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October 28, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

I write you to urge the Environmental Protection Agency (EPA) to withdraw its proposed amendments to a variety of refinery Maximum Achievable Control Performance Standards (MACT) and New Source Performance Standards (NSPS), collectively referred to as the Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards (RTR). The EPA is proposing new control requirements for flares, storage tanks, coking units, and fenceline monitoring at petroleum refineries. These regulations are not justified by risk assessments and will result in an increase in the cost of producing gasoline; further, with these regulations, EPA has again failed to comply with the employment impact analysis requirements of Section 321(a) of the Clean Air Act. In the interest of American consumers and EPA compliance with both the law and the President's Executive Orders 12866 and 13563 concerning the principles of sound regulation, I urge you to withdraw these rules.

A key principle of sound regulatory policy is that regulations be pursued only when they are targeting significant, scientifically identified risks that cannot be otherwise addressed. In 2008, when EPA last developed an RTR rulemaking for refineries, EPA elected to take no regulatory action, citing that the public health and environmental risk of refinery operations around the country were within an adequate margin of safety and did not require additional regulation. Under the Obama Administration, EPA conducted a massive data collection effort, assessing the same risk characteristics, and while the Agency established a nearly identical risk assessment as the 2008 rulemaking, it pursued the opposite course and elected to mandate additional, costly requirements on the industry. As written, the RTR dismisses the instructions within EO 12866 that "agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need." The Clean Air Act does not mandate these regulations and EPA has failed to justify why they are "necessary by compelling public need."

It is good that air quality has improved so significantly in the United States over the past thirty years, and a large part of this improvement is a direct result of efforts by U.S. refineries and petrochemical manufactures working collaboratively with the EPA since passage of the Clean Air Act Amendments of 1990, which I cosponsored and supported. In fact, since 1990, total hazardous air pollutants have declined in the refining industry by nearly two-thirds; fugitive

hazardous air pollutants have declined by 80%. This has come on the back of nearly $250 billion in investments by the industry to ensure its facilities and operations are clean and safe. Despite the clear trend in reductions and history of industry collaboration, EPA is now proposing requirements without industry buy in that are not justified by any compelling need. As a result, these proposed rules will do little more than put upward pressure on gasoline prices and further strain the pocketbooks of American families; by EPA's own admission, any health benefits of this rule will be negligible.

EPA's approach to fenceline monitoring also fails to comply with EO 13563, which mandates that agencies take a regulatory approach that "reduce burdens and maintain flexibility and freedom of choice for the public." Instead, EPA took a one-size fits all approach that is too broad; it fails to account for the specific conditions at the regional and local levels, opting instead to impose a fenceline monitoring requirement on all refineries, regardless of location of sources (either inside or outside the refinery) or risk to surrounding communities. EPA should tailor its rule to those refineries in higher risk areas instead of needlessly imposing the requirement on all refineries.

The new requirements EPA is proposing on new flaring equipment also provide little to no reductions in air emissions. These requirements will also restrict refiners' ability to use flares without penalty, even though the principle design of this technology is to minimize the impact refining operations have on the environment. In this sense, these new regulations could actually be counterproductive to the EPA's stated goals. Additionally, pressure relief valves (PRVs), which act as safety devices and are present at many refineries, cannot be used without being subject to environmental violation in the event of a rare overpressure emergency thus putting the refinery and communities at risk; EPA should not punish refineries with Clean Air Act violations for periodically taking appropriate steps to protect worker and public safety, such as using PRVs. This requirement will prohibit the PRVs' ability to deliver the safe working conditions they were installed to protect. It is not sound policy to have conflicting safety and environmental mandates – they should be synergized, and EPA needs to take steps to ensure this.

Furthermore, EPA's proposal for a new standard for coker unit depressurization is too strict, and EPA's timeline for adoption of the new requirement is too aggressive. Together, the requirement and timeline dramatically increase the cost of compliance, which industry has estimated is significantly higher than EPA's estimated compliance cost for the entire rulemaking.

Not surprisingly, EPA has underestimated the cost involved with controlling emissions through these regulations, and the identified costs are not justified by the incremental benefits at hand. EPA estimates that these rules will cost $240 million; however, industry experts' conservative estimate is between $10 billion to $15 billion over the next ten years with few environmental benefits. In any event, EPA did not take the time to quantify the expected benefits that may come as a result of reducing the emissions targeted by this rulemaking; rather, EPA is asking the American people to 'trust them' that the regulations are justified. This is unacceptable and again brings into question the need for the regulations; if EPA, which is known for exaggerating the benefits of its rules, cannot determine the financial benefit it believes these rules will bring the economy, then it is reasonable to presume that any benefits will be negligible.

It is also worth noting that EPA stated in its analysis that many of the refineries that will be impacted by the rules have never posed a health risk to their surrounding communities. This raises a troubling question of judgment, as EPA may actually be increasing fear of a potential public safety threat simply by mandating controls that are not necessary.

Lastly, EPA has failed to evaluate the effect these rules will have on the cumulative employment impact of EPA's rules. This requirement is set out in Section 321(a) of the Clean Air Act, which states that "the Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement" of the law. EPA has failed to comply with this section and should amend the rules to account for (1) the cumulative employment impact of all its existing regulations, and (2) how these rules will add to that.

The need for these regulations has not been articulated by EPA, nor do the rules satisfy the bipartisan principles of regulating that have been well established for decades. With these rules, EPA is also perpetuating its refusal to comply with the entirety of the Clean Air Act, and for these reasons, I urge EPA to withdraw the rule.

Sincerely,

James M. Inhofe
United States Senator