



The Committee on Energy and Commerce

Internal Memorandum

April 17, 2012

To: Subcommittee on Environment and the Economy

From: Committee Staff

Subject: Hearing entitled “H.R. 4345, The Domestic Fuels Protection Act of 2012.”

On Thursday, April 19, 2012, the Subcommittee on Environment and the Economy will hold a hearing at 9:30 a.m. in room 2322 of the Rayburn House Office Building entitled “H.R. 4345, The Domestic Fuels Protection Act of 2012.”

I. Witnesses

Charles T. Drevna
President
American Fuels and Petrochemical Manufacturers

John Eichberger
Vice President, Government Relations
National Association of Convenience Stores

Bob Dinneen
President and CEO
Renewable Fuels Association

K. Allen Brooks
Senior Assistant Attorney General and Chief, Environmental Protection Bureau
State of New Hampshire

Shannon Baker-Branstetter
Policy Counsel, Energy and Environment
Consumers Union Policy & Action from Consumer Reports

II. Background

Since 2005, most gasoline marketed in the U.S. has been blended with 10 percent ethanol, in part to help meet clean air standards¹ but also to help satisfy renewable fuel volumetric obligations under the Renewable Fuels Standard (RFS)².

In 2010, the U.S. Environmental Protection Agency (EPA) announced it would grant a waiver³ to permit E-15 (gasoline blended with up to 15 percent ethanol) for use in model year 2007 and later cars and light trucks.⁴ In 2011, EPA expanded this conditional waiver to include cars and light trucks with model years 2001 and later, but did not approve it for boats, lawn and garden equipment, or for other small engines.⁵ Also in 2011, EPA prescribed detailed regulations on E-15 labeling in order to prevent misfueling – using the wrong fuel blend for a particular engine.⁶ In these conditional approvals of E-15, EPA cited tests performed by the U.S. Department of Energy (DOE) on vehicle emissions for a variety of high selling car and light truck models.⁷

Despite these tests, concern has arisen about the possibility that mixing gasoline and ethanol in various ratios could give rise to damage claims based upon the presence of those fuels. GAO reported in June 2011 that “according to EPA and several industry representatives the compatibility of many [underground storage tank] systems with these fuels [intermediate ethanol blends] is uncertain.”⁸ In the same report, GAO discussed concern that potential law suits could allege that the presence of a particular EPA-certified fuel is to blame for property damage or even injury in connection with damage to underground storage tanks, dispensing equipment, vehicles, or engines.⁹

EPA also administers the renewable fuel program¹⁰ which calls for growing volumes of renewable fuels to become part of the U.S. fuel mix. Comparing the current and projected overall fuel demand for the United States with the year-by-year volumes of renewable fuel called for in the Renewable Fuel Standard,¹¹ some are concerned that EPA certifying new blends and new fuels to help keep pace with the RFS, and the fuels industry deploying them, could increase the risk of law suits based on the presence of such fuels, despite EPA approval and industry

¹ Clean Air Act Section 211(m)

² Clean Air Act Sec. 211(o)(2)(B)

³ See Clean Air Act Sec. 211(f)(4)

⁴ <http://www.epa.gov/otaq/regs/fuels/additive/e15/>

⁵ Id.

⁶ Id.

⁷ <http://www.epa.gov/otaq/regs/fuels/additive/e15/420f10054.htm>

⁸ Challenges to the Transportation, Sale, and Use of Intermediate Ethanol Blends – GAO-11-513
June 3, 2011

⁹ For a discussion of liability concerns for selling intermediate ethanol blends, see GAO Report 11-513 pp. 29-30, June 3, 2011

¹⁰ Clean Air Act Section 211(o)

¹¹ Clean Air Act Sec. 211(o)(2)(B)

compliance with applicable regulations. Applications for approval of new fuels could multiply as innovators employ a wide variety of feedstocks to create alternatives to crude oil, gasoline, and conventional ethanol.

H.R. 4345 is intended to allay those concerns about potential liability so that, as long as entities in the transportation fuel supply chain comply with applicable regulations, persons who produce, distribute, and dispense various fuels are not conflicted in their business decisions by the specter of adverse legal action based upon the presence of EPA-approved fuels when government regulations have been followed. The bill is not intended to excuse retailers or others from liability under the Solid Waste Disposal Act¹² or the Comprehensive Environmental Response, Compensation and Liability Act (Superfund)¹³, nor is it intended to waive compliance with other regulations governing, e.g., unfair trade practices or worker safety protections.

With regard to misfueling, H.R. 4345 is not intended to relieve retailers (or anyone else) from all negligence actions. It is intended to ensure that if the retailer complies with all misfueling regulations and a self-service purchaser misfuels, the risk does not shift to the vender (or anyone else) for the action of the consumer merely due to the presence of the EPA-certified fuel.

III. H.R. 4345 - The Domestic Fuels Protection Act of 2012

The following is a summary of H.R. 4345. Please read the attached bill text for details.

H.R. 4345 contains three principal components. They address fuel compatibility, misfueling, and limitation on liability.

Section 2, "Fuel Compatibility," provides that no person shall be liable, and no provider of financial assurance shall deny payment for any claim, because an underground storage tank, tank system, or dispensing equipment is not compatible with a fuel or fuel additive if such equipment has been determined to be compatible with the fuel or fuel additive under regulations issued by EPA.

Section 2 also requires EPA to set (or revise) standards for determining whether an underground storage tank, tank system, or dispensing equipment is compatible with a fuel or fuel additive that is authorized and registered by EPA for use in a motor vehicle or nonroad vehicle or equipment.

Section 2 also deems compatible any underground storage tank, tank system, or dispensing equipment that on date of enactment is listed as compatible by a national testing laboratory.

H.R. 4345 makes explicit that nothing in Section 2 affects the introduction into commerce, offering for sale, or sale of any fuel or fuel additive. Nor does Section 2 affect "any applicable requirement, including any requirement under Section 211(o) of the Clean Air Act."

¹² 42 U.S.C Sec. 6901, et seq.

¹³ 42 U.S.C. Section 9601 et seq.

Section 3, “Misfueling,” provides that (with two exceptions, below) no person will be liable if a self-service purchaser introduces fuel into a motor vehicle or non-road vehicle or equipment for which the fuel has not been approved by EPA, nor shall such person be liable if such misfueling voids a manufacturer’s warranty on the vehicle or nonroad equipment. Exceptions: This provision does not apply to sellers of transportation fuel who fail to comply with EPA’s misfueling regulations, or to anyone who intentionally misfuels.

Section 4, “Limitation on Liability,” provides that no “qualified civil liability action” may be filed or maintained in any Federal or State court (and any such pending actions would be dismissed). “Qualified civil liability action” is defined as “any civil action or proceeding brought by any person against a covered entity for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, penalties, or other relief resulting from the introduction of any qualified product into any motor vehicle, motor vehicle engine, nonroad vehicle, nonroad engine, or nonroad equipment.”

Section 4 also provides that no “qualified product” shall be considered to be a defective product if it does not violate a control or prohibition respecting any characteristic or component of the product imposed by EPA under Section 211 of the Clean Air Act. “Qualified product” means (a) any fuel or fuel additive for which a registration is in effect under Section 211 (b) of the Clean Air Act or other Federal law enacted after October 12, 2010; (b) a transportation fuel or fuel additive that contains any renewable fuel and is designated for introduction into interstate commerce by EPA or DOE; (c) any component of a fuel or fuel additive; or (d) any blend stock.

IV. **Issues**

The scope of the hearing is limited to H.R. 4345.

IV. **Contacts**

If you have any questions regarding this hearing, please contact Dave McCarthy (dave.mccarthy@mail.house.gov) of the Majority Committee staff at (202) 225-2927.

Attachment: H.R. 4345