

Signed December 12, 1997.

Mr. Tom Osburn
Society of Independent Gasoline Marketers of America (SIGMA)
11911 Freedom Drive
Reston, Virginia 20190

Re: Gasoline Distribution MACT Standard

Dear Mr. Osburn:

The American Petroleum Institute recently approached the Environmental Protection Agency (EPA) seeking relief from the Gasoline Distribution Maximum Achievable Control Technology (MACT) standard for those facilities that timely sought permits limiting their potential to emit so as to qualify as area sources not covered by that standard. We were then informed that numerous facilities (through no fault of their own) have not yet been issued such permits by their permit issuing authorities. Under EPA's "once in - - always in" policy, such facilities will become subject to the Gasoline Distribution MACT standard on that rule's compliance date (December 15, 1997).

As a general matter, we believe that it is the source's obligation to achieve compliance with the regulation as of the effective date of that regulation. Where, as here, the regulation provided 3 years to achieve compliance, we believe that sources who wish to avoid the imposition of major source obligations by seeking "synthetic minor" permits should do so shortly after the date of rule promulgation. Given the substantial workload imposed on permitting authorities by the Title III and Title V programs, those who wait until there is less than 1 year from the compliance date to submit their permit application should anticipate that there is a substantial risk, that they must bear, that the synthetic minor permit may not be issued in time. However, because this is an issue of first impression, and facilities may have relied in good faith on representations of permitting authorities that permits received within a shorter time frame would be processed by December 15, 1997, we have agreed to provide a limited enforcement discretion as set out below.

Based on the facts presented and subject to the terms, conditions and limitations outlined herein, we concluded that EPA should and, therefore, will provide limited relief for certain facilities:

Limited Exclusion - EPA will not consider an otherwise covered facility to be subject to the Gasoline Distribution MACT standard (1) if the facility owner or operator filed a complete application with its appropriate permitting authority for a permit limiting its

potential to emit so as to qualify as an area source not covered by that standard prior to June 15, 1997, and (2) if it identifies the facility to EPA not later than January 15, 1998. This limited exclusion is limited to a 90-day period and will expire on March 15, 1998.

Conditional Extension - If a facility has not yet received its permit by March 15, 1998, it will be subject to the Gasoline Distribution MACT standard as of this date *unless* such facility notifies EPA, prior to March 15, 1998, that an additional period of time is needed for good cause shown. If the facility has not yet received such permit and then certifies to EPA that it has made diligent efforts to obtain the needed permit by (1) providing all information requested by the permitting authority and (2) accepting reasonable permit conditions, then EPA may grant an additional extension for up to 90 days beyond March 15, 1998. Failure to accept reasonable permit terms and conditions will not be recognized as a good cause basis for seeking an extension. If a facility has not yet received its permit by that later date, it will be subject fully to the Gas Distribution MACT standard as of its compliance date.

General Conditions/Limitations - As an express condition of benefiting from and operating under the above-described limited exclusion, each facility must comply at all times with each of the following:

- ! The source must have submitted the synthetic minor permit by June 15, 1997.
- ! The permit application terms and conditions must effectively limit emissions to area source levels.
- ! The source must certify to EPA and maintain full compliance with all the terms, conditions and representations reflected or referred to in its timely, complete permit application.
- ! The reason for the delay in the issuance of the permit must not be the fault of the source (e.g., at least one source will not be issued a permit because of unresolved New Source Performance Standards violations at the facility). Such source does not qualify for this exclusion.
- ! The source must submit, by January 15, 1998, supporting documentation, including the executive summary and enforcement provisions of the permit application with transmittal date, any indication from the permitting agency regarding the completeness of the application and recent communication from or to the permitting authority indicating the current status of the application (e.g., public comment being sought, etc.). Such documentation must be mailed to the Air Enforcement Division,

Attention: Charles Garlow, Esq., US EPA, Mail Code 2242A, 401 M St., SW, Washington, D.C. 20460, or sent by delivery service to the same Division, Ariel Rios Building, Room 2111, 12th and Pennsylvania Ave., NW, Washington, D.C. 20004.

A failure to fully comply with each and every requirement, as may be determined by EPA, will void this grant of discretionary enforcement relief, cause such facility to be subject to the requirements of the Gasoline Distribution MACT standard as of its compliance date (December 15, 1997), and subject the facility to possible enforcement for violation of the MACT standard.

Sources in this situation should be reminded that if they presently qualify as synthetic minor sources, by operation of the January 25, 1995, Seitz/Van Heuvelen policy memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act", then these sources do not need to utilize the option described here prior to the termination date of that policy. For example, if a source has documented actual emissions since January 1994 of less than 50% of the major source thresholds, then a permit is not needed to limit the PTE. Other options are described in this memorandum.

As the Gasoline Distribution MACT standard compliance date is fast approaching, you have agreed to endeavor to distribute this memorandum broadly at the earliest practicable time to all facilities that may be subject to the MACT standard.

Questions regarding this matter should be directed to the Air Enforcement Division, 202-564-1088.

Sincerely,

Steven A. Herman
Assistant Administrator

Identical letters sent to:

Mr. John Prokof
Independent Liquid Terminal Association
1133 15th Street, NW, Suite 650
Washington, D.C. 20005

Ms. Michele Joy
Association of Oil Pipelines (AOPL)
110 Vermont Avenue, NW
Washington, D.C. 20005

Ms. Ellen Siegler
American Petroleum Institute
1220 L Street, NW
Washington, D.C. 20005-4070

cc: Regional Counsel, Regions I - X
Regional Air Program Directors, Regions I - X
John Seitz, Director, OAQPS
Lydia Wegman, Deputy Director, OAQPS
Bruce Jordan, Director, ESD