

April 29, 2004

**NPRA Comments on EPA's Draft
"Guidance on Quantifying NOx Benefits for Cetane Improvement
Programs For Use in SIPs and Transportation Conformity"**

The National Petrochemical & Refiners Association (NPRA) appreciates this opportunity to submit comments on the Agency's draft guidance report. NPRA is a national trade association whose members include virtually all U.S. refiners and petrochemical manufacturers.

NPRA supports the comments submitted by API and dated February 19, 2004. NPRA would like to emphasize a few additional concerns.

General Comments

NPRA strongly opposes any action by EPA that may encourage States to design their own individual, boutique diesel fuel regulations. NPRA recommends the following:

1. EPA should prepare a guidance document for the States that addresses federal preemption with respect to diesel fuels.
2. When considering a State waiver for nonidentical diesel fuel regulations, EPA should consider the effects that the proposed State regulation would have on diesel fuel supply, the diesel fuel distribution system and its transition to federal ULSD. EPA should advise States that their regulations could result in local supply shortages and price volatility due to the tendency of boutique fuels to limit the number of suppliers in the market.

Many new "boutique" State diesel fuel regulations would have a major adverse impact on future supplies and market stability. Even under a status quo regulatory environment, high refinery utilization rates must be sustained over the longer term to avoid short-term supply disruptions. Any requirement for a unique diesel fuel will affect refinery processing capability, petroleum product yields, utilization, participating refineries, etc., and eventually, the delicate diesel fuel supply balance. Unique diesel fuel regulations can also act as a barrier to diesel fuel imports that might otherwise be available during a domestic supply disruption, leaving the industry without one of its backstops. While industry has historically been resourceful in meeting petroleum product requirements, a State boutique diesel fuel rule increases the risk that fuel markets will be disrupted, particularly when supply capability and demand are closely balanced.

NPRA recommends that EPA require States to incorporate an analysis of fuel supply impacts in all State boutique fuel rulemakings. NPRA believes it is possible to enjoy reliable and affordable fuel supplies while preserving, and continuing, our environmental progress. However, this goal can only be achieved if the costs and benefits of new regulatory requirements are carefully

weighed in the context of their impact on energy supplies. A State boutique diesel fuel regulation should not threaten the State's practical need for assurance that there will be sufficient and affordable diesel supplies.

In addition, there are other important factors related to the diesel fuel distribution system. The fungible pipeline system may have difficulty adding an additional boutique fuel type with limited suppliers and a limited distribution area or it may simply be uneconomical. Inserting an additional fuel could increase the amount of transmix that must be processed. A boutique diesel fuel would have to be accommodated at terminals. These terminals may not have the capability to provide bulk storage for an additional fuel type and could be faced with the dilemma of choosing to store the current federal diesel or the new boutique diesel with a loss of customers and overall supply.

We must reinstitute a supply ethic in energy policy to provide both national energy security and to maintain U.S. economic growth.

Predicting Emissions Reductions Using an Assumed Value for "Reference Cetane"

EPA explains in the draft guidance report (page 7) that the estimated NOx emissions reductions are dependent on, among other assumptions, the quality of diesel fuel prior to implementation of the cetane improvement program (called "Reference Cetane"). However, States will be unable to estimate accurately how much difference a State minimum cetane specification would make relative to the federal highway ULSD rule (and, therefore, be unable to predict NOx emissions benefits) since diesel fuel cetane will change as the pool is desulfurized.

Diesel fuel properties will change as refiners comply with EPA's ultra low sulfur diesel (ULSD) rule for highway vehicles, which is effective in 2006 (66 FR 5002), because refineries will have to treat more of the diesel fuel pool and treat it more severely (i.e., higher temperatures and pressures, increased hydrogen addition). Although we know that more severe hydrotreating of diesel fuel blendstocks will increase cetane number and reduce aromatics and specific gravity for the whole pool, it is not possible to quantify how much these properties will change or how fast these changes will occur. Furthermore, these changes will begin in 2005 if refiners choose to generate early credits and will continue through the phase-in period from 2006 through 2010. Therefore, predictions of NOx emissions reductions due to an increase in cetane will inevitably be complicated by the shifting diesel fuel property baseline which will not stabilize until 2010.

Choosing a pre-2006 Reference Cetane value would overstate the benefits of increasing cetane and inflate the measure's cost effectiveness likely leading to poor policy choices.

Federal preemption

Federal preemption is discussed on pages 2 and 3 of EPA's draft guidance report. The Agency should clarify that a state or local cetane improvement program for highway diesel fuel is preempted. EPA addressed preemption in the preamble for the federal highway ULSD regulations (66 FR 5084). In addition, the Agency elaborated in another report:

As stated in the preamble, CAA section 211(c)(4)(A) prohibits states (and political subdivisions of states, which shall be included in the term “states” for this response) from establishing controls or prohibitions respecting motor vehicle fuel characteristics or components for the purpose of motor vehicle emissions control if EPA has established a control of the fuel characteristic or component. This preemption applies to all states except California, in accordance with section 211(c)(4)(B). . . . because of EPA’s controls of highway diesel fuel in 80 [sic, should be 40] CFR 80.29, states are preempted under section 211(c)(4)(A) from establishing highway diesel fuel controls respecting sulfur content, cetane index, aromatics content, and the use of certain visible dyes.¹

Furthermore, EPA lists six items (on page 6 of the draft guidance report) that states need to submit to meet the criteria for incorporating a cetane improvement program control measure in a SIP. There is a missing item, namely a request with supporting analyses for a waiver from federal preemption.

¹ U.S. EPA, Heavy-duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements: Response to Comments, EPA420-R-00-027, December 2000, p. 4-64.