ENERGY MARKETERS OF AMERICA EMA

September 12, 2022

Environmental Protection Agency
Mail Code: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted Electronically

Attention: Docket ID No. EPA-HQ-OAR-2020-0371

Re: Comments on the "National Emission Standards for Hazardous Air Pollutants: Gasoline Distribution Technology Review and Standards of Performance for Bulk Gasoline Terminals Review: Proposed Rule"

Introduction

EMA is a federation of 47 state and regional trade associations representing small business energy marketers throughout the United States. Energy marketers represent a vital link in the downstream petroleum distribution chain. Operating exclusively below the terminal rack, EMA members supply 80 percent of all finished petroleum products sold nationwide including gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel and lubricating oils. Moreover, petroleum marketers represented by EMA own and operate approximately 60,000 retail gasoline stations nationwide along with thousands of small intermediate bulk plants servicing wholesale accounts. EMA members also supply heating fuel to more than 5 million homes and businesses.

Comments

EMA appreciates the opportunity to comment on the EPA's proposed rule[1] to revise National Emission Standards for Hazardous Air Pollution (NESHAP) requirements for bulk gasoline storage tanks, loading operations, and equipment leaks[2].

Bulk Plants Operated by Small Business Energy Marketers

EMA members typically operate small intermediate bulk plants with anywhere from 1,000 to 40,000 gallons storage capacity to supply their wholesale customer accounts. Wholesale customers include

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[1] Federal Register for Friday, June 10, 2022 (87 FR 35608) (FRL-8202-01-OAR)

[2] The source categories that are the subject of this proposal are Gasoline Distribution regulated under 40 CFR part 63, subparts R and BBBBBB and Petroleum Transportation and Marketing regulated under 40 CFR part 60, subpart XX.

farmers, state and local government entities, private fleet operators, school bus contractors and car dealerships, among others. While these small bulk plants are primarily used for diesel fuel, heating oil and kerosene storage, it is not uncommon for one tank to store small quantities of gasoline.

There are several reasons why small business energy marketers require gasoline storage at their bulk plants. Intermediate gasoline storage is required when terminals are too far away to make daily runs from the terminal rack directly to end users. Instead, transport vehicles pull up to 14,000 gallons of fuel from the terminal and off load at an intermediate bulk plant for later delivery to end users.

Typically, the daily *gasoline* throughput for small intermediate bulk plant facility ranges from a few hundred gallons up to a several thousand gallons per day. It is not uncommon, however for these small bulk plants to have many days with zero gasoline throughput.

Another reason for the necessity of intermediate bulk gasoline storage is cargo tank vehicle size prohibitions. Typically, gasoline bulk plant owners use smaller top loading bobtail trucks (straight cargo tank trucks without a trailer) with a capacity of 4,000 gallons or less to deliver gasoline to wholesale accounts. These sized down cargo tank vehicles are used due to the small volume required by wholesale customers. Unfortunately, most terminal facilities will not allow smaller bobtail cargo tank vehicles to pull fuel from their racks. Terminals require cargo tank trucks to be equipped for bottom loading and have a capacity of more than 4,000 gallons. Terminals put this prohibition in place to maximize their daily throughput volume by reducing the number of smaller tank vehicles waiting in line at the terminal rack to fill up. Servicing wholesale accounts with large transport cargo tank trailers is not possible because of the small volume wholesale customers can accommodate at one time.

Impact of NESHAP Proposals on Small Business Energy Marketers

EMA believes that the EPA has significantly underestimated the economic impact of the proposed rule on small business energy marketers. In a recent survey of 650 small bulk facilities: 72 percent of respondents indicated they would *shut down or stop selling gasoline at* one or more bulk plants if they were required to upgrade with vapor balancing equipment; 14 percent indicated they were already equipped with vapor balancing; while the remaining 14 percent were either unsure if they would upgrade or did not answer the question. Most of these bulk plants use top loading with a far smaller number using bottom loading.

EMA would also like to point out that maximum daily *design* throughput is an inaccurate way of defining compliance threshold since it is not representative of *actual* daily through-put. When analyzing tank size from 88 respondents in the survey with just one bulk plant: 26 percent had tank sizes greater than 4,000 gallons but less than 10,000 gallons; 56 percent had tanks less than 20,000 gallons but greater than 10,000 gallons, and 16% had tanks greater than 20,000 gallons. While the tank size suggests maximum design throughput more than 4,000 gallons per day, 84% of these respondents reported actual daily throughput of far less than 4,000 gallons. One respondent, with a 16,000-gallon tank reported an average daily throughput of just 127 gallons. Dropping the current compliance threshold from 20,000-gallon maximum daily design threshold to 4,000 gallons 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. Small business energy marketers fill a gasoline supply niche that larger gasoline distribution facilities ignore due to low volume.

Changing the maximum daily design threshold from 20,000 to 4,000 gallons for compliance with vapor balancing requirements would force many small energy marketers out of the wholesale gasoline market. As a result, farmers, state and local governments, fleet operators, and a host of additional customers would be left without a reliable source of fuel supply.

EPA Must Accurately Measure Compliance Costs for Small Business Energy Marketers

The Congressional Findings and Declaration of Purposes in the preamble of the Regulatory Flexibility Act[3] (RFA) requires the EPA to, among other things, recognize the differences and scale of resources of regulated entities to avoid an adverse impact on competition in the marketplace. The practice of treating all regulated businesses as equivalent leads to the inefficient use of agency resources, enforcement problems and in some cases to actions inconsistent with legislative intent according to the preamble. Finally, the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses and small organizations.

EMA believes the EPA did not achieve these goals when developing the proposed NESHAP standards for small gasoline bulk plant facilities. Reviewing the docket resulted in no evidence of outreach to small business gasoline bulk plant operators of the type EMA represents. Many of the large gasoline distributors were consulted on numerous occasions, however.

The lack of outreach is evidenced in the RFA certification in the proposed rule where the agency determined that only 111 small entities are affected to the proposed amendments. In fact, an EMA survey conducted over a short one-week period resulted in 209 entities responses. Most of those respondents, said the proposed amendments would have a *significant economic impact* on their businesses and would result in the closure of hundreds of gasoline bulk plants relied on by an array of small business entities for their fuel needs. EMA estimates that there could be close to 1,000 small gasoline bulk plant facilities in operation nationwide.

EMA is also concerned that cost estimates in the docket are outdated. Some cost documents dated back to 2006 and before. While the agency extrapolated previous estimates by adjusting for inflation, many of the assumptions used in these cost estimates may no longer be accurate or relevant.

Finally, using a maximum daily design throughput as a threshold for compliance is not an accurate or meaningful method to control emissions of hazardous air pollution from small gasoline bulk plants. EMA believes actual daily throughput averaged over a month is a better method to establish a compliance threshold and will not place a heavier regulatory burden on small bulk plants than is necessary.

[3] 5 USC §601 et seq (2020)

Conclusion

EMA believes that until the EPA can better quantify the number of small gasoline bulk plants affected by the proposed amendments, their imposed costs and economic impact, the 20,000-gallon maximum daily design throughput should be maintained, and no new requirements imposed on these entities.

EMA is willing to work closely with the EPA to collect such information to ensure that interests of small business gasoline bulk plant operators are fairly considered in the proposed rulemaking.

Please contact me at (202) 487-4536 or mmorgan@emamerica.org with any questions or information requests.

Sincerely,

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