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Two Steps Forward for Biodiesel in Texas —New TCEQ Announcements Clear Prior Hurdles & Signal Growth for Biodiesel Blends in Texas

By [Mike Nasi](#) and [Benjamin Rhem](#)

Background

Over the past several years, the Texas Commission on Environmental Quality (TCEQ) has been working through a series of regulatory and programmatic issues that slowed the growth of biodiesel blending in Texas. Over the past several weeks, the TCEQ and the biodiesel industry have made great strides and not just eliminated barriers, but commenced a program that incentivizes the construction of biodiesel fueling infrastructure. The change in regulatory approach has many within the biodiesel industry excited about the prospect of reinvigorating a once-promising fuel market in Texas and the significant operational and environmental benefits that biodiesel offers.

Proposed Revisions to TxLED Rules

On March 7, 2012, TCEQ proposed revisions to the Texas Low Emission Diesel (TxLED) Program rules. Though these rules have not been yet adopted by TCEQ, the period during which the public can submit comments regarding the proposed rulemaking is now over, and every comment letter TCEQ received fully supported the rule changes. Therefore, it is very likely the TCEQ will finalize the rules this summer with the proposed revisions.

The proposed rules make three significant changes in the way TCEQ regulates biodiesel. First and foremost, the TCEQ's proposed rules revise the definition of "additive" so that biodiesel is no longer regulated as an additive under the TxLED rules, which ensures that Texas does not run afoul of federal law. Second, TCEQ has clarified performance testing requirements which ensures that they do not create an unintended barrier to biodiesel blending. Finally, the rules clarify the difference between fuel producers and biodiesel blenders and confirm that biodiesel blends will be considered compliant with TxLED standards if:

- 1) the diesel fuel used to make the blend is compliant with TxLED requirements
- 2) the biodiesel used meets the current active version of ASTM D6751
- 3) the biodiesel used contains no more than 15 ppm sulfur (a requirement that biodiesel easily meets because the fuel contains little-to-no sulfur and is, in fact, often used to enhance lubricity in place of sulfur in Ultra-Low Sulfur Diesel (ULSD) blends)

Incentives for Biodiesel and Other Alternative Fuel Infrastructure

Not only has TCEQ proposed to remove the regulatory obstacles the

biodiesel industry previously faced, but on May 2, 2012, TCEQ issued a Request for Grant Applications under its Alternative Fueling Facilities Program, which specifically includes biodiesel fueling stations as one of the types of facilities eligible for funding under this Texas Emission Reduction Program (TERP) initiative. Under this program, TCEQ expects to award roughly \$2.4 million dollars in grants to eligible facilities in order to increase the availability of alternative fuels, like biodiesel, that will reduce emissions of criteria pollutants. As the Texas Legislature continues to expand TERP grant opportunities for alternative fuel infrastructure, biodiesel is now well-positioned alongside natural gas and propane to help Texans reduce vehicle emissions and our dependence on foreign oil.

For additional information on this rule proposal or TCEQ's incentive programs, please contact **Mike Nasi** at 512.236.2216 or mnasi@jw.com or **Benjamin Rhem** at 512.236.2012 or brhem@jw.com.

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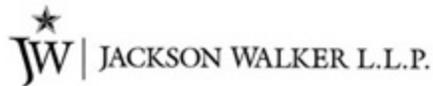
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