STATEMENT

OF

THE OUTDOOR POWER EQUIPMENT INSTITUTE

BEORE THE:

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

U.S. SENATE

APRIL 13, 2011

PRESENTED BY

MR. KRIS KISER

EXECUTIVE VICE PRESIDENT

Good morning Chairman Boxer, Ranking Member Inhofe and members of the Committee. Thank you for the opportunity to appear.

I. BACKGROUND

My name is Kris Kiser and I am Executive Vice President of the Outdoor Power Equipment Institute. OPEI is an international trade association representing eighty member companies that manufacture forestry, utility, landscape and lawn and garden equipment. Our manufacturers produce billions of dollars of product in the US and enjoy a positive trade surplus exporting worldwide.

Our members have some 200 million legacy products in use today in every corner of the United States. Millions of foresters, landscapers, contractors, tradesman, firemen, small businesses, states and municipalities, park departments, farmers and everyday homeowners use our machines every day.

These are working machines. Their safe and reliable operation (and their emissions compliance) is critical to their users and to us.

Portable power generators provide power to work sites for electricians, plumbers, carpenters, farmers, emergency workers and any other business whenever and wherever needed. Chainsaws, chippers, grinders, pruners, and splitters empower the forest products industry. Additionally, chainsaws are used by emergency utility crews and found in every firehouse in the country alongside small engine "jaws of life." Ninety thousand landscape businesses use our lawn and garden power products as do city, state and federal governments who manage our parks, forests, green spaces and the 50 million acres of turfgrass in the US. Our utility vehicles are ubiquitous in any hauling endeavor. Small engines power water wells, irrigation systems, myriad equipment and their uses and applications are too many to list. Open a homeowner's garage and we'll likely be there.

These products are among those in the 900 engine families represented by OPEI and regulated by the US EPA and the California Air Resources Board for emission and evaporative standards. The certification fuel used for establishing emission compliance is dictated by the regulatory authorities.

II. POLICY OVERVIEW

Our members understand and appreciate the work Congress has done on energy independence, reducing demand on foreign sources of oil and on the use of biofuels. Our members offer a full range of powered product including battery, electric, propane, CNG, diesel and gasoline electric hybrids, solar and biodiesel as well as gasoline with 0 to 10 percent ethanol.

Increasing the use of biofuels, and in particular, the use of mid-level ethanol blended fuels in the general purpose fuel market, presents enormous challenges to manufacturers and users alike.

No engine product in our legacy portfolio or coming off the production lines today is designed, built or warranted to run on any gasoline fuel containing more than 10 percent ethanol.

We are not anti-ethanol. We can design products to run on mid-level ethanol fuel given adequate lead time and assurance that the "design fuel" is available in the marketplace and is reflective of the certification fuel specified by EPA for emissions compliance. Ours is roughly a ten percent design window for any ethanol blend fuel...for example 0 to 10 percent, 10 to 20 percent or 20 to 30 percent.

EPA has approved a 15 percent ethanol blend fuel for use in model 2001 and newer automobiles. EPA has signaled that E-15 may be available at retail this summer and is certainly available at blender pumps. It has not approved its use for any non-road engine product. No outdoor power equipment, no boats, no snowmobiles, no ATVs, specialty

vehicles or watercrafts are permitted to run on E-15. EPA has said that they will use a label to affix to E-15 pumps to inform consumers about its use.

Should E-15 become available, and especially if cheaper than E-10, widespread misfueling will occur.

This is a problem not just to our customers and users but to the ethanol industry as well. A label is inadequate to prevent misfueling. What goes in the car goes in the can. What goes in the can goes in the generator, chainsaw, bass boat, snowmobile, lawnmower, jet ski, utility vehicle and the list goes on. When product fails someone is going to get a black eye and that includes the ethanol industry. Non-road product does not use a lot of fuel by volume but a lot of non-road product is in use. This is the dilemma we face together.

III. DOCUMENTED ADVERSE IMPACTS OF E-15 ON NON-ROAD PRODUCTS AND AIR QUALITY

In the Growth Energy E-15 waiver docket, OPEI and the Alliance for an Alternative Safe Fuels Environment (AllSAFE) submitted comprehensive comments to EPA documenting the failures and operating problems that could result from mid-level ethanol fuels. (These comments are attached to my testimony and are available at www.allsafefuels.com). As the AllSAFE comments document, the adverse impacts of E-15 on non-road engines and products include the following:

A. Heat

Increased Ethanol in gasoline could result in increased engine heat, including consumer accessible components, such as the plastic engine cover, guards, etc.

Higher engine heat may result in potential safety concerns, especially in smaller hand held lawn and garden products that are held in close proximity to the operator. A product operator could inadvertently come in contact with the hotter plastic engine housing or other surfaces because they are unaware of the added heat caused by the higher Ethanol gasoline.

Current two-cycle engine oils do not mix well with alcohol, which may also increase engine heat and lead to premature engine failures. Increased heat causes damage to gaskets and piston seals, which in turn, causes increased emissions of HC and NOx, as documented by the tests performed by DOE, which are analyzed in the AllSAFE comments on the E-15 waiver.

B. Fuel Leaks and Evaporative Emission Increases

The effects of higher ethanol levels on engine components are not fully known, but may result in earlier degradation of existing and legacy engine seals, gaskets, fuel lines, etc.; the deterioration of these components could lead to fuel leaks and increase the risk of fire if an ignition source is present.

E-15 also causes increased permeation and evaporative emissions.

C. Unintended/Early Clutch Engagement

Higher levels of Ethanol will also mean higher oxygen levels in fuel and result in higher engine revolutions per minute (RPMs). The higher engine RPMs may present unintended clutch engagement, which may result in potential safety concerns for bladed products, such as brush cutters, edgers, chain saws, hedge trimmers and pruners where

the customer is expecting the blade to start moving at higher RPMs from prior product experience.

For example, a chain saw chain may now turn at idle speed when it did not with the lower Ethanol content fuel, which may surprise the operator and cause an accident.

Ethanol damage to engines and products is permanent. The Department of Energy's testing on outdoor power equipment concluded that 28 engines in four families (out of our 900 regulated engine families) showed increased heat, performance irregularities, failure and unintentional clutch engagement.

IV. LEGAL BACKGROUND

Given the severity of the hazards and damages that would result from misfueling non-road products on E-15, EPA has a corresponding legal obligation to first document how its misfueling controls will achieve its statutory mandate and effectively prevent misfueling and any "emission failures" from non-road products.

EPA's "partial waiver" would allow fuel to come on the market with inadequate misfueling controls and without a dedicated legacy fuel for use in those products for which E-15 was not approved. These are the very sort of problems that Congress intended to prevent in the 2007 amendments to the Energy Independence and Security Act (EISA). Specifically, Congress added procedural safeguards to the fuels-waiver process to specifically address their concerns with mid-level ethanol damaging non-road products and air quality. Under these new requirements, EPA cannot approve a mid-level ethanol fuel unless it determines there will not be "any failures or emission-exceedances" from non-road products. The E-15 waiver applicant did not meet this legal obligation in its E-15 waiver application.

The "partial waiver" (with inadequate misfueling controls) will result in E-15 damaging non-road products and air quality. Blender pumps currently dispensing E-15 could be having this effect now.

OPEI, along with the major associations that represent the manufacturers of non-road and on-road products, reluctantly filed a petition in December with the US Court of Appeals for the District of Columbia Circuit. This petition challenges EPA's "partial waiver" approval for E-15 fuel. We believe the DC Circuit will find that EPA has not fulfilled its statutory obligations to ensure the safe introduction of E-15.
The "partial waiver" for E-15 sets a bad precedent of how to introduce a new fuel. That bad precedent is further exacerbated by EPA's weak misfueling controls and the lack of legacy fuel.

V. PETITION TO ENSURE THE AVAILABILITY OF LEGACY FUEL

To meet its legal obligation, EPA must require fueling stations to also carry E-10 fuels if they sell E-15. If a gasoline retailer only offers E-15 for sale, then consumers will be essentially forced to misfuel E-15 into their non-road products. The E-15 fuel waiver will significantly reduce the availability of the E-10 fuel supply. The E-15 waiver does not require retailers to ensure E-10 fuel availability for non-road products or "legacy" vehicles. Therefore even a robust misfueling control program will fail if E-15 becomes the predominately available market fuel.

In the absence of EPA action, this situation will occur, as there are several factors working against maintaining an E-10 fuel supply. A few of the contributing factors are:

- The non-road sector represents a very small market segment of the fuel consumed at retail, removing financial incentive for the retailer to maintain two fuel supplies.

- E-10 may be more expensive for the fuel retailer to offer and the consumer to purchase in comparison to E-15 due to tax subsidies, low volume consumption and reduced availability.

OPEI, along with a dozen national associations represents the owners and operators and manufacturers of outdoor power equipment, motorcycles, recreational vehicles, boats, and automobiles, submitted on March 23, a petition for rulemaking requesting EPA to ensure the availability of E-10. As documented in that petition (attached to my testimony), there is a legal precedent EPA should follow to require retailers to continue to make E-10 available. OPEI urges Congress to adopt federal legislation that explicitly requires gasoline retailers that sell E-15 to also make E-10 fuels available.

VI. COMPREHENSIVELY ADDRESSING SERIOUS PROBLEMS BEFORE ALLOWING E-15 TO ENTER THE MARKET

OPEI is committed to working with EPA to help it meet its legal obligations and to fill all the critical remaining data gaps. To that end, OPEI has been urging EPA for over a year to hold a solutions-oriented workshop or roundtable with all the stakeholders charged with developing and implementing effective misfueling controls. Pump changes, consumer interfaces, RFID interfaces, color-coding and measures should all be carefully considered. For example, EPA could mandate changes in the electronic consumer interface at the pump. If the consumer selects fuel with E-15, the interface could tell them it contains E-15 that may cause damage to some vehicles or engines and then ask them to acknowledge this before the pump will turn on.

Before allowing E-15 into the market, Congress should exercise its oversight authority and ensure that EPA fills all the misfueling-related data gaps and documents how its final control program will be effective in preventing misfueling.

OPEI urges Congress to adopt federal legislation that ensures that the "general purpose" E-15 fuels can not be introduced into the market until manufacturers are insulated from unfair exposure to potential EPA or CPSC recall liability and warranty liability resulting from the illegal misfueling with E-15 blends.

Manufacturers should be provided with adequate lead time and with financial incentives or tax credits to develop new products designed to run on alternative and renewable fuels, including mid-level ethanol.

Again, thank you for the opportunity to appear and for your time.

OPEI Testimony for Senate Environmental and Public Works – "Oversight Hearing on Domestic Renewable Fuels"

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1.	**Comments filed by OPEI/AllSAFE on Growth Energy E-15 Waiver Notice (July 20, 2009)**
A.	Dr. Sahu's Technical Study
B.	Supplemental Statutory Appendix – Legal Analysis
C.	Briggs Study on E-20
D.	Dr. Sahu's Critique of Minn. Compatibility Study
E.	Dr. Sahu's Critique of DOE Study
F.	Two Evaporative Certification Applications
G.	OPEI Recommended Test Program
H.	EMA Recommended Test Plan
I.	EPA (Karl Simon) Presentation on Waiver Criteria
2.	**Supplemental OPEI Comments on Growth Energy E-15 Notice (September 24, 2010)**

A.	Congressional Oversight Letter
B.	API Misfueling Study: Evaluation of Measures to Mitigate Misfueling of Mid-to-High-Ethanol Blend Fuels at Fuel Dispensing Facilities
3.	**Comments Filed by OPEI and AllSAFE on Proposed RFS-II Regulations (September 25, 2010)**
A.	American Coalition for Ethanol (ACE) Press Release Regarding Blender Pumps
B.	2008 Letter from Adam Kushner, EPA Air Enforcement Director, to API Regarding Ethanol Blender Pumps
4.	**Press Release on Engine Product Group's Legal Challenge of E-15 Partial Waiver Decision in D.C. Circuit and Related Fact Sheet (December 20, 2010)**
5.	**Petition to EPA Requiring Gasoline Retailers to Make Available ≤E-10 Fuels and Related Press Release (March 23, 2011)**
A.	40 C.F.R. Section 80.22 – Controls Applicable to Gasoline Retailers and Wholesale Purchaser-Consumers
6.	**Letter to Administrator Jackson on Complying with EO 12866 in Developing Misfueling Control Regulations (October 4, 2010)**
7.	**OPEI Comments on EPA's Proposed Misfueling Control Regulations (December 22, 2010)**
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B.	40 C.F.R. Section 80.22 – "Controls and Prohibitions" on the Sale of Leaded and Unleaded Fuels
C.	OPEI Comments Submitted to FTC on Proposed Ethanol Label
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E.	Recommended Label for Pumps that Dispense E-15 Fuels