

introduction, E15 may become available in the marketplace. Thus, EPA anticipates that some UST system owners and operators may choose to store higher percentages of ethanol in their UST systems.

Please note that this action under the CAA has no bearing on an UST owner or operator's requirement to comply with all applicable EPA 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 under EPA's UST program, owners and operators must meet the compatibility requirement for UST systems.

40 CFR 280.32 states that "[o]wners 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 to ensure that all UST system components in contact with biofuels are materially compatible with that fuel.

#### UST System Components That May Be Affected by Biofuel Blends

To meet § 280.32, owners and operators of UST systems storing ethanol-blended fuels greater than 10 percent ethanol or greater than [TBD] percent biodiesel must use compatible equipment. At a minimum, the following UST system equipment must be compatible:

- Tank or internal tank lining;
- Piping;
- Pipe adhesives and glues;
- Line leak detectors;
- Flexible connectors;
- Fill pipe;
- Spill and overfill prevention equipment;
- Submersible turbine pump and components;
- Fittings, gaskets, bushings, couplings, and boots;
- Containment sumps (including submersible turbine sumps and under dispenser containment);
- Release detection floats, sensors, and probes.

#### Options for Meeting the Compatibility Requirement

Currently, EPA believes that the most effective options for owners and operators of UST systems storing ethanol-blended fuels greater than 10 percent ethanol and biodiesel-blended fuels greater than [TBD] percent biodiesel to ensure compatibility under this requirement are:

- Use components that are certified or listed by an independent test laboratory for use with the fuel stored (for example, Underwriters Laboratories);
- Use components approved by the manufacturer to be compatible with the fuel stored. EPA considers acceptable forms of manufacturer approvals to be:
  - Be in writing;
  - Indicate an affirmative statement of compatibility; 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.

#### Note About Using API 1626 To Meet the Compatibility Requirement

Currently, a note in the federal UST regulations 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 does address ethanol blends greater than 10 percent, and may also be used as a method for demonstrating compatibility.

Please note that state underground storage tank program regulations may be more stringent than the federal UST regulations, so owners and operators should always check with their states about state program requirements. Also, this guidance will apply in Indian country and in states that do not have state program approval (SPA). Because states with SPA must have a compatibility requirement that is similar to the federal compatibility requirement, SPA states could find this guidance relevant and useful to them as well.

If you have questions about this guidance, please contact Andrea Barbery at [barbery.andrea@epa.gov](mailto:barbery.andrea@epa.gov) or (703) 603-7137.

Dated: November 8, 2010.

#### Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2010-0681; FRL-8850-6]

### Lead Fishing Sinkers; Disposition of TSCA Section 21 Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** On August 3, 2010, several groups filed a petition under the Toxic Substances Control Act (TSCA) section 21 requesting that EPA prohibit under TSCA section 6(a) the manufacture, processing, and distribution in commerce of (1) lead bullets and shot; and (2) lead fishing sinkers. On August 27, 2010, EPA denied the first request due to a lack of authority to regulate lead in bullets and shot under TSCA. EPA's decision was based on the exclusion of shells and cartridges from the definition of "chemical substance" in TSCA section 3(2)(B)(v). On November 4, 2010, EPA denied the second request. This notice explains EPA's reasons for the denial of the request specific to fishing sinkers.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Christina Wadlington, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-1859; e-mail address: [wadlington.christina@epa.gov](mailto:wadlington.christina@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, import, or distribute in commerce lead fishing sinkers or lead fishing tackle. If you have any questions regarding this action, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2010-0681. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in

the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

## II. Background

### A. What is a TSCA section 21 petition?

Under section 21 of TSCA (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or, if the Agency does not resolve the petition, the expiration of the 90-day period.

### B. What criteria apply to a decision on a TSCA section 21 petition?

Section 21(b)(1) of TSCA requires that the petition “set forth the facts which it is claimed establish that it is necessary” to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21

establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA generally relies on the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate petitions.

### C. Summary of TSCA Section 21 Petition Received

On August 3, 2010, the Center for Biological Diversity, American Bird Conservancy, Association of Avian Veterinarian, Project Gutpile and Public Employees for Environmental Responsibility filed a petition under TSCA section 21 requesting that EPA prohibit under TSCA section 6(a) the manufacture, processing, and distribution in commerce of (1) lead bullets and shot; and (2) lead fishing gear. With respect to fishing gear, petitioners requested a nationwide, uniform ban on the manufacture, processing, and distribution in commerce of lead for use in all fishing gear, regardless of size, including sinkers, jigs and other tackle. (Ref. 1).

### D. Summary of the Disposition of the Request With Respect to Lead in Bullets and Shot

As discussed in the **Federal Register** of September 24, 2010 (75 FR 58377) (FRL-8847-5), on August 27, 2010, EPA denied the first request due to a lack of authority to regulate lead in bullets and shot under TSCA. Today's notice provides EPA's reasons for denying the second portion of the petition: A request to prohibit under TSCA section 6(a)(2)(A)(i) the manufacture, processing, and distribution in commerce of lead for use in all fishing gear.

### III. Disposition of the Request With Respect to Lead in Fishing Sinkers

On November 4, 2010, EPA denied the request to prohibit under TSCA section 6(a) the manufacture, processing, and distribution in commerce of lead fishing gear. EPA denied the request because the petitioners have not demonstrated that the action requested is necessary to protect against an unreasonable risk of injury to health or the environment, as required by TSCA section 21. The petitioners do not provide a sufficient justification for why a national ban of lead fishing sinkers and other lead fishing tackle is necessary given the actions being taken to address the concerns identified in the petition. The petitioners also have not demonstrated

that the action requested—a uniform national ban of lead for use in all fishing gear—is the least burdensome alternative to adequately protect against the concerns identified in the petition, as required by section 6. There are an increasing number of limitations on the use of lead fishing gear on some Federal lands, as well as Federal outreach efforts. A number of states have established regulations that ban or restrict the use of lead sinkers and have created state education and fishing tackle exchange programs. The emergence of these programs and activities over the past decade calls into question whether the broad rulemaking requested by petitioners would be the least burdensome, adequately protective approach. EPA notes that the prevalence of non-lead alternatives in the marketplace continues to increase.

Lead tackle already is prohibited for use in Yellowstone National Park and at several national wildlife refuges including Patuxent National Wildlife Refuge in Maryland, Rachel Carson National Wildlife Refuge in Maine, Rappahanock National Wildlife Refuge in Virginia, Red Rock Lakes National Wildlife Refuge in Montana, Seney National Wildlife Refuge in Michigan, and Union Slough National Wildlife Refuge in Iowa. Since 1999, the National Fish and Wildlife Service has encouraged the use of non-lead fishing tackle (See “Let's Get the Lead Out” at <http://www.fws.gov/contaminants/Documents/leadpoisoning2.pdf>). The National Park Service is also encouraging the use of alternatives to lead tackle in national parks through an education and outreach program. This program, which has a goal of eliminating the use of lead tackle in parks, focuses on the benefits of using lead-free fishing tackle.

States also have been taking action to ban or limit the use of lead fishing sinkers or have been working to limit the use of lead fishing sinkers through outreach and exchange programs. Since 2000, five states have banned or limited the use of fishing sinkers. Maine, New York, and Vermont have banned the sale of lead fishing sinkers of less than one-half ounce. In Massachusetts, the use of all lead sinkers in the Quabbin and Wachusett Reservoirs, the loons' primary habitat in the state, is prohibited, and starting in 2012, the use of lead sinkers, lead weights, and lead fishing jigs of less than one ounce will be prohibited in all inland waters. In New Hampshire, lead fishing sinkers and jigs are banned for use in all fresh waters. Additionally, the Washington Department of Fish and Wildlife is considering whether to adopt

restrictions on the use of lead tackle in the state. Other states have outreach and education and tackle exchange programs.

The comments that EPA has received from states and a state organization highlight the geographic focus of state controls on lead fishing tackle. According to the Association of Fish and Wildlife Agencies, "the exposure to certain migratory birds (primarily loons, and to a lesser extent, swans) and related impacts to populations of those birds is localized, and where impacts have been substantiated to be significant, state fish and wildlife agencies have acted to regulate the use of lead sinkers and jigs. In the northeast, five states have enacted restrictions (e.g., ban in certain bodies of water; ban on certain weights and sizes) on the use of lead fishing tackle where studies have identified lead toxicosis as a contributing factor to declining loon populations. Some states are also offering a fishing tackle exchange program (non-lead for lead products). States have thus demonstrated a responsible exercise of their authority to regulate or restrict lead fishing tackle under circumstances of exposure where it contributes to decline in loon populations" (Ref. 2).

Several state fish and game agencies submitted comments (Refs. 3–5). All support denial of the petition and provide several reasons why they do not support the actions requested in the petition. These comments assert that mortality from ingestion of lead fishing tackle is rare and is primarily limited to some areas of the country, that states are already working closely with the Fish and Wildlife Service on education and exchange programs, and that where there have been impacts on loons and trumpeter swans, states have already taken action. These states contend that these impacts are best addressed by geographically targeted actions that the states are undertaking. As noted by these commenters, states in the northern part of the country, where the majority of the impacts on loons has been observed, have taken action to limit or ban the use of lead sinkers or have implemented tackle exchange programs.

While it is the case, as petitioners noted, that 16 years ago, in 1994, EPA proposed a ban of lead for use in certain smaller-sized fishing sinkers under TSCA section 6(a)(2)(A), the sweeping alternative requested by petitioners was not one the Agency, as reflected in its proposal, found to be appropriate even then. (59 FR 11122, March 9, 1994). The steps that have been taken at the Federal and State levels since that time make a nationwide ban on all lead fishing gear

such as that sought by petitioners even less appropriate today.

Moreover, the market for fishing gear is changing. While lead tackle may still constitute the largest percentage of the fishing sinker market, over the last decade the availability of fishing sinkers made from other materials has expanded. New non-lead products have entered the market, and the market share of lead sinkers has decreased. With improvements in technology, changes in consumer preferences, state-level restrictions, and increased market competition, the market for lead fishing sinkers is expected to continue to decrease while the market for substitutes such as limestone, steel, and tungsten fishing sinkers is expected to continue to increase (Ref. 6).

In sum, EPA is not persuaded that the action requested by the petitioners—a sweeping national uniform rule on lead in all fishing gear—is necessary. The petitioners also have failed to demonstrate that a national ban on lead fishing gear is the least burdensome approach to adequately address the risk to the environment addressed in the petition, as required by TSCA section 6, given the mix of actions that state agencies and the Federal Government already are taking to address the impact of lead fishing sinkers on local environments. The risk described by the petitioners does appear to be more prevalent in some geographic areas than others, and the trend over the past decade has been for increasing state and localized activity regarding lead in fishing gear. For these reasons, EPA denied the petitioners' request for a national ban on lead in all fishing gear.

## V. References

1. American Bird Conservancy, Petition to the Environmental Protection Agency to Ban Lead Shot, Bullets and Fishing Sinkers under the Toxic Substances Control Act. August 3, 2010.
2. Association of Fish and Wildlife Agencies. Letter to Honorable Lisa Jackson, Administrator, United States Environmental Protection Agency. September 2, 2010.
3. The State of Arizona Game and Fish Department. Letter to Lisa P. Jackson, Administrator, United States Environmental Protection Agency. September 14, 2010.
4. Kentucky Department of Fish & Wildlife Resources Tourism, Art and Heritage Cabinet. Letter to Honorable Lisa Jackson, Administrator, United States Environmental Protection Agency. September 15, 2010.
5. Commonwealth of Virginia Department of Game and Inland Fisheries. Letter to Honorable Lisa Jackson, Administrator, United States Environmental Protection Agency. September 15, 2010.
6. Background Document—TSCA § 21 Petition; Pb in Fishing Sinkers and Other Components. October 2010.

## List of Subjects

Environmental protection, Bird, Lead, Lead bullets, Lead fishing sinkers, Lead shot.

Dated: November 4, 2010.

**Steve A. Owens,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0477; FRL–8848–7]

### Endocrine Disruptor Screening Program; Second List of Chemicals for Tier 1 Screening

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces the second list of chemicals and substances for which EPA intends to issue test orders under the Endocrine Disruptor Screening Program (EDSP). EPA established the EDSP in response to section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA). This second list of chemicals expands the EDSP in an effort to include all pesticides, required by FFDCA, and adds priority drinking water chemicals into the program for screening as authorized by SDWA section 1457. Today's publication provides public notice of EPA's tentative decision-making in advance of the actual issuance of EDSP testing orders.

**DATES:** In order for the Agency to consider information and/or comments that may be relevant to the inclusion or exclusion of chemicals contained on the second EDSP list, this information and/or comments should be received by EPA on or before December 17, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0477, by one of the following methods:

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

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0477. The DCO is open from 8 a.m. to 4 p.m.,