



Office of Advocacy

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April 25, 2000

The Honorable John T. Spotila  
Administrator  
Office of Information and Regulatory Affairs  
U.S. Office of Management and Budget  
The Old Executive Office Building, Room 350  
Washington, D.C. 20503

**Subject: Recommendations of Representatives of Small Business Refineries under an EPA Highway Diesel Fuel Sulfur Control Program with a Sulfur Limit at the Lower End of the Range Proposed during the SBREFA Panel Process (5-40 ppm)**

Dear Mr. Spotila:

At your April 19 meeting with representatives of small business refineries, Tom Kelly of EPA extended an offer to receive comments from such representatives regarding recommended regulatory flexibility alternatives under an EPA Highway Diesel Fuel Sulfur Control Program with a sulfur limit at the lower end of the range proposed during the SBREFA panel process (5-40 ppm). Enclosed are the recommendations of eleven representatives.

We believe that the regulatory flexibility alternatives recommended by these small business representatives have merit under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. EPA should seriously consider these alternatives.

Sincerely,

Jere W. Glover  
Chief Counsel for Advocacy

cc: Bob Perciasepe, EPA  
Margo Oge, EPA  
Tom Kelly, EPA  
Art Fraas, OMB

**Small Refiner Supplemental Comments on Diesel Sulfur Standard**

April 24, 2000

Mr. Jere Glover  
Chief Counsel for Advocacy  
U.S. Small Business Administration  
409 Third Street, S.W.  
Washington, DC 20416

Dear Jere:

Small business refiners producing highway diesel fuel want to respond to the invitation, issued by Tom

Kelly of EPA in a meeting on April 19, to comment on the prospect of a sulfur limit significantly lower than 50 ppm. As you know, during the short time frame of the diesel SBREFA process, we were not aware that EPA might require a much lower sulfur limit. We appreciate this opportunity to reconsider and modify our recommendations in light of such a prospect.

We have tried to build on the SBREFA panel work in developing these comments. Unfortunately, the 50-ppm sulfur limit for small refiners—the corner stone of the alternatives we recommended during that process—no longer appears viable in light of the prospect of a national sulfur standard significantly lower than 50-ppm. As a result, we are now placed in the uncomfortable position of making recommendations that may provide little, if any, flexibility for small refiners. We are very concerned that, even with a delay of the gasoline sulfur or "Tier 2" standards (both interim and final standards) until 2010 and an exemption for an unlimited time from the ultra-low sulfur diesel standards, many small refiners will be unable to remain in the market for highway diesel fuel for long, to take advantage of these alternatives.

The prospect of sulfur limit for highway diesel fuel in the lower end of the 5-40 ppm range would significantly impact our abilities to comply with a diesel rule by potentially increasing capital costs and dramatically escalating operational losses (with commensurate negative impacts on company earnings and profitability), and by adding a level of technological uncertainty that, when combined with the financial impacts of "Tier 2" compliance may create a situation where necessary funding is either not available to small business refiners or the interest rates that are offered are prohibitively high. However, in the spirit of SBREFA, we recommend the following set of alternatives that should be considered as a package proposal, even though, taken together, may still be of limited assistance to small refiners. We want to reemphasize that there is no "one size fits all" approach to providing flexibility for small refiners. However, once again, there is a set of alternatives (below) that may be more likely to be of assistance (e.g., an automatic delay of "Tier 2" standards) than others (e.g., a hardship provision under the diesel rule).

We have reached consensus and agree on the following priorities.

1. ***Delay of all or part of the 2007 Heavy-Duty Engine and Vehicle Standards at least until 2010.*** A 50-ppm diesel sulfur limit with not less than a 40-ppm average is of critical importance to small refiners. An across-the-board delay of these engine standards would allow producers of aftertreatment technologies to continue researching and possibly innovating to develop devices capable of withstanding higher levels of sulfur in diesel fuel. It would also allow small refiners that would otherwise have to comply with the diesel and gasoline sulfur standards in virtually the same time frame to stage those investments.

*We would prefer that EPA delay the entire diesel rule because that would preclude any need to produce ultra-low sulfur diesel fuel for at least three years. However, if such an across-the-board delay were not possible, we would recommend a phase in approach that would maximize the likelihood of continued markets for 500-ppm highway diesel fuel in the lower-48 states (see point 3 below regarding an Alaska-specific phase-in). First, a significant portion of the market (not just small refiners) would have to be allowed to continue producing 500-ppm diesel for some period of time, subject to sufficient availability of the ultra-low sulfur fuel. If the main barrier to a market for vehicles requiring ultra-low sulfur diesel fuel is that consumers won't demand them in the early years because there is insufficient availability of the new fuel, then EPA would only have to ensure a sufficient supply in year one. After that, the market would work efficiently to supply and meet the increasing demand for the new fuel and transition from the old to new fuel, provided there were no backsliding from the year one requirement(s). Second, most, if not all, small businesses should be exempt from such year-1 requirement(s). If EPA decides to require that retailers must provide ultra-low sulfur fuel wherever highway diesel fuel is sold and/or that a*

certain amount of refinery production of highway diesel fuel must be ultra-low-sulfur, those requirements should be limited to those retailers and refiners that have some threshold level of throughput.

Alternatively, EPA diesel sulfur rules could recognize the different fuel needs of different emissions equipment by phasing in any standards lower than 50 ppm. Specifically, because the particulate matter (PM) trap is relatively less sulfur sensitive, PM traps (but not NOx absorbers) could be required on new vehicles by 2007 whereas NOx absorbers could be added later (e.g., 2010). The diesel fuel sulfur limit could be lowered if technology has not improved sufficiently to allow the use of a 50 ppm sulfur fuel.

Regardless of whether the entire rule is delayed or one or more parts of it are phased in, we recommend that EPA conduct a technological review before small refiners are required to meet a national standard below 50 ppm, to determine whether a lower standard is indeed still required.

2. **Delay "Tier 2" Standards at least until 2010 for qualifying small refiners.** As noted above, delaying the entire diesel rule until 2010 would allow small refiners that would otherwise be expected to comply with both "Tier 2" and diesel sulfur standards virtually simultaneously to stage those investments. Without such flexibility and with the overwhelming increase in capital and operating costs required to meet both rules almost simultaneously, many small refiners will not be able to continue in operation. However, if such an across-the board delay were not possible, we recommend that EPA modify the current hardship extension provision under "Tier 2" to automatically delay until 2010 the final "Tier 2" standards for small refiners that commit to desulfurizing highway diesel fuel whenever national standards become effective. We further recommend that EPA delay the interim "Tier 2" until 2010. Finally, we recommend that EPA provide for an additional delay of up to two years (until 2012) for small refiners that require additional time. In general, we are uncomfortable with hardship provisions because EPA tends to disapprove most, if not all, applications for such waivers. However, if criteria could be identified that would allow for nearly automatic waivers (e.g., must comply with Tier 2 and diesel sulfur rules virtually simultaneously), we would be more comfortable with such provisions.
3. **Alaska's special circumstances should be considered separately** from those of other small refiners and appropriate solutions developed for that unique market. Petro Star continues to strongly support an exemption for small refiners from the ultra-low sulfur requirements for an unlimited time. Petro Star believes that small refiners should be allowed to continue producing 500-ppm diesel fuel for as long as they have legal buyers (and assuming labeling and separate storage requirements), and further that retailers should have the option of offering only non-ultra-low sulfur fuel if they so chose. Petro Star does not believe that there is any need for a retailer availability requirement in Alaska and supports EPA proposals that any "availability" problem in Alaska would be best addressed through an Alaska-specific conference among EPA, the State, and the various stakeholder groups.
4. **Access to capital, a critical issue for all small refiners, must be enhanced.** We recommend three types of assistance:
  - \$0.03 to \$0.05/gallon excise tax credit for small refiners for a limited time. A small refiner should receive an income tax credit of \$0.03 to \$0.05 per gallon of diesel produced during the first three years to defray costs of an investment in desulfurization technology for diesel.
  - Increase in SBA maximum loan guarantee on pollution control loans from \$1 million to \$5 or \$10 million.
  - Implementation of an SO<sub>2</sub> allowance program similar to the original diesel desulfurization allowance system but enhanced to represent more realistically the significant costs to small refiners of this ultra low sulfur proposal.

*We greatly appreciate your interest in our small businesses and stand ready to provide additional information if and when that might be helpful.*

*Sincerely yours,*

*Countrymark Cooperative (John Stern)  
Frontier Refining (Gerald Faudel)  
Gary-Williams Energy (Sally V. Allen)  
Golden Bear Oil Specialties (Jerry Davis)  
Kern Oil (Chad Tuttle)Petro Star (Richard Curtin)  
Placid Refining (Ron Hurst)  
San Joaquin Refining (Larry Young)  
U.S. Oil and Refining (Al Cabodi)  
Western Independent Refiners Association (Craig Moyer)  
Wyoming Refining Company (Bob Neufeld)*

### **Additional Comments**

#### **Western Independent Refiners Association and Kern Oil**

*Small refiners previously have submitted data documenting that a 15 ppm standard is unfeasible and will severely impact small refiners. Small refiner annual operating costs increase by \$0.10 per gallon and maintenance costs also increase substantially, on the order of \$1,000,000 per year. This is over \$0.08 per gallon more than costs anticipated in connection with achieving a 50 ppm sulfur limit. Small refiners simply do not possess the broad operating flexibility, capital and other economies of scale as a major oil company. At these levels, all distillate streams will be directed through the diesel hydrotreater and additional residence time will be required. Because of limitations on hydrotreater capacities in refineries, substantial production loss would occur. Achieving a 15 ppm standard is calculated to result in production losses in excess of 30%. These production losses not only exponentially increase per gallon costs but also threaten the viability of the entire operation. There are also numerous other technical and logistical issues facing small refiners that have also previously been submitted.*

*It is important to note that small refiners have already reduced sulfur in diesel by over 90% from the previous 5,000 ppm standard down to the current 500 ppm standard. Please also note that a further reduction down to a 50 ppm standard results in a reduction of over 99%. A 50 ppm standard would represent the single greatest reduction of any motor fuel specification, ever. Consistent with all control technologies, the small refiner costs become exponential at control efficiencies greater than 99%, i.e., below 50 ppm.*