than 10 percent alternative fuel, or biodiesel or biodiesel blended fuel containing greater than 5% biodiesel to submit DEP's Alternative Fuel Storage Tank Installation/Conversion Form, 2630-FM-BECB0608. This required form verifies the compatibility of the UST system and all UST equipment and components that may come in contact with the alternative fuel being stored. If EPA's proposal is adopted as it is currently written, all UST owners, upon replacement of a UST system or component, would need to prove to DEP that the replaced system or component is compatible with E100 fuel. Applicability of EPA's proposed requirement would be difficult to determine because, in addition to whether the UST system stores a motor fuel, DEP would need to determine whether each UST system is used to fuel over-the-road vehicles.

In 2020, there were approximately 2,400 reported tank handling activities involving component replacement in Pennsylvania. This EPA requirement would represent an increased cost of upgrade or replacement in the majority of those activities and an increased burden of recordkeeping and record review in every reported activity. For these UST owners, replacing components with E100 compatible equipment will be a cost increase. EPA has not provided cost comparisons but has instead proposed asking the public how their proposal may increase costs.

EPA should also consider the impact this proposal will have on UST insurance providers. Both Pennsylvania and EPA regulations require owners of UST systems to maintain adequate financial responsibility to cover both corrective action and third-party liability in the event of a release. EPA does not indicate in the current proposal whether insurance providers were contacted to determine what the effects of the proposal would have on a UST system's insurance coverage if a release occurred because of the failure on an incompatible component. More information is needed on the effects of this proposal, if finalized, regarding financial responsibility.

DEP requests that EPA carefully review and consider the comments attached in the document “DEP Comments on the Proposed E15 Fuel Dispenser Labeling and Compatibility with USTs – Docket ID No. EPA-HQ-OAR-2020-0448.” EPA’s proposed regulations weaken existing EPA and state UST regulations by allowing UST systems to contain regulated substances without any knowledge of compatibility. In addition, EPA’s proposal on requiring UST owners to install new equipment and components that are compatible with E100, regardless if E100 will be stored in the UST, is unnecessary and would lead to increased costs on behalf of the UST owner and additional workload on behalf of the regulatory agency to verify E100 compliance. DEP does not support EPA’s proposed regulations and requests EPA to reject the current proposals regarding compatibility with UST systems.

Should you have questions or need additional information, please contact Troy Conrad, Director of the Bureau of Environmental Cleanup and Brownfields, by e-mail at tconrad@pa.gov or by telephone at 717.783.9480.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell". The signature is fluid and cursive, with a large initial "P" and "M".

Patrick McDonnell
Secretary