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Martha A. Beauchamp
Director
Health & Environmental Affairs Department

October 16, 1989

Mr. Jack R. Farmer
Director, Emission Standards
and Engineering Division
(MD-13)
U. S. Environmental Protection Agency
Research Triangle Park, NC 27711

Re: Proposed NESHAPS for Benzene (54 Fed. Reg. 38083)

Dear Mr. Farmer:

On September 14, 1989, the Environmental Protection Agency ("EPA" or the "Agency") proposed National Emission Standards for Hazardous Air Pollutants ("NESHAPS") for a number of categories of sources of benzene emissions. 54 Fed. Reg. 38083 (Sept. 14, 1989). Several of these categories are of significant concern to API's members. According to EPA's estimates, which API believes are too low, the proposed regulations for benzene transfer operations, gasoline marketing, and waste operations could require the petroleum industry to expend approximately one billion dollars. The proposals could impose costs on hundreds of thousands of petroleum facilities. In addition to imposing substantial costs, the proposals raise significant legal, technical, and policy issues. API intends to submit extensive comments on the proposals. For the reasons presented below, however, API believes that an extension of the comment period relating to petroleum waste operations is essential to the Agency as well as to API and its members.

While API believes it will be able to submit comments on the transfer and gasoline marketing proposals by November 13th,¹ the current deadline for comments, it will not be possible for us to

¹ API plans to initiate a study relating to one feasibility issue raised by the proposal relating to bulk terminals. It is possible that the study will not have been completed by November 13th and that API may have to supplement its November 13th comments. API expects, however, that its November 13th comments with respect to transfer and all but one aspect of marketing will be substantially complete.

submit meaningful comments on the waste proposal by that date. The scope of the waste proposal is unexpectedly broad, and API is still attempting to assess its potential effects. It is clear even at this point, however, that EPA has failed to assess properly the waste proposal's impact in terms of both risk and cost.

The proposed waste regulation requires that any facility with benzene waste in any concentration or quantity either comply with substantive regulatory requirements or seek an exemption. The technical support document for this proposal shows that EPA believed that, in the industry sectors for which EPA had data, the proposal would impose substantive controls on only some 30 facilities, including eleven refineries. EPA also believed that only 400 - 500 facilities would be required to seek exemptions.²

EPA has grossly underestimated the rule's impacts. In contrast to EPA's expectations, API has concluded that the proposal may affect over 200,000 production facilities and 160,000 service stations as well as all refineries and certain other facilities. Even though most of these facilities may qualify for exemptions, the costs of monitoring and recordkeeping required to support the exemptions could have a substantial impact on many of these facilities. API has concluded, preliminarily, that monitoring and associated costs for the several hundred thousand petroleum facilities that can be expected³ to seek exemptions could reach several hundred million dollars.

The disparity between EPA's and API's estimates of the proposal's impact is due, in part, to the proposal's expansive definition of "waste." The definition includes recycled materials, which are not typically considered wastes. Further, EPA's failure to establish a benzene concentration threshold for "benzene containing wastes" makes the scope of the regulation so broad that determining its boundaries and impacts is extremely difficult.

² The Agency made no attempt to estimate the impact of its decision to extend the rule beyond the industries for which it had data.

³ These monitoring requirements also will have a significant impact on facilities outside the petroleum and chemical industries, such as municipal wastewater treatment systems and municipal solid waste operations. Benzene has been detected in the wastes of these facilities; thus, exemptions or compliance with the proposal's substantive requirements will be necessary.

While, as indicated above, the waste proposal will impose substantial costs on non-refinery operations, EPA has no basis for concluding that the risks associated with benzene emissions from the wastes of these facilities merit regulation. EPA's technical document indicates that the Agency did not even examine this issue before proposing the regulation. The facilities on which the proposal is based include only chemical plants, steel mills, pipelines and refineries. Furthermore, EPA has done a poor job of evaluating regulatory options for those facilities that may warrant controls. For example, requiring total enclosure of refinery sewers -- as is proposed -- would create fire and explosion hazards. In addition, the rule would prohibit the use of certain oil recovery practices, such as belt filter presses, which cannot be operated in an enclosed manner. Finally, the proposal leads to illogical requirements, such as restrictions on the deepwell injection of wastes on the basis of a perceived need to control air emissions.

API does not dispute that EPA has a responsibility to examine sources of benzene such as waste operations and to consider regulating them in an appropriate manner. However, EPA first must understand the universe of affected facilities, the risks they may present, and the types of control measures that are most appropriate. Had EPA followed its normal procedure of making the regulated community aware of the substance of these regulations in advance of proposal, through the circulation of draft technical documents and other means, API would have been pleased to assist EPA in crafting a proposal that would achieve the Agency's goals in a cost-effective manner. Instead, EPA, under the pressure of a court order, proposed this regulation without appreciating its impacts, compelling API to expend a substantial part of the comment period to understand the regulation's potential scope and to initiate the type of constructive dialogue between industry and the Agency that should have taken place earlier.

API remains committed to assisting the Agency but needs an extension in the comment period to help EPA remedy the defects in the proposal. Certainly it is in EPA's and the public's interest, as well as API's, to take the time to develop a sensible regulation, and a supporting record, that will withstand review in the event of a legal challenge after promulgation.

Because the waste proposal is broad and complex, and EPA's record is incomplete, API requests that the period for submission of comments be extended by at least 60 days. If EPA believes that it must seek a court-sanctioned extension in the promulgation date to extend the comment period, API urges EPA to do so. A regulation of the significance of the benzene waste proposal should not be promulgated without a full airing of the relevant issues. API believes, however, that it is not necessary

for EPA to seek more time from the court at this time. Those portions of the waste proposal that would regulate petroleum production, marketing, and refining operations are not required to be promulgated by February 1, 1990.⁴ Therefore, EPA could grant API's request by bifurcating the regulation without jeopardizing the Agency's ability to comply with the court order.⁵

There are technical, as well as legal, reasons that support separating petroleum operations from chemical operations for purposes of the waste proposal. As is indicated above, EPA does not appear to have considered how the proposal might affect those petroleum-related activities, such as marketing and exploration and production, that have no close analogue in the chemical manufacturing industry. This issue requires careful evaluation.

⁴ The February 7, 1989 court order in Natural Resources Defense Council v. EPA, Civ. Nos. 83-2011 and 83-2951 (D.D.C.), requires that waste disposal regulations governing only "chemical manufacturing" be promulgated by February 1, 1990. Judge Green's memorandum dated February 7, 1989, makes clear that this language was crafted with the specific intention of excluding refinery wastes. At pages 11-12 of her memorandum, Judge Green states:

EPA also particularized its complaint concerning the scope of the Court's September 14th Order by noting that two items named in the order, "refinery waste disposal" and "other forms of benzene usage," are not identified as items for relief in NRDC's Amended Complaint. EPA Brief at 2 note 1. [Footnote omitted.] EPA's observation is correct, and the Court incorporates this revision in its new order, limiting the relief granted to that sought in the amended complaint. [Footnote omitted.]

It should be noted that non-refinery segments of the petroleum industry apparently were never contemplated as part of Judge Green's order.

⁵ It may become necessary for EPA to re-propose some or all portions of the regulation governing petroleum industry waste operations. If EPA were to bifurcate the regulation, the Agency could re-propose, if appropriate, without seeking permission from the court.

We would appreciate an early response to this request. Please telephone Paul Price of my staff at 682-8477 if you have any questions. I would appreciate a call to Mr. Price or myself as soon as you have decided whether to grant this request.

Sincerely,

Martha A. Beauchamp

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cc: F. Henry Habicht II

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