

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 161,682.

Frequency of response: Varies by requirement (*i.e.*, on occasion, monthly, quarterly, semi-annually, and annually).

Estimated total average number of responses for each respondent: 3.1.

Estimated total annual burden hours: 3,249,695 hours.

Estimated total annual costs: \$119,174,000. This includes an estimated burden cost of \$97,636,000 and an estimated cost of \$21,538,000 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is no estimated increase or decrease of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

What is the next step in the process for these ICRs?

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another Federal Register notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about these ICRs or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: June 28, 2011.

Ronald W. Bergman,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2011-16731 Filed 7-1-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-UST-2010-0651; FRL-9428-8]

Compatibility of Underground Storage Tank Systems With Biofuel Blends

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final guidance.

SUMMARY: EPA is issuing final guidance on how owners and operators of underground storage tanks (USTs) can demonstrate compliance with the Federal compatibility requirement for UST systems storing gasoline containing greater than 10 percent ethanol or diesel containing greater than 20 percent biodiesel.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA-HQ-UST-2010-0651. All documents and public comments in the document are available at <http://www.regulations.gov> or in hard copy at the UST Docket in the EPA Headquarters Library, located at EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566-1744. The telephone number for the UST Docket is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: Andrea Barbary, Office of Underground Storage Tanks, Mail Code 5402P, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603-7137; e-mail address: barbary.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This guidance is for owners and operators of underground storage tank (UST) systems (hereafter referred to as tank owners) regulated by 40 CFR Part 280, who intend to store gasoline blended with greater than 10 percent ethanol or diesel blended with greater than 20 percent biodiesel.

40 CFR Part 280, and therefore this guidance, applies in Indian country and

in states and territories (hereafter referred to as states) that do not have state program approval (SPA). You can view a map of SPA states with approved UST programs at: <http://www.epa.gov/oust/states/spamap.htm>. SPA states may find this guidance relevant and useful because they also have a compatibility requirement that is similar to the Federal compatibility requirement. You can view state-specific requirements for SPA states at: http://www.epa.gov/oust/fedlaws/spa_frs.htm.

B. How can I get copies of this document and other related information?

1. Docket. EPA has established a docket for this action under Docket ID No. EPA-HQ-UST-2010-0651. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the UST Docket in the EPA Docket Center, located at EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566-1744. The telephone number for the UST Docket is (202) 566-0270.

2. Electronic Access. EPA established a docket for this action under Docket ID No. EPA-HQ-UST-2010-0651. All documents and public comments in the document are available at <http://www.regulations.gov>. In addition to being available in the UST docket, an electronic copy of this guidance is also available on EPA's Office of Underground Storage Tanks Web site at <http://www.epa.gov/oust>.

II. Background

A. Statutory Authority

This guidance discusses the Federal UST compatibility requirement promulgated under the authority of Subtitle I of the Solid Waste Disposal Act (SWDA), as amended. 42 U.S.C. 6991b *et seq.* You can find this requirement, which is referenced and discussed in the guidance, in 40 CFR 280.32.

B. Underground Storage Tank Compatibility Requirement

To protect groundwater, a source of drinking water for nearly half of all Americans, the U.S. Environmental Protection Agency (EPA) regulates UST systems storing petroleum or hazardous substances under authority of Subtitle I of the Solid Waste Disposal Act (SWDA), as amended. Tanks storing

gasoline or diesel mixed with ethanol or biodiesel are regulated, although pure ethanol and biodiesel are not regulated substances under Subtitle I of SWDA. For the purposes of this guidance, EPA considers an ethanol-blended fuel to be any amount of ethanol mixed with petroleum gasoline, and a biodiesel-blended fuel to be any amount of biodiesel mixed with petroleum diesel.

The Federal UST regulation in 40 CFR part 280 addresses preventing and detecting UST system releases; the provision in 40 CFR 280.32 requires the UST system be compatible with the substance stored. As the United States moves toward an increased use of biofuels, including ethanol and biodiesel, compliance with the UST compatibility requirement becomes even more important, since biofuel blends can compromise the integrity of some UST system materials (see following sections). Today's **Federal Register** notice issues guidance on how owners and operators of UST systems storing fuels containing greater than 10 percent ethanol or greater than 20 percent biodiesel can demonstrate compliance with the UST compatibility requirement.

As of September 30, 2010, there are approximately 600,000 regulated USTs at 215,000 facilities nationwide. Based on the size and diversity of the regulated community, states are in the best position to implement UST program requirements, and are therefore primarily responsible for the implementation of the UST program. Subtitle I of SWDA, as amended, allows state UST programs approved by EPA to operate in lieu of the Federal UST program. In order for EPA to approve a state's program, that state's regulations must be at least as stringent as the Federal UST regulations.

An UST system, as defined by 40 CFR 280.12, includes "* * * an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any." Ancillary equipment includes "* * * any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST." Fuel dispensers are not part of the UST system as defined by 40 CFR 280.12. This means the compatibility requirement in 40 CFR 280.32 does not apply to dispensers.

C. Compatibility of UST Systems With Biofuels

The Federal UST regulation in 40 CFR 280.32 requires, "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." EPA understands that the chemical and physical properties of ethanol and biodiesel can be more degrading to certain UST system materials than petroleum alone, so it is important to ensure that all UST system components in contact with the biofuel blend are materially compatible with that fuel. Industry practice has been for tank owners to demonstrate compatibility by using equipment that is certified or listed by a nationally recognized, independent testing laboratory, such as Underwriters Laboratories (UL). However, based on EPA's understanding of UL listings, many UST system components in use today, with the exception of certain tanks and piping, have not been tested by UL or any other nationally recognized, independent testing laboratory for compatibility with ethanol blends greater than 10 percent. In addition, EPA is not aware of any nationally recognized, independent testing laboratory that has performed testing on UST system components with biodiesel-blended fuels. Absent certification or listing from a nationally recognized, independent testing laboratory, or other verification that equipment is compatible with anything beyond conventional fuels, the suitability of these components for use with ethanol or biodiesel blends comes into question.

1. Compatibility of UST Equipment With Ethanol-Blended Fuel

Gasoline containing 10 percent or less ethanol has been used in parts of the United States for many years. According to the Renewable Fuels Association, ethanol is blended into over 90 percent of all gasoline sold in the country.¹ Recently, there has been a movement toward higher blends of ethanol, due in part to recent Federal and state laws encouraging the increased use of biofuels. Certain tanks and piping have been tested and are listed by UL for compatibility with higher-level ethanol blends. Many other components of the UST system, such as leak detection devices, sealants, and containment sumps, may not be listed by UL or another nationally recognized, independent testing laboratory for compatibility with these blends.

EPA expects Federal and state laws encouraging increased use of biofuels to translate into a greater number of UST

systems storing ethanol blends, as well as a greater number of UST systems storing ethanol blends greater than 10 percent. EPA is aware of material compatibility concerns associated with some UST system equipment storing higher ethanol blends, such as gasoline blended with up to 85 percent ethanol (E85), which is an alternative fuel used in flexible fuel vehicles. EPA understands that in order to avoid compatibility issues with E85, many tank owners who currently store E85 either installed all new equipment designed to store high level ethanol blends or upgraded certain components to handle the higher ethanol content. Because it is common for tank owners to use their tanks for 30 years or more, most UST systems currently in use are likely to contain components not designed to store ethanol blends greater than 10 percent. Components of these older systems may not be certified or listed by UL or another nationally recognized, independent testing laboratory for use with these blends.

Although very little data pertaining to the compatibility of UST equipment with ethanol blends exist, literature suggests that intermediate ethanol blends may have the most degrading effect on some UST system materials. A recent study performed by U.S. Department of Energy's Oak Ridge National Laboratory indicates some elastomeric materials are particularly affected by intermediate ethanol blends and certain sealants may not be suitable for any ethanol-blended fuels.² A 2007 report from UL³ evaluated the effect of 85 percent ethanol and 25 percent ethanol blends on dispenser components. Results indicated some materials used in the manufacture of seals were degraded more when exposed to the 25 percent ethanol test fluid than when exposed to the 85 percent ethanol test fluid. Other literature suggests alcohol fuel blends can be more aggressive toward certain materials than independent fuel constituents, with maximum polymer swelling observed at approximately 15 percent ethanol by volume.⁴

² Oak Ridge National Laboratory, "Intermediate Ethanol Blends Infrastructure Materials Compatibility Study: Elastomers, Metals, and Sealants" (March 2011). Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

³ Underwriters Laboratories, Inc., "Underwriters Laboratories Research Program on Material Compatibility and Test Protocols for E85 Dispensing Equipment" (December 2007). Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

⁴ Westbrook, P.A., "Compatibility and Permeability of Oxygenated Fuels to Materials in Underground Storage and Dispensing Equipment"

¹ Renewable Fuels Association, "Building Bridges to a More Sustainable Future: 2011 Ethanol Industry Outlook." <http://www.ethanolrfa.org/page/-/2011%20RFA%20Ethanol%20Industry%20Outlook.pdf?nocdn=1>.

2. Compatibility of UST Equipment With Biodiesel-Blended Fuel

In addition to ethanol, biodiesel is becoming increasingly available across the United States, though its total use is significantly less than that of ethanol-blended gasoline. EPA understands some tank owners are storing blends of biodiesel and petroleum diesel ranging from 2–99 percent biodiesel (B2–B99, respectively) in UST systems, with the vast majority of biodiesel tanks storing biodiesel at concentrations of 20 percent (B20) or less. Although there is little information available regarding the compatibility of UST system equipment with biodiesel blends, there are known compatibility issues for pure biodiesel (B100). According to the U.S. Department of Energy's National Renewable Energy Laboratory (NREL) *Biodiesel Handling and Use Guide, Fourth Edition*,⁵ "B100 will degrade, soften, or seep through some hoses, gaskets, seals, elastomers, glues, and plastics with prolonged exposure * * * Nitrile rubber compounds, polypropylene, polyvinyl, and Tygon® materials are particularly vulnerable to B100."

In contrast, the properties of very low blends of biodiesel (B5 or less) are so similar to those of petroleum diesel that ASTM International (ASTM) considers conventional diesel that contains up to 5 percent biodiesel to meet its "Standard Specification for Diesel Fuel Oils".⁶ For biodiesel blends between 5 and 100 percent, there is very little compatibility information; however, NREL's handling and use guide concludes that biodiesel blends of B20 or less have less of an effect on materials and very low blends of biodiesel (for example, B5 and B2) " * * * have no noticeable effect on materials compatibility."⁷ In addition, fleet service sites have stored B20 in USTs for years, and EPA is not aware of compatibility-related releases associated with those USTs storing B20. Based on these experiences, some states developed UST compatibility policies similar to today's final guidance, and

they chose a mix of thresholds: B5, B10, and B20.⁸

D. EPA E15 Waivers

In March 2009, EPA received a Clean Air Act (CAA) waiver application to increase the allowable ethanol content of gasoline-ethanol blended fuel from 10 percent ethanol to 15 percent ethanol.⁹ In October 2010 and January 2011, EPA conditionally granted partial waivers that allow gasoline-ethanol blends containing greater than 10 percent ethanol up to 15 percent ethanol (E15) to be introduced into commerce for use in 2001 and newer model year light-duty motor vehicles (which include passenger cars, light-duty trucks, and medium-duty passenger vehicles such as some sport utility vehicles).¹⁰ If other state, Federal, and industry practices also support the introduction of E15 into commerce, EPA anticipates some tank owners may choose to store higher percentages of ethanol in their UST systems when these fuels become available.

Please note that this action under the CAA has no legal bearing on the requirement for tank owners to comply with all applicable UST regulations, including the UST compatibility requirement in 40 CFR 280.32. Under the existing Federal UST regulation, tank owners must meet the compatibility requirement for UST systems to ensure safe storage of any regulated substance, including higher ethanol and biodiesel blends.

E. November 17, 2010 Federal Register Notice and Request for Comments

On November 17, 2010, EPA published draft guidance in the **Federal Register** to solicit public comments on proposed options to help tank owners in complying with the Federal compatibility requirement for UST systems storing gasoline containing greater than 10 percent ethanol and diesel containing a to-be-determined amount of biodiesel.¹¹ EPA solicited comments on a number of issues, including: UST components that may be affected by biofuel blends; methods to demonstrate compatibility; criteria for equipment manufacturer approval as a compatibility method; applicability to biodiesel blends; ability to demonstrate compatibility using the proposed

guidance; and other options that would sufficiently protect human health and the environment. The 30 day public comment period ended December 17, 2010. In response to the notice and proposed guidance, EPA received 27 comments from states, petroleum marketers, tank owners, biofuel groups, equipment manufacturers, and others. These comments are available in EPA's UST Docket under Docket ID No. EPA-HQ-UST-2010-0651 and are summarized and addressed in the following section.

III. Response to Public Comments

A. UST Components That May Be Affected by Biofuel Blends

In the **Federal Register** notice, EPA asked for comments on the proposed list of UST system components that may be affected by biofuel blends. Most commenters generally supported the proposed list, though some suggested additions or deletions. Many commenters suggested the list should include components such as shear valves, fill and riser caps, and vapor recovery equipment. EPA's intent is to identify all equipment that falls under the definition of UST system in 40 CFR 280.12, which, if incompatible, would lead to a liquid release to the environment. Therefore, EPA is adding the product shear valve and fill and riser caps to the list because: if a product shear valve is incompatible, product may be released if the dispenser is dislodged; if a riser cap fails, the overflow flow restrictor may no longer alert the transfer operator prior to overflowing a tank. EPA is not including vapor recovery equipment because these components do not routinely contain liquid product. Incompatibility of vapor recovery equipment would be less likely to result in a liquid release to the environment.

Based on commenters' input, EPA is removing from the list pipe adhesives and glues, because these components are typically used as part of the fiberglass piping and their compatibility is linked to that piping. That is, an UST contractor installing a new UST system does not have discretion over which pipe adhesives to use in the field. The pipe manufacturer provides these adhesives, also commonly referred to as glues, along with the piping as a complete set. Because these are not discretionary components, tank installers have not historically documented the type of pipe adhesive used during installation. As a result, a tank owner would have difficulty finding records about the type of pipe adhesives used in the piping system.

(January 1999). Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

⁵ National Renewable Energy Laboratory, "Biodiesel Handling and Use Guide, Fourth Edition." (2009). Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

⁶ ASTM Standard D975, 2010c "Standard Specification for Diesel Fuel Oils," ASTM International, West Conshohocken, PA, 2010, DOI: 10.1520/D0975-10C, www.astm.org.

⁷ National Renewable Energy Laboratory, "Biodiesel Handling and Use Guide, Fourth Edition." (2009). Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

⁸ Wisconsin, Colorado, and South Carolina are examples of states with compatibility policies that address biodiesel. These documents are available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

⁹ See 74 FR 18228 (April 21, 2009).

¹⁰ See 75 FR 68093 (November 4, 2010), and 76 FR 4662 (January 26, 2011).

¹¹ See 75 FR 70241 (November 17, 2010).

According to manufacturers, piping and its adhesives have been compatible with ethanol blends for many years before UL included ethanol blends as a test fluid. Therefore, pipe adhesives and glues are covered under the general category of piping.

Many commenters strongly recommended EPA include dispensers on the list; however, EPA does not regulate aboveground equipment, such as dispensers, under 40 CFR Part 280. Because EPA understands this distinction might not be obvious to tank owners and there are known material compatibility issues with dispenser components,¹² EPA is recommending tank owners determine if other Federal, state, or local requirements apply to their storing and dispensing equipment. For example, the U.S. Occupational Safety and Health Administration has listing requirements that apply to dispensing equipment,¹³ and many state and local regulatory agencies adopted codes of practice such as National Fire Prevention Association codes and the International Fire Code. For information on which dispensers are listed for higher blends of ethanol, please see Appendix F of the Department of Energy's *Handbook for Handling, Storing, and Dispensing E85*.¹⁴

EPA is making one additional change by including further clarification regarding newly installed equipment versus equipment that has undergone maintenance where one or more components is replaced. For newly installed equipment comprised of multiple individual components and assembled by the manufacturer, some manufacturers provide a compatibility certification for the equipment as a whole. For example, a manufacturer may certify the entire submersible turbine pump as being compatible. The submersible turbine pump certification would include all components (gaskets, sealants, bushings, etc.) of the equipment assembled by the manufacturer. Therefore, an owner may obtain one certification for newly installed manufacturer-assembled equipment, as long as the manufacturer certifies the entire piece of equipment as compatible. However, over the lifetime of a typical UST system, equipment is likely to require maintenance, which

may involve replacing parts like gaskets, sealants, and bushings. It is important for tank owners to use compatible replacement parts, especially since these components are sometimes constructed of materials that are not compatible with biofuel blends. Therefore, equipment components (such as gaskets, sealants, bushings, etc.) replaced after the equipment was originally installed will not be covered by the original manufacturer's approval.

B. Methods To Demonstrate Compatibility and Criteria for Manufacturer Certification

In the proposed guidance, EPA asked for comment on the appropriateness and feasibility of using these methods to demonstrate compatibility:

- Certification or listing by an independent test laboratory;
- Equipment manufacturer approval; or
- Another method determined by the implementing agency to sufficiently protect human health and the environment. EPA will work with states as they evaluate other acceptable methods.

Many commenters, including states, were concerned with the manufacturer approval option as a way to demonstrate UST system compatibility. Some thought this method would be better supported if manufacturers submitted compatibility test data as qualitative proof of compatibility. We acknowledge that the element of testing may make commenters more comfortable with allowing manufacturer's self-certification. However, absent nationally recognized compatibility test protocols for each component and general agreement on what constitutes acceptable test results, regulatory agencies are not in a position to assess the sufficiency of the tests.

After additional discussions with states and industry, EPA concluded that equipment manufacturers are uniquely suited to attest to the compatibility of their products and have an incentive to make truthful claims regarding use of their equipment with biofuel blends. Further, the manufacturer certification option is critical for components that do not have a certification or listing by a nationally recognized, independent testing laboratory. For example, biodiesel blends are not addressed by any nationally recognized, independent testing laboratory standards for UST equipment.¹⁵ Therefore, EPA is keeping

the manufacturer certification option in today's final guidance.

Other commenters warned that tank owners might obtain product brochures or other information with a general claim such as, biofuel-compatible, which may pertain to some biofuel blends but not others. To address this concern, EPA is including an additional element under the manufacturer's certification option to specify the range of biofuel blends the component is compatible with. This will better ensure components are compatible with the fuel blend stored.

Some commenters recommended EPA allow a Professional Engineer (P.E.) to make a compatibility determination. Although using P.E.s to determine compatibility is an option in some states, EPA understands tank owners are not using this option. There are numerous types of P.E.s, any of which is not likely to cover all aspects of materials science and UST equipment compatibility. If a tank owner is not able to provide information about the type of equipment at the facility, a P.E. would not be able to make a well informed decision regarding the compatibility of below-ground equipment with any fuel. Therefore, for the purposes of the Federal UST program as implemented under 40 CFR parts 280 and 281, EPA does not believe blanket acceptance of P.E. certification is an appropriate approach.

Similarly, some commenters recommended EPA allow tank owners to use other credible third-party determinations, such as a white paper on compatibility, to demonstrate compatibility. Without reference to an existing model of this idea, EPA does not think it is appropriate to speculate as to what criteria a white paper should meet or what other third-party groups would be credible. EPA's options in today's guidance allow flexibility for implementing agencies to adopt other methods if, in the future, a white paper or other tool is produced and implementing agencies determine it is a credible and appropriate demonstration of compatibility.

Some commenters suggested that EPA allow the National Work Group on Leak Detection Evaluations (NWGLDE) to act as an independent third party, since NWGLDE is involved in evaluating leak detection equipment. However, NWGLDE specifically does not make claims regarding material compatibility of leak detection equipment with biofuels, and it is unlikely to do so in the future. Therefore in today's final

¹² Boyce, K.; Chapin, J.T. (2010). "Dispensing Equipment Testing with Mid-Level Ethanol/Gasoline Test Fluid: Summary Report." NREL Report No. SR-7A20-49187. Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

¹³ 29 CFR 1910.106.

¹⁴ U.S. Department of Energy, "Handbook for Handling, Storing, and Dispensing E85." (2010). Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

¹⁵ UL does not require special investigation for products intended to use biodiesel blends up to B5 that meets ASTM D975 fuel quality specifications. Available at: <http://www.ul.com/global/eng/pages/offerings/industries/appliancesandhvac/gasol/solidfuel/release/>.

guidance, EPA is not including use of NWGLDE as an option to demonstrate compatibility.

Some commenters did not think it is appropriate to allow implementing agencies to use other options because this would lead to a patchwork of compatibility standards across the country. EPA understands the difficulty for tank owners to keep up with UST requirements in 56 states. However, states' discretion is a hallmark of the UST program. Currently, 38 states have UST programs approved by EPA to operate in lieu of the Federal UST program. These 38 states with State Program Approval (SPA) may or may not rely on the recommendations in this guidance. EPA will continue to allow other options, as long as those options sufficiently protect human health and the environment.

Other commenters expressed concern about the proposed methods because they do not allow for some equipment to be used. Commenters said there could be an instance where a certification or listing from a nationally recognized, independent testing laboratory was not available at the time of manufacture, and the manufacturer is no longer in business or is unwilling to certify the component is compatible. EPA does not see a way to accommodate this situation while minimizing risk to the environment. If tank owners cannot demonstrate compatibility, they would not be able to store ethanol blends greater than 10 percent or biodiesel blends greater than 20 percent in the UST system.

Finally, some commenters suggested adding "nationally recognized" to "independent test laboratory." EPA acknowledges that some states, other Federal agencies, and organizations refer to UL and other third party testing labs as "nationally recognized testing laboratories (NRTLs)." To maintain consistency with 40 CFR part 280, today's guidance will use the term "nationally recognized, independent testing laboratory." EPA considers "nationally recognized, independent testing laboratories" to be essentially the same as NRTLs.

C. Biodiesel Blends

In the November 17, 2010 **Federal Register** notice, EPA asked commenters if we should include biodiesel blends in the guidance. The majority of commenters agreed that USTs storing biodiesel blends should be subject to this guidance. EPA also requested feedback on what blend would be appropriate as a cutoff—that is, up to what blend level is the compatibility of biodiesel with UST equipment similar

to the compatibility of petroleum diesel with UST equipment, and at what blend level do the known incompatibilities and the unknown risks necessitate further assurance of compatibility? Five percent biodiesel (B5), which is most commonly sold at retail facilities, and B20, which is more commonly used for vehicle fleets, were the two main options. Of those commenters who had an opinion on what biodiesel blend would be a reasonable cutoff, the majority chose B20, based largely on field experience and lack of compatibility issues with this blend. Some cited a report authored by Ken Wilcox¹⁶ on leak detection devices used in biodiesel applications, though EPA notes this document addresses leak detection functionality, but not compatibility. More specific to compatibility, the aforementioned *Biodiesel Handling and Use Guide*¹⁷ indicates that UST system materials should not experience compatibility issues with B20, so long as the biodiesel component meets fuel quality requirements in ASTM D6751.

Some commenters recommended EPA set the threshold at less than 20 percent biodiesel, since compatibility is more certain for biodiesel blends up to B5. For example, UL issued a statement indicating that biodiesel blends up to B5 meeting the fuel quality specification, ASTM D975, will not require special investigation by UL. Similarly, the Federal Trade Commission does not require B5 that meets ASTM D975 to be labeled, making it indistinguishable from conventional diesel fuel. Although this certainty does not exist for biodiesel blends between 5–20 percent, many states have experience with USTs storing biodiesel blends up to B20, and are not aware of any compatibility issues associated with those blends. Further, many fleet service sites, including state and local governments, use B20 to meet Federally mandated alternative fuel vehicle requirements and have experienced no compatibility problems with their UST equipment at this blend level. EPA is setting the threshold in today's final guidance at B20 because: The properties of B5 are so similar to petroleum diesel; field experience with B20 has been generally positive; little information exists on compatibility of UST equipment with

biodiesel blends between 20–99 percent; and there are known compatibility issues with pure biodiesel. Because nearly all biodiesel blends used today are B20 or less, this guidance in effect applies to a small number of regulated USTs storing very high blends of biodiesel. EPA intends to investigate biodiesel compatibility further in our proposed UST regulation, which we expect to release for public comment in summer 2011. If you have additional data on biodiesel compatibility, please provide it during that public comment period.

D. Ability To Demonstrate Compatibility

While commenters generally agreed with the options for demonstrating compatibility, they also emphasized that, largely due to a lack of records, a majority of tank owners would not be able to demonstrate compatibility of their existing UST systems with any new fuel. Despite this, commenters did not generally support or suggest using equipment that was not demonstrated to be compatible. EPA acknowledges the challenge of maintaining records for UST system components, as well as the burden associated with tracking down third party listings or manufacturer certifications for each component. However, the Federal UST compatibility requirement has been in place for over twenty years, and tank owners decide whether to store higher percentages of biofuels. Tank owners who intend to store ethanol blends greater than 10 percent ethanol or biodiesel blends greater than 20 percent biodiesel will want to consider UST system compatibility as part of their overall business decisions. EPA believes most major components (tanks and pipes) are compatible with biofuel blends, and tank owners often have records of these components. It will be more difficult to obtain records for the smaller components, such as fittings, sealants, and boots, and therefore it will be more difficult to determine compatibility for these components. Because these smaller components are usually found in sumps, they can be accessed without excavation and changed out at a cost substantially less than the cost of an entire UST system replacement.

Many commenters felt the burden of demonstrating compatibility for individual UST components should not be on tank owners but on equipment manufacturers. The Federal UST regulation does not apply to UST equipment manufacturers; it only applies to UST system owners and operators. Today's guidance does not preclude a tank owner from obtaining assistance to make a compatibility

¹⁶ Ken Wilcox Associates, Inc., "Effects of Biodiesel Blends On Leak Detection for Underground Storage Tanks and Lines," August 18, 2010. Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

¹⁷ National Renewable Energy Laboratory, "Biodiesel Handling and Use Guide, Fourth Edition." (2009). Available in the UST Docket under Docket ID No. EPA-HQ-UST-2010-0651.

determination. In some states, a tank owner is assisted by a state-certified UST installer to identify the components in question and determine whether or not they are certified or listed by a nationally recognized, independent testing laboratory or otherwise approved by the equipment manufacturer for use with the intended fuel blend.

E. Other Comments

1. Functionality of UST Equipment

Although the guidance addresses how tank owners can comply with the UST regulation compatibility requirement for ethanol blends greater than 10 percent and biodiesel blends greater than 20 percent, many commenters asked EPA to expand the scope of the proposed guidance to address both compatibility and functionality with regard to leak detection equipment. EPA acknowledges the operability of some UST equipment may also be impacted by new fuels. In a separate effort, we are working to assess the functionality of leak detection equipment with ethanol blends. EPA expects that effort will provide information about what kinds of leak detection devices are suitable for use in ethanol blends. Also, some UST stakeholders are currently investigating functionality of other UST system components. EPA may be in a better position to issue guidance on UST equipment functionality after research and testing are complete.

2. Additional Tools To Assist Tank Owners

Some commenters suggested the most time-consuming portion of demonstrating compatibility is obtaining the documentation, and a tool to make the documentation more readily available would be helpful. In a separate effort, EPA will work with states and other stakeholders to consider useful resources to facilitate demonstrating compatibility.

3. Alternatives to Compatibility

In the proposed **Federal Register** notice, EPA asked if there were alternative methods tank owners could rely on or activities they could perform that would sufficiently protect human health and the environment. Commenters' suggestions included: conducting more frequent inspections and monitoring, performing a risk-based assessment, and using a secondarily contained UST system with interstitial monitoring. Because the regulatory requirement for compatibility is already in place and these alternatives would require a regulatory change to

implement, EPA intends to consider these and other alternatives as part of a proposed UST regulation revision.

IV. Final Guidance

Guidance on the Compatibility of Underground Storage Tank Systems With Ethanol Blends Greater Than 10 Percent and Biodiesel Blends Greater Than 20 Percent

This guidance discusses how owners and operators of underground storage tanks (USTs) regulated under 40 CFR part 280 can demonstrate compliance with EPA's compatibility requirement (40 CFR 280.32) when storing gasoline containing greater than 10 percent ethanol or diesel containing greater than 20 percent biodiesel. In 1988, EPA promulgated the compatibility requirement (and all other UST requirements) under the authority of Subtitle I of the Solid Waste Disposal Act, as amended.

This guidance applies in Indian country and in states that do not have state program approval (SPA). Because SPA states must have a compatibility requirement that is similar to the Federal compatibility requirement, SPA states may find this guidance relevant and useful to them as well.

The discussion in this document is intended solely as guidance. The statutory provisions and EPA regulations described in this document contain legally binding requirements. This document is not a regulation itself, nor does it change or substitute for those provisions and regulations. Thus, it does not impose legally binding requirements on EPA, states, or the regulated community.

In March 2009, EPA received a Clean Air Act (CAA) waiver application to increase the allowable ethanol content of a gasoline-ethanol blended fuel from 10 percent ethanol to 15 percent ethanol.¹⁸ In October 2010 and January 2011, EPA conditionally granted partial waivers, allowing gasoline-ethanol blends that contain greater than 10 percent ethanol up to 15 percent ethanol (E15) to be introduced into commerce for use in 2001 and newer model year light-duty motor vehicles (which include passenger cars, light-duty trucks, and medium-duty passenger vehicles such as some sport utility vehicles).¹⁹ If other state, Federal, and industry practices also support this introduction, E15 may become available in the marketplace. As a result, EPA anticipates that some UST system owners and operators may choose to

store higher percentages of ethanol in their UST systems.

Please note that EPA's partial waiver under the CAA has no legal bearing on an UST owner or operator's requirement to comply with all applicable Federal UST regulations, including the UST compatibility requirement in 40 CFR 280.32. Specifically, in order to ensure the safe storage of higher ethanol and biodiesel blends, or any other regulated substance, owners and operators must meet the existing compatibility requirement for UST systems.

The UST compatibility requirement in 40 CFR 280.32 states, "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." Because the chemical and physical properties of ethanol and biodiesel blends may make them more aggressive to certain UST system materials than petroleum, it is important that all UST system components in contact with ethanol or biodiesel blends are materially compatible with that fuel.

UST System Components That May Be Affected by Biofuel Blends

To be in compliance with 40 CFR 280.32, owners and operators of UST systems storing ethanol-blended fuels greater than 10 percent ethanol or biodiesel-blended fuels greater than 20 percent biodiesel must use compatible equipment. EPA considers the following parts of the UST system to be critical for demonstrating compatibility:

- Tank or internal tank lining
- Piping
- Line leak detector
- Flexible connectors
- Drop tube
- Spill and overflow prevention equipment
- Submersible turbine pump and components
- Sealants (including pipe dope and thread sealant), fittings, gaskets, o-rings, bushings, couplings, and boots
- Containment sumps (including submersible turbine sumps and under dispenser containment)
- Release detection floats, sensors, and probes
- Fill and riser caps
- Product shear valve

For newly installed equipment comprised of multiple individual components such as submersible turbine pump assemblies, UST system owners and operators may obtain a certification from the equipment manufacturer documenting compatibility for the entire assembly. If equipment requires maintenance and components of that equipment (for example, sealants and gaskets) are

¹⁸ See 74 FR 18228 (April 21, 2009).

¹⁹ See 75 FR 68093 (November 4, 2010), and 76 FR 4662 (January 26, 2011).

subsequently added or replaced, manufacturer approval of the overall component is not sufficient to demonstrate compatibility.

Options for Meeting the Compatibility Requirement

Acceptable methods for owners and operators of UST systems storing ethanol-blended fuels greater than 10 percent ethanol or biodiesel-blended fuels greater than 20 percent biodiesel to demonstrate compatibility under 40 CFR 280.32 are:

- Use components that are certified or listed by a nationally recognized, independent testing laboratory (for example, Underwriters Laboratories) for use with the fuel stored;

- Use components approved by the manufacturer to be compatible with the fuel stored. EPA considers acceptable forms of manufacturer approvals to:

- Be in writing;
- Indicate an affirmative statement of compatibility;
- Specify the range of biofuel blends the component is compatible with; and
- Be from the equipment

manufacturer, not another entity (such as the installer or distributor); or

- Use another method determined by the implementing agency to sufficiently protect human health and the environment. EPA will work with states as they evaluate other acceptable methods.

Currently, a note in 40 CFR 280.32 allows owners and operators to use the American Petroleum Institute's (API) Recommended Practice 1626, an industry code of practice, to meet the compatibility requirement for ethanol-blended fuels. The original version of API 1626 (1st ed. 1985, reaffirmed in 2000) applies to up to 10 percent ethanol blended with gasoline and is not applicable to meet the compatibility requirement for ethanol blends greater than 10 percent. In August 2010, API published a second edition of API 1626. The second edition addresses ethanol blends greater than 10 percent and may be used to demonstrate compatibility for UST systems storing ethanol blends.

If the UST owner and operator is not able to demonstrate that the UST system is made of materials that are compatible with the ethanol blend or biodiesel blend stored, according to 40 CFR 280.32, the UST owner and operator may not use the system to store those fuels.

State UST program regulations may be more stringent than the Federal UST regulations. In addition to state and Federal UST requirements, UST system owners and operators may be subject to other Federal, state, or local regulatory

requirements (for example, U.S. Occupational Safety and Health Administration, National Fire Prevention Association, and International Fire Code). UST system owners and operators should check with their state and local agencies to determine other requirements.

If you have questions about this guidance, please contact Andrea Barbary at barbary.andrea@epa.gov or (703) 603-7137.

Dated: June 17, 2011.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2011-16738 Filed 7-1-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

EPA-HQ-OW-2011-0409; FRL-9428-4]

EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act

AGENCY: Environmental Protection Agency (EPA); and U.S. Army Corps of Engineers, Department of the Army, Department of Defense.

ACTION: Notice; extension of comment period.

SUMMARY: On May 2, 2011, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) announced availability of draft guidance (76 FR 24479) that describes how the agencies will identify waters protected by the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act or CWA or Act) and implement the Supreme Court's decisions on this topic (*i.e.*, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)* (531 U.S. 159 (2001)) and *Rapanos v. United States* (547 U.S. 715 (2006)) (*Rapanos*)). The comment period was originally set to expire on July 1, 2011, and the agencies are extending the public comment period by 30 days.

DATES: Public comments are due by July 31, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2011-0409 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* ow-docket@epa.gov. Include EPA-HQ-OW-2011-0409 in the subject line of the message.

- *Mail:* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2011-0409.

- *Hand Delivery/Courier:* Deliver your comments to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OW-2011-0409. Such deliveries are accepted only during the Docket's normal hours of operation, which are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The telephone number for the Water Docket is 202-566-2426.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2011-0409. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Avoid the use of special characters and any form of encryption, and ensure that electronic files are free of any defects or viruses. For additional information