

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** September 24, 2004

Thru: LaDonna Castañuela
Chief Clerk

From: Randolph Wood, Deputy Director
Office of Environmental Policy, Analysis, and Assessment

Subject: Consideration of a Petition for Proposed Rulemaking

Docket No.: 2004-1379-RUL

Rule Project No.: 2004-095-PET-NR

Who Submitted the Petition:

The petition was submitted on August 4, 2004, by the Texas Petroleum Marketers and Convenience Store Association (TPCA).

What the Petitioners Request:

TPCA requests an amendment to §114.319, regarding the compliance date by which persons in the affected counties shall be in compliance with low emission diesel standards. Specifically, the proposed rulemaking requested by this petition will amend 30 TAC §114.319 by delaying the effective date of subsections (a) and (b) from April 1, 2005 to October 2, 2006, and by delaying the effective date of subsection (c) from June 1, 2006 to February 1, 2007.

Recommended Action and Justification:

Staff recommends granting the petition to initiate rulemaking with the following changes:

- Propose to amend §114.319(a) and (b), relating to counties and compliance dates for the Low Emission Diesel Standards, by delaying the effective date from April 1, 2005 to **October 1, 2005** ~~April 1, 2006~~;
- Do not make any changes to the effective date in §114.319(c), relating to the compliance date for the maximum sulfur content of low emission diesel;
- Propose to amend §114.318 to address enforcement issues with alternative plans;
- Propose to amend §114.315 to allow new nitrogen oxide (NO_x) reduction calculation models developed by the U.S. Environmental Protection Agency to be used to determine whether

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an alternative diesel fuel formulation is equivalent to Texas Low Emission Diesel (TxLED), and to allow for the use of additional testing sequences that have been approved by EPA or the California Air Resources Board (CARB); and

- Propose to amend §114.314 to strengthen registration requirements.

Reason(s) for recommendation:

- The TCEQ has had limited success in determining the supply of TxLED that will be available in the affected counties on the effective date of this rule due to the fact that diesel producers and importers that intend to supply TxLED to these areas are not required to register with the TCEQ until December 1, 2004. Delaying the effective date of this rule would provide TCEQ with additional time to evaluate the response from the December 2004 registration and to address possible supply issues after this evaluation. **In addition, this delay, combined with the revisions to the testing requirements, may allow the registration of additional additives that can be used for compliance.**
- Delaying the effective date for requiring 15 parts per million sulfur TxLED from June 1, 2006 to February 1, 2007 as proposed in the petition could reduce the use of retrofit technology and advanced engines in non-road equipment being promoted by the Texas Emissions Reduction Plan (TERP) incentive grants programs. This date is also eight months after the federal 15 parts per million sulfur requirement goes into effect (June 1, 2006) for on-road vehicles. Since the federal requirement would be in effect, a delay of the state requirement past June 1, 2006 as proposed by the petition would conflict with the federal requirement for on-road vehicles.
- The TxLED rules regarding alternative plans require plans to contain adequate enforcement provisions. However, these rules do not specify what is considered adequate and therefore the addition of specific provisions is needed to ensure that enforcement issues are being properly addressed in the alternative plans.
- The EPA has developed NO_x reduction calculation models that determine NO_x reductions based from adjustments in several diesel fuel content parameters. These models were not available when the TxLED rules were adopted. The TxLED rules currently require expensive and lengthy engine testing procedures to determine whether an alternative diesel fuel formulation is equivalent to TxLED in reducing NO_x emissions. Allowing the use of these EPA models to determine equivalency will greatly reduce the burden on producers that want to demonstrate compliance with the TxLED rules using an alternative formulation.
- The test sequencing in the TxLED rules relating to the engine test procedures used to determine equivalency to TxLED does not allow a fuel additive to be properly represented if the NO_x reductions are derived from a cumulative effect from the prolonged use of the additized fuel. The EPA and CARB have approved test sequences that allow for this effect.

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Allowing these EPA and CARB approved test sequences to be used would provide additional flexibility for producers that want to demonstrate compliance with the TxLED rules using fuel additives to produce an alternative formulation.

- The registration requirements in the TxLED rules specify that a producer must register with the TCEQ by December 1, 2004 if they intend to begin production by April 1, 2005 or within 30 days after the producer begins production of TxLED. If the effective dates are delayed, producers may refrain from registering in December 2004 and this may also delay the TCEQ in being able to effectively determine if a potential supply shortfall exists. Amending the TxLED rules to require producers and importers to register with the TCEQ by December 1, 2004, regarding whether or not they intend to produce TxLED by October 1, 2005, will provide TCEQ with the information needed to determine whether a commercially reasonable supply of TxLED fuel will be available for sale on a wholesale and retail basis when the rule becomes effective.

Applicable Law:

Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule and 30 TAC §20.15, which provides such procedures specific to the commission.

Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, providing commission authority to control the quality of the state's air; §382.012, which provides the commission authority to prepare and develop a general, comprehensive plan to control the state's air; §382.017, which provides the commission the authority to adopt rules; §382.019, which provides the commission the authority to provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles; §382.202(o), which provides the commission the authority to require distribution of low-emission diesel as described in revisions to the state implementation plan (SIP) on or after February 1, 2005; and §382.208, which provides the commission the authority to coordinate with federal, state and local transportation agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

Affected Public:

Users of both on-road and non-road diesel fuel such as agriculture, trucking companies, delivery services, fleet vehicles, marine vessels, school buses, ambulance services, emergency generators, etc.

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Affected Agency Programs:

Delaying the effective dates of the TxLED rules, as requested by the petitioners, would require revisions to the Houston/Galveston/Brazoria, Beaumont/Port Arthur, and Dallas/Fort Worth SIPs, which would impact the Environmental Planning and Implementation Division in replacing the eliminated emissions reductions from the SIPs. The Implementation Grants Section may need to consider the impacts that a delay might have on the TERP program.

Agency Contacts:

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Attachment: Petition

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