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To: OIRA_BC_RPT@omb.eop.gov

cc:

Subject: API Comments to the 2004 Draft Report to Congress

Please find attached the comments of the American Petroleum Institute (API) on the Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations (69 FR 7987, February 20, 2004).

Please feel free to contact me with any questions or problems opening the attached file. Thank you,

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- 2004 OMB Cost-Benefit Comments 052004.pdf

May 20, 2004

VIA ELECTRONIC MAIL:
OIRA_BC_RPT@omb.eop.gov

Office of Management and Budget
Office of Information and Regulatory Affairs
1725 17th Street, NW
Washington, DC 20503

RE: Comments on the Draft 2004 Report to Congress on the Costs and Benefits of
Federal Regulations (69 *Fed. Reg.* 7987 – 7988; February 20, 2004)

Dear Sir or Madam:

API appreciates the opportunity to comment on the draft report referenced in the notice of availability cited above. API is a national trade association with over 400 companies involved in all aspects of the oil and natural gas industry. Each year, API's members' facilities are subject to dozens of new regulations addressing environmental, economic and security issues at a cost of billions of dollars. As a result, many of the regulations reviewed by the Office of Management and Budget (OMB) have a direct and substantial impact on our members.

Comments presented below specifically address the request in the notice – and the draft report – for suggestions of reforms that would improve manufacturing regulations. The suggested reforms presented below would improve manufacturing regulations by reducing costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty and/or increasing flexibility.

1. Fundamental Reform of the Definition of “Solid Waste”

On October 28, 2003, EPA published proposed revisions to the regulatory definition of “solid waste” under subtitle C of the Resource Conservation and Recovery Act (“RCRA 68 Fed. Reg. 61558. EPA’s proposal would exclude certain recyclable materials from the definition of solid waste, and establish criteria for determining whether or not materials are recycled legitimately. Although moving in the right direction, EPA’s proposal is too narrow. Additional reforms are needed.

Under current RCRA regulations, EPA regulates certain waste streams as hazardous wastes, even when they are being recycled. To be a hazardous waste, a material must fit the definition of a “solid waste.” 42 U.S.C. § 6903(5). RCRA defines the term “solid waste” to include “discarded material” 42 U.S.C. § 6903(27). Thus, to be a solid waste, a material must be “discarded.” Several court cases address this issue, including *American Mining Congress v. EPA* (“AMC I”),

824 F.2d 1177 (D.C. Cir. 1987), where the D.C. Circuit held that “solid waste” (and therefore EPA’s regulatory authority) is limited to materials that are “discarded” by virtue of being *disposed of, abandoned, or thrown away*. AMC I, 824 F.2d at 1193.

A residual that is being sent for recycling should not be regulated as a waste under RCRA since the material is not being “discarded”. Management costs for the generation, reclamation, and disposal facilities increase when managing hazardous waste. To significantly increase national recycling rates, while lowering management costs, a more fundamental reform of EPA’s definition of solid waste regulations is needed. EPA should create a regulatory incentive for recycling over disposal, not the other way around.

While a positive step, EPA’s current proposal adopts a narrow approach to reform. Manufacturers are restricted from recycling wastes between different industrial sectors. Prohibitions are even placed on the recycling activities themselves (e.g., proposed exemption does not apply when the material is used to produce a fuel). Reform of this regulatory program could result in a significant environmental benefit by increasing recycling, reducing the volume of waste being disposed of in landfills and extending the life cycle of valuable resources.

2. Conditional Exclusion from Hazardous Listing of Spent Hydrotreating and Hydrorefining Catalysts -- needed in order to provide a cost-effective management option for recycling, while maintaining hazardous waste regulations for catalysts sent for disposal

EPA’s 1998 decision to list spent hydrotreating and hydrorefining catalysts as hazardous wastes has created a disincentive for recycling these refinery residuals. K171 and K172 wastes; 63 *Fed. Reg.* 42109; August 6, 1998).

Listed hazardous wastes are far more expensive to transport due to Department of Transportation and many individual state regulations that cause higher fees to be associated with the transportation of hazardous materials. These higher transportation costs strongly favor local disposal over recycling, since the distance to a catalyst recycling facility is typically many times further than that to a Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste landfill (there are only a handful of catalyst reclaimers in the U.S.).

In November of 1995, EPA proposed that these spent catalysts would only be listed if they were managed in a manner that indicated risk levels above EPA’s acceptable risk threshold. The spent catalysts would have been listed if managed in a less protective manner (i.e., land disposal), but would *not* be listed if managed in a more protective manner (i.e., recycled). This “conditional listing” approach would have promoted environmentally beneficial recycling of K171 and K172 wastes, by removing the economic disincentive to recycling. Unfortunately, EPA abandoned this approach in their final rule, but has subsequently adopted similar conditional listing approaches in other listing decisions.

Recently the catalyst recyclers petitioned EPA to amend the land disposal treatment standards for these residuals to require treatment for additional constituents. They also claim that these residuals are self-heating and reactive. On January 16, 2004, API responded to the advanced

notice of proposed rulemaking (68 *Fed. Reg.* 59935; October 20, 2003) arguing that the recyclers have not justified their case and are obviously motivated by their own business interests.

We expect a proposed rule will be published in the next few months. This is a waste of government and manufacturing resources. EPA can still propose a conditional exclusion for spent refining catalysts that are reclaimed. By removing the regulatory barriers in place that impede recycling, more materials will be recycled, fewer raw materials will be needed to replace the spent materials, fewer materials will be disposed of in landfills, and valuable products can be made from the recycled components. A conditional exclusion would provide a cost-effective management option for recycling, while maintaining hazardous waste regulations for catalysts sent for disposal.

3. Provide Flexibility and Eliminate Redundancy With EPA Determination of “Widespread Use” of Onboard Refueling Vapor Recovery (ORVR) Equipment (Clean Air Act Section 202(a)(6))

When a vehicle is refueled at a gasoline service station there is the potential for vapor emissions (volatile organic compounds (VOC)) to be released at the interface between the station’s nozzle and the vehicle’s fill pipe. There are two redundant systems for capturing these emissions: one on the vehicle, Onboard Refueling Vapor Recovery (ORVR), and one at the station (Stage II vapor recovery systems).

The EPA promulgated the ORVR rule (59CFR 16262, April 6, 1994) that requires onboard emissions controls on passenger cars and light-duty trucks and most other gasoline fueled vehicles. When fully phased in, the vehicle’s ORVR system will capture 95% of the emissions during refueling across the country. Congress recognized that there would be a phase in of the ORVR technology and therefore required the installation of Stage II vapor recovery systems at service stations during that phase in period. The law requires that Stage II systems must be installed at service stations in ozone non-attainment areas categorized as Serious, Severe, or Extreme. However, also recognizing that the Stage II and the ORVR system would eventually be largely redundant, Congress gave EPA the authority to remove the requirement for the Stage II systems at service stations. The CAA states that the EPA Administrator may determine that ORVR systems are in “widespread use” throughout the motor vehicle fleet, and can revise or waive the application of the Stage II requirements.

ORVR systems have been installed on new vehicles since 1998 and are now on all new vehicles and light-duty trucks (pickups and SUVs) built since that time. ORVR continues to be phased in for other larger vehicles. The EPA should make a determination of “widespread use” as soon as possible. This would allow service-stations owners to remove their Stage II equipment, which as stated above, is recognized as being largely redundant with ORVR systems. Removing the Stage II equipment would save industry (a large percentage which are small businesses) approximately \$4,100 per station annually. This cost is based on maintenance, compliance testing and the associated paperwork for complying with the rules. In Massachusetts and Connecticut alone, where Stage II systems are required at every station in the state, this would amount to annual savings of \$17 million. Stage II systems are required in 28 states and the District of Columbia.

Further, many regions are currently developing their approach to bringing their area into compliance with the 8-hour ozone standard. These areas could require the installation of Stage II vapor recovery systems as a local control for VOC reductions. This would be an unfortunate approach when one considers that ORVR will soon be on a majority of vehicles being refueled and that the consequential benefit (VOC reductions) of a Stage II system will be less and less at a higher and higher cost. Additionally, the consumer is already paying for ORVR on the vehicle. They should not have to pay again for redundant vapor controls at the station.

The EPA should implement its authority to determine when ORVR will be in “widespread use” and thus allow service station owners the ability to remove their Stage II vapor recovery systems. Consequently, service station owners will be able to eliminate the cost of maintaining, inspecting, testing and managing the associated paperwork for these systems that are largely redundant with the ORVR system that is required by federal law to be installed on vehicles. The elimination of the Stage II system can be done while achieving the environmental objective of capturing emissions during refueling.

4. Reporting and Paperwork Burden Needs to be Reduced in the Toxic Chemical Release Inventory (TRI) Reporting

The TRI is a federal program (Section 313 of the Emergency Planning and Community Right-to-Know Act; Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499; Section 6607 of the Pollution Prevention Act of 1990) to gather and distribute information about toxic chemicals that are either introduced into the environment or otherwise managed (e.g., treated or stored). Almost 650 toxic chemicals and toxic chemical categories are currently subject to TRI reporting. Nearly 25,000 manufacturing, mining, electric power generation, and chemical and petroleum wholesaler facilities, among other entities, are required to submit annual reports about their releases and waste management of these chemicals to EPA.

The program has become more complicated and burdensome since its inception. In 1993 EPA began expanding the list of covered chemicals and chemical categories. EPA amended the TRI regulations to require annual reports from certain mining, electric power generation, hazardous waste management, and petroleum and chemical wholesaler facilities in 1997. In 1999, EPA expanded the chemical list again and divided it into two categories: persistent bioaccumulative toxic (PBT) chemicals and non-PBT chemicals. In 2001, EPA added lead and lead compounds to the PBT chemical list, resulting in a fourfold increase in Form R filings for that chemical category. Many of the new reports describe zero onsite releases whose right-to-know value to the public is questionable.

In October 1996, OMB asked EPA to investigate changes and, since 1996, has continued issuing requests for burden reduction as part of the Information Collection Request process. In 1997, the Agency committed to reduce the burden of paperwork associated with reporting. Yet at the same time, EPA once again expanded the number of covered chemicals and industries. Despite EPA’s public commitment since 1997 to provide paperwork relief, it has added new chemicals and additional facilities to the TRI reporting requirements without providing promised relief.

Not surprisingly, the TRI database still contains many thousands of reports that show no release or small releases of toxics, for which the time consuming and costly standard reporting format is still required.

Reforms that are generally accepted to reduce burden on business while preserving data quality include:

- Reducing the reporting burden on petroleum wholesalers and other small facilities by raising the reporting thresholds on the amount of material manufactured, processed or otherwise used, as well as the number of site employees, and
- Allowing all facilities with no significant year-to-year changes in TRI activities to file a newly proposed “no significant” change form.

Cost estimates for any program are often difficult to define. As rough numbers, the program may cost about \$500 million a year to industry, and \$25 million to the EPA. The suggested reforms would likely still capture 99% of toxic releases currently reported with a burden reduction for this program of 20%, or an estimated \$100 million annually. Much of this burden reduction would benefit small business and other small facilities.

API welcomes the opportunity to discuss these suggestions for regulatory reform with OMB. Please contact Kyle Isakower (202-682-8314 or isakowerk@api.org) of my staff, or me (202-682-8340 or feldman@api.org) should you wish to request any of the cited documents, or if you have any questions regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold J. Feld". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

c: Lorraine Hunt, OMB/OIRA