

July 17, 2018

Bill Wehrum  
Assistant Administrator  
Office of Air and Radiation  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W., 6101A  
Washington, DC 20460

Dear Assistant Administrator Wehrum:

I look forward to seeing you this Friday at your offices. In advance of our meeting, I would like to provide you with more detail on the first regulatory reform recommendation I suggested in my email of June 20<sup>th</sup>. Specifically, I articulated my belief that EPA should eliminate aspects of the labeling requirements associated with the current partial waiver for E15 that distinguish between pre-2001 and later passenger vehicles.

At present, EPA's E15 waiver under Clean Air Act § 211(f)(4) only applies to 2001 and newer passenger vehicles, to the exclusion of 2000 and older passenger vehicles. Pre-2001 passenger vehicles comprise only a small subset of the U.S. fleet – less than 11% of vehicles on the road by number, representing less than 7% of vehicle miles traveled.<sup>1</sup> With each passing year there are fewer and fewer MY2000 and older vehicles on the road, and such vehicles are well beyond their useful life as defined by EPA regulations (see, e.g., 40 C.F.R. § 86.1805–17). Nonetheless, EPA regulations require that E15 pumps are labeled to clarify that E15 cannot be used in this vanishingly small segment of vehicles. Our experience indicates that this same labeling dissuades drivers of even post-2001 vehicles for which EPA has approved E15 from using E15. In other words, legitimate consumers driving approved vehicles are “scared off” by the orange labeling technically relating to vehicles they do not even own. As a result, the very labeling intended to protect consumers and the environment is actually undermining the potential climate and other environmental benefits of E15. Given that pre-2001 vehicles are well-beyond their useful life and continuing to decline in number, EPA should remove the prohibition on use of E15 in them and revise accordingly the E15 labeling requirements.

<sup>1</sup> See Air Improvement Resource, Inc., *Analysis of Ethanol-Compatible Fleet for Calendar Year 2018* at 2 (Aug. 31, 2017), Exhibit 3 to Growth Energy Comments on EPA's Proposed Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019, Docket # EPA-HQ-OAR-2017-0091. When EPA issued the first Notice of Partial Waiver decision in 2010, EPA granted the waiver with respect to MY2007 and newer light-duty motor vehicles and denied the application for MY2000 and older vehicles. 76 Fed. Reg. at 68,095. EPA deferred a decision on the applicability of a waiver to MY2001–2006 light-duty motor vehicles to await additional test data. *Id.* Later, in 2011, EPA extended the waiver to MY2001 through MY2006 light-duty motor vehicles when additional test data became available for those model years. 76 Fed. Reg. at 4,662.

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EPA may accomplish this end by a number of means. For example, in the context of extending the 1 pound RVP waiver to E15, EPA could determine that E15 is substantially similar to E10 certification fuel, thus obviating the need for an E15 waiver under the statute. In conjunction with such a determination, EPA could adjust its misfueling regulations to simply prohibit use of E15 in non-passenger vehicles and non-road engines.<sup>2</sup> In the alternative, if EPA were to issue a new E15 waiver without an RVP condition, the new waiver should remove the prohibition on use of E15 in 2000 and older passenger vehicles because the Section 211(f)(4) waiver analysis only applies “over the useful life of the motor vehicle.” 42 U.S.C. § 7545(f)(4). EPA could then adjust its misfueling regulations accordingly. Under either scenario, given the small number of 2000 and older passenger vehicles on the road and the fact that they are well-beyond their useful life, it is not necessary for EPA to prohibit E15 use in such vehicles and to structure labeling and other misfueling requirements around such a small, increasingly obsolete portion of the U.S. vehicle fleet.<sup>3</sup>

Please let us know if you have any questions on this or other issues prior to our meeting.

Sincerely,



Bob Casper  
President  
POET Ethanol Products

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<sup>2</sup> There are a number of regulatory paths to a determination that E15 is substantially similar to E10, as discussed with the Agency during Growth Energy’s January 2018 meeting with Assistant Administrator Wehrum and other EPA and industry representatives.

<sup>3</sup> Removal of the prohibition of use of E15 in 2000 and older passenger vehicles may necessitate limited revision of the E15 misfueling regulations to retain labeling relating to non-passenger vehicles, boats, and gasoline-powered equipment, if appropriate.