



September 22, 2019

Mr. Mike Sikula
Director
New York Department of Agriculture and Markets
Bureau of Weights and Measures
10B Airline Drive, Albany, NY 12235

ID No. AAM-30-19-00004-P

Dear Director Sikula:

On behalf of the members of the American Coalition for Ethanol (ACE), thank you for the opportunity to comment in response to the proposed action to amend Part 224 of Title 1 of the New York Code of Rules and Regulations to permit a wider range of alternative fuels such as E15 and impose a variety of requirements on fuel retailers.

ACE is a grassroots advocacy organization, powered by rural Americans from all walks of life who have built an innovative industry that delivers homegrown biofuel and food for a growing world. Our 500 members include U.S. ethanol biorefineries, investors in biofuel facilities, farmers, and companies that supply goods and services to the U.S. ethanol industry.

We strongly support the proposal to conform New York with regulations at the federal level which provide retailers the option to offer E15 to their customers year-round. However, we strongly oppose the proposal to prohibit the retail sale of mid-level blends of ethanol and gasoline greater than 15 percent and less than 51 percent by volume. Finally, we recommend any prohibition of fuel delivery into a tank containing a particular amount of water should apply to all gasoline or gasoline/ethanol blends, and do not see the need for the labeling approach taken with respect to butanol.

On May 31, 2019, the U.S. Environmental Protection Agency (EPA) issued a final rule to extend the 1-psi Reid vapor pressure (RVP) waiver to E15, effectively removing the last remaining federal regulatory barrier to year-round E15 availability.

E15 is a clean, safe, and low-cost fuel which can be used in more than 90 percent of all cars on the road today, and it should be noted a flexible fuel vehicle (FFV) is not required to use the fuel. Since E15 typically costs 2 to 10 cents per gallon less than E10 and gasoline and has a higher octane rating (88 AKI), allowing its sale year-round will give New York consumers the option to buy a higher quality fuel and save money at the pump. We strongly support your proposal to conform New York regulations with EPA and the American Society for Testing and Materials (ASTM) regarding E15.

Nevertheless, we strongly oppose your proposal to prohibit the retail sale of mid-level blends greater than 15 percent and less than 51 percent by volume. It appears the Department of Agriculture and Markets is proposing this prohibition because it is concerned about confusing motorists and your regulatory impact statement indicates a “market is not fully functional if consumers are confused.” Simply put, this part of the proposal is a solution in search of a problem. Flexible fuel vehicles (FFVs) are designed to operate on straight gasoline, E85, and any mixture of ethanol and gasoline in between. This means mid-level blends of ethanol such as E20, E30, E40, etc. are allowed in FFVs. New York has nearly 1 million FFVs on the road and there are approximately 100 stations in the state offering E85 (and likely offering mid-level blends) to the owners of FFVs.¹ We oppose this part of your rule because it will take options away from retailers and prohibit the owners of FFVs the opportunity to use a mid-level blend which will function safely and efficiently in their vehicles. It should also be noted blends such as E20 and E30 are substantially lower-cost at the pump than straight gasoline.

While not necessarily disagreeing subdivision (f) of section 224.4 should be amended “to require that transporters may not deliver motor fuel to a storage tank is the water level is in excess of one inch,” we disagree with the statement that “the presence of water at the bottom of a tank, when the product is a gasoline ethanol blend, is an indicator that the fuel therein has become saturated with water.” The presence of water in the bottom of a tank, especially water in excess of one inch, is more likely an indicator the product in the tank is NOT a gasoline ethanol blend. Unlike “clear” gasoline, ethanol blends can absorb and hold small amounts of water and run them through the engine harmlessly, and higher percentage blends of ethanol can hold absorb and hold higher amounts of water and run them through an engine harmlessly. In a recent study, E15 was found to hold twice as much water as E10 without incident.²

Regarding the issue of “phase separation,” whether the product is a gasoline ethanol blend or clear unleaded, the presence of water in the bottom of a tank is an indicator of poor housekeeping by the tank owner, or an indicator the gasoline delivered to that site had water in it. Ethanol does not contain water. Gasoline does. When excess water is a concern in a gasoline storage tank, more ethanol is not a problem, it is a potential solution. An inch or two of phase separated water is not harmless, it is merely unlikely to cause a problem because pumps used in storage tanks typically draw from about four inches off the bottom of the tank. If there is an excessive amount of water in a tank, the ethanol portion of the fuel will attempt to absorb the water and when the water volume is too high, ethanol will fall to the bottom of a tank along with the water, creating a phase separation that is above the four inch intake level of the pump.

We recommend any prohibition of fuel delivery into a tank containing a particular amount of water should apply to all gasoline or gasoline ethanol blends, since gasoline without ethanol guarantees the water problem will not be remedied in any way. A regulation requiring elimination of water in gasoline would be a far greater benefit to retailers and consumers than a rule such as this one, which could discourage retailers from offering their customers a cleaner, higher octane, lower-cost fuel that helps reduce the harmful effects of water in gasoline.

Even if excess water causes a large phase separation event, a vehicle receiving that fuel-water mixture from a retail dispenser is not likely to perform poorly or damage its engine, primarily because it is

¹ https://flexfuelforward.com/wp-content/uploads/2019/06/E15_Flex_Fuel_Retailer_Roadmap.pdf

² <https://cropwatch.unl.edu/documents/Ethanol%20and%20Water%20Contamination%2009052014.pdf>

unlikely to start and run with that fuel in its tanks. In most cases of phase separated product being pumped into a vehicle, the fuel system is drained, and when fresh, non-water containing gasoline with ethanol is added to the tank and run through the system, there are no further problems. Potential problems could also be eliminated by using several excellent water-sensitive filters that can be installed on fuel dispensers and would completely shut the fuel pump down if fuel with high amounts of water is detected.

Finally, as to section (c) of section 224.8, it is incredibly disappointing governments continue to insist on “making consumers aware of” products like ethanol and now anything more than 1 percent butanol, even though there does not seem to be any legitimate scientific reason to “warn” people about the presence of those products. Meanwhile, so-called “clear” gasoline is mixture that may contain butane, pentane, n-hexane, hexane, other isomers, benzene, n-heptane, ethylbenzene, xylenes, cyclohexane, trimethylbenzene, cumene, toluene, tertiary-amyl-methyl-ether, other aromatics, and refined crude oil, all in varying amounts almost always above 1 percent, and most of which cause cancer or are hazardous to one’s health, and no labeling requirements similar to the ethanol or proposed butanol labeling requirements exist to make consumers aware of the presence of those deadly chemicals.

In short, if there is more reason for people to be aware of the presence of butanol than the other harmful substances in gasoline, then a labeling requirement makes sense. Otherwise, it is merely continuation of an oil industry strategy to needlessly alarm consumers and reinforce ghost stories they’ve made up about competing fuel products they don’t manufacture.

Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Jennings". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Brian Jennings, CEO
American Coalition for Ethanol