



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

NOV 27 2007

**MEMORANDUM**

SUBJECT: Regulatory Interpretation;  
Regulatory Status of E85 Tanks

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

FROM: Cliff Rothenstein, Director  
Office of Underground Storage Tanks

A handwritten signature in black ink, appearing to read "Cliff Rothenstein", written over the printed name of the sender.

TO: EPA UST/LUST Regional Program Managers  
State UST Program Managers

This memorandum responds to questions from states on the regulatory status of underground storage tanks (USTs) containing E85. E85 is a blend of approximately 85% ethanol and 15% gasoline, though the actual percentage may vary due to different blending techniques and seasonal blends.

An underground storage tank is defined, in part, as, "any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances." Pure ethanol is not a regulated substance; however, gasoline is a petroleum product, and petroleum is a regulated substance. An UST storing E85 is thus storing an accumulation of regulated substances and is a regulated UST subject to 40 CFR Part 280 unless it meets one of the exclusions in §280.10(b) or exemptions in the definition of UST in §280.12.

One common exclusion is for a small-capacity UST system defined as, "[a]ny UST system whose capacity is 110 gallons or less" (§280.10(b)(4)). This exclusion refers to total tank capacity and was chosen primarily to reduce the regulatory burden on implementing agencies. An UST system storing E85 would be excluded by §280.10(b)(4) only if the total capacity of the UST system were 110 gallons or less.

Another common exclusion addresses "[a]ny UST system that contains a *de minimis* concentration of regulated substances" (§280.10(b)(5)). Examples given in the preamble to the regulation include substances with very small concentrations, such as chlorine in drinking water and swimming pools (generally a few parts per million) (53 Fed. Reg. 37108 - 37109 (1988)). The petroleum fraction in E85 is orders of magnitude greater than the examples of *de minimis* concentrations referenced in the preamble. Therefore, an UST storing E85 contains more than a *de minimis* concentration of petroleum and does not qualify for the *de minimis* exclusion. Implementing agencies should use the examples given in the preamble as a guide to determine whether USTs storing other fuel blends qualify for the *de minimis* concentration exclusion.

If you have any questions about this clarification or any other issues relating to regulation of UST systems storing alternative fuels, please contact Andrea Barbery at [barbery.andrea@epa.gov](mailto:barbery.andrea@epa.gov) or 703/603-7137.

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