

## As the industry grows, prepare to face regulations head on

By Kevin C. Brague



Brague

In 1898, Rudolf Diesel formulated and demonstrated his engine using peanut oil—a fuel he believed was widely available to the common man. Eventually, the disparity between the cost of petroleum and organic oil, as well as other market forces, resulted in a near-total shift to petroleum fuel in diesel engines. Presently, economic, social and environmental factors are causing the return to Diesel's original vision of biodiesel for his engine. Accordingly, the biodiesel industry is poised to grow and capture more public attention, but such recognition is usually followed by regulation. As such, and pursuant to their respective congressional mandates, the U.S. EPA, U.S. DOE and U.S. Department of Transportation will all be encouraging—but also regulating—the emerging biodiesel industry. Fortunately, the existing environmental regulations applicable to the petroleum industry allow the biodiesel industry to look forward and anticipate regulations and enforcement actions.

The refining and transportation of petroleum diesel is subject to the Clean Air Act, the Clean Water Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Oil Pollution Act; the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—otherwise known as "Superfund"—and associated regulations for the transportation of oil or hazardous materials. In short, there is scarcely an environmental law that does not apply to the industry. The biodiesel industry, a cousin of the petroleum industry, is not immune from many of these same environmental regulations. In fact, the EPA requires registration of biodiesel as a fuel and fuel additive. Environmental regulations affect the biodiesel industry at two general phases: refining and delivering.

The refining of neat biodiesel, or B100, is likewise subject to many of the above-named laws—specifically, the Clean Air Act. For instance, oil extraction from seeds may require the use of solvents, which is a major source of n-hexane, a hazardous air pollutant, and may be a source for volatile organic compounds (VOCs). Sources of hazardous air pollutants (HAPs) and VOCs may include recovery systems, dryers, coolers, leaking equipment components, storage tanks and wastewater. The EPA may sim-

ply turn to Title 40 of the Code of Federal Regulations to charge a biodiesel refiner with violations of the Clean Air Act for gross emissions of HAPs and VOCs. The use of water and resultant wastewater also implicates the Clean Water Act. If proper wastewater treatment is not adhered to, and/or VOCs are allowed to percolate to an underlying water table due to accidental or wrongful disposal, then the EPA may intervene to require cleanup and process changes. In either case, the cleanup, process changes and penalties imposed through a consent decree will be substantial. Wisdom dictates that implementing "best management practices" (BMPs) today will prevent becoming tomorrow's Superfund site.

Environmental laws also affect the delivery of B100 upon its blending with No. 2 diesel. Commercially, a common use of B100 is to blend it with No. 2 diesel to produce, for example, B20. This blending may occur at the refinery to allow for splash or in-tank blending during its transport to a distributor, or in-line blending at the time the fuel is delivered to the customer. At the time B20 is created, its handler becomes subject to all the same regulations as a petro-diesel handler (now the product is 80 percent petroleum). Thus, transporting B20 will require U.S. Department of Transportation permits for transporting diesel fuel, among other regulations. In addition, petroleum diesel fuel is a hazardous material, subject to disposal regulations and treatment under the Resource Conservation and Recovery Act. If a spill occurs, then soil or water testing is necessary to ascertain contamination. If strict compliance to regulations, and precautions to prevent spills and contamination of the environment are not followed, then a handler, commercial supplier or even a landowner of a commercial supplier may be subject to future liability through a potential Superfund action.

The petroleum industry spends billions of dollars each year on environmental issues. The emerging biodiesel industry is likely to face the same scrutiny and expenditures as it gains popularity and grows as an industry.

*Note: The opinions expressed herein are solely that of the Author and for general informational purposes only, and should not be construed as legal advice or legal opinion.*

Kevin C. Brague is an attorney at the Portland, Ore.-based law firm of Abbott & Prange P.C. Reach him by e-mail at [kbrague@abbottprange.com](mailto:kbrague@abbottprange.com) or by phone at (503) 241-1254.

Environmental regulations affect the biodiesel industry at two general phases: refining and delivering.