

compelling and extraordinary conditions.

### C. Consistency with Section 202(a) of the Clean Air Act

EPA has stated in the past that California standards and accompanying test procedures would be inconsistent with section 202(a) of the Clean Air Act if: (1) There is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to cost of compliance within the lead time provided, or (2) the federal and California test procedures impose inconsistent certification requirements.<sup>38</sup>

The first prong of EPA's inquiry into consistency with section 202(a) of the Act depends upon technological feasibility. This requires EPA to determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. CARB noted during its rulemakings that the methods that can be used to meet the 2004–2005 standards consist of technologies that have already been developed in response to federal emission standards. The technology changes that were expected to occur as a result of the new regulations include: Improved durability catalysts with increased precious metal loading, optimization of the catalyst and fuel metering systems (including improved fuel injection and heated oxygen sensors), increased use of air injection and retarded spark ignition to control cold start emissions, and improved exhaust gas recirculation for better NO<sub>x</sub> control.<sup>39</sup> Additionally, CARB notes that the technological feasibility demonstrations for the exhaust emission standards reflect the technological feasibility in EPA's own analysis for the federal standards.<sup>40</sup> CARB also relied on the federal findings of technological feasibility for technologies that can be used to meet the 2008 and beyond standards.<sup>41</sup> EPA finds that CARB employed appropriate projections of the feasibility of the technologies necessary to meet both the 2004–2005 standards and the 2008 standards. CARB's examination of the technological feasibility findings made by EPA in the federal rulemaking along with subsequent technology developments provide no basis upon which to find that CARB's standards are

not consistent with section 202(a) of the Act.

The second prong of EPA's inquiry into consistency with section 202(a) of the Act depends on the compatibility of the federal and California test procedures. CARB points out that its certification requirements are nearly identical to those adopted by EPA.<sup>42</sup> In fact, CARB found that beginning with the 2008 model year, California's test procedures are identical to the federal test procedures for heavy-duty gasoline engines and incomplete vehicles.<sup>43</sup> EPA agrees with this analysis and finds that one set of tests for a heavy-duty engine or vehicle could be used to determine compliance with both California and federal requirements. Therefore, we cannot find California's test procedures to be inconsistent with our own.

For these reasons, I cannot deny the waiver based on a finding that the 2000 and 2002 amendments are inconsistent with section 202(a) of the Clean Air Act.

### III. Decision

EPA's analysis finds the criteria for granting a waiver of preemption to be satisfied. The amendments require a new waiver of preemption because "new issues" are presented by the establishment of more stringent numerical standards in efforts to harmonize California standards with federal standards. Upon evaluation, EPA has determined that CARB has met the criteria for a waiver of preemption for the 2000 and 2002 amendments.

The Administrator has delegated the authority to grant California a section 209(b) waiver to enforce its own emission standards for on-road engines to the Assistant Administrator for Air and Radiation. Having given consideration to all the material submitted for this record, and other relevant information, I find that I cannot make the determinations required for a denial of a waiver pursuant to section 209(b) of the Act. Therefore, I grant a waiver of Clean Air Act preemption to the State of California with respect to its heavy-duty Otto-cycle engine and vehicle requirements as set forth above.

My decision will affect not only persons in California but also manufacturers outside the State who must comply with California's requirements in order to produce engines for sale in California. For this reason, I determine and find that this is a final action of national applicability

for purposes of section 307(b) (1) of the Act.

Pursuant to section 307(b) (1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 18, 2011. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b) (2) of the Act.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: November 10, 2010.

**Gina McCarthy,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 2010–28971 Filed 11–16–10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–UST–2010–0651; FRL–9227–8]

### Compatibility of Underground Storage Tank Systems With Biofuel Blends

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed guidance and request for comments.

**SUMMARY:** EPA's Office of Underground Storage Tanks intends to issue guidance that would clarify EPA's underground storage tank (UST) compatibility requirement as it applies to UST systems storing gasoline containing greater than 10 percent ethanol and diesel containing an amount of biodiesel yet to be determined. Today's **Federal Register** notice solicits comment on the proposed guidance, which provides owners and operators of underground storage tank systems greater clarity in demonstrating compatibility of their tank systems with these fuels.

**DATES:** Comments must be received on or before December 17, 2010, 30 days after publication in the **Federal Register**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–UST–2010–0651, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov).
- *Mail:* EPA Docket Center, Environmental Protection Agency,

<sup>38</sup> See, e.g., 75 FR 8056 (February 23, 2010); 70 FR 22034 (April 28, 2005).

<sup>39</sup> CARB Item 2 at 7–8.

<sup>40</sup> 65 FR 59896 (October 6, 2000).

<sup>41</sup> 66 FR 5002 (January 18, 2001), at pp. 5053 to 5055.

<sup>42</sup> *Id.* And Item 2 at pp. 7–8.

<sup>43</sup> CARB Request for Confirmation that Amendments Are Within the Scope of Previous Waivers of Preemption Under Clean Air Act Section 209(b), December 7, 2005 at 14.

Underground Storage Tank (UST) Docket, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-UST-2010-0651. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the UST Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone

number for the UST Docket is (202) 566-0270.

**FOR FURTHER INFORMATION CONTACT:**

Andrea Barbary, Office of Underground Storage Tanks, Mail Code 5402P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603-7137; e-mail address: [barbary.andrea@epa.gov](mailto:barbary.andrea@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action applies to owners and operators of underground storage tank systems regulated by 40 CFR Part 280, who intend to store gasoline blended with greater than 10 percent ethanol. It may also apply to owners and operators storing a to-be-determined percentage of biodiesel blended with diesel fuel.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

**II. Background**

*A. Statutory Authority*

This proposed guidance discusses EPA's underground storage tank (UST) compatibility requirement that was promulgated under the authority of Subtitle I of the Solid Waste Disposal Act (SWDA), as amended. 42 U.S.C. 6991b *et seq.* This requirement, which is referenced and discussed in the guidance, is found in 40 CFR 280.32.

*B. Underground Storage Tank Compatibility Requirement*

To protect groundwater, a source of drinking water for nearly half of all Americans, the U.S. Environmental Protection Agency (EPA) regulates UST systems storing petroleum or hazardous substances under authority of Subtitle I of the Solid Waste Disposal Act, as amended. Ethanol and biodiesel are not regulated substances under EPA's UST program; however, tanks storing gasoline or diesel mixed with ethanol or biodiesel are regulated by EPA. For the purposes of this guidance, EPA considers an "ethanol blend" to be any amount of ethanol mixed with petroleum gasoline, and a "biodiesel blend" to be any amount of biodiesel mixed with petroleum diesel.

EPA regulations address the prevention and detection of releases from UST systems; one particular provision in the federal UST regulations that aims to prevent releases specifically requires compatibility of stored substances with UST system components. As the U.S. moves toward an increased use of biofuels, such as ethanol and biodiesel, compliance with the UST compatibility requirement becomes even more important, since ethanol and biodiesel blends can compromise the integrity of some UST system materials. Today's **Federal Register** notice solicits comment on proposed guidance and associated issues that will clarify how owners/operators of UST systems storing fuels containing greater than 10 percent ethanol or a to be determined percent of biodiesel can demonstrate compliance with the UST compatibility requirement.

As of March 2010, there are approximately 607,000 regulated USTs

at 221,000 facilities nationwide. States and territories (hereafter referred to as states) are the primary implementers of the UST program because they are in the best position to implement UST program requirements, based on the size and diversity of the regulated community. In order for EPA to approve a State's program, that state's regulations must be at least as stringent as the Federal UST regulations.

An UST system includes the underground storage tank, connected underground piping, underground ancillary equipment, and any containment systems. Fuel dispensers are not part of the UST system, and therefore this guidance does not apply to dispensers.

### C. Discussion

The federal UST regulations require that "[o]wners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system" (40 CFR § 280.32). Because the chemical and physical properties of ethanol and biodiesel can make these fuel blends containing them more degrading to certain UST system materials than petroleum, it is important to ensure that all UST system components in contact with the biofuel blend are materially compatible with that fuel. Industry practice has been for owners and operators to demonstrate compatibility by using equipment certified by an independent testing laboratory, such as Underwriters Laboratories (UL). However, many UST system components in use today, with the exception of most tanks and piping, have not been tested by UL for compatibility. Without certification from a third party that these equipment are compatible with anything beyond conventional fuels, the suitability of these particular components for use with ethanol and biodiesel blends comes into question.

#### Compatibility of Ethanol-Blended Fuel

Gasoline containing low percentages (10 percent or less) of ethanol has been used in parts of the country for many years. Many tanks and piping have been tested and are listed by UL for compatibility with higher-level ethanol blends. Many other components of the UST system, including leak detection devices, seals, and containment sumps (for example) may not be listed by UL for compatibility with ethanol blends. EPA expects recent federal and state laws encouraging increased use of biofuels to translate into a greater number of UST systems storing biofuels, as well as a greater number of UST

systems storing higher percentages of biofuel blends. EPA is aware of material compatibility concerns associated with some UST system equipment storing higher ethanol blends, such as E85 (gasoline containing up to 85 percent ethanol), which is an alternative fuel used in flexible fuel vehicles. EPA understands that in order to avoid compatibility issues with E85, many tank owners who currently store E85 either installed all new equipment designed to store high level ethanol blends or upgraded certain components to handle the higher ethanol content. Because the typical lifespan of an underground storage tank is about 30 years, most UST systems currently in use are likely to contain components that were not designed to store ethanol blends beyond 10 percent. These older systems may not be certified by UL or another independent testing laboratory for use with these blends.

Although very little data exists pertaining to the compatibility of UST equipment with ethanol blends, literature suggests that mid-level ethanol blends may have the most degrading effect on some UST system materials. For example, "Underwriters Laboratories Research Program on Material Compatibility and Test Protocols for E85 Dispensing Equipment," which evaluated the effect of 85 percent ethanol and 25 percent ethanol blends, indicates that some materials used in the manufacture of seals were degraded more when exposed to the 25 percent ethanol test fluid than when exposed to the 85 percent ethanol test fluid (Underwriters Laboratories, 2007). Further, "Compatibility and Permeability of Oxygenated Fuels to Materials in Underground Storage and Dispensing Equipment" (State Water Resources Control Board's Advisory Panel, 1999) confirms that alcohol fuel blends are "more aggressive toward polymers than any of the neat constituents in the fuel," and points specifically to 15 percent ethanol in gasoline as being the blend at which the maximum swelling occurs in polymeric materials. Both of these documents are available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

In March 2009, EPA received a Clean Air Act (CAA) waiver application to increase the allowable ethanol content of a gasoline-ethanol blended fuel from 10 volume percent ethanol to 15 volume percent ethanol.<sup>1</sup> Please note that this action under the CAA has no bearing on an UST owner or operator's requirement to comply with all applicable EPA UST

regulations, including the UST compatibility requirement in 40 CFR 280.32. Specifically, in order to ensure the safe storage of higher ethanol and biodiesel blends under EPA's UST program, owners and operators must meet the compatibility requirement for UST systems. Recently, EPA conditionally granted a partial waiver that allows gasoline-ethanol blends that contain greater than 10 volume percent ethanol up to 15 volume percent ethanol (E15) to be introduced into commerce for use in 2007 and newer model year light-duty motor vehicles, which includes passenger cars, light-duty trucks and medium-duty passenger vehicles such as some sport utility vehicles (SUVs).<sup>2</sup> If other State, Federal, and industry practices also support such introduction, E15 may become available in the marketplace. Thus, EPA anticipates that some UST system owners and operators may choose to store higher percentages of ethanol in their UST systems. For those who intend to store E15 or other amounts of ethanol greater than 10 volume percent, EPA is proposing this guidance to clarify the compatibility requirement with regard to these blends and provide greater flexibility for owners and operators who intend to store E15, including those whose equipment may not be certified as compatible by an independent testing laboratory.

#### Compatibility of Biodiesel-Blended Fuel

In addition to ethanol, biodiesel is becoming increasingly available across the U.S., though its total use is significantly less compared to that of ethanol-blended gasoline. EPA understands that owners and operators are storing biodiesel/petroleum diesel blends in UST systems, ranging from two percent biodiesel (B2) to 99 percent biodiesel (B99). In this guidance, EPA proposes to include biodiesel blends, based on the fact that many states that already have compatibility policies in place address both ethanol blends and biodiesel blends. At least one state developed a compatibility policy to apply to biodiesel blends greater than B5, meaning owners and operators of UST systems containing biodiesel/petroleum diesel blends greater than 5 percent biodiesel must meet the requirements in the state's guidance. Other states have selected to use B20 as the threshold, since B20 is commonly used in government and military fleets.

EPA is aware that there may be material compatibility issues with some UST system equipment in biodiesel service, but the Agency lacks sufficient

<sup>1</sup> See 74 FR 18228 (April 21, 2009).

<sup>2</sup> See 75 FR 68043 (November 4, 2010).

data on the compatibility of various biodiesel blends with UST system equipment currently in use across the country. EPA also acknowledges that no UST equipment has a UL-listing for use with biodiesel blends. UL has issued a statement indicating that biodiesel blends up to B5 will not require special investigation by UL, meaning that these fuels may be considered the same as conventional petroleum fuels.

According to UL, biodiesel blends greater than 5 percent may have a significant effect on materials. For these reasons, EPA is seeking comment on what percentage of biodiesel in biodiesel blends should be used for including these fuels in the scope of today's proposed guidance.

#### Testing on Ethanol and Biodiesel Blends

The U.S. Department of Energy is currently performing testing on the compatibility of some UST system materials with mid-level ethanol blends. Depending on results of DOE's research, EPA may change its guidance. EPA is not aware of a testing program to evaluate the compatibility of UST system equipment with biodiesel blends.

#### Applicability of Proposed Guidance

This guidance clarifies how owners and operators of underground storage tanks (USTs) can comply with EPA's compatibility requirement (40 CFR 280.32) when storing certain biofuels (ethanol-blended fuels greater than 10 percent and biodiesel-blended fuels greater than [TBD] percent). UST owners and operators, as well as other affected stakeholders should be aware that, when final, EPA's proposed guidance will apply in Indian country and in States that do not have State program approval (SPA). States that have SPA must, in 40 CFR 281.32, have a compatibility requirement that is similar to the Federal requirement. Therefore, SPA states could also find this guidance to be relevant and useful to them as well.

#### Owner and Operator Demonstration of Compatibility

EPA considers the following three methods as effective options for demonstrating compatibility:

- Certification or listing by an independent test laboratory;
  - Equipment manufacturer approval;
- or
- Another method determined by the implementing agency to sufficiently protect human health and the environment.

Implementing agencies may determine there are other acceptable

methods for demonstrating compliance with the compatibility requirement, as long as they sufficiently protect human health and the environment. EPA will work with states as they evaluate other acceptable methods.

Some states have developed policies similar to EPA's proposal published today. Some examples of state policies regarding compatibility of UST equipment with biofuels include:

*Iowa:* <http://www.iowadnr.gov/land/ust/technicalresources/ethanol.html>.

*Wisconsin:* [http://test.commerce.wi.gov/ER/pdf/bst/Forms\\_FM/ER-BST-FM-9-AlternativeFuels.pdf](http://test.commerce.wi.gov/ER/pdf/bst/Forms_FM/ER-BST-FM-9-AlternativeFuels.pdf).

*South Carolina:* <http://www.scdhec.gov/environment/lwm/forms/d-3885.pdf>.

*Colorado:* <http://www.colorado.gov/cs/Satellite?blobcol=urlldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251616370465&ssbinary=true>.

These documents are also available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

Currently, a note in the Federal UST regulations allows owners and operators to use the American Petroleum Institute's (API) Recommended Practice 1626, an industry code of practice, to meet the compatibility requirement for ethanol-blended fuels. The original version of API 1626 (1st ed. 1985, reaffirmed in 2000) applies to up to 10 percent ethanol blended with gasoline and is not applicable to meet the compatibility requirement for ethanol blends greater than 10 percent. In August, 2010, API published a second edition of API 1626. The second edition does address ethanol blends greater than 10 percent, and may also be used as a method for demonstrating compatibility.

#### D. Request for Comments

EPA requests public comment on the following issues as well as the proposed guidance that immediately follows:

*1—UST Components That May Be Affected by Biofuel Blends*—A UST system comprises many components that can be affected by the fuel stored. Some of these components may or may not come into contact with fuel or lead directly to a release. However, the failure of these components could either directly or indirectly lead to a release if they are not compatible. To help owners ensure compatibility, EPA proposes listing the following equipment, at a minimum, to be included in today's proposed guidance to clarify what UST system components may be affected by biofuel blends:

- Tank or internal tank lining;
- Piping;

- Pipe adhesives and glues;
- Line leak detectors;
- Flexible connectors;
- Fill pipe;
- Spill and overfill prevention equipment;
- Submersible turbine pump and components;
- Fittings, gaskets, bushings, couplings, and boots;
- Containment sumps (including submersible turbine sumps and under dispenser containment);
- Release detection floats, sensors, and probes.

This list of components is consistent with lists used by states with compatibility policies, though it is somewhat less inclusive, since the federal UST program does not have authority to regulate dispensers or fuel quality.

Although release detection equipment and overfill prevention equipment do not contain product and failure of these components will not directly lead to a release, EPA proposes including these categories because failure of these equipment may lead indirectly to releases. For example, a failed leak detection device may not detect a release that has occurred; similarly, a malfunctioning overfill prevention device may lead to overfilling of a tank.

#### Questions for commenters:

- Are there components that should be added to or removed from the list?
- Is it possible to demonstrate compatibility for these components?

#### 2—Methods To Demonstrate

*Compatibility*—Many tanks and piping have been tested and are listed by UL for compatibility with ethanol blends. EPA considers this to be an effective method for demonstrating compatibility. However, many other components of the UST system may not have been tested with ethanol and are not listed by UL for compatibility with ethanol blends. In addition, no UST equipment is UL-listed for use with biodiesel blends. Some existing UST system components might be compatible with ethanol or biodiesel blends, although the equipment may not have a certification or listing from an independent testing laboratory specific to the fuel blend. As a result, EPA is proposing manufacturer approval as another acceptable method for demonstrating compatibility. Also, states may believe that there are other reasonable ways to demonstrate compatibility. With that in mind, EPA is considering providing flexibility for states who wish to take a different approach for demonstrating compatibility, as long as that approach sufficiently protects human health and

the environment. EPA proposes to recommend the following methods for demonstrating compatibility:

- Certification or listing by an independent test laboratory;
  - Equipment manufacturer approval;
- or
- Another method determined by the implementing agency to sufficiently protect human health and the environment. EPA will work with states as they evaluate other acceptable methods.

Although some states allow a professional engineer (P.E.) to make a compatibility determination, EPA does not believe a blanket acceptance of P.E. certification is a good approach. There are numerous types of P.E.s, any one of which is not likely to cover all aspects of materials science and UST equipment compatibility. Further, states that allow this option indicated that it is not being used. If additional states consider allowing a P.E. to make a compatibility determination for UST equipment, EPA will discuss that option with those states.

*Questions for commenters:*

- Are the methods for demonstrating compatibility, as described above, appropriate?
- Are these options feasible for UST owners?
- Are there other reasonable methods EPA should include?

*3—Criteria for Equipment Manufacturer Approval as a Compatibility Method—EPA*

understands that an independent testing laboratory certification may be the most standardized, consistent, and recognizable way to demonstrate compatibility. However, EPA wants to provide flexibility and is also considering relying on a statement of compatibility by the manufacturer as a secondary method for owners and operators, and to demonstrate compatibility of their UST equipment. EPA is considering numerous forms for manufacturer approvals. For example, EPA is considering items such as product warranties, brochures, or letters from manufacturers as acceptable equipment manufacturer approvals. EPA believes manufacturer approvals should include these three criteria in order to adequately demonstrate compatibility:

- Be in writing;
- Indicate affirmative statements of compatibility; and
- Be from the equipment manufacturer, not another entity (such as the installer or distributor).

*Questions for commenters:*

- Are these three criteria appropriate?

- Are manufacturers willing and able to produce this approval?
- Are there other tools which might assist UST owners to obtain this information?

*4—Applicability to Biodiesel Blends—* EPA proposes to include biodiesel blends in its guidance because of the increased use of biodiesel across the U.S., as well as the fact that many states already address biodiesel blends in their compatibility policies. EPA understands compatibility issues with biodiesel-blended fuels may be different than those experienced with ethanol-blended fuels and acknowledges that determining a percentage threshold in the absence of compatibility data may be either unnecessarily stringent or not sufficiently protective. However, lack of compatibility information for biodiesel and biodiesel blends makes it difficult to determine whether UST system materials and equipment are compromised by storing biodiesel blends and at what approximate blend percentage compatibility problems occur. EPA seeks input about the percentage of biodiesel where compatibility becomes a potential concern.

*Questions for commenters:*

- Should EPA include biodiesel blends in the guidance?
- What biodiesel blend percentage should EPA use in the guidance? Please provide data to support the percentage.

*5—Ability To Demonstrate Compatibility Using the Proposed Guidance—*Due to the long expected lifetime of USTs and the high turnover rate of owners and operators, EPA understands it will be difficult for many owners and operators to locate documentation for much of their equipment. Without knowing what equipment is installed at the site, demonstrating compatibility may be difficult for those who wish to store and sell biofuel blends. In addition, some equipment may simply not be compatible with some biofuel blends.

Based on the list of UST components and methods described above in issues 1 and 2, respectively, EPA requests comment on the following:

- How difficult will it be for owners and operators to demonstrate compatibility for each of these components?
- How many UST facilities will not be able to demonstrate compatibility based on these criteria?
- What would be necessary for these facilities to come into compliance (for example, replace seals, replace release detection probes, replace the entire UST system, etc.)?

*6—Other Options That Sufficiently Protect Human Health and the Environment—*In light of the discussion under issue 5 above, EPA recognizes that some owners and operators of UST system components may not be able to demonstrate compatibility or may find it difficult to do so. Because of this, EPA is seeking input on alternatives that would sufficiently protect human health and the environment, even though they are outside the scope of the proposed guidance. For example, there might be additional activities owners and operators could perform in the absence of being able to demonstrate compatibility that would result in sufficient protection of human health and the environment.

*Question for commenters:*

- Without documentation, are there alternative methods UST owners and operators could rely on or activities they could perform that would sufficiently protect human health and the environment? Please be specific and provide data to support your alternative.

**Proposed Guidance**

*Guidance on the Compatibility of Underground Storage Tank Systems With Ethanol Blends Greater Than Ten Percent and Biodiesel Blends Greater Than [To Be Determined (TBD)] Percent [Insert Date]*

This guidance clarifies how owners and operators of underground storage tanks (USTs) can comply with EPA's compatibility requirement (40 CFR 280.32) when storing certain biofuels (ethanol-blended fuels greater than 10 percent and biodiesel-blended fuels greater than [TBD] percent). EPA promulgated this requirement (and all other UST requirements) under the authority of Subtitle I of the Solid Waste Disposal Act, as amended.

In March 2009, EPA received a Clean Air Act (CAA) waiver application to increase the allowable ethanol content of a gasoline-ethanol blended fuel from 10 volume percent ethanol to 15 volume percent ethanol.<sup>3</sup> EPA recently conditionally granted a partial waiver that allows gasoline-ethanol blends that contain greater than 10 volume percent ethanol up to 15 volume percent ethanol (E15) to be introduced into commerce for use in 2007 and newer model year light-duty motor vehicles, which includes passenger cars, light-duty trucks and medium-duty passenger vehicles such as some sport utility vehicles (SUVs).<sup>4</sup> If other state, federal, and industry practices also support such

<sup>3</sup> See 74FR18228 (April 21, 2009).

<sup>4</sup> See 75FR68043 (November 4, 2010).

introduction, E15 may become available in the marketplace. Thus, EPA anticipates that some UST system owners and operators may choose to store higher percentages of ethanol in their UST systems.

Please note that this action under the CAA has no bearing on an UST owner or operator's requirement to comply with all applicable EPA UST regulations, including the UST compatibility requirement in 40 CFR 280.32. Specifically, in order to ensure the safe storage of higher ethanol and biodiesel blends under EPA's UST program, owners and operators must meet the compatibility requirement for UST systems.

40 CFR 280.32 states that "[o]wners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system." Because the chemical and physical properties of ethanol and biodiesel blends may make them more aggressive to certain UST system materials than petroleum, it is important to ensure that all UST system components in contact with biofuels are materially compatible with that fuel.

#### UST System Components That May Be Affected by Biofuel Blends

To meet § 280.32, owners and operators of UST systems storing ethanol-blended fuels greater than 10 percent ethanol or greater than [TBD] percent biodiesel must use compatible equipment. At a minimum, the following UST system equipment must be compatible:

- Tank or internal tank lining;
- Piping;
- Pipe adhesives and glues;
- Line leak detectors;
- Flexible connectors;
- Fill pipe;
- Spill and overfill prevention equipment;
- Submersible turbine pump and components;
- Fittings, gaskets, bushings, couplings, and boots;
- Containment sumps (including submersible turbine sumps and under dispenser containment);
- Release detection floats, sensors, and probes.

#### Options for Meeting the Compatibility Requirement

Currently, EPA believes that the most effective options for owners and operators of UST systems storing ethanol-blended fuels greater than 10 percent ethanol and biodiesel-blended fuels greater than [TBD] percent biodiesel to ensure compatibility under this requirement are:

- Use components that are certified or listed by an independent test laboratory for use with the fuel stored (for example, Underwriters Laboratories);
- Use components approved by the manufacturer to be compatible with the fuel stored. EPA considers acceptable forms of manufacturer approvals to be:
  - Be in writing;
  - Indicate an affirmative statement of compatibility; and
  - Be from the equipment manufacturer, not another entity (such as the installer or distributor); or
- Use another method determined by the implementing agency to sufficiently protect human health and the environment. EPA will work with states as they evaluate other acceptable methods.

#### Note About Using API 1626 To Meet the Compatibility Requirement

Currently, a note in the federal UST regulations allows owners and operators to use the American Petroleum Institute's (API) Recommended Practice 1626, an industry code of practice, to meet the compatibility requirement for ethanol blended fuels. The original version of API 1626 (1st ed. 1985, reaffirmed in 2000) applies to up to 10 percent ethanol blended with gasoline and is not applicable to meet the compatibility requirement for ethanol blends greater than 10 percent. In August 2010, API published a second edition of API 1626. The second edition does address ethanol blends greater than 10 percent, and may also be used as a method for demonstrating compatibility.

Please note that state underground storage tank program regulations may be more stringent than the federal UST regulations, so owners and operators should always check with their states about state program requirements. Also, this guidance will apply in Indian country and in states that do not have state program approval (SPA). Because states with SPA must have a compatibility requirement that is similar to the federal compatibility requirement, SPA states could find this guidance relevant and useful to them as well.

If you have questions about this guidance, please contact Andrea Barbery at [barbery.andrea@epa.gov](mailto:barbery.andrea@epa.gov) or (703) 603-7137.

Dated: November 8, 2010.

#### Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2010-0681; FRL-8850-6]

### Lead Fishing Sinkers; Disposition of TSCA Section 21 Petition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On August 3, 2010, several groups filed a petition under the Toxic Substances Control Act (TSCA) section 21 requesting that EPA prohibit under TSCA section 6(a) the manufacture, processing, and distribution in commerce of (1) lead bullets and shot; and (2) lead fishing sinkers. On August 27, 2010, EPA denied the first request due to a lack of authority to regulate lead in bullets and shot under TSCA. EPA's decision was based on the exclusion of shells and cartridges from the definition of "chemical substance" in TSCA section 3(2)(B)(v). On November 4, 2010, EPA denied the second request. This notice explains EPA's reasons for the denial of the request specific to fishing sinkers.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Christina Wadlington, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-1859; e-mail address: [wadlington.christina@epa.gov](mailto:wadlington.christina@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, import, or distribute in commerce lead fishing sinkers or lead fishing tackle. If you have any questions regarding this action, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2010-0681. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in