

October 28, 2014

VIA REGULATIONS.GOV

Gina McCarthy, Administrator
United States Environmental Protection Agency
EPA Docket Center (EPA/DC)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Comments on EPA’s proposed rule “Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards” (Docket No. EPA-HQ-OAR-2010-0682).

Dear Administrator McCarthy:

The U.S. Small Business Administration’s Office of Advocacy (Advocacy) submits the following comments in response to Environmental Protection Agency’s (EPA’s) June 30, 2014, notices of proposed rulemaking on “Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards.”¹ Small refiners have concerns about EPA’s proposal for fence-line monitoring, and Advocacy believes that EPA should adopt regulatory alternatives to reduce the burden of this requirement on small entities.

The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small entities before federal agencies and Congress. Because Advocacy is an independent office within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.² The Regulatory Flexibility Act (RFA),³ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),⁴ gives small entities a voice in the federal rulemaking process. For all rules that are expected to have a “significant economic impact on a substantial number of small entities,”⁵ EPA is required by the Regulatory Flexibility Act to conduct a SBREFA panel to assess the impact of the proposed rule on small entities,⁶ and to consider less burdensome alternatives.

¹ 79 Fed. Reg. 36879 (June 30, 2014), Docket No. EPA-HQ-OAR-2010-0682.

² 15 U.S.C. § 634a, *et. seq.*

³ 5 U.S.C. § 601, *et. seq.*

⁴ Pub. L. 104-121, Title II, 110 Sta. 857 (1996) (codified in various sections of 5 U.S.C. § 601, *et. seq.*).

⁵ *See* 5 U.S.C. § 609(a), (b).

⁶ Under the RFA, small entities are defined as (1) a “small business” under section 3 of the Small Business Act and under size standards issued by the SBA in 13 C.F.C. § 121.201, or (2) a “small organization” that is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field, or

Background

Clean Air Act (CAA) section 112 requires EPA to review each National Emissions Standard for Hazardous Air Pollutants (NESHAP) to determine: (1) the remaining risk to public health or the environment and if EPA action is necessary to manage that risk;⁷ and (2) whether there has been technological progress that can further reduce the emission of Hazardous Air Pollutants.⁸ EPA is also required to regularly review the New Source Performance Standards (NSPS) for criteria pollutant emissions.

In this proposal, EPA has determined that regulatory action to respond to a risk to public health or the environment is not necessary under the statute. However, it has proposed several additional regulatory measures based on the availability of new technologies to reduce or monitor emissions.

On May 23, 2011, EPA advised Advocacy of its intent to convene a SBREFA panel.⁹ The scope of this panel included revisions to the NSPS, NESHAP, and possible regulation of greenhouse gas emissions from petroleum refineries. EPA hosted a meeting with small entity representatives (SERs) on June 28, 2011, in advance of convening the panel. EPA convened the panel on August 4, over Advocacy's objection that EPA had not provided SERs sufficient information to understand EPA's regulatory intent and suggest reasonable alternatives.¹⁰ EPA hosted a second meeting with SERs on August 18. During both of these meetings, SERs provided oral comments in response to the information EPA presented and then provided written comments.¹¹

The members of the panel did not complete a final report, as would be required by statute if EPA were required to prepare an Initial Regulatory Flexibility Analysis.¹² After these consultations, EPA issued separate final rules covering some of the topics presented during the panel. With this action, EPA has certified that the proposed rule would not impose a significant economic impact on a substantial number of small entities, meaning that it did not need to return to the panel and complete the report.

(3) a "small governmental jurisdiction" that is the government of a city, county, town, township, village, school district or special district with a population of less than 50,000 persons. 5 U.S.C. § 601.

⁷ CAA § 112(f)(2) (42 U.S.C. § 7412(f)(2)).

⁸ CAA § 112(d)(6) (42 U.S.C. § 7412(d)(6)).

⁹ 5 U.S.C. § 609(b)(1).

¹⁰ See Letter from Dr. Winslow Sargeant to EPA Administrator Lisa Jackson and OIRA Administrator Cass Sunstein, August 4, 2011, available at <http://www.sba.gov/content/letter-dated-08042011-environmental-protection-agency-1>.

¹¹ See Small Business Advocacy Review Panel Report on EPA's Planned Proposed Rule Petroleum Refinery Sector Risk and Technology Review and NSPS – DRAFT, regulations.gov Document ID EPA-HQ-OAR-2010-0682-0224.

¹² 5 U.S.C. § 609(b)(5).

Fenceline Monitoring

EPA proposes a system of continuous fenceline monitoring that gathers information about benzene from a variety of points around a refinery. It acknowledges that this system would not measure solely refinery emissions, but would include ambient air quality around the refinery. To tie this requirement to the sources regulated by this NESHAP, EPA proposes a simple calculation to subtract out low detections from high detections in order to estimate the contribution of background. If there emissions from sources not covered by this NESHAP that are still captured in this calculation (e.g., benzene sources within the refinery gates subject to other CAA regulations), the refinery can propose additional monitoring to show that the emissions are not coming from covered sources. EPA proposes a “concentration action level,” which if exceeded, would require corrective action by the refinery. Finally, EPA would require all data from every monitor be provided to EPA and the public.

Advocacy Comments

Small refiners are concerned that this proposal would impose unnecessary costs on small entities. First, EPA’s presentation of the public health and environmental risks acknowledges that the data in its possession does not support additional tightening of emission standards. EPA cites uncertainty as a justification for a significant increase in monitoring. Advocacy believes that uncertainty should be resolved by narrowly tailoring monitoring to sources of uncertainty or gathering data on a limited basis to better understand those sources of uncertainty. Small refiners believe a one-size-fits-all monitoring solution imposes unnecessary costs on those sources that EPA acknowledges are unlikely to raise significant public health or environmental concerns.¹³

EPA requests comment on reducing or eliminating reporting requirements based on a history of fenceline concentrations below the “concentration action level.” Small entities believe that EPA should do so, but would prefer that EPA go further and adopt a flexibility that exempts small refiners for which existing emissions are low enough to protect the public with an ample margin of safety.

Second, Advocacy is concerned that EPA has underestimated the cost of continuous fenceline monitoring for small entities. Small entities believe that EPA’s assumption that they can hire the manpower and build the facilities necessary to conduct in-house testing is unreasonable. They also believe that EPA has underestimated the cost by assuming that small refiners have small compact facilities that would require only 12 monitors. In addition, EPA’s analysis does not include the cost of additional monitors that would be required to demonstrate that higher emissions within the refinery come from sources not subject to this rule. Finally, EPA assumes that this rule would not impose new compliance costs due to fenceline monitoring, even though fenceline monitoring may trigger corrective actions that would otherwise not be required and may not be related to emissions subject to this rule.

¹³ See Draft Residual Risk Assessment for the Petroleum Refining Source Sector, section 3, Document ID EPA-HQ-OAR-2010-0682-0225

Third, EPA would require refineries to submit overly burdensome reports to EPA. To the extent EPA believes that fence-line monitoring and resulting corrective action are necessary to protect public health and the environment, it should consider requiring small refineries to submit only the calculated fence-line concentration, corrected for background. This information would be sufficient for EPA to confirm compliance with the rule, with audits and inspections to ensure monitors are placed and calculations are performed correctly. If EPA believes that additional research is necessary to validate or improve the design of this program, EPA should consider means that impose fewer burdens on small refiners and minimize reporting on emissions that do not impose significant risk and are unrelated to their regulatory compliance.

Conclusion

Small refiners are concerned that EPA's proposed fence-line monitoring requirement imposes unnecessary costs on small refineries. EPA should use its discretion to "minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. . . ." ¹⁴ Advocacy recommends exempting small entities that EPA has shown are unlikely to pose an unreasonable risk and limiting the data submitted to EPA to only that necessary to demonstrate compliance.

Advocacy looks forward to continuing to work with EPA as this rulemaking progresses and strives to be a resource to the agency for all small business-related concerns. If my office can be of further assistance, please contact me or Assistant Chief Counsel David Rostker at (202) 205-6966 or david.rostker@sba.gov.

Sincerely,

/s/

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy

/s/

David Rostker
Assistant Chief Counsel
Office of Advocacy

Copy to: The Honorable Howard Shelanski, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

¹⁴ 5 U.S.C. § 604(a)(6).