



May 24, 2018

VIA REGULATIONS.GOV

The Honorable Scott Pruitt
Administrator, U.S. Environmental Protection Agency
EPA Docket Center
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Comments on EPA’s proposed rule “National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards: Petroleum Refinery Sector” (Docket ID No. EPA-HQ-OAR-2010-0682).

Dear Administrator Pruitt:

The U.S. Small Business Administration’s Office of Advocacy (Advocacy) submits the following comments in response to the Environmental Protection Agency’s (EPA’s) April 10, 2018, notice of proposed rulemaking on “National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards: Petroleum Refinery Sector.”¹ Advocacy reiterates its comments of October 28, 2014, opposing the imposition of fenceline monitoring requirements on small refiners. EPA should consider broader relief from the fenceline monitoring than the limited technical changes proposed.

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

¹ 83 Fed. Reg. 15458 (April 10, 2018), Docket ID 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).



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.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁷ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁸

Fenceline Monitoring

In its 2015 rulemaking on National Emission Standards for Hazardous Air Pollutants (HAP), EPA imposed a requirement for fenceline monitoring on petroleum refineries.⁹ This new requirement was based on EPA's authority to require new technologies to reduce emissions under Clean Air Act section 112(d)(6). Refineries are required to set up monitoring around the perimeter of their facilities, using a device that is changed every two weeks, and, after laboratory analysis, gives an average of benzene levels over that period. Because the results are an average of benzene levels over time, not available in a timely manner, and from around the perimeter of the facility, the raw data provided does not provide a clear indication of the source of the emissions, whether the emissions even come from the facility, or the timing of the emissions. In addition, the results are highly dependent on local meteorological conditions. These factors make this particular technology ill-suited to prevention of emissions that are incidental, accidental or temporary.

Nonetheless, EPA imposed fenceline monitoring "to manage fugitive emissions from the refinery."¹⁰ In the response to comments, EPA stated:

In other words, the purpose of the fenceline monitoring work practice is to ensure that sources are limiting HAP emissions at the fenceline, which are solely attributable to emissions from sources within the facility.¹¹

However, as discussed above, neither the raw data nor the calculated regulatory trigger are limited to emissions "which are solely attributable" to the refinery. In addition, EPA set the trigger for corrective action at a level intended to not require corrective action for facilities already in compliance with pre-2015 rules.¹²

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 (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 Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁸ *Id.*

⁹ 80 Fed. Reg. 75177 (December 1, 2015).

¹⁰ *Id.* at 75190

¹¹ *Id.* at 75192

¹² See Memorandum re: Fenceline Ambient Benzene Concentrations surrounding Petroleum Refineries, Docket ID. EPA-HQ-OAR-2010-0682-0208 (January 7, 2014).

Importantly, EPA did not base the fenceline monitoring requirement on a need to mitigate any public health risk under Clean Air Act section 112(f). EPA stated in the final 2015 rule:

Consequently, as discussed [above], we conclude that the risks from the Petroleum Refinery source categories are acceptable and that . . . [the pre-2015] rules provide an ample margin of safety to protect public health. We also maintain . . . that the current standards prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect.¹³

EPA's Economic Impact Analysis for the 2015 final rule did not estimate the health benefits of fenceline monitoring. "We were not able to estimate . . . the costs, product recovery credits, or emissions reductions associated with any root cause analysis and corrective action taken in response to the final amendments for fugitive emissions monitoring"¹⁴

Advocacy Comments

Advocacy has consistently opposed the imposition of this fenceline monitoring requirement on small entities. Small entities opposed fenceline monitoring during the consultations for the SBREFA panel.¹⁵ Advocacy's comment letter on the 2014 proposed rule (see attached) recommended exempting small entities that EPA had already demonstrated were unlikely to pose an unreasonable risk to the public.

In this proposed rule, EPA has suggested relatively minor changes to the fenceline monitoring requirements without addressing Advocacy's major concern: the costs imposed on small entities have not been justified by reductions in public exposure to benzene. EPA should narrowly tailor its regulations to improving public health and avoid imposing burdens that require gathering data solely for speculative benefits or possible future analyses. Therefore, Advocacy recommends that EPA reexamine this requirement in light of its significant costs and unlikely benefits to the public.

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

¹³ *Id.* at 75190.

¹⁴ "Economic Impact Analysis: Petroleum Refineries Final Amendments to the National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards," Docket ID. EPA-HQ-OAR-2010-0682-0799 (September 2015), p. 3-21.

¹⁵ On August 4, 2011, EPA convened an SBREFA panel to cover a range of possible new rules on Petroleum refineries under the Clean Air Act. The panel did not complete its final report before EPA published a proposed rule with a RFA certification. *See* "Small Business Advocacy Review Panel Report on EPA's Planned Proposed Rule Petroleum Refinery Sector Risk and Technology Review and NSPS – DRAFT", Docket ID. EPA-HQ-OAR-2010-0682-0224, Appendix B: Written Comments Submitted by Small Entity Representatives.

Sincerely,

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David Rostker
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Office of Advocacy

Attachment

cc: The Honorable Neomi Rao, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget