

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER G-04-073

Relating to Adoption of Emergency Regulatory Amendment Delaying the
January 1, 2005 Implementation Date for the Diesel Fuel Lubricity Standard

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the Board or ARB) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 43018(a) and (b) of the Health and Safety Code direct the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state ambient air quality standards at the earliest practicable date;

WHEREAS, section 43018(c) of the Health and Safety Code provides that in carrying out section 43018, the Board shall adopt standards and regulations which will result in the most cost-effective combination of control measures on all classes of motor vehicles and motor vehicle fuel, including but not limited to specification of vehicular fuel composition;

WHEREAS, Health and Safety Code section 43013 authorizes the Board to adopt and implement motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the Board has found necessary, cost-effective, and technologically feasible to carry out the purposes of Division 26 of the Health and Safety Code;

WHEREAS, following a public hearing on July 24, 2003, the ARB adopted new section 2284 of title 13, California Code of Regulations (CCR), which phases in a minimum lubricity standard for motor vehicle diesel fuel starting January 1, 2005 for diesel fuel being supplied from the production facility, February 15, 2005 for diesel fuel being supplied from terminals, and April 1, 2005 for diesel fuel being sold at fueling facilities or supplied from bulk plants; by operation of section 93114, title 17, CCR, the standard will also apply to diesel fuel used in nonvehicular sources other than marine vessels and locomotives;

WHEREAS, on November 18, 2004, the Board delegated to the Executive Officer or my designee the authority to consider emergency amendments to the diesel fuel lubricity standard, delaying the implementation dates up to 120 days, until May 1, 2005; I subsequently delegated to Assistant Executive Officer Michael H. Scheible the authority to conduct a hearing to consider adoption of the emergency amendments;

WHEREAS, On November 24, 2004, Mr. Scheible conducted the hearing, and he subsequently prepared the Hearing Officer's Report attached hereto as Attachment 1;

WHEREAS, in the Hearing Officer's Report the hearing officer recommends that the Executive Officer adopt the Finding of Emergency attached to the Hearing Officer's Report as Attachment B thereto, and adopt the amendments to section 2284, title 13, CCR, as attached to the Hearing Officer's Report as Attachment A thereto;

WHEREAS, the Finding of Emergency includes findings that:

In order to consistently comply with the new lubricity standard, some California refiners will need to increase their use of lubricity additives in diesel fuel; until October 2004, California refiners were expecting to continue to their practice of adding the lubricity additives to their diesel fuel at the refinery, including the more than 50 percent of the state's diesel fuel that is shipped through the pipeline system of California's primary common carrier pipeline operator after it leaves the refinery;

Because of recently-raised concerns that lubricity additives in diesel fuel shipped by pipeline could contaminate subsequent shipments of jet fuel, the operator of California's primary common carrier pipeline announced on November 5, 2004, that it will only permit the pipeline transport of California diesel fuel treated with the type and amount of additive consistent with regular practices in the past years; while the operator would on an expedited basis be equipping its terminals with diesel fuel additization blending equipment that would allow the additives to be added after the diesel fuel was shipped through the pipeline, installation of the equipment could not be completed by January 1, 2005; and

Pending installation of the terminal additization equipment, refiners have very limited options for complying with the new lubricity standard when increased levels or lubricity additives are needed for diesel fuel being shipped by common carrier pipeline;

WHEREAS, the Executive Officer has reviewed the Hearing Officer's Report attached hereto as Attachment 1, and hereby adopts as her own the findings, conclusions, and recommendations of the Hearing Officer; and

WHEREAS, these findings include determinations that the amendments adopted herein will not have significant adverse environmental or economic impacts.

NOW, THEREFORE, IT IS ORDERED that the Executive Officer, pursuant to a delegation of authority by the Board, hereby adopts the Finding of Emergency set forth in Attachment B to the Hearing Officer's Report that is attached hereto as Attachment 1.

IT IS FURTHER ORDERED, that the Executive Officer hereby adopts the amendments to section 2284, title 13, CCR as set forth in Attachment A to the Hearing Officer's Report that is attached hereto as Attachment 1.

Executed this _____ day of December, 2004, at Sacramento, California.

Catherine Witherspoon
Executive Officer

Attachment