

April 16, 2021

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To: Lauren Michaels  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: EPA Proposed Rule “E15 Fuel Dispenser Labeling and Compatibility With Underground Storage Tanks” ([EPA- HW- OAR- 2020-0448](#))

Dear Ms. Michaels,

The undersigned organizations representing a diverse group of stakeholders consisting of manufacturers, suppliers, and consumers of boats, off-road vehicles, motorcycles, and outdoor power equipment respectfully submit the following comments on the Environment Protection Agency’s (EPA) recent proposed rule “*E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks*” (EPA-HQ-OAR-2020-0448). Specifically, our comments address the provisions pertaining to fuel dispenser labeling requirements of fuel blended with 10.5% to 15% ethanol (E15) and misfuelling mitigation for non-approved engines.

The EPA’s designation of our industries’ products as non-approved for E15 was based on testing conducted by Mercury Marine and Volvo Penta, funded by the U.S. Department of Energy and with oversight by the National Renewable Energy Labs. This testing found that additional oxygen content of higher ethanol blend fuels in marine and other small road and non-road engines produces a significant increase in engine temperatures that causes increased corrosion of both metallic, rubber, and plastic components, increased fuel consumption, and damage severe enough to prevent engines from completing the EPA durability testing process. This in turn leads to performance degradation, emission increases, and ultimately engine failure.

The EPA concurred with these findings when the partial waiver to the Clean Air Act (CAA) was granted to allow E15 into the marketplace, as evident by its prohibition against the use of E15 (and higher blends) in marine engines, off-road vehicles, motorcycles, and outdoor power equipment. The E15 label was a core element of EPA’s misfuelling mitigation program (MMP) that was put in place to implement the prohibition and address the likelihood of E15 being used in engines for which that fuel is not approved. Importantly, the current rulemaking notice confirms that EPA has no information which would support changing these original determinations and the continuing need for an MMP and E15 label.

Unfortunately, market research data over the years demonstrates that consumers currently lack the information necessary to choose the right fuel for the right product which is leading to sustained levels of product misfuelling. This data further demonstrates that the current MMP and EPA-approved E15 label is inadequate. While the most recent polling was conducted among 3,000 adults to measure consumer knowledge and actions specific to the fueling of outdoor power equipment, we would argue that these trends

are applicable across all non-approved products subject to the current EPA E15 pump label. To summarize the most recent year's (2020) key findings<sup>1</sup>:

- More than half of consumers say they either don't pay attention to or are unsure of the type of fuel they use.
- Twenty percent of consumers admit they currently use fuel in their equipment with higher than recommended ethanol.
- Twenty-five percent of consumers admit they have used fuel with greater than 10% ethanol in the past.
- More than 60% of consumers say they would purchase 88 Octane fuel if it was available at a cheaper price.
- Only 22% of consumers know that 88 Octane fuel has more ethanol in it than 87 Octane.

As this polling indicates, the missing and crumbling labels, dismal and non-uniform label placement, and pumps labeled as Unleaded 88 have resulted in increased consumer confusion clearly indicating that the MMP has been ineffective in educating consumers on the dangers of E15. On this last point, the current EPA E15 label and other pump labelling is not serving to deter the purchase of fuel based solely on price, ignoring whether the fuel is EPA-approved for the subject product. Octane 88 fuel contains 15% ethanol and yet the current MMP provides no transparency on this fact, and even worse enables fuel retailers to market this fuel based on price and without the necessary warnings that it should not be used in our collective industries' products.

Additionally, the results of another recent national poll revealed the vast majority of consumers find current E15 labeling at gas pumps to be ineffective in communicating the dangers of this type of fuel for usage in small engines like those in boats, off road vehicles, motorcycles, and lawn mowers. Among the key findings<sup>2</sup>:

- A mere 18.25% of consumers think the current E15 label used at gas pumps across the country is very effective in showing that E15 is hazardous to certain types of engines.
- Consumers were more than four times as likely to prefer a prototype design with direct language and visual representations of the fuel's risk, saying the improved label elements of the prototype more clearly serve as a warning than the current label.
- 77.5% of respondents cited red as the best color of a label to convey warning, a contrast to the existing label color.
- Over 80% of respondents found the use of icons and visuals to be more effective than text-only versions.
- Considering only the text on the labels, consumers were twice as likely to say that the prototype had more effective language in communicating the hazards and risks of E15 than the real label.

Beyond the design and wording of the label, another concern for consumers is the inconsistent placement of the E15 label at gas pumps: Roughly 70% of consumers noted that inconsistent or hidden E15 label placement made the labels less effective overall.

As EPA has worked to broaden the availability of E15 in the U.S., including most recently the 2019 repeal of seasonal restrictions on its sale, our organizations have consistently urged EPA to implement a more effective MMP. This action is necessary to better protect engines and products prohibited by the EPA from running on gasoline with more than 10% ethanol due to performance degradation, emission increases, and engine failures caused by E15. The current rulemaking provides no new data or theoretical basis to support the proposals to either decrease the stringency of the existing E15 label or eliminate it altogether. Due to

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<sup>1</sup> Protect Your Power: New Poll Shows Consumers are Confused About Fuel Product Offerings, February 27, 2020 (attached)

<sup>2</sup> Public Awareness E15 Survey, November 30, 2020 (attached)

the breadth of products not EPA-approved for E15 or higher blends, and the ubiquity of ownership of some of these products, this situation poses an unreasonable risk to consumers as well as the 841,000 American jobs and \$186 billion in economic activity generated by the industries manufacturing these products. These risks also extend beyond new products shipped, not designed, warranted, or EPA-approved to run on E15, to include hundreds of millions of legacy products in service.

In the boating industry, approximately 64% of boat owners have annual household incomes below \$100,000. Replacing a marine engine that is damaged by E15 misfueling can cost the consumer upwards of ten thousand dollars. Again, use of E15 voids the manufacturer's warranty so the entire cost of misfuelling is shouldered by the consumer.

The ineffectiveness of the existing E15 label and dangers of misfuelling are clear and compelling, and the EPA's co-proposals to change label requirements would inarguably exacerbate the existing misfuelling crisis, causing irreparable harm to millions of consumers as well as our various industries' significant economic contributions. We agree with the assertion that changes should be made to the label as the market research referenced above indicates that changes are desperately needed to protect consumers from E15 misfueling. However, the proposed modifications to the E15 label, such as removing the words "Attention" and "E15", insertion of language that alludes to safe usage, and stripping away any elements indicating a warning message, would effectively make the label more vague and confusing for consumers interpretation.

We instead recommend that EPA consider changes to the label size, design, and other characteristics that successfully capture consumer attention and communicate information in a way that's easy to comprehend, remember, and influence consumers to engage in behaviors that comply with warnings. EPA must also consider the placement of labels in order to maximize the effectiveness of the label and increase consumer awareness of the fuel's ethanol content. EPA should also take into account whether E15 pump labels should carry warnings in languages other than English in order to more broadly communicate the risk of fueling small road and nonroad engines with E15. On this latter point, EPA should consider the use of pictorial warnings in place of, or in combination with, text, as a more effective means of warnings. Pictorial use for this purpose is now state-of-art in globally standardized approaches to consumer warnings. Most importantly, EPA should have any proposed E15 label changes evaluated and tested to ensure an effective replacement for the current label.

Lastly, given that the second co-proposal to remove the E15 label is entirely in direct violation of the CAA section 211(f)(4) waiver and the prohibition would remain in place even if the label requirements were removed, it would be negligent and dangerous to abandon misfuelling mitigation while E15 remains in the marketplace. To the related question, posed in the current rulemaking notice, as to what role the Federal Trade Commission (FTC) might fill if EPA were to eliminate its E15 label, we again believe EPA has an obligation to maintain a label. Nonetheless, FTC may be an appropriate interagency partner in a subsequent rulemaking to assure fair marketing practices are observed and disparities in pump labelling is avoided.

This industry consortium takes emissions compliance seriously having invested significant time and resources to be compliant with applicable regulations. Additionally, in understanding our own role in consumer education, our collective industries have worked diligently to raise awareness among outdoor power equipment and marine engine manufacturers, dealers, retail outlets, and owners about proper fueling. As an example, the "Look Before You Pump" (and subsequently "Protect Your Power") campaign developed by the Outdoor Power Equipment Institute in 2013, has been employed in partnership with NMMA and other consortia members to educate all affected stakeholders. Despite this lengthy and concerted campaign, polling data demonstrates that industry efforts and the current EPA MMP are not enough to ensure that consumers are fully aware of the risks of misfuelling their small road and non-road products with E15 and mid-level blend fuel, and we call on EPA to do its part by advancing a robust MMP.

The recreational boating, motorcycling, off-roading, and outdoor power equipment industries strongly encourage the EPA to take into consideration the significant financial and safety implications for millions of consumers as a result of the proposed rule, with the benefit of the current polling data we have provided.

We further request that EPA initiate a subsequent rulemaking to advance changes to the E15 label requirements that are proven improvements to the effectiveness of the label in protecting consumers from misfueling. EPA should aim to protect consumers - not put them in jeopardy. Improving the label to actually warn consumers, requiring uniform label positioning, and working with the Federal Trade Commission on fair marketing so unleaded 88 is not used as a workaround, would be effective measures to protect consumers before and at the pump.

The undersigned organizations appreciate the opportunity to provide comments on the proposal and stand ready to work with EPA to develop needed consumer safeguards from misfuelling to ensure all consumers have a safe and reliable fuel supply.

Respectfully submitted:

American Motorcyclist Association

American Sport Fishing Association

Boat Owner's Association of the United States

Briggs & Stratton

Marine Retailers Association of the Americas

Motorcycle Industry Council

Motorcycle Riders Foundation

National Marine Manufacturers Association

Outdoor Power Equipment Institute

Recreational Off-Highway Vehicle Association

Special Vehicle Institute of America

Truck and Engine Manufacturers Association