



November 16, 2022

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**RE Notice of Workshop to Solicit Comments on Proposed Regulation
LCB File No. R038-21RP1**

Dr. Striejewski

Following the Workshop to Solicit Comments on Proposed Regulation R038-21RP1 (which is revising existing regulations to allow for the sale of gasoline containing not more than 15 percent ethanol by volume if the gasoline meets certain requirements), conducted on November 7, 2022, the Nevada Division of Environmental Protection (NDEP) submits the following updated comments on the draft regulation.

NDEP is not proposing any changes to the proposed regulation; and supports the inclusion of requirements for E15 Fuel Dispenser Labeling and E15 Compatibility with Underground Storage Tanks as detailed below.

NDEP supports the inclusion of Section 590.065.7(b)(2) and (3) that require:

- The gasoline manufacturer, oxygenate blender or oxygenate producer that produces, introduces into commerce, sells, or offers such gasoline for sale is in compliance with the E15 misfueling mitigation survey requirement set forth in 40 C.F.R. § 1090.1420; and
- The retailer or wholesale purchaser-consumer applies a label to the fuel dispenser in compliance with the requirements set forth in 40 C.F.R. § 1090.1510.

NDEP also supports the inclusion of 590.065.7(b)(4) that requires:

- The underground storage tanks used to store the gasoline are in compliance with the requirements set forth in subsection 2 of NAC 459.993.

NDEP's Bureaus of Air Pollution Control and Air Quality Planning – E15 Fuel Dispenser Labeling

Per Federal Register (FR), Vol. 86, No. 11, E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks, January 19, 2021, “EPA currently requires fuel dispenser labels for

gasoline-ethanol blends of greater than 10 volume percent (vol%) ethanol and up to 15 vol% ethanol (E15). The label was designed to alert consumers to the appropriate and lawful use of the fuel.” EPA further states in the FR “Those regulations [*see Clean Air Act 211(c) (referred to as the Misfueling Mitigation Rule)*] were needed to implement EPA’s affirmative determinations that the use of E15 in MY2000 and older light-duty motor vehicles, all heavy-duty gasoline engines and vehicles, all on- and off-highway motorcycles, and all nonroad products would cause or contribute to the impairment of these vehicles’ and engines’ emission controls and harm public health from increases in regulated emissions.”

This misfueling can result in increases in emissions of criteria air pollutants such as carbon monoxide, nitrous oxide, and particulate matter; as well as volatile organic compounds, which can result in greater production of ground-level ozone. Additionally, misfueling can result in greater emissions of air toxics.

The transportation sector is a significant contributor to air emissions, and it should be noted that:

- In Clark County, the Las Vegas Valley was designated marginal nonattainment for the 8-Hour 2015 Ozone National Ambient Air Quality Standard (NAAQS) in August 2018;
- Washoe County is currently designated in attainment for the 2015 Ozone NAAQS; however, recent ozone levels have been close to 100 percent of the NAAQS; and
- In Carson City / Douglas, ozone levels are also approaching the NAAQS.

EPA is expected to review and potentially revise the current ozone standard by the end of 2023, possibly making it more stringent.

It is NDEP’s understanding based on Department of Motor Vehicles data that there are over 280,000 pre-2000 vehicles registered in Nevada (as of April 2021); and this does not include vehicles that do not require registration.

NDEP’s Bureau of Corrective Actions – E15 Compatibility with Underground Storage Tanks

Per Federal Register (FR), Vol. 86, No. 11, E15 Fuel Dispenser Labeling and Compatibility with Underground Storage Tanks, January 19, 2021, EPA states the follow:

- It is important for USTs to be constructed, maintained, and operated in a manner so that petroleum and other regulated substances are stored safely.
- Incompatibility between fuels stored and UST system materials can result in equipment or components such as tanks, piping, gaskets, or seals becoming brittle, elongated, thinner, or swollen when compared with their condition when first installed. When this occurs, the UST system may fail to contain the regulated substance resulting in a release to the environment and possibly a failure to detect the release.
- Changes in the fuel supply have caused unintended consequences to UST systems, including equipment failure and releases to the environment. As a result, in 2015 we [*EPA*] revised the UST regulation and required owners and operators to provide

additional notification, demonstration, and recordkeeping when storing fuel blends such as those with more than 10 percent ethanol or more than 20 percent biodiesel.

NDEP supports the inclusion 590.065.7(b)(4) that references NAC 459.993, which is the section of the Storage Tanks regulation that addresses adoption by reference of certain provisions of federal regulations regarding underground storage tanks. This section adopts by reference 40 CFR Part 280.32 as it existed on October 13, 2015. This section requires notification and demonstration of compatibility for changes in fuel supply.

§ 280.32 Compatibility.

- (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.
- (b) Owners and operators must notify the implementing agency at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the implementing agency. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:
 1. Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:
 - (i) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
 - (ii) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or
 2. Use another option determined by the implementing agency to be no less protective of human health and the environment than the options listed in paragraph (b)(1) of this section.
- (c) Owners and operators must maintain records in accordance with § 280.34(b) documenting compliance with paragraph (b) of this section for as long as the UST system is used to store the regulated substances.

NDEP estimates that a little over half the tank systems operating in the State were installed pre-1998; which is the date EPA started requiring new tank systems to have interstitial monitoring or secondary containment.

Thank you for the opportunity to provide comments on the proposed regulation. Please reach out to me at 775-687-9307 or jkinder@ndep.nv.gov if you have any questions.

Respectfully,



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Deputy Administrator

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cc: Greg Lovato, Administrator, Nevada Division of Environmental Protection
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