



US Environmental Protection Agency
Air and Radiation
Office of Transportation and Air Quality

April 1998

Mr. Urvan Sternfels
President
National Petroleum Refiners Association
Suite 1000
1899 L Street, N.W.
Washington, D.C. 20036

Dear Mr. Sternfels:

This letter addresses two issues related to announced enforcement tolerances for motor vehicle fuels standards.

Enforcement Tolerances for the VOC Emissions Performance Standard

Under § 80.41(d) of the reformulated gasoline ("RFG") regulations, the minimum per-gallon VOC emissions performance minimum standards are 32.6% and 13.1% reductions for RFG used in VOC Control Regions 1 and 2, respectively. As a result, RFG must meet these minimum standards at all points in the gasoline distribution system from the refinery through the retail outlet. However, as a matter of enforcement discretion, the Environmental Protection Agency ("EPA") will recognize an enforcement tolerance of 2% for these VOC emissions performance standards in the case of gasoline found at locations downstream of the refinery level.

This exercise of enforcement discretion will expire on December 31, 1998. Thus, for the remainder of 1998 EPA will consider gasoline downstream of the refinery to have met the applicable VOC emissions performance standard if the emissions performance is 30.6% or 11.1% reduction for RFG used in VOC Control Regions 1 or 2, respectively. This is true regardless of whether the testing is conducted by EPA or by a regulated party.

EPA will continue its policy of not recognizing any enforcement tolerance when gasoline is produced at a refinery or is imported in the manner described in the Preamble to the RFG final rule:

[r]efiners and importers may not use the tolerances to expand the applicable standard. Further, product must meet all applicable specifications when it leaves the refinery or import facility. If the refiner or importer results show the product

to be above the standard, then the product is in violation regardless of whether or not it is within the tolerance.

59 Fed. Reg. 7764 (February 16, 1994). This no-tolerance policy for refiners and importers will apply to the VOC emissions performance standards as well.

In addition, EPA will not recognize a VOC emissions performance enforcement tolerance for downstream parties when they are blending non-VOC controlled RFG with VOC controlled RFG. This type of blending occurs at downstream facilities in advance of the high ozone season each year when gasoline contained in storage tanks is being transitioned to meet the VOC emissions performance standard. In this situation parties have control over the VOC quality of the RFG being produced and use of an enforcement tolerance is particularly inappropriate.

As a result, a downstream party such as a terminal operator who combines VOC controlled and non-VOC controlled RFG, should treat the mixture as non-VOC controlled until the party has a test result showing the RFG meets the applicable VOC emissions performance standard without the application of any enforcement test tolerance. However, EPA will recognize the VOC emissions performance enforcement tolerances for RFG at a downstream facility subsequent to the party's initial VOC control classification test showing compliance.

The downstream standards applicable to terminals apply on a per-gallon basis. As a result, if the RFG contained in part of a storage tank fails to meet the applicable VOC control standard, the RFG would be in violation even if the standard is met on average for the entire tank contents. For this reason a terminal operator should consider the gasoline in a storage tank to have been successfully transitioned to meet the VOC control standard only if top, middle and bottom spot samples, and preferably a running sample as well, demonstrate compliance with this standard.

Subsequent to the time RFG in a terminal storage tank is classified as VOC controlled, EPA will strictly apply the prohibition in § 80.78(a)(1)(v) against combining non-VOC controlled RFG with VOC controlled RFG. This prohibition applies regardless of the VOC emissions performance of the VOC controlled RFG, because these standards may be met on average by the refiner or importer. Thus, subsequent to classifying RFG as VOC controlled and until September 16, a terminal operator may add RFG classified only as VOC controlled. Leftover non-VOC controlled RFG specifically may not be mixed with VOC controlled RFG unless the mixture of non-VOC controlled and VOC controlled RFG is classified as non-VOC controlled.

Starting on January 1, 1999, EPA is withdrawing its exercise of enforcement discretion with regard to an announced enforcement tolerance for the VOC emissions performance standards at all locations including at downstream facilities, for reasons that are discussed in the next section of this letter. After that date, and at all locations, EPA will consider VOC controlled RFG to violate the Phase I VOC emissions performance standard if the VOC emissions performance is less than 32.6% or 13.1% reduction for RFG used in Regions 1 or 2, respectively.

Enforcement Tolerances for Other Fuels Requirements

As a matter of enforcement discretion, EPA currently recognizes enforcement tolerances for several motor vehicle fuels standards.¹ These tolerances were announced as a matter of enforcement discretion, and were not the subject of notice and comment rulemaking under the Administrative Procedures Act. We believe these tolerances may be inconsistent with current EPA policy regarding enforcement discretion relief. That policy provides that enforcement discretion relief is appropriate only where there is no regulatory avenue for relief, where it is in the public interest to grant the relief, where the relief is limited in scope both in time and applicability, and where there is no risk to public health and the environment.

EPA has not announced enforcement tolerances for standards that apply in other areas of environmental regulation, such as water, toxics, and so on. We believe the announced tolerances for motor vehicle fuels standards should remain in effect only if they are consistent with the EPA's enforcement discretion policy. As we discussed with you during our February 24, 1998 meeting, we seriously doubt the currently announced tolerances for fuels standards meet the policy criteria outlined above.

For this reason, EPA is considering withdrawing announced enforcement tolerances for all motor vehicle fuels standards in the near future.² We would like to meet with you and other

¹ These tolerances are the following:

0.21 volume percent (vol%) for the benzene standard for RFG (benzene standard specified at 40 CFR § 80.4), see, 59 FR 7764 (February 16, 1994);

0.3 pounds per square inch (psi) for the volatility standard for gasoline (volatility standard specified at 40 CFR § 80.27), see, 55 FR 23660 (June 11, 1990) (tolerance applies only if the regulated party has a test result within the applicable standard);

0.005 weight percent (wt%) for the sulfur standard for diesel fuel (sulfur standard specified at 40 CFR § 80.29), see 55 FR 34135 (August 21, 1990) (tolerance value announced in a Question and Answer document issued by EPA on August 5, 1993); and

0.5 for the cetane index standard for diesel fuel (cetane index standard specified at 40 CFR § 80.29), see 55 FR 34135 (August 21, 1990) (tolerance value announced in a Question and Answer document issued by EPA on August 5, 1993).

² EPA has announced an enforcement tolerance of 0.3 wt% for the oxygen standard for RFG. However, this enforcement tolerance was not issued by EPA solely a matter of enforcement discretion. Section 211(k)(2)(b) of the Clean Air Act, which establishes the oxygen requirement for RFG, states that "[t]he oxygen content of the gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator)" As described in the Preamble to the RFG Final Rule, EPA believes this is a statutory requirement for EPA to announce an enforcement tolerance for the oxygen standard for RFG. See 59 FR 7763 (February

interested parties soon to discuss this change of policy. Other interested parties may include associations representing the states such as STAPPA/ALAPCO, environmental groups such as the Natural Resources Defense Counsel and the Sierra Club, and the Department of Energy.

If you believe there are compelling reasons why EPA should continue to recognize an announced enforcement tolerance for any fuels standard, you should give us the information necessary to support that position. In particular, if you believe there would be a significant adverse economic impact on industry resulting from a policy change to eliminate announced tolerances, and that this impact cannot be appropriately mitigated through improvements in testing and quality control procedures or contractual arrangements such as indemnification, you should give us your analysis in as much detail as possible.

If you have any questions, you may call George Lawrence, Chief of the Mobile Source Enforcement Branch, at (202) 564-1307.

Sincerely,

Steven A. Herman
Assistant Administrator

16, 1994). For this reason the current 0.3 wt% enforcement tolerance for oxygen will continue to be recognized at locations downstream of the refinery level.