

## **EPA, State Rules Set Back Ethanol Industry Bid To Quickly Sell E15 Fuels**

In an article last week it was noted that the EPA says that “As of November 7, 2011, E15 is not registered with EPA and is therefore not legal for distribution or sale as a transportation fuel.” This is positive news for the recreational boating industry given the negative impacts on marine engines from ethanol-blended fuels over 10%. The EPA has a number of hurdles left before it can approve the legal sale of E15, and they do not appear to be in much of a hurry. The article speculates that it is due to the legal challenge, which NMMA is part of.

The article continues, “The ethanol industry is facing a long and uncertain schedule as it seeks to comply with EPA rules and state requirements to allow distribution of gasoline containing 15-percent ethanol (E15) in the retail market, even as the industry joins with EPA to defend the agency’s Clean Air Act waivers allowing sale of E15 from legal challenges.

EPA, in information posted on its website late last month, did not say when it expects to complete the health and other testing needed to register the fuel, approve an industry misfueling mitigation plan and other steps necessary to allow the industry to sell the fuel -- even after it granted the air act waivers, the first step in the lengthy approval process.

But the agency says there are additional steps the industry must go through before the fuel can be sold. But the industry -- represented by the Renewable Fuels Association (RFA) and the America Coalition for Ethanol (ACE), among others -- says it is not waiting for the court to rule on the challenge to EPA’s waivers. Instead, industry sources say they are moving ahead to clear the host of regulatory and legal steps to ensure the fuel is ready for sale and distribution once the court approves EPA’s waivers. Led by Growth Energy, the ethanol industry in 2010 sought and won two air act waivers from EPA to increase the current E10 cap on conventional gasoline to allow sale of blends of up to E15 in model year 2001 and newer vehicles. The ethanol groups are seeking to allow sale of E15 to overcome a so-called ethanol blend wall. The industry sought the change in part to drive increased demand for the fuel, which is in oversupply.

But a host of groups are concerned about increasing the cap. The oil industry, along with engine and vehicle manufacturers, for example, fear the fuel will damage engines because it is more corrosive than lower grade fuel blends, leaving them vulnerable to third-party tort suits. Food industry groups, meanwhile fear it will siphon stocks away from their supplies, increasing prices.

Lawsuits over the E15 waivers have been consolidated in the suit *Grocery Manufacturers Association, et al., v. EPA*. Oral arguments in the U.S. Court of Appeals for the District of Columbia Circuit are scheduled for April 17.

In addition to litigation on the waivers, the automobile industry is also challenging the E15 fuel labeling rule that EPA promulgated last November but the litigation is stayed until after the waiver suit is completed.”

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