

State of California
AIR RESOURCES BOARD

Hearing Officer's Report

**PUBLIC HEARING TO CONSIDER EMERGENCY REGULATORY AMENDMENT
DELAYING JANUARY 1, 2005 IMPLEMENTATION DATE FOR THE DIESEL FUEL
LUBRICITY STANDARD**

I. INTRODUCTION

On November 24, 2004, I, Michael H. Scheible, Deputy Executive Officer, conducted a public hearing to consider the adoption of a proposed emergency regulatory amendment delaying the January 1, 2005 implementation date for the diesel fuel lubricity standard in section 2284, title 13, California Code of Regulations (CCR). The hearing was conducted in accordance with a November 18, 2004 delegation of authority from the Air Resources Board (ARB or Board) and from the Executive Officer pursuant to Health and Safety Code sections 39515 and 39516.

A notice for the public hearing was posted on ARB's Internet website on November 18, 2004. On November 19, 2004, a notification of this notice and a Staff Report on the proposed emergency amendment was sent to all parties that have asked to receive "listserve" notifications of the ARB's rulemaking hearing notices or ARB activities pertaining to motor vehicles and motor vehicle fuels. Attachment A hereto contains the text of the proposed amendment that accompanied the Staff Report.

Based on the record before me, including the hearing notice, Staff Report, references identified in the Staff Report, and written and oral comments, I make the following findings and recommendations.

II. FINDINGS

A. FINDING OF EMERGENCY AND PROPOSED AMENDMENT

Attachment B hereto is a Finding of Emergency for the proposed amendment, reflecting my findings. It sets forth a description of and the rationale for the amendment. It also provides a detailed explanation of the need for immediate action, and contains all of the information required by Government Code section 11346.1(b).

B. PUBLIC COMMENTS

Prior to or at the hearing, written comments were received from the Western States Petroleum Association (WSPA), ChevronTexaco Products Company (ChevronTexaco), Valero Refining Company-California (Valero), the Engine Manufacturers Association (EMA), and Bosch. Oral testimony was presented at the hearing by ChevronTexaco, Bosch, and Gordon Shremp, a Senior Fuel Specialist in the Transportation Fuels Office of the California Energy Commission (CEC).

WSPA, ChevronTexaco, Valero, and the CEC's Transportation Fuels Office supported the proposed amendment. The following comments were also presented.

1. Comment: The timely implementation of ARB's previously-adopted lubricity standard is not a luxury, but a necessity. The proposed delay in implementation, if approved, would delay the phase-in of the lubricity standard by 30 to 120 days, depending on the point of sale. Although a delay of that length can be managed, implementation of the new standard simply cannot be postponed beyond the proposed dates. (EMA)

Response: I fully expect that before May 1, 2005, all necessary terminal additive injection equipment will be installed and operative to bring all California diesel fuel into

compliance with the lubricity standard after shipment of the diesel fuel through the state's pipeline system without additives. Any amendment further delaying implementation of the lubricity standard would have to be preceded by a hearing conducted in compliance with all requirements of the California Administrative Procedure Act.

2. Comment: The emergency amendments were prompted, in large part, by a last minute decision of the state's primary common carrier pipeline operator to restrict shipments of additized diesel fuel. That decision, however, should have no effect on the sales of diesel fuel from a production or import facility. Therefore, EMA and its members recommend that the Board reject the proposed amendment to section 2284(a)(2)(A). This subsection applies the lubricity standard starting January 1, 2005 to all sales, supplies, or offers of vehicular diesel fuel from the production or import facility at which it was produced or imported. (EMA)

Response: The lubricity requirement for diesel fuel being supplied from the refinery applies to all California diesel fuel, whether it is to be shipped through a pipeline or dispensed at a terminal at the refinery (section 2284(a)(5) allows shipments of noncomplying unadditized diesel fuel from the refinery as long as the refiner takes the necessary steps to assure that the diesel fuel will be brought into compliance with the lubricity standard before it is supplied from the terminal). In addition, it would not be feasible to maintain the January 1, 2005 lubricity standard just for the portion of diesel fuel that is dispensed into trucks at refinery terminal facilities. Much of this diesel fuel would be in batches that are typically distributed both from a refinery terminal and through a common-carrier pipeline. A refiner would need sufficient storage facilities to

segregate the fully additized diesel fuel dispensed at the refinery from the diesel fuel shipped by common carrier pipeline, which would have to be limited to historic levels of additives.

However, no delay is necessary for ultra-low sulfur diesel fuel represented as having a sulfur content not exceeding 15 parts per million (ppm), and the amendments accordingly do not delay the January 1, 2005 compliance date for this category of diesel fuel being supplied from a production or import facility. All such diesel fuel now being marketed in California as having a sulfur content of 15 ppm or less is trucked from the refinery, and is kept segregated from diesel fuel not having an ultra-low sulfur content. Thus it is practical for the refiner to fully additize this fuel at the refinery. Moreover, since diesel fuel with an ultra-low sulfur content is likely subjected to the most severe hydrotreating, it has the greatest need for lubricity additives.

3. Comment: Any backsliding in the status quo prior to the effective date of the new standard would raise serious performance problems for diesel engines and would have significant adverse economic effects for those businesses and individuals who use them. We support the staff in its efforts to encourage refiners to continue to meet the voluntary standard prior to the new standard's effective date. (EMA)

Response: As noted in the Finding of Emergency, there is a voluntary diesel lubricity standard in place in California. The voluntary standard resulted from lubricity concerns following the 1993 implementation of the ARB's statewide standards for the sulfur and aromatic hydrocarbon content of motor vehicle diesel fuel. Subsequent monitoring indicates that adequate lubricity levels have been maintained in California diesel consistent with the voluntary lubricity standard. Providing adequate lubricity in

diesel fuel is in the refiners' self interest to ensure customer satisfaction with their product. Staff fully expects that refiners will maintain the voluntary lubricity standard until the new lubricity standard becomes effective.

4. Comment: As a manufacturer of diesel fuel injectors, we oppose extension of the diesel fuel lubricity requirement from January 1, 2005 for any period of time. Fuel suppliers have known for over a year that this requirement was coming, and now at the last moment fear of jet fuel contamination is used as an excuse to delay this critical fuel parameter even longer. This delay request is based on preliminary tests (Colonial Pipeline et al.) which have not been available for peer review and has been limited in scope. (Bosch)

Response: As described in the Finding of Emergency, on November 5, 2004, California's common carrier pipeline operator imposed limits on the use of lubricity additives in diesel fuel shipped by pipeline. Until October, California refiners – who had used lubricity additives in diesel fuel pipeline shipments for at least 10 years – reasonably anticipated that this practice would not be curtailed without sufficient time for the installation of additization equipment at terminals. The delay being adopted is for 120 days only, and full compliance is expected at that time.

5. Comment: ASTM is currently balloting an extension to the implementation date in their D 975 diesel fuel specification. If this does not succeed, it would indicate their consensus process does not find the date extension a credible request. ARB should not pass an extension if ASTM deems such an extension without merit. (Bosch)

Response: The ASTM vote will not affect the inability of refiners to distribute diesel fuel that consistently complies with the new lubricity standard pending completion of the installation of the terminal additization equipment.

6. Comment: We believe California has been using pipelines to transport diesel fuel containing lubricity additive. Does any information exist to support the trail-back allegations? (Bosch)

Response: Trail-back, or the potential of lubricity additives in a pipeline shipment to contaminate subsequent pipeline shipments of other petroleum products such as jet fuel, has been a concern for a number of years. Common carrier pipelines have typically managed the pipeline by properly sequencing product shipments to avoid jet fuel following additized shipments of diesel fuel. In California during the last 10 years, two occurrences of trail-back have been identified where jet fuel was contaminated with lubricity additives following shipments of additized diesel fuel. In these cases the pipeline carrier was able to remove these shipments from the market. However, because the January 1, 2005 lubricity standard will likely require an increase in use of lubricity additives, management of the pipeline will be more difficult, potentially increasing the risk of trail-back.

7. Comment: It is the supplier's business to assure their diesel fuel meets the 520 micron wear scar diameter (WSD) using the High Frequency Reciprocating Rig (HFRR) test method. Some interim means (other than implementation delay) may need to be devised while a more optimal solution (terminal additizing?) is put in place. (Bosch)

Response: The Finding of Emergency discusses the inadequacies of the various short-term options for compliance pending installation of additization equipment at terminals.

C. ENVIRONMENTAL AND ECONOMIC IMPACTS

Adoption of the amendment set forth in Attachment A hereto will not result in any significant adverse environmental impacts. The 120-day delay in implementation of ARB's new lubricity standard will not cause an increase in emissions due to increased fuel system wear in existing vehicles since historic lubricity levels will be maintained. Although this minimum lubricity level may be adequate for the short term, it is not adequate for enabling and maintaining future low emissions technology.

The emergency amendment will not have any adverse economic impacts on businesses or individuals. The objective of the amendment is to avoid disruptions of diesel fuel supplies, which could have adverse economic impacts. Since the lubricity of diesel fuels in the state is expected to continue to meet the voluntary standard recommended by the diesel fuel task force, and the amendment does not change the phase-in schedule for diesel fuel represented as having a sulfur content not exceeding 15 ppm, the short-term delay is not expected to have any adverse impacts on diesel engines.

III. HEARING OFFICER'S CONCLUSIONS AND RECOMMENDATIONS

After full consideration of the record herein, including all testimony and written materials submitted by the staff and interested parties, the hearing notice, and the Staff Report and its References, I find the adoption of the Finding of Emergency set forth in Attachment B hereto, and adoption of the amendments to section 2284, title 13, CCR

set forth in Attachment A hereto, to be necessary and appropriate. I accordingly recommend that the Executive Officer issue an Executive Order that adopts the Findings of Emergency set forth in Attachment B hereto, and adopts the amendments to section 2284, title 13, CCR, set forth in Attachment A hereto.

Michael H. Scheible
Deputy Executive Officer
Hearing Officer

Date: _____

Adopted: _____
Catherine Witherspoon
Executive Officer

Date: _____