

Originally Processed With FOIA(s):
2001-1865-F

FOIA Number:
2001-1865-F

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Series: Holmstead, Jeffrey, Files
Subseries: Environmental Subject Files

OA/ID Number: 45127
Folder ID Number: 45127-016

Folder Title:
EPA [Environmental Protection Agency] - Miscellaneous: Reformulated Gas

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- o Surveys/Ratchets for Reformulated Gasoline Enforcement. EPA says that the survey and a tightening ratchet are essential to allow refinery averaging for VOCs and toxics in order to assure that compliance would be no worse than under a per gallon compliance.
 - However, it is inappropriate that the ratchet be applied to the average or target performance standard as well as to the minimums and maximums within which averaging can occur.
 - The ratchet should be symmetric allowing wider ranges for averaging if refiners do better than the target.

- o Oxygen and benzene credit trading. There is no specific mention of oxygen and benzene credit trading though they are authorized by statute.
 - EPA staff informally say that benzene and oxygen trading are allowed.
 - However, because toxics trading is prohibited in the agreement, benzene credit trading will be severely restricted and may be precluded since benzene makes up the bulk of gasoline toxic emissions.

- o Restricted use of complex model through May 1997. Refiners can only certify gasoline with the complex model if it performs as well as under the simple model with 1990 refinery caps on sulfur, and other fuel parameters.
 - Requiring refiners to make improvements from their 1990 averages instead of the Act's baseline imposes more stringent requirements on refiners who produced the cleanest fuel in 1990.

- o Clear Gasoline for Ethanol Blenders. The detailed framework says that states shall be advised by EPA to take appropriate steps to assure the availability of various oxygenates in the market.
 - It is objectionable that EPA would be advising states to assure market shares for ethanol blenders.

Example w/ hypothetical

**EnviroFuels****TELEFAX TRANSMITTAL SHEET**

The following transmittal is being sent by:

NAME: BEN G. HENNEKE, JR.

DATE: 8/1/91 # OF PAGES: 7
(Including Cover Sheet)

Please deliver transmittal to:

NAME: C. Boyden GRAY

COMPANY: Counsel to the President

TELEFAX #: 202-456-6279

- ☐ For Your Information
- ☐ Please Comment
- ☐ Please call me about this.
- ☐ Per your request.
- ☐ As we discussed.
- ☐ Note:

Please call us at (918) 592-0300 if the transmittal you received was incomplete or not legible. Thank You!



August 1, 1991

C. Boyden Gray
Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Boyden:

I'm shocked and dismayed.

After being put completely out of business by the EPA's "stacking of waivers" regulations and having to shut down a brand new \$30 million ethanol plant, I am horrified to see that EPA is going to hammer ethanol again.

After talking to Mary Smith (Dick Wilson was out of town), I've discovered that in fact EPA was aware that 10 percent ethanol blends would be excluded from any reformulated gasoline until they "proved" that they would not increase NOX under the complex (and presently non-existent) model. How this total reversal of Congressional intent has occurred, I don't know.

What we have now is a mandate for MTBE. If you took all of the American Petroleum Institute's rhetoric during the clean air act debate about government gasoline and mandating market share and replaced the word "ethanol" with "MTBE" you would have exactly what EPA has agreed to in the Reg Neg process.

Here are the unvarnished reformulated fuels facts:

- 1). Ethanol can be used only up to a maximum of 2.1 percent oxygen.
- 2). Reformulated gasoline must average at least 2.1 percent oxygen.
- 3). Only MTBE can be used above 2.1 percent oxygen.
- 4). Sub-sim mixtures of ethanol, methanol, MTBE, ETBE, etc., are not allowed above 2.1 percent oxygen.
- 5). Ethanol is specifically not allowed above 2.7 percent oxygen, and will not be allowed in reformulated gasoline until the "complex model" is completed sometime in '93.

So no matter how good the "performance" of a 10 percent ethanol blended gasoline (or Oxynol, or DuPont Waiver), no matter how much it reduces

Page 2

ozone, no matter how much more cost-effective, EPA will not allow it.

Anyone getting ready for 1995 will of course be making capital expenditures well before the complex model is certified. This means that no one will choose ethanol for reformulated fuels.

I assume Congress will either think this is a cruel joke or will be angry that the EPA would turn absolutely "Alice in Wonderland" on the intent of Congress. Congress reduced at the American Petroleum Institute's urging the oxygenated fuels levels from 3.1 to 2.7 and from 2.7 to 2.0 specifically to "allow" MTBE some market share, since API said anything else would "mandate" ethanol. Now we have just exactly the opposite of Congressional intent. We have MTBE being mandated by EPA.

I'm afraid Reg Neg did degenerate into a "let's try to rewrite the law" effort after all. EPA got more than the law required on volatility, and now is making sure that the numerous members around the table who produce MTBE or methanol can ensure no competition. I thought we learned in Denver that spending a nickel a gallon more on MTBE gasoline through eliminating competition was dumb public policy. I guess we have to learn the lesson over and over and over again.

I cannot believe that the policy people at EPA and at OMB are intent on eliminating competition, "mandating a formula," and ensuring higher prices - but they better hurry or Reg Neg will have achieved just that. Who is minding the store?

Sincerely,



Ben G. Henneke, Jr.
President

cc: W.G. Rosenberg

Enclosure

BGH:aal

Alcohol Week's New Fuels Report

reporting worldwide on oxygenates, alcohols, and other alternative fuels

July 29, 1991

Special Report

EPA DRAFT ON FUELS PROGRAMS SEEN AS LAST CHANCE FOR NEGOTIATED SETTLEMENT

The U.S. Environmental Protection Agency late last week issued the second and probably final draft framework agreement for the clean fuels programs in the Clean Air Act, and it appears that EPA has softened some of the provisions of particular concern to industry. However, on the highly contentious issue of Reid Vapor Pressure standards for reformulated gasoline, EPA is suggesting even greater RVP reductions than its earlier draft. In this regard, industry appears to have lost ground in negotiations over the fuels rules.

The draft agreement, if signed by all the affected parties on the regulatory negotiating (reg-neg) committee, will provide the framework for the future rules of the oxygenated fuels and reformulated gasoline programs in the act. New Fuels Report has obtained a copy of the restricted document, and the full text of the draft follows this story.

In a cover letter accompanying the draft proposal, Dick Wilson, the director of EPA's Office of Mobile Sources, urges the members of the committee to respond by noon, Aug. 2 as to whether they would be willing to sign the draft. "We believe this draft represents the best possible balance of the many competing interests involved and strongly encourage your positive response," Wilson writes.

The deadline is quickly approaching for the end of the comment period for the oxygenated fuels and reformulated gasoline programs, a point that many sources see as the final cutoff date for continuing negotiations on the two programs. This Wednesday, July 31, comments on the oxygenated fuels rule are due.

Preliminary comments by industry representatives indicate that EPA has managed to back off on some of the more stringent and restrictive regulations that were contained in the first draft. State air quality officials and environmentalists involved with the committee are "swallowing hard" over this proposal, an industry source said.

Still, a number of highly restrictive provisions remain in the second draft, a development that has raised some concern among industry representatives. For example, RVP reductions, the central issue that has divided the two sides in the negotiations, appear in the second draft to have been tightened even further than what was proposed in the first draft. Specifically, the second draft calls for 7.2 pounds per square inch (psi) for four of the nine cities required to have reformulated gasoline. For the other five cities, EPA proposes an RVP of 8.1 psi. In the first draft, the RVP levels were 7.5 psi and 8.4 psi respectively, according to a source.

EPA Draft of Clean Fuels Regulations

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 25, 1991

MEMORANDUM

TO: Members of the Clean Fuels Advisory Committee
FROM: Richard D. Wilson
Director, Office of Mobile Sources

Attached is a revised draft "Agreement in Principle" that represents an effort by EPA staff to reflect the comments we received on the July 9 draft and discussions we have had with many of you. As such, the draft does not necessarily represent the views of any party, including the Administration.

My staff and I wish to extend our thanks for all the hard work that you and your colleagues have contributed to the clean fuels reg neg process. We believe this draft represents the best possible balance of the many competing interests involved and strongly encourage your positive response. I look forward to working with each of you to implement the concepts outlined in the attachment.

We need an indication of your willingness to sign the attached draft "Agreement in Principle" as quickly as possible but no later than noon, August 2. You should call Ms. Mary Smith of my staff at (202) 382-2633 with you decision. We anticipate arranging for a signing ceremony in the near future and will coordinate these arrangements with you.

than noon, August 2. You should call Ms. Mary Smith of my staff at (202) 382-2633 with you decision. We anticipate arranging for a signing ceremony in the near future and will coordinate these arrangements with you.

ENVIRONMENTAL PROTECTION AGENCY ADVISORY COMMITTEE ON REFORMULATED GASOLINE, ANTIDUMPING AND OXYGENATED GASOLINE

AGREEMENT IN PRINCIPLE

The Clean Fuels Advisory Committee (hereinafter Advisory Committee) considered the technical and policy issues involved in implementing the reformulated gasoline, antidumping and oxygenated gasoline provisions of sections 211(k) and (m) of the Clean Air Act, as amended in 1990, and has reached a consensus on the underlying principles of the proposed rules and guidances (hereinafter proposed rules) to implement these provisions.

The _____, a party on the Committee, agrees that:
1. The person signing this agreement is authorized to commit the party to its terms.

2. The party concurs in principle to the outline of the proposed rules, dated _____, when considered as a whole. The outline of the proposed rules is attached to this Agreement in Principle.

3. EPA agrees to draft preambles and proposed rules consistent with the attached agreed upon outline. These preambles and proposed rules will form the basis of Supplemental Notices of Proposed Rulemaking to the maximum extent possible consistent with EPA's legal obligations. A draft of these Notices will be made available to each party for its review and comment prior to signature by the Administrator. At the same time these drafts are made available to members of the Advisory Committee, copies will be submitted by EPA to the rulemaking dockets. Based upon comments to these drafts, EPA will undertake, prior to proposal, an informal process to consult with the parties and to address the differences between the commentators. After such consultation, EPA will publish the Supplemental Notices of Proposed Rulemaking and extend the comment period for the proposed rules and guidances regarding reformulated gasoline, antidumping and oxygenated gasoline published on July 9, 1991 (56 FR 31148, 31151, 31154, and 31176) 30 days beyond the publication of the Supplemental Notices in the Federal Register.

4. Each party other than EPA agrees not to file negative comments on the Supplemental Notices of Proposed Rulemaking to the extent that they have the same substance and effect as the attached outline.

5. In developing a final rule, EPA will give serious consideration to the attached outline, along with other materials in the docket, subject to the Statement of the President on Signing the Negotiated Rulemaking Act of 1990 and EPA's other legal obligations.

6. Each party other than EPA agrees not to take any action to inhibit the adoption of the Supplemental Notices of Proposed Rulemaking as final rules to the extent that the final rules and their preambles have the same substance and effect as the attached outline concurred in by the Advisory Committee.

7. Each party other than EPA agrees not to challenge the reformulated gasoline, antidumping and oxygenated labeling rules in court to the extent that the final rules and their preambles have the same substance and effect as the attached outline concurred in by the Advisory Committee. Each party, however, retains the right to challenge provisions in the final rules and their preambles if the provisions are not specifically addressed in the attached outline.

8. Each party other than EPA agrees to support the oxygenated gasoline guidelines to the extent that the final guidelines and their preambles have the same substance and effect as the attached outline concurred in by the Advisory Committee.

ENVIRONMENTAL PROTECTION AGENCY CLEAN FUELS ADVISORY COMMITTEE OUTLINE OF SUPPLEMENTAL PROPOSED RULES AND GUIDANCES FOR REFORMULATED GASOLINE, ANTIDUMPING AND OXYGENATED GASOLINE

I. REFORMULATED GASOLINE

A. CERTIFICATION

1. Reformulated gasoline produced before March 1, 1997 will be certified by EPA if it results in no increase in oxides of nitrogen (NOX) (see paragraph I.A.3. below); contains no more than 1.0 volume percent of benzene; contains at least 2.0% oxygen by weight; contains no heavy metals unless waived; and meets or is below the following Reid Vapor Pressure (RVP) specification during the ozone season --

a. In Class B areas, 7.2 psi RVP, and

b. In Class C areas, 8.1 psi RVP.

In addition, the gasoline must meet the toxics performance standard considering its benzene, oxygenate and aromatics content. This is to be known as certification by the simple model. The model will take into account the VOC effects of both higher and lower RVP and oxygen values.

In addition, the refiner's annual reformulated gasoline averages for sulfur, T90 and olefins cannot exceed the refiner's corresponding 1990 annual averages.

2. EPA will issue a proposed rule by November 30, 1992 containing the specifics of a more complex model and addressing the year 2000 performance standards. The complex model is anticipated to include at least the following parameters: sulfur, olefins, RVP, oxygen, aromatics, benzene and T90. This rule will be finalized by March 1, 1993. Reformulated gasoline produced on or after March 1, 1997 must be certified under the complex model. EPA will establish, by November 1991, a working group comprised of all interested persons to expedite the development and promulgation of this rule. Each of the parties to this agreement will commit to work in good faith to assist EPA in developing and analyzing the additional data needed for the complex model and to expedite concurrence on the form, content, proposal and final adoption of the rulemaking process. If EPA is unable to finalize the rule by March 1, 1993, the recertification requirement will be delayed on a month-for-month basis commensurate with the delay in promulgation.

3. NOx Compliance

a. Reformulated gasoline certified under the simple model will be deemed to result in no increase in oxides of nitrogen (NOx) if

- (1) it contains no greater than 2.1% oxygen by weight, or
- (2) the only oxygenate it contains is MTBE at a concentration no greater than 2.7% oxygen by weight.

EPA will expeditiously process petition's for approval of oxygenates other than MTBE at concentrations up to 2.7% oxygen by weight. The petitioner must demonstrate that use of the oxygenate will not adversely impact NOx through the use of existing data or data generated by the petitioner.

b. In the case of reformulated gasoline certified under the complex model, the reformulated gasoline should yield a no NOx increase result under the model.

4. Reformulated gasoline may be certified by means of the complex model before May 1, 1997. However, such certification cannot result in deterioration in VOC and toxics performance from that achieved with the simple model and the refiner's 1990 annual averages for sulfur, T90 and olefins.

5. Vehicle testing will be permitted to qualify new parameters but not to modify the coefficients of existing model parameters including aromatics, oxygen, olefins, T90, sulfur, benzene and RVP. When other parameters are subsequently added to the complex model, the complex model shall be used in certifying these parameters.

B. REFORMULATED GASOLINE ENFORCEMENT FOR OXYGEN, BENZENE, TOXICS AND VOCs

Per Gallon Compliance

1. At its option, a refinery may elect to comply with any or all reformulated gasoline requirements on a per gallon basis.

Compliance on Average

1. Oxygen averaging

a. Compliance with the averaged standard will be determined at the refinery if the oxygenates are added at the refinery and at the terminal if the oxygenates are added downstream of the refinery.

b. The averaging period shall be the calendar year for areas that are in attainment with the NAAQS for carbon monoxide (CO).

For an area in nonattainment for CO, the averaging periods shall be the control period during which 2.7% oxygenated gasoline must be sold (oxy control period) and the non-oxy control period.

c. The average oxygen content of each gallon of reformulated gasoline shall be 2.1% by weight.

d. The minimum oxygen content of each gallon of reformulated gasoline shall be 1.5% by weight.

2. Compliance on the average for benzene, VOCs and toxics will be determined on a refinery by refinery basis. No trading or banking will be permitted for the VOC or toxics performance standards.

3. VOC averaging for Class B and C areas (1995-1999)

a. The VOC averaging period will be designated by each refinery prior to the start of the VOC averaging period and may begin from the time a refinery starts to make VOC-controlled reformulated gasoline until no later than September 15. All reformulated gasoline at all points in the gasoline distribution system (except at retail outlets) must be VOC-controlled during the period May 1 through September 15; and for retail outlets, during the period June 1 through September 15.

b. For the 1995 and 1996 ozone seasons, the average RVP of the refinery's reformulated gasoline shall be 7.1 psi for Class B areas and 8.0 psi for Class C areas. In addition, the RVP of each gallon of reformulated gasoline shall be no greater than 7.4 psi for Class B areas and 8.3 psi for Class C areas.

c. For the 1997 through 1999 ozone seasons, the average VOC reduction of the refinery's reformulated gasoline shall be at least an additional 1.5% above the non-averaged standard. The minimum VOC reduction required of each gallon of reformulated gasoline shall be 2.5% below the non-averaged standard. (E.g., if the non-averaged standard is 15%, then the average VOC reduction the refinery must achieve is 16.5% and the minimum per gallon VOC reduction requirement is 12.5%.)

d. The RVP enforcement tolerance for a single analysis of a single sample taken at other than the refinery or the point of first introduction into U.S. commerce is .3 psi RVP.

A smaller enforcement tolerance for samples taken anywhere shall be established by EPA based on a multiple sample test protocol.

4. Toxics and benzene averaging (1995-1999)

a. The averaging period shall be the calendar year.

b. The average benzene content of the refinery's reformulated gasoline shall be no greater than .95 volume percent. The benzene content of each gallon of reformulated gasoline shall not exceed 1.3 volume percent.

c. The average toxics reduction shall be at least 1.5% above the non-averaged standard.

5. Compliance Surveys

a. Extensive surveys to determine whether the VOC, oxygen, toxics and benzene standards are being met on average in each nonattainment area shall be designed by a Workgroup of experts from industry, EPA, the states, the environmental community and the general public. The workgroup, chaired by EPA, will select one or more independent contractors with recognized expertise in the field, to advise in the survey design. The survey design will ensure that representative samples of reformulated gasoline sold to consumers in a nonattainment area are taken. The workgroup shall identify qualified independent contractors to conduct the survey and EPA shall select one or more contractors to conduct the survey. The workgroup will monitor the survey implementation but EPA alone will control when and where the unannounced surveys are conducted.

b. The contractor conducting the surveys shall provide a split sample to each service station surveyed upon request. A sample will be excluded from the survey and, hence, from the non-

compliance determination if it exceeds the applicable max/min (enforcement situation) or it is deemed by EPA to be invalidly taken or tested. The contractor shall quickly report survey results to EPA and EPA shall place the results in the public docket.

c. Refiners (including importer and blenders) who participate in the averaging program will pay for the surveys.

d. The base survey program for the nine cities will focus more surveys in the early years of the program to obtain greater assurance of initial compliance, according to the following schedule:

1. First year -- 120 surveys
2. Second year -- 80 surveys
3. Third year -- 60 surveys
4. Fourth year and thereafter -- 50 surveys

Additional surveys will be added based upon the proportional increase of the reformulated gasoline market supplied to opt-in areas. Each nonattainment area would experience at least one VOC survey in the first year. If any nonattainment area fails to comply with a survey, the total number of surveys will be increased proportionately (based on share of gasoline market) to account for the need to maintain the higher survey level in that nonattainment area to ensure future compliance.

e. VOC Performance

(1) In any nonattainment area, if the average of all samples (excluding min/max violations and invalid samples) taken in any one week of the ozone season fails to comply with the applicable non-averaged VOC standard, then an automatic adjustment of the averaged standard and the max/min will occur in the subsequent ozone season for averaged reformulated gasoline produced by each refinery who served or will serve the noncomplying nonattainment area. An affected refinery shall adjust all averaged reformulated gasoline destined for any nonattainment area designated with the same VOC classification (B or C, as applicable) as the noncomplying nonattainment area. A refinery will be subject to at most one adjustment per ozone season.

(i) The first time the automatic adjustments are made, they shall be as follows:

(a) In the 1996 ozone season, the average RVP of the refinery's reformulated gasoline shall be 7.0 psi for Class B areas and 7.9 for Class C areas. The RVP of each gallon of reformulated gasoline shall be no greater than 7.3 psi for Class B areas and 8.2 psi for Class C areas.

(b) In the 1997 through 1999 ozone seasons, the average VOC reduction of the refinery's reformulated gasoline shall be at least 2.5% above the non-averaged standard. The minimum VOC reduction required of each gallon of reformulated gasoline shall be 1.5% below the non-averaged standard.

(ii) The second time the automatic adjustments are made, the required average VOC reduction shall be increased an additional 1.0%. Also, the minimum VOC reduction required of each gallon of reformulated gasoline shall be increased by an additional 1.0%.

(2) Once an adjustment is applied, compliance with the applicable non-averaged standard for two consecutive years will result in a one-time movement of the applicable averaged standard down by one adjustment (e.g., 1995 noncompliance -- adjust up in 1996 and 1997 compliance -- adjust down in 1998). any subsequent adjustment up will remain, regardless of subsequent compliance.

f. Toxics Performance and Benzene Content

(1) In any nonattainment area, if the average of all samples (excluding min/max violations and invalid samples) taken in four toxic surveys (two in the summer season and two in the winter season) conducted during the calendar year fails to comply with the applicable non-averaged toxics or benzene standard, then an automatic adjustment will occur in the following calendar year. a

benzene failure will trigger only a toxics adjustment. The adjustment will apply to all averaged reformulated gasoline produced by each refinery who served or will serve the noncomplying nonattainment per calendar year. The automatic adjustments shall be as follows:

- (i) the average benzene content of the refinery's reformulated gasoline shall be decreased by an additional .05 volume percent,
- (ii) the maximum benzene content allowed for each gallon of reformulated gasoline shall be decreased by an additional .1 volume percent,
- (iii) the average toxics reduction shall be increased by an additional 1.0%.

(2) Once an adjustment is applied, compliance with the applicable non-averaged standard for two consecutive years will result in a one-time movement of the applicable averaged standard down by one adjustment. Any adjustment up will remain, regardless of subsequent compliance.

6. refiners will submit quarterly reports to EPA on the status of their averaging program.

7. The year 2000 averaging program for VOC and toxics performance will be established in conjunction with the rulemaking addressing the year 2000 performance standards.

C. TEST TOLERANCES

EPA will establish appropriate test tolerances.

II. ANTIDUMPING

A. Compliance in 1995 and 1996 will be based on

1. Compliance with the refiner's 1990 annual average for exhaust benzene emissions (as determined by the antidumping simple model) and the refiner's annual averages for sulfur, olefins and T90 shall not exceed 125% of the refiner's corresponding 1990 annual averages, or

2. use of the complex model which demonstrates no increase in exhaust benzene emissions from the refiner's 1990 annual average.

B. In 1997 and later, the complex model shall yield no increase in the exhaust toxics and NOx from the refiner's 1990 annual average.

C. A refiner's 1990 baseline will be modified for refinery work-in-progress at year-end 1990 if it can be demonstrated that

1. such a modification was significant, i.e., if at least a five percent difference between baseline emissions calculated with and without the work-in-progress resulted, and

2. such work was associated with other regulatory requirements, and

3. failure to grant credit would result in an extraordinary regulatory burden, i.e. a substantial portion of the refinery's capital would be at risk if the adjustment were not granted, and

4. such credit would not result in significant environmental harm (e.g., the credit will not cause the refiner to be five percent above the Clean Air Act antidumping baseline, etc.).

D. Anyone may petition EPA to establish an individual refinery baseline for refineries that are located in an isolated gasoline distribution system which contains a reformulated gasoline opt-in area surrounded by a conventional gasoline area, and where it is shown that significant increases in toxic emissions are occurring in the conventional gasoline area.

E. A refinery may elect to establish an individual refinery baseline.

III. OXYGENATED GASOLINE

A. While recognizing state discretion, EPA guidelines shall recommend a credit program which shall include the following:

1. Each gallon of oxygenated gasoline shall contain at least 2.0% oxygen by weight.

2. The following averaging periods shall apply

a. For areas of a control period of five months or less, the averaging period shall be the control period.

b. For areas with a control period of six months or longer, the averaging period shall be three months.

3. Compliance will be determined at the terminal.

4. The control area shall consist of the applicable CMSA/MSA.

5. In the preamble to the guidance, the states shall be advised to monitor the availability of a variety of oxygenates and shall be advised to take appropriate steps necessary to reasonably assure the availability of various oxygenates in the market.

B. EPA guidance on the control period length shall be in accordance with EPA Approach II except for Grants Pass, Medford and Klamath in the state of Oregon which shall have control periods of four months from October 1 until January 31. Additionally, the length of the New York City CMSA shall be coordinated with the states of New York City CMSA shall be coordinated with the states of New York, New Jersey and Connecticut.

C. EPA will propose waiver guidelines and take public comment.

IV. INABILITY TO PRODUCE CONFORMING GASOLINE IN EXTRAORDINARY CIRCUMSTANCES

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner and which could not have been avoided by the exercise of prudence, diligence and due care, EPA may permit a refiner, for a brief period, to distribute fuel which does not meet the requirements for reformulated gasoline if

1. It is in the public interest to do so (e.g., distribution of the nonconforming fuel is necessary to meet projected shortfalls which cannot otherwise be compensated for), and

2. the refiner exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity, and

3. the refiner can show how the requirements for reformulated gasoline will be expeditiously achieved, and

4. the refiner agrees to make up air quality detriment associated with the nonconforming gasoline, where practicable, and

5. pay the U.S. Treasury an amount equal to the economic benefit of the nonconformity minus the amount expended, pursuant to subparagraph 4 above, in making up the air quality detriment.

EPA guidance on the oxygenated gasoline program shall advise the states to consider a similar provision for oxygenated gasoline.

V. FEDERAL PREEMPTION FOR REFORMULATED GASOLINE AND ANTIDUMPING

A State may prescribe and enforce, for the purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 of the Clean Air Act so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this paragraph even if the plan for the area does not contain an approved demonstration of timely attainment.

CLEAN FUELS AGREEMENT IN PRINCIPLE

I. General

A. Document addresses procedural issues with attached nine page outline which contains the substance of the agreement.

B. Parties who sign agreement commit not to challenge final rule that implements outline but may challenge issues not specifically addressed in outline.

C. EPA to issue supplemental notice which mirrors agreement in principle if Government agrees.

D. EPA has asked for an indication from reg neg parties by August 2 of willingness to sign agreement.

II. Outline of Agreement

A. Reformulated Gasoline Certification

1. Certification by simple model prior to March 1, 1997.

- no increase in NOx
- 1.0% maximum benzene
- 2.0% minimum oxygen
- RVP of 7.2 psi in Class B areas, 8.1 in Class C
- toxics performance based on benzene, oxygen and aromatics content of fuel
- cap on refiner's 1990 annual averages for sulfur, T90, olefins

Assume no NOx increase for MTBE up to 2.7% and other oxygenates up to 2.1% with process for approving other oxygenates up to 2.7%.

2. Complex model finalized by March 1, 1993. Mandatory recertification by March 1, 1997. Slip in 3/93 date will result in equal slip in 3/97 date.

3. Permits vehicle testing as option to certification under the model.

B. Reformulated Gasoline Enforcement

1. Allows averaging for content and performance standards. Averaging periods are

- yearly for oxygen (except for areas that are also in CO nonattainment; they have two averaging periods based on CO control season)
- yearly for benzene and toxics
- ozone season for VOCs

2. Sets minimums and maximums for each gallon
 - oxygen -- 1.5% minimum
 - benzene -- 1.3% maximum
 - VOCs -- 7.4 psi for B areas, 8.3 for C areas (simple model)
 - none for toxics
3. Different standards for averaged fuel (required by CAA):
 - oxygen -- at least 2.1%
 - benzene -- no more than .95%
 - VOCs -- no more than 7.1 for B areas, 8.0 for C areas (simple model)
 - toxics -- reduction 1.5% above averaged standard
4. Surveys to be conducted in 1995-1999 to ensure that standards are being met on average in each nonattainment area. Adjustments of the minimums/maximums and averaged standards if survey finds noncompliance.

C. Antidumping

1. Simplified antidumping program based on parameters that will likely affect compliance with antidumping requirements.
2. Provision for modification of antidumping baseline for refiners who had significant 1990 work-in-progress associated with other regulatory requirements and where failure to grant modification would put substantial capital at risk.

D. CO Oxygenated Gasoline Program

1. Averaging program
 - 2.0% minimum oxygen content per gallon
 - most averaging periods equal to length of control period
 - states monitor availability of clear gas for terminal blending
2. Vast majority of control periods are four months.
3. EPA will propose waiver guidelines for public comment.

E. Provision for waiver of reformulated gasoline requirements under extraordinary circumstances (e.g., Act of God, natural disaster) for brief duration. Must minimize nonconformity and pay economic benefit of waiver.

F. Federal preemption provision.



U.S. ENVIRONMENTAL PROTECTION AGENCY
IMMEDIATE OFFICE OF AIR AND RADIATION
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FACSIMILE COVER SHEET

TO: Boyden Gray / John Schmitz

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FAX #: _____

NO. OF PAGES (including cover): 12

FROM: Bill Rosenberg - EPA
382-7400

MESSAGE: _____

ENVIRONMENTAL PROTECTION AGENCY
ADVISORY COMMITTEE ON
REFORMULATED GASOLINE, ANTIDUMPING AND
OXYGENATED GASOLINE

AGREEMENT IN PRINCIPLE

The Clean Fuels Advisory Committee (hereinafter Advisory Committee) considered the technical and policy issues involved in implementing the reformulated gasoline, antidumping and oxygenated gasoline provisions of sections 211(k) and (m) of the Clean Air Act, as amended in 1990, and has reached a consensus on the underlying principles of the proposed rules and guidances (hereinafter proposed rules) to implement these provisions.

The _____, a party on the Committee, agrees that:

1. The person signing this agreement is authorized to commit the party to its terms.

2. The party concurs in principle to the outline of the proposed rules, dated _____, when considered as a whole. The outline of the proposed rules is attached to this Agreement in Principle.

3. EPA agrees to draft preambles and proposed rules consistent with the attached agreed upon outline. These preambles and proposed rules will form the basis of Supplemental Notices of Proposed Rulemaking to the maximum extent possible consistent with EPA's legal obligations. A draft of these Notices will be made available to each party for its review and comment prior to signature by the Administrator. At the same time these drafts are made available to members of the Advisory Committee, copies will be submitted by EPA to the rulemaking dockets. Based on comments to these drafts, EPA will undertake, prior to proposal, an informal process to consult with the parties and to address the differences between the commentators. After such consultation, EPA will publish the Supplemental Notices of Proposed Rulemaking and extend the comment period for the proposed rules and guidances regarding reformulated gasoline, antidumping and oxygenated gasoline published on July 9, 1991 (56 FR 31148, 31151, 31154, and 31176) 30 days beyond the publication of the Supplemental Notices in the Federal Register.

4. Each party other than EPA agrees not to file negative comments on the Supplemental Notices of Proposed Rulemaking to the extent that they have the same substance and effect as the attached outline.

2

5. In developing a final rule, EPA will give serious consideration to the attached outline, along with other materials in the docket, subject to the Statement of the President on Signing the Negotiated Rulemaking Act of 1990 and EPA's other legal obligations.

6. Each party other than EPA agrees not to take any action to inhibit the adoption of the Supplemental Notices of Proposed Rulemaking as final rules to the extent that the final rules and their preambles have the same substance and effect as the attached outline concurred in by the Advisory Committee.

7. Each party other than EPA agrees not to challenge the reformulated gasoline, antidumping and oxygenated labeling rules in court to the extent that the final rules and their preambles have the same substance and effect as the attached outline concurred in by the Advisory Committee. Each party, however, retains the right to challenge provisions in the final rules and their preambles if the provisions are not specifically addressed in the attached outline.

8. Each party other than EPA agrees to support the oxygenated gasoline guidelines to the extent that the final guidelines and their preambles have the same substance and effect as the attached outline concurred in by the Advisory Committee.

Organization

Date

ENVIRONMENTAL PROTECTION AGENCY CLEAN FUELS ADVISORY COMMITTEE
OUTLINE OF SUPPLEMENTAL PROPOSED RULES AND GUIDANCES FOR
REFORMULATED GASOLINE, ANTIDUMPING
AND OXYGENATED GASOLINE

I. REFORMULATED GASOLINE

A. CERTIFICATION

1. Reformulated gasoline produced before March 1, 1997 will be certified by EPA if it results in no increase in oxides of nitrogen (NOx) (see paragraph I.A.3. below); contains no more than 1.0 volume percent of benzene; contains at least 2.0% oxygen by weight; contains no heavy metals unless waived; and meets or is below the following Reid Vapor Pressure (RVP) specification during the ozone season --

a. In Class B areas, 7.2 psi RVP, and

b. In Class C areas, 8.1 psi RVP.

In addition, the gasoline must meet the toxics performance standard considering its benzene, oxygenate and aromatics content. This is to be known as certification by the simple model. The model will take into account the VOC effects of both higher and lower RVP and oxygen values.

In addition, the refiner's annual reformulated gasoline averages for sulfur, T90 and olefins cannot exceed the refiner's corresponding 1990 annual averages.

2. EPA will issue a proposed rule by November 30, 1992 containing the specifics of a more complex model and addressing the year 2000 performance standards. The complex model is anticipated to include at least the following parameters: sulfur, olefins, RVP, oxygen, aromatics, benzene and T90. This rule will be finalized by March 1, 1993. Reformulated gasoline produced on or after March 1, 1997 must be certified under the complex model. EPA will establish, by November 1991, a working group comprised of all interested persons to expedite the development and promulgation of this rule. Each of the parties to this agreement will commit to work in good faith to assist EPA in developing and analyzing the additional data needed for the complex model and to expedite concurrence on the form, content, proposal and final adoption of the complex model, according to the above timetable and within the rulemaking process. If EPA is unable to finalize the rule by March 1, 1993, the recertification requirement will be delayed on a month-for-month basis commensurate with the delay in promulgation.

3. NOx Compliance

a. Reformulated gasoline certified under the simple model will be deemed to result in no increase in oxides of nitrogen (NOx) if

(1) it contains no greater than 2.1% oxygen by weight, or

(2) the only oxygenate it contains is MTBE at a concentration no greater than 2.7% oxygen by weight.

EPA will expeditiously process petition's for approval of oxygenates other than MTBE at concentrations up to 2.7% oxygen by weight. The petitioner must demonstrate that use of the oxygenate will not adversely impact NOx through the use of existing data or data generated by the petitioner.

b. In the case of reformulated gasoline certified under the complex model, the reformulated gasoline should yield a no NOx increase result under the model.

4. Reformulated gasoline may be certified by means of the complex model before May 1, 1997. However, such certification cannot result in deterioration in VOC and toxics performance from that achieved with the simple model and the refiner's 1990 annual averages for sulfur, T90 and olefins.

5. Vehicle testing will be permitted to qualify new parameters but not to modify the coefficients of existing model parameters including aromatics, oxygen, olefins, T90, sulfur, benzene and RVP. When other parameters are subsequently added to the complex model, the complex model shall be used in certifying these parameters.

B. REFORMULATED GASOLINE ENFORCEMENT FOR OXYGEN, BENZENE, TOXICS AND VOCs

Per Gallon Compliance

1. At its option, a refinery may elect to comply with any and all reformulated gasoline requirements on a per gallon basis.

Compliance on Average

1. Oxygen averaging

5

a. Compliance with the averaged standard will be determined at the refinery if the oxygenates are added at the refinery and at the terminal if the oxygenates are added downstream of the refinery.

b. The averaging period shall be the calendar year for areas that are in attainment with the NAAQS for carbon monoxide (CO). For an area in nonattainment for CO, the averaging periods shall be the control period during which 2.7% oxygenated gasoline must be sold (oxy control period) and the non-oxy control period.

c. The average oxygen standard for reformulated gasoline shall be 2.1% by weight.

d. The minimum oxygen content of each gallon of reformulated gasoline shall be 1.5% by weight.

2. Compliance on the average for benzene, VOCs and toxics will be determined on a refinery by refinery basis. No trading or banking will be permitted for the VOC or toxics performance standards.

3. VOC averaging for Class B and C areas (1995-1999)

a. The VOC averaging period will be designated by each refinery prior to the start of the VOC averaging period and may begin from the time a refinery starts to make VOC-controlled reformulated gasoline until no later than September 15. All reformulated gasoline at all points in the gasoline distribution system (except at retail outlets) must be VOC-controlled during the period May 1 through September 15; and for retail outlets, during the period June 1 through September 15.

b. For the 1995 and 1996 ozone seasons, the average RVP of the refinery's reformulated gasoline shall be 7.1 psi for Class B areas and 8.0 psi for Class C areas. In addition, the RVP of each gallon of reformulated gasoline shall be no greater than 7.4 psi for Class B areas and 8.3 psi for Class C areas.

c. For the 1997 through 1999 ozone seasons, the average VOC reduction of the refinery's reformulated gasoline shall be at least an additional 1.5% above the non-averaged standard. The minimum VOC reduction required of each gallon of reformulated gasoline shall be 2.5% below the non-averaged standard. (E.g., if the non-averaged standard is 15%, then the average VOC reduction the refinery must achieve is 16.5% and the minimum per gallon VOC reduction requirement is 12.5%.)

d. The RVP enforcement tolerance for a single analysis of a single sample taken at other than the refinery or the point of first introduction into U.S. commerce is .3 psi RVP.

6

A smaller enforcement tolerance for samples taken anywhere shall be established by EPA based on a multiple sample test protocol.

4. Toxics and benzene averaging (1995-1999)

- a. The averaging period shall be the calendar year.
- b. The average benzene content of the refinery's reformulated gasoline shall be no greater than .95 volume percent. The benzene content of each gallon of reformulated gasoline shall not exceed 1.3 volume percent.
- c. The average toxics reduction shall be at least 1.5% above the non-averaged standard.

5. Compliance Surveys

- a. Extensive surveys to determine whether the VOC, oxygen, toxics and benzene standards are being met on average in each nonattainment area shall be designed by a workgroup of experts from industry, EPA, the states, the environmental community and the general public. The workgroup, chaired by EPA, will select one or more independent contractors with recognized expertise in the field, to advise in the survey design. The survey design will ensure that representative samples of reformulated gasoline sold to consumers in a nonattainment area are taken. The workgroup shall identify qualified independent contractors to conduct the survey and EPA shall select one or more contractors to conduct the survey. The workgroup will monitor the survey implementation but EPA alone will control when and where the unannounced surveys are conducted.
- b. The contractor conducting the surveys shall provide a split sample to each service station surveyed upon request. A sample will be excluded from the survey and, hence, from the non-compliance determination if it exceeds the applicable max/min (enforcement situation) or it is deemed by EPA to be invalidly taken or tested. The contractor shall quickly report survey results to EPA and EPA shall place the results in the public docket.
- c. Refiners (including importer and blenders) who participate in the averaging program will pay for the surveys.
- d. The base survey program for the nine cities will focus more surveys in the early years of the program to obtain greater assurance of initial compliance, according to the following

schedule:

1. First year -- 120 surveys
2. Second year -- 80 surveys
3. Third year -- 60 surveys
4. Fourth year and thereafter -- 50 surveys

Additional surveys will be added based upon the proportional increase of the reformulated gasoline market supplied to opt-in areas. Each nonattainment area would experience at least one VOC survey in the first year. If any nonattainment area fails to comply with a survey, the total number of surveys will be increased proportionately (based on share of gasoline market) to account for the need to maintain the higher survey level in that nonattainment area to ensure future compliance.

e. VOC Performance

(1) In any nonattainment area, if the average of all samples (excluding min/max violations and invalid samples) taken in any one week of the ozone season fails to comply with the applicable non-averaged VOC standard, then an automatic adjustment of the averaged standard and the max/min will occur in the subsequent ozone season for averaged reformulated gasoline produced by each refinery who served or will serve the noncomplying nonattainment area. An affected refinery shall adjust all averaged reformulated gasoline destined for any nonattainment area designated with the same VOC classification (B or C, as applicable) as the noncomplying nonattainment area. A refinery will be subject to at most one adjustment per ozone season.

(i) The first time the automatic adjustments are made, they shall be as follows:

(a) In the 1996 ozone season, the average RVP of the refinery's reformulated gasoline shall be 7.0 psi for Class B areas and 7.9 for Class C areas. The RVP of each gallon of reformulated gasoline shall be no greater than 7.3 psi for Class B areas and 8.2 psi for Class C areas.

(b) In the 1997 through 1999 ozone seasons, the average VOC reduction of the refinery's reformulated gasoline shall be at least 2.5% above the non-averaged standard. The minimum VOC reduction required of each gallon of reformulated gasoline shall be 1.5% below the non-averaged standard.

(ii) The second time the automatic adjustments are made, the required average VOC reduction shall be increased an additional 1.0%. Also, the minimum VOC reduction

required of each gallon of reformulated gasoline shall be increased by an additional 1.0%.

(2) Once an adjustment is applied, compliance with the applicable non-averaged standard for two consecutive years will result in a one-time movement of the applicable averaged standard down by one adjustment (e.g., 1995 noncompliance -- adjust up in 1996; 1996 and 1997 compliance -- adjust down in 1998). Any subsequent adjustment up will remain, regardless of subsequent compliance.

f. Toxics Performance and Benzene Content

(1) In any nonattainment area, if the average of all samples (excluding min/max violations and invalid samples) taken in four toxics surveys (two in the summer season and two in the winter season) conducted during the calendar year fails to comply with the applicable non-averaged toxics or benzene standard, then an automatic adjustment will occur in the following calendar year. A benzene failure will trigger only a benzene adjustment and a toxics failure will trigger only a toxics adjustment. The adjustment will apply to all averaged reformulated gasoline produced by each refinery who served or will serve the noncomplying nonattainment area. A refinery will be subject to at most one adjustment per calendar year. The automatic adjustments shall be as follows:

(i) the average benzene content of the refinery's reformulated gasoline shall be decreased by an additional .05 volume percent,

(ii) the maximum benzene content allowed for each gallon of reformulated gasoline shall be decreased by an additional .1 volume percent,

(iii) the average toxics reduction shall be increased by an additional 1.0%.

(2) Once an adjustment is applied, compliance with the applicable non-averaged standard for two consecutive years will result in a one-time movement of the applicable averaged standard down by one adjustment. Any subsequent adjustment up will remain, regardless of subsequent compliance.

6. Refiners will submit quarterly reports to EPA on the status of their averaging program.

7. The year 2000 averaging program for VOC and toxics performance will be established in conjunction with the rulemaking addressing the year 2000 performance standards.

C. TEST TOLERANCES

EPA will establish appropriate test tolerances.

II. ANTIDUMPING

A. Compliance in 1995 and 1996 will be based on

1. compliance with the refiner's 1990 annual average for exhaust benzene emissions (as determined by the antidumping simple model) and the refiner's annual averages for sulfur, olefins and T90 shall not exceed 125% of the refiner's corresponding 1990 annual averages, or

2. use of the complex model which demonstrates no increase in exhaust benzene emissions from the refiner's 1990 annual average.

B. In 1997 and later, the complex model shall yield no increase in exhaust toxics and NOx from the refiner's 1990 annual average.

C. A refiner's 1990 baseline will be modified for refinery work-in-progress at year-end 1990 if it can be demonstrated that

1. such a modification was significant, i.e., if at least a five percent difference between baseline emissions calculated with and without the work-in-progress resulted, and

2. such work was associated with other regulatory requirements, and

3. failure to grant credit would result in an extraordinary regulatory burden, i.e., a substantial portion of the refinery's capital would be at risk if the adjustment were not granted, and

4. such credit would not result in significant environmental harm (e.g., the credit will not cause the refiner to be five percent above the Clean Air Act antidumping baseline, etc.).

D. Anyone may petition EPA to establish an individual refinery baseline for refineries that are located in an isolated gasoline distribution system which contains a reformulated gasoline opt-in area surrounded by a conventional gasoline area, and where it is shown that significant increases in toxic emissions are occurring in the conventional gasoline area.

E. A refinery may elect to establish an individual refinery baseline.

III. OXYGENATED GASOLINE

A. While recognizing state discretion, EPA guidelines shall recommend a credit program which shall include the following:

1. Each gallon of oxygenated gasoline shall contain at least 2.0% oxygen by weight.

2. The following averaging period shall apply

a. For areas with a control period of five months or less, the averaging period shall be the control period.

b. For areas with a control period of six months or longer, the averaging period shall be three months.

3. Compliance will be determined at the terminal.

4. The control area shall consist of the applicable CMSA/MSA.

5. In the preamble to the guidance, the states shall be advised to monitor the availability of a variety of oxygenates and shall be advised to take appropriate steps necessary to reasonably assure the availability of various oxygenates in the market.

B. EPA guidance on the control period length shall be in accordance with EPA Approach II except for Grants Pass, Medford and Klamath in the state of Oregon which shall have control periods of four months from October 1 until January 31. Additionally, the length of the New York City CMSA shall be coordinated with the states of New York, New Jersey and Connecticut.

C. EPA will propose waiver guidelines and take public comment.

IV. INABILITY TO PRODUCE CONFORMING GASOLINE IN EXTRAORDINARY CIRCUMSTANCES

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner and which could not have been avoided by the exercise of prudence, diligence and due care, EPA may permit a refiner, for a brief period, to distribute fuel which does not meet the requirements for reformulated gasoline if

1. it is in the public interest to do so (e.g., distribution of the nonconforming fuel is necessary to meet projected shortfalls which cannot otherwise be compensated for), and

2. the refiner exercised prudent planning and was not able

11

to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity, and

3. the refiner can show how the requirements for reformulated gasoline will be expeditiously achieved, and

4. the refiner agrees to make up air quality detriment associated with the nonconforming gasoline, where practicable, and

5. pay the U.S. Treasury an amount equal to the economic benefit of the nonconformity minus the amount expended, pursuant to subparagraph 4 above, in making up the air quality detriment.

EPA guidance on the oxygenated gasoline program shall advise the states to consider a similar provision for oxygenated gasoline.

V. FEDERAL PREEMPTION FOR REFORMULATED GASOLINE AND ANTIDUMPING

A State may prescribe and enforce, for the purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 of the Clean Air Act so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this paragraph even if the plan for the area does not contain an approved demonstration of timely attainment.

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	<u>Cuat 17</u>	Referral Note: <u>I</u>	<u>91.07.04</u>			<u>C 91.07.10</u>
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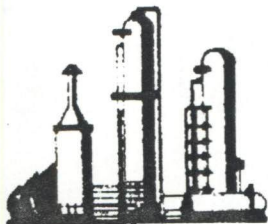
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Washington Bulletin

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7.6
NPEC-REF

June 28, 1991

Reg-Neg Poses Predicament for Refiners

A little after midnight on the morning of June 28, the final scheduled reg-neg meeting ended. In a statement issued today, the mediators announced that "The negotiators agreed on a framework for a rule, but without overall agreement on the major elements of regulations affecting the manufacture and sale of reformulated and oxygenated gasolines that are required by the 1990 Amendments to the Clean Air Act." The mediators' statement left open the possibility for a future meeting of the Reg-Neg Umbrella Group to be called by EPA, if the Agency determines there would be value to yet another meeting.

The regulations on reformulated gasoline and oxygenated fuels, to be finalized later this year, will dramatically change the way refiners manufacture gasoline in the future, with requirements for substantial capital investment.

It is important to note that no agreement has been reached on many issues, so there is no certainty that the comments below will ultimately be included in a reg-neg agreement, or in the final rule. Do not use these comments as a reliable basis for investment decisions, but feel free to use them for strategic thinking.

There was little receptivity to many of the concerns which industry raised during the four months of reg-neg as to the effect of implementing regulations on the refining industry. The framework that emerged from the reg-neg process contains the following important elements:

Page Two

Fuel Certification:

Beginning in 1995, refiners making reformulated gasoline (RFG) would use a "simple model" to certify their RFG. EPA will later issue a proposal for a "complex model"; it will be finalized no later than June of 1993. All gasoline will have to be certified under the complex model by May 1997.

The simple model would be based on a 2.0% oxygen content and a 7.2 psi RVP for Class B areas (the South) and 8.1 psi for Class C areas (the North). Under the simple model, the other important parameters that will come into the complex model (i.e., sulfur, T-90 and olefins) would be capped at the 1990 individual refiner annual average.

Refiners wishing to avoid the simple model caps by certifying via the complex model will be able to do so beginning in 1995. But the performance of fuels certified this way could not be less than under the simple plus complex model. The complex model will satisfy the year 2000 performance standards, as well as the earlier clean fuel requirements.

The requirement of the law that there be no increase in NOx emissions is dealt with by EPA's approving the use of all oxygenates in quantities of up to 2.1%, with MTBE use permitted at 2.7%. There is to be an expeditious approval process for other oxygenates, and an option to use the complex model for NOx at any time. Vehicle testing will be permitted, but is only for "new" parameters, i.e., those outside the simple and complex models.

RFG Enforcement:

The focus of enforcement issue was on averaging of VOCs and toxics. For VOC averaging, under the simple model in 1995-96, for Class B areas, the base standard for RFG is 7.2 RVP plus 2.0% by weight oxygen. Averaging would be done at the refinery level. Those volumes that are averaged (rather than being right on the 7.2 RVP "spec") in the simple model, would have to average 7.1 RVP, as an extra environmental "margin of safety." No batch of gasoline made by a refiner to be put into

Page Three

distribution could exceed 7.5 RVP. The 0.3 psi enforcement tolerance recommended by the oil industry was seen by the environmentalists as too large, and EPA agreed to develop a test protocol to reduce the tolerance. Refiners could elect per gallon compliance, or could elect the complex model to bypass the averaging limits. There would be no PADD or sub-PADD divisions required for averaging, nor would there be a limit on what percent of reformulated gasoline made by a refiner could be averaged. The high ozone season would be the averaging period.

As a concession to the environmentalists, EPA agreed to develop a proposal to survey the individual ozone control areas on a frequent basis. If it were found that an area was high on average RVP (7.4 or 7.5), it would indicate a "spike", and there would be an automatic ratcheting down of the flexibility (what little there is), with a lower RVP for averaging and a lower maximum RVP. The law requires that RFG show a 15% reduction in aggregate VOC emissions from baseline gasoline in 1995. For VOC averaging when the complex model is in place in 1997, every gallon of gasoline would have to measure a minimum 12.5% reduction in VOCs. If VOC averaging is used, then the performance standard for the averaged gallons would have to be 1.5% greater, i.e., a 16.5% reduction in VOCs.

Averaging of toxics for RFG would be permitted, but with comparably stringent criteria. The benzene content of RFG must average no more than 1.0% by volume. Benzene content of RFG that is averaged would have to be at 0.95%. The maximum benzene content permitted in any gallon sold at retail would be 1.5%. The law requires that RFG average 15% emissions reduction from baseline gasoline. Toxics would be averaged annually, but with quarterly reporting. For RFG that is averaged for its toxics content, the performance standard would have to be 1.5% greater than required by the law for non-averaged gasoline, i.e., 16.5%.

Oxygenated Fuels:

Each gallon of oxygenated fuel for the 41 CO non-attainment areas would have to contain a minimum 2.0% by weight oxygen. Oxygen content would have to average a minimum of 2.7% over the averaging period. The averaging period would be the full control period specified by EPA if the

Page Four

specified period is less than or equal to 5 months. If the specified control period is greater than 5 months, the averaging period would be 3 months.

Antidumping:

Antidumping will focus on exhaust toxics, since VOC's are reduced as the result of Phase II RVP. For 1995 and 1996, sulfur, olefins and T-90 would be capped at the refiner's 1990 annual average. For 1997 and later, a refiner must use the complex model to predict exhaust toxic increases. There would be an option for a refiner to avoid its 1990 caps by using the complex model in 1995 and 1996. There will be a provision, although very tightly constrained, for "work in progress". Any adjustment to baseline for work in progress could not result in a baseline more than 5% higher than the national average 1990 baseline. There would be a requirement that substantial capital be at risk as a percentage of total refinery depreciated value before an adjustment for work in progress would be made. There would be a tightly constrained provision for the "Salt Lake City" phenomenon, referring to concerns about localized dumping that might result from a nationally based antidumping program.

Variances:

The proposal that NPRA brought to the table urging relief for extreme circumstances, such as those that trigger contractual "force majeure," was recast as guidance for enforcement, rather than as a regulatory provision. It was agreed there would be further effort to tighten the criteria for allowing variances.

EPA staff is preparing a draft written proposal to fill in more of the details in many of the areas discussed above.

Now that reg-neg is over, we at NPRA wish to express sincere appreciation for the unflagging efforts of the refining caucus members. They have made a valuable contribution to the process.