

November 26, 2004

Mr. Bruce McEwen
Fuels Division
Oil, Gas and Energy Branch
Environment Canada
351 St. Joseph Blvd., 10th Floor
Gatineau, Quebec K1A 0H3

Subject: **CPPI Response to Sulphur in Off Road Diesel Gazette 1 Regulations**

Dear Bruce:

CPPI is pleased to comment on the October 2nd, 2004 Canada Gazette 1 “Regulations Amending the Sulphur in Diesel Fuel Regulations”, which incorporate the new requirements for sulphur levels in off road, marine and locomotive diesel fuels. CPPI appreciates the efforts made by Environment Canada in adopting a straightforward approach which avoids all the complexities of the parallel U.S. rule. By adopting this simpler approach, and aligning sulphur levels and timing with the U.S., Canadian refiners will be able to meet the requirements without sacrificing their competitiveness position vis à vis the U.S. refiners. We view this as a “smart regulation”.

CPPI finds the proposed regulations generally acceptable. We have concerns with specifics amendments, which we describe below. We have also reviewed the document for possible unintended adverse consequences which may arise from incorporating the non road requirements into the existing on road regulations.

General Comments

In terms of general comments, CPPI believes that revisions to the guidance document will have to be made to accompany the new regulations. Such a document is extremely useful in helping refiners implement the regulatory requirements. Examples of clarifications required include:

1. The validation of alternate test methods, as communicated in a July 21, 2004 letter posted on the Environment Canada website.
2. With the broadening of the diesel definition to include non-petroleum fuels such as bio-diesel and biodiesel blends, are the current alternate methods still valid or will new validation be required, and if so, using what Blend grade? (B1-B5, B20, B100?)

Also, we recommend that the cost benefit analysis in the RIAS, accompanying the regulations, incorporate the latest cost information. This latest data is included in the August 4, 2004 Purvin & Gertz report entitled “Economic and Environmental Impacts of Removing Sulphur from Canadian Gasoline and Distillate Production”. Environment Canada was one of the sponsors of the report.

Specific Comments

- 1. Subsection 1. (1):** we note that biodiesel fuel has been added to the definition of diesel. We agree with this, but the definition for biodiesel is missing in the regulations, and needs to be included. Both CGSB and the U.S. energy Bill offer acceptable definitions for this product (see attachment for these definitions) With the inclusion of biodiesel in the regulation does this imply that any biodiesel production facility will be treated the same as a refinery with all the same requirements?

In addition, the definition of “diesel fuel” should be expanded to read: “... .. represented as diesel fuel, *biodiesel fuel or biodiesel fuel blend.*” This will help clarify that both pure biodiesel - commonly called B100, and other grades being addressed by CGSB (B1-B5, B-20) are subject to the Sulphur and reporting requirements.

The definition for “off-road engine” does not make it clear what is included and what is excluded, unlike Part 89 of the U.S. Code of Federal regulation. For example, according to the definition for “off-road engine” it would appear that a diesel engine that is part of a permanent installation is exempted. We doubt this was the intention. We suggest the definition be expanded to make it perfectly clear what engines this regulation is intended to cover (**or exclude**) and that it be consistent with the US EPA regulations. See attachment for more detail.

- 2. Section 3. (4) & (5):** The grace period for meeting the 500 mg/kg sulphur level between point of production/ import to point of sale is 4 months, and 3 months for the 15 mg/kg sulphur level. These time periods should not be different, and in our view should both be 4 months, as per the U.S. rule (Note: the US rule has 4 different dates as follows: June 1 at refinery/import, Aug 1 at terminal, Oct 1 at retail and Dec 1 for in-use). Since in Canada, only production/import and point of sale are relevant, Oct 1 would appear consistent with the US rule and timing. In this case Section 3. (5) (a) would read “*500 mg/kg from October 1, 2007 until September 30, 2010*”. And section 3. (5) b would specify “*15 mg/kg after September 30, 2010*”.
- 3. Subsection 5. (1):** This stipulates quarterly reporting for the life of the regulation. We recommend that quarterly reporting be required for 2 years after the compliance date and then be changed to annual reporting, as was done in the Benzene in Gasoline Regulations. This would mean that annual reporting could start August 31, 2008 for on road diesel.

- 4. Subsection 5. (4):** The reporting requirement in this section has in practical terms not worked very well for on road diesel, and would be just as problematic when non-road diesel is added. There are 2 problems:
- (i) Requirement (a) leads to “nil” reporting for imports – i.e. refineries who have no imported diesel in a given year, report “zero” imports just to avoid being called by regional offices as to why they haven’t submitted their imports report.
This problem could be avoided by amending Subsection 5. (1) to read: *“Every person who produces or importsshall submit.....a reportwithin 45 days.....for each facility.....produces diesel fuel in that quarter (year, after August 31, 2008).....and for each province into which the person imports diesel fuel in that quarter (year, after August 31, 2008) that contains.....set out in Schedule 1.”*
 - (ii) The 15 day advance notice requirement (b) doesn’t account for emergency situations where diesel must be imported and the luxury of 15 days advance notice is not available. Refiners accommodate this information request by registering in every province as importers and guessing at a volume, whether or not they plan to import product. If this part of the regulation doesn’t change we expect the Industry will take the same approach.
- 5. Subsection 5. (7):** Although there is no amendment connected with this section, the requirement is for production reports to be retained at the point of production. Some companies have government reports prepared at their central office, away from the point of production. It would seem reasonable that reports be retained where they are prepared. This request could be accommodated with a simple change as follows: *“5. (7) A copy.....shall be maintainedat the production facility or place of business in Canada or at the place of business of the importerunder subsections (4) and (5).”* This would also necessitate a change to Schedule 2, section 2 to include for producers, the street address where reports are kept (if different from the address of the production facility).
- 6. Subsection 6. (2):** The dates will need to be aligned if the 4 month grace period requested in (3) above is granted.
- 7. Section 12:** The January 1, 2006 start date for the regulation could cause a problem if a new report needs to be submitted for 1Q06, which is in advance of the June 1, 2006 production date for 15 mg/kg sulphur diesel. We recommend that the first report become due November 14, 2006 (45 days after the end of the quarter requiring 15 mg/kg diesel).
- 8. SCHEDULE 1:** Sections 6. (b), (c), 7. (b), (c) should only apply until May 31, 2012.

- 9. SCHEDULE 2:** The requirements to report on diesel fuel “*for any other use*” should be removed in Section 4, 10, 11. The regulations do not apply to these categories and would add unnecessary reporting burden. Furthermore refiners have no control over customer usage.

Closing Remarks

CPPI commends Environment Canada for producing these regulations, which will meet both the environmental objectives of the government and the economic well being of our industry. CPPI has been particularly pleased with the level of consensus that emerged during the period of consultation on this initiative. We would be pleased to meet with you at your convenience to further discuss our response.

Yours truly,

A handwritten signature in black ink, appearing to read "J. Belletrutti", with a stylized flourish at the end.

J. Belletrutti
Vice President, CPPI

ATTACHMENT

1. BIODIESEL DEFINITIONS

i. CGSB:

Biodiesel Ester – A fuel component comprised of mono-alkyl esters of long chain fatty acids derived from plant oils or animal fats. In its pure form, biodiesel is commonly designated as B100.

Bxx — A fuel comprised of **xx** volume percent of a biodiesel ester mixed with petroleum diesel fuel.

Biodiesel fuel blend: The biodiesel ester component Bxx is in the range of 1% to 20 % by volume (i.e. B1 to B20).

ii. U.S. Energy Policy Act of 1992 (42 U.S.C 13220(f)) tax portion:

“The term ‘biodiesel’ means the monoalkyl esters of long chain fatty acids for use in diesel-powered engines which meet—

- A. The registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air act(42 U.S.C 7545), and
- B. The requirements of the American Society of Testing Materials D6751 Biodiesel is further broken down into ‘Agri-Biodiesel’ (derived solely from virgin oils) and ‘Recycled Biodiesel’ (derived from non virgin oils and nonvirgin animal fats).

2. OFF ROAD ENGINE DEFINITION

The US EPA 40 CFR Subpart A 89.2 nonroad engine definition paragraph (2) states :

An internal combustion engine is not a nonroad engine if:

- (i) the engine is used to propel a motor vehicle or a vehicle used solely for competition
- (ii) not applicable in Canada (New Source Review exemption)
- (iii) the engine is otherwise included in paragraph (1) (iii) of this definition remains or will remain at a location for more than 12 consecutive months.....

Also, the US final rule (Federal Register, vol.69, no. 124, June 29, 2004 / Rules and Regulations) states, on pp 39041 that "the sulphur standards do not apply to:

- (1) No. 1 distillate fuel used to power aircraft;
- (2) No. 1 or No 2 distillate fuel used for stationary source purposes, such as to power stationary diesel engines, including boilers, or for heating
- (3) Number 4, 5 and 6 fuels (residual fuels or residual blends, IFO Heavy Fuel Oil grade 30 or higher), used for stationary source purpose;

(4) Any distillate fuel with a T-90 distillation point greater than 700 F, when used in category 2 or 3 marine diesel engines. ...This include category 4,5 and 6, as well as fuels meeting ASTM specification DMB, DMC and RMA-10 and heavier.

Note: Some of the terms and units used in Canada are not identical to those used in the U.S.

Specifically, under (1) & (2) US "Type 1" (more correctly ASTM D975 Grade No. 1-D) equates to Type A in Canada, similarly US type 2 equates to Type B in Canada as defined in CAN/CGSB-3.517.

Under (4) the 700 deg F limit is 371 deg C (versus the T90 max of 360 deg C in the CGSB spec, currently in ASTM D975 the T90 max is 338 deg C - although there is a ballot out to move to 360 deg C).

Also under (4) Canada (CGSB) calls up the ISO Marine Fuel Standard (ISO 8217) which uses the same terminology as ASTM D 2069 (as the latter is just the ASTM equivalent of the former).

Similarly in Canada Types 4, 5 & 6 refer to CAN/CGSB-3.2 Heating Oil Types which defines them in the scope of this Standard.