



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

NESHAP/U.S. Environmental Protection Agency Proposed Technology Review Standards of Performance for Bulk Gasoline Terminals: Energy Marketers of America Submits Comments

09/15/2022

The Energy Marketers of America (“EMA”) submitted September 13th comments on the United States Environmental Protection Agency’s (“EPA”) proposed rule addressing Clean Air Act National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Gasoline Distribution facilities and the Standards of Performance for Bulk Gasoline Terminals (“Proposed Rule”). See 87 Fed. Reg. 35608-35642 (June 10, 2022).

EMA describes itself as a federation of 47 state and regional trade associations representing small business energy marketers throughout the United States. Its members operate exclusively below the terminal rack and supply 80% of all finished petroleum products nationwide including gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel, and lubricating oils. These petroleum marketers own and operate approximately 60,000 retail gasoline stations nationwide along with thousands of small intermediate bulk plants servicing wholesale accounts.

The Arkansas Oil Marketers Association is a state member of EMA.

The Proposed Rule constitutes the Residual Risk and Technology Rule (“RRTR”) for the Gasoline Distribution facilities and the Standards of Performance for the bulk gasoline terminals NESHAP category. EPA had previously set Maximum Available Control Technology (“MACT”) standards for the Gasoline Distribution major source category in 1994 and conducted an RRTR review in 2006.

Sources affected by the major source NESHAP for the Gasoline Distribution source category include:

- Bulk gasoline terminals
- Pipeline breakout stations

The sources affected by the area source NESHAP for the Gasoline Distribution source category include:

- Bulk gasoline terminals
- Bulk gasoline plants
- Pipeline facilities

EMA's comments initially note that its members typically operate small intermediate bulk plants with anywhere from 1,000 to 40,000 gallons storage capacity to supply wholesale customer accounts. Such customers include farmers, state and local government entities, private fleet operators, school bus contractors and car dealerships (among others).

The rationale for energy marketers to utilize gasoline storage at bulk plants is stated to include:

- Intermediate gasoline storage is required when terminals are too far away to make daily runs from the terminal rack directly to end users (noting that typical daily gasoline throughput can range from a few hundred gallons to up to 7,000 gallons per day with some days at zero gasoline throughput).
- Cargo tank vehicle size prohibitions (Smaller top-loading bobtail trucks with a capacity of 4,000 gallons or less are used to deliver gasoline to wholesale accounts because of the small volume required by wholesale customers.)
- Servicing wholesale accounts with large transport cargo tank trailers is not possible because of the small volume wholesale customers can accommodate at one time.

EMA takes the position that EPA has significantly underestimated the economic impact of the Proposed Rule on small business energy marketers. The Association stated that a recent survey of 650 small bulk facilities indicated:

- 72% of respondents indicated they would shut down or stop selling gasoline at one or more bulk plants if required to upgrade with vapor balancing equipment
- 14% indicated they were already equipped with vapor balancing
- The remaining 14% were either unsure if they would upgrade or did not answer the question

Note that EMA indicates that most of these bulk plants use top loading with a far smaller number using bottom loading.

Maximum daily design throughput is also argued to be an inaccurate way of defining compliance threshold since it is stated to be not representative of actual daily throughput.

The survey is stated to have indicated that when analyzing tank size from 88 respondents with just one bulk plant:

- 26% had tank sizes greater than 4,000 gallons but less than 10,000 gallons
- 56% had tanks less than 20,000 but greater than 10,000 gallons
- 16% had tanks greater than 20,000 gallons

Eighty-four percent of the respondents are stated to have reported actual daily throughput of less than 4,000 gallons.

EMA argues that dropping the current compliance threshold from 20,000 gallons maximum daily design threshold to 4,000:

. . . would pull virtually every small bulk plant into the NESHAP vapor balancing requirements. EMA believes this unfairly subjects small business energy marketers to the same regulatory requirements as much larger gasoline distribution facilities.

EMA also argues that the Congressional Findings and Declaration of Purposes in the preamble of the Regulatory Flexibility Act requires EPA to recognize the differences and scale of resources of regulated entities to avoid adverse impacts on competition.

The Association argues that EPA did not achieve these goals when developing the proposed NESHAP for small gasoline bulk plant facilities. It cites an absence of outreach to small business gasoline bulk plant operators as opposed to outreach to large gasoline distributors which were consulted.

EPA's indication that only 111 small entities are affected by the Proposed Rule is deemed inaccurate because it cites a survey conducted over a one-week period that resulted in 209 entities responses. These responses are stated to have indicated that the Proposed Rule would have a significant economic impact.

Cited problems also include:

- Cost estimates in the docket are outdated
- Maximum daily design throughput is a threshold for compliance is not an accurate or meaningful method to control emissions of hazardous air pollution from small gasoline bulk plants

A copy of the EMA comments can be downloaded [here](#).