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The Honorable Susan Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Transmitted via email

Re: Enforcement of E15 Labeling Requirements

Dear Assistant Administrator Bodine,

We are writing to the Agency to express our concerns regarding the enforcement of EPA's E15 regulations. We request that EPA issue an Enforcement Alert clarifying the regulations which prohibit the sale of E15 as Ethanol Flex-Fuel (flex-fuel) and advise the market that EPA will fully enforce these regulations.

For the past several years, some fuel retailers have engaged in the misleading practice of relabeling E15 as flex-fuel during the summer months to circumvent the Clean Air Act (CAA or the Act) Reid Vapor Pressure (RVP) limits. As a result of EPA's CAA section 211(f) substantially similar waiver for E15, E15 is classified as gasoline under EPA's regulations (not sometimes gasoline and sometimes flex-fuel) and is subject to EPA's summer RVP and pump label regulations. Some ethanol groups have actively endorsed the practice of relabeling E15 as flex-fuel to circumvent the RVP controls, creating confusion in the marketplace and potential economic harm to retailers that abide by the rules. Notwithstanding EPA's clear statements in 2016¹ that the Agency's RVP regulations cannot be avoided by changing the pump labels, we

¹ 81 Fed. Reg. 80828, 80863 (Nov. 16, 2016): "All gasoline, including E15, is subject to all of the requirements applicable to gasoline because of its formulation, not because of its end use. These requirements cannot be circumvented by relabeling. Allowing a fuel to be exempted from fuel quality requirements simply based on a

continued to observe market participants engaging in this practice during the Summer of 2017. We are not aware of any enforcement actions initiated by EPA to stop the labeling violations, even though EPA receives information concerning E15 pump labels and RVP data from the RFG Survey Association that almost certainly documents these violations.² Failure to provide clear messaging to consumers may ultimately result in misfueling incidents and ultimately undermine consumer confidence in the Agency's ability to protect their interests.

Both the EPA regulations and the CAA could not be clearer. As EPA has consistently recognized, E15 does not qualify for the one-pound waiver and must meet the summertime RVP requirements to be legally sold. The attempt to label and sell E15 as flex-fuel is an unlawful attempt to bypass the existing RVP regulatory requirements. If this labeling is allowed, then theoretically, the same logic could apply to virtually any blend of ethanol and gasoline such as E10.

EPA should clarify that relabeling E15 as flex-fuel is illegal. This action is needed immediately in light of the impending 2018 summertime gasoline season. As we near the June 1 beginning of the summer low RVP season, we urge EPA to educate market participants concerning the labeling and RVP regulations and advise retailers that EPA will fully enforce the law. EPA should impose civil penalties which include the requirement for violators to surrender the economic benefits of the non-compliance. See 42 USC 7545(d).³ This is necessary to ensure that those who are violating EPA's regulations do not gain an unfair competitive advantage and profit from violating the law.

In summary, we request EPA to issue an Enforcement Alert clarifying the regulations which prohibit the sale of E15 as flex-fuel and advise market participants that EPA will fully enforce the law, based on the following:

- The CAA, its implementing regulations (at 40 CFR 80.27) and State Implementation Plans set RVP requirements for motor fuels. Congress granted a one-pound waiver from those RVP requirements for E10 blends. The statute is clear that the one-pound RVP waiver does not extend to E15 blends and EPA has explicitly rejected granting RVP waivers to E15 blends.

statement of its intended use would undermine the EPA's ability to assure compliance with fuel quality requirements."

² If EPA has initiated any enforcement actions concerning E15 labeling or RVP violations, please provide us with copies of all notices of violation issued by the Agency concerning such violations.

³ 42 USC 7545(d)(1) states that any person who violates regulations prescribed under 7545(c), which includes the RVP regulations, "shall be liable to the United States for a civil penalty of not more than the sum of [\$37,500] for every day of such violation and the amount of economic benefit or savings resulting from the violation."

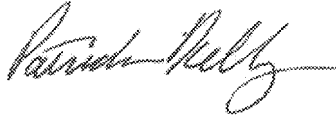
- Allowing retailers to sell E15 as flex-fuel is contrary to law, undermines EPA policy, and unjustly enriches those who violate the Agency's regulations.
- The marketing of E15 is subject to EPA's Misfueling Mitigation Rule, a rule that sets forth several different requirements regarding sampling, labeling, and practices designed to prevent misfueling. Retailers offering E15 must either participate in an independent survey consortium plan (e.g., the RFG Survey Association) or have their own survey plan approved by EPA.
- Allowing retailers to sell E15 as flex-fuel creates the very consumer confusion that the misfueling mitigation rule was intended to prevent.

We would be happy to discuss this in greater detail and we look forward to your acting on this important issue in advance of the June 1 effective date at retail for summer gasoline standards.

If you have any questions concerning this request, please contact me at

Ex. 6

Sincerely,



Patrick Kelly
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