

The following is a proposed settlement on the Gasoline Distribution MACT. All parties signed this proposed settlement on October 29, 1996. In early November, the EPA will announce in the Federal Register, an opening of a public comment period and procedures for making comment on this proposed settlement. That announcement will be placed on the TTN soon after signature and then updated with the proper dates when published in the Federal Register.

Contact Jon Averback, at 202 260-7718, if you have questions about the proposed settlement. Contact Stephen Shedd, at 919 541-5397, if you have technical questions on the standard.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN PETROLEUM INSTITUTE,)	
)	
Petitioner,)	
)	
v.)	
)	
U.S. ENVIRONMENTAL PROTECTION)	Docket No. 95-1098
AGENCY and CAROL M. BROWNER,)	
Administrator, U.S. Environmental)	
Protection Agency,)	
)	
Respondents.)	

SETTLEMENT AGREEMENT

WHEREAS, the American Petroleum Institute ("API"), petitioner, seeks judicial review under Clean Air Act section 307(b), 42 U.S.C. § 7607(b), of the final rule entitled "National Emission Standard for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)," 59 Fed. Reg. 64303 (Dec. 14, 1994) ("Gasoline Distribution Standard"), promulgated by the United States Environmental Protection Agency and Carol M. Browner, Administrator (collectively "EPA"), respondents;

WHEREAS, API and EPA wish to effect a settlement of this matter without expensive and protracted litigation;

NOW THEREFORE, API and EPA hereby agree as follows:

1. API and EPA are the parties to this Settlement Agreement. Except as otherwise provided in this Settlement

Agreement, all terms herein shall be defined in accordance with the Clean Air Act and regulations promulgated under the authority of the Clean Air Act.

2. EPA agrees to conduct notice-and-comment rulemaking in accordance with Clean Air Act section 307(d) on the issue of whether 40 C.F.R. part 63 should be amended as follows:

a. to incorporate into the emission screening equations in 40 C.F.R. § 63.420(a) and (b) a variable, "OE," which would equal the total tons of hazardous air pollutant ("HAP") emissions at the facility that are not addressed by the current emission screening equations;

b. to modify the emission screening equations in 40 C.F.R. § 63.420(a) and (b) by adding OE divided by twenty-five ("OE/25") to the variables to be summed in calculating the emission screening factor for the bulk terminal or pipeline breakout station;

c. to provide that an owner or operator of a facility with a bulk terminal or a pipeline breakout station that has HAP emission sources that are not part of the Gasoline Distribution (Stage I) source category or are not part of the current emission screening equation, may use the emission screening equations described in Subparagraph 2(b), above, to establish that the facility's potential to emit ("PTE") is less than that of a major source, provided that OE/25 does not exceed five percent (5%) of the emission screening factor for the facility as calculated

under the revised emission screening equations described in Subparagraph 2(b), and provided that the current compliance, reporting, and recordkeeping requirements for the parameters of the emission screening equations (40 C.F.R. § 63.420 (c) - (f)), are met for the OE parameter.

3. EPA agrees to sign a notice of proposed rulemaking described in Paragraph 2 no later than four (4) months after the date this Settlement Agreement has been signed by counsel for both parties ("Signature Date"). After considering any public comments received, EPA agrees to sign a notice of final rulemaking on the issues described in Paragraph 2 no later than ten (10) months after the Signature Date.

4. EPA agrees to issue a policy memorandum that extends the expiration date of the methods for establishing HAP PTE limits available under Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act), John S. Seitz and Robert I. Van Heuvelen to EPA Regions, January 25, 1995, as modified by Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit, from John S. Seitz and Robert I. Van Heuvelen, EPA to EPA Regional Office Addressees, January 22, 1996 ("PTE Transition Policy Memoranda") until at least January 1, 1998, for owners and operators of bulk terminal facilities and pipeline breakout stations. This policy memorandum shall be issued either as a stand-alone document or as part of other documents addressing

additional matters. If EPA extends the expiration date of the PTE Transition Policy Memoranda to beyond January 1, 1998, then such an extended date would apply to the Gasoline Distribution Standard.

5. EPA agrees to issue the policy memorandum described in Paragraph 4 no later than four (4) months after the "Signature Date," as defined in Paragraph 3 of this Settlement Agreement.

6. The parties may extend the dates set forth in Paragraphs 3 and 5 or otherwise modify this Settlement Agreement by written stipulation executed by counsel for the parties. API will agree to reasonable requests for extensions if the Agency has exerted its best efforts to accomplish the tasks described in Paragraphs 2 through 5.

7. The parties agree and acknowledge that final approval of this proposed Settlement Agreement is subject to the requirements of Clean Air Act section 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed agreement be given to the public, that the public shall have at least thirty (30) days to make any comments, and that the Administrator or the Attorney General, as appropriate, must consider those comments in deciding whether to consent to this Settlement Agreement.

8. The Administrator shall cause notice of this Settlement Agreement requesting public comment thereon to be forwarded to the Federal Register for publication within 15 days of execution

of this Settlement Agreement by the parties. Within 30 days after the close of such public comment period, and after review of any public comments, the Administrator or the Attorney General, or their delegates, as appropriate, shall determine whether to consent to this Settlement Agreement. Unless such consent is withheld, the parties shall promptly thereafter move the Court, based on this Settlement Agreement, to stay further proceedings before the Court until the Settlement Agreement is implemented as provided in Paragraphs 2 - 5 or until further motion to the Court. For purposes of this Settlement Agreement, the date the parties file the finally-approved Settlement Agreement shall constitute the "Approval Date."

9. Nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to the Administrator by the Clean Air Act or by general principles of administrative law.

10. Nothing in this Settlement Agreement shall be construed to require EPA to obligate or pay funds or in any other way to take action in violation of the Anti-Deficiency Act or any other applicable appropriations law.

11. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to alter, amend or revise the regulations identified in Paragraph 2 or the policy memorandum described in Paragraph 4 from time to time or to promulgate superseding regulations or memoranda.

12. In the event that EPA takes final agency action within the time frames specified in Paragraph 3 that substantially conforms to Paragraph 2, and issues within the timeframes specified in Paragraph 5 a policy memorandum that substantially conforms to Paragraph 4, API and EPA shall promptly stipulate to the dismissal with prejudice of API's petition in Case No. 95-1098 in accordance with Rule 42 of the Federal Rules of Appellate Procedure. If EPA amends 40 C.F.R. part 63 in substantial conformance with Paragraph 2 above, API will not exercise whatever rights it may have to seek review of that amendment pursuant to Clean Air Act section 307, or otherwise.

13. In the event EPA fails to perform its obligations under this Settlement Agreement, API's sole remedy (except as provided in Paragraph 14) shall be the right to reactivate this litigation. API agrees to give EPA thirty (30) days notice prior to exercising its rights under this Paragraph.

14. If EPA's final action under Paragraph 3 does not amend 40 C.F.R. part 63 in substantial conformance with Paragraph 2 above, API may exercise whatever rights it may have to seek review of that final action pursuant to Clean Air Act section 307, or otherwise.

15. Except as expressly provided in this Settlement Agreement, none of the parties waives or relinquishes any legal rights, claims, or defenses it may have. Each party will bear its own costs and attorneys' fees, including but not limited to

any costs of monitoring compliance with this Settlement Agreement and participating in the rulemaking proceeding contemplated by this Settlement Agreement.

16. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to bind the respective parties to the terms of this Settlement Agreement, subject to the provisions of Paragraphs 7 and 8.

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