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March 23, 2020

The Honorable Andrew Wheeler, Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Wheeler:

On behalf of the members of the American Petroleum Institute,<sup>1</sup> I would like to thank you for your efforts at the Environmental Protection Agency to assist in our nation's response to the global crisis arising from the COVID-19 pandemic. The oil and natural gas industry, like other critical infrastructure sectors, is working tirelessly to help ensure there is no interruption in our supply chains as a result of these unprecedented circumstances. We play a critical role in providing affordable and reliable energy, which is essential to maintaining our national security and will help drive our economic recovery. As indicated in a letter dated March 20<sup>th</sup> from API President and CEO Michael J. Sommers to President Donald J. Trump (attached), there are two potential overarching issues that may affect our industry: critical infrastructure designations and temporary relief through non-essential compliance discretion. The purpose of this letter is to specifically address the issues within your agency's purview associated with non-essential compliance discretion.

### **Non-essential Compliance Discretion**

The oil and natural gas industry remains committed to prioritizing safe and reliable operations, but is taking into consideration that there may be limited personnel capacity

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<sup>1</sup> API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.

to manage the full scope of the current regulatory requirements. As such, we are requesting assistance from your agency in temporarily waiving non-essential compliance obligations, and we request coordination with your state agency counterparts as necessary. As indicated in the letter to President Trump, these issues may include recordkeeping, training or other non-safety critical requirements.

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking Federal and State agencies to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with:

- Quarantine/treatment due to employee exposure to COVID-19;
- Measures taken by the industry to avoid COVID-19 transmission and spread;
- Good faith attempts by the industry to comply with national, state or local edicts related to controlling the virus;
- Addressing the risks of continuing to conduct routine agency inspections; and
- Contractor availability and supply chain disruptions related to all of the above.

Individual company requests for relief would be burdensome to file and track and a more holistic approach may be necessary in an unprecedented situation such as the one we are facing. Nonetheless, industry will make efforts to comply with requirements, but obviously the situation may limit some activities.

Additionally, many of the nation's petroleum refineries are parties to one or more state or federal judicial or administrative consent agreements or decrees with the U.S. EPA and/or its state counterparts. These agreements generally include force majeure clauses which require the settling party to notify the government of known or anticipated compliance delays within tight timeframes. Failure to meet the prescribed notification timeframe often voids any enforcement protection the settling party might otherwise have under the agreement. These hurdles become particularly problematic in the current climate of the COVID-19 disease, where delays in meeting settlement

requirements might occur due to workforce impacts or reductions or other disruptions that are difficult to predict and continue to evolve. They may also be complicated by the daily pronouncement of protection measures suggested or required by national, state and local governments. There may be a need for federal and state officials to work with individual companies as part of their settlement agreements.

Given the considerations associated with the importance of following CDC guidance for public health, the attached list provides detailed examples of issues for which industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic.

In closing, the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat and we thank your agency for its efforts key to this undertaking. We look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis. Thank you for consideration of the requests outlined in this letter, and please do not hesitate to contact API as we stand ready to assist in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Macchiarola", with a stylized flourish at the end.

Frank J. Macchiarola

## **Attachment: API Member Company Priority Issues for COVID-19 Response**

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking EPA to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with the identified constraints. Given the uncertainty of the severity and duration of this pandemic, the following categories of constraints have been identified:

- Category 1: Administrative constraints while working remotely
- Category 2: Physical constraints with on-site testing/monitoring requirements
- Category 3: Operability of assets

For certain constraints, we have also identified some specific potential solutions in sub-bullets.

### **Category 1: Administrative challenges while working remotely**

EPA and State Agency examples include but are not limited to:

- Wet signatures requirements on permit applications and reports, such as Title V permit applications. Responsible officials may not have ready access to printers or a DocuSign option. Clarity needed on alternatives.
- Temporary relief for notary witnessing of signatures on permits, etc.
- Potential delay to project permits due to closed state agency offices/canceled meetings that may reset the public comment period.
- Deferred permit renewal applications for expiring permits to address revised work schedules/arrangements.
- Potential to miss certifying laboratory equipment unless NIST certified instruments can be purchased and delivered in time.
- Periodic certification and reporting:
  - Deferred filing of periodic reports

- Examples include emissions inventory, emissions banking and trading, TRI reports and rule- or permit-required periodic reports.
- Filing of reports without the normal signatures (where plant manager or formal designee is unavailable).

## **Category 2: Physical challenges with on-site testing/monitoring/reporting requirements**

EPA and State Agency examples include but are not limited to:

- Waivers of seasonal fuels requirements
- Fuels reporting and compliance
  - Request waivers or enforcement discretion for late reports due to access and resource limitations for the following types of reports:
    - Annual gasoline and Renewable Fuel Standard (RFS) reports
    - EMTS Fuels ABT Credit generation and retirement for compliance with gasoline programs
    - EMTS RIN retirements for annual compliance with RFS standards
- Annual gasoline and RFS program attest engagements
- Fugitive Leak Detection and Repair (LDAR)
  - Deferred LDAR monitoring
  - Late repair times
  - Late recheck of LDAR component after monitoring
  - Delayed reporting
  - Inability to address delay of repair during unit shutdowns due to personnel, supply or external resource shortages or disruptions
- Delayed GHG reporting
- Benzene Waste Operations (BWON)
  - Deferred monitoring
  - Late repair times
  - Delayed reporting

- Potential for delayed or missed sampling required for reporting or to demonstrate exemption from control
- NSPS & MACT
  - Regulatory noncompliance due to limited onsite personnel or external resource shortages or disruptions
  - Late reports due to limited onsite personnel or external resource shortages or disruptions
  - Subpart XX tank trucks vapor tightness tests may not be available
  - Lower shipping levels could prevent enough product available to float an internal floating roof tank when refilling, resulting in a compliance issue under GD GACT or NSPS Subpart Kb
- CEMS and stack tests
  - Delayed stack and RATA testing
  - Missed or late CEMS evaluation
  - Unable to repair CEMS due to specialized knowledge vested in personnel
  - Unable to repair CEMS due to parts unavailability
  - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
  - Waive or delay 6-month smoke school recertification due to cancellation of training/testing sessions to avoid unavailability of emissions observers.
- Cooling tower sampling
  - Delayed sampling and analysis
  - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
  - Lack of lab availability
- Fence line monitoring
  - Unable to change sample tubes in a timely manner
  - Disruptions in lab shipments
  - Lab analytical delays

- Delayed reports from contractors whose employees are quarantined or in remote work arrangements
- Different verifiers for Title V obligations may be unavailable to certify compliance with the requirements
- Extend recurring/refresh deadline for Method 9 (visible emissions) certification.
- Extend deadlines for required visible emission monitoring of permitted facilities.
  
- Drinking Water Permit testing and reporting requirements
  - Provide flexibility on routine monitoring/sampling/analysis required drinking water permits.
  - Expected delays in laboratory analysis and short hold time for coliform
- Effluent inspections, sampling and reporting (NPDES and SWPPP)
  - Deferred inspections (monthly, quarterly, etc.).
  - Deferred sampling and WET testing.
  - Deferred filing of periodic reports.
  - Late lab turn-around time on sample results.
  - Missed hold-time on samples.
  - Delayed reporting.
  - Delayed annual training.
  - Contractor who typically performs grab samples is temporarily unable to access site pending medical screening.
  - Improper storage temperature.
  - Inability to collect discharge samples within specified time period due to unavailability of personnel.
  - Storm water monitoring and compliance samples within required timeframe (for rain events) may be problematic.
  - Hydrotesting – providing for pre-approval of low-risk discharges and/or a streamlined approval process. This would help prevent holding up construction and field work to get these permits as the current approval processes are likely to slow down with agencies working remotely.

- Lack of lab availability.
- NPDES/Discharge Permits (EPA/State)
  - Effluent inspections, sampling and reporting.
  - Deferred inspections (monthly, quarterly, etc.).
  - Deferred sampling and WET testing.
  - Deferred filing of periodic reports.
  - Late lab turn-around time on sample results.
  - Missed hold-time on samples.
  - Delayed reporting.
  - Contractor who typically performs daily grab samples is temporarily unable to access site pending medical screening.
  - Improper storage temperature.
- Storm Water Permit Compliance (SWPPP/SWP/Discharge Plans) (EPA/State)
  - Possible disruption of required inspections.
  - Challenges with post storm event inspections due to contractor availability.
  - Sample collection and delayed laboratory analyses.
  - Possible delay of BMP inspections and non-compliance repairs to BMPs due to limited contractor availability.
  - Delayed monitoring/annual reporting requirements
- Soil and/or groundwater remediation
  - Delayed sampling and reporting requirements.
  - Delayed project implementation.
  - Lack of lab availability.
- Tanks
  - Potential for late repairs on failed tank inspections
  - Tank inspections (deadlines and logistical issues)
  - Delayed above or underground tank inspections
- Hazardous waste management
  - Ensure that waste and hazardous waste fall under the definition of essential travel/trade.



- Deferral of movements past time limits, including 3-day satellite accumulation time limit and 90-day accumulation time limit.
    - Impacts on speculative accumulation requirements.
    - Delayed analytics and delayed waste characterization.
    - Delayed reporting of specific RCRA permit or remediation program.
    - Manifest management disruptions.
    - TSD permit noncompliance due to personnel, supply or external resource shortages or disruptions.
    - Deferral of weekly inspections.
    - Delay of annual training.
    - Potential for missed weekly RCRA inspections due to personnel shortage.
    - Temporary EPA ID number request processing.
    - Renewal of Hazardous Material Transporter ID numbers (annual; via DOT).
    - Delayed/limited analytical laboratory support for profiling.
  - SPCC
    - SPCC applicability determinations.
    - Generation of site security diagrams.
    - Secondary containment repairs.
    - Deferral of daily and monthly inspections.
    - Deferral of annual training and drills.
    - API Standard 653 integrity inspections.
  - Underground Injection Control (UIC)
    - Overall UIC compliance obligations.
    - Deferred Mechanical Integrity Testing (MITs).
    - Deferred monthly/annual monitoring requirements.
    - Surface Injection Pressure monitoring.
    - Injection fluid sampling & laboratory analyses.
    - Monthly disposal volume reporting.
  - Self-audits/disclosures (where applicable)
    - Late notices.
    - Late Disclosures of Violation and other submittals on pending audits.
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- Late implementation of corrective actions.
- Emergency response drills and mandatory equipment deployment to demonstrate emergency readiness.
- Past-due regulatory training that can only be done in a face-to-face environment, e.g. Method 9 opacity certification.
- Fees for TSCA risk evaluation
  - Manufacturers of 20 high priority chemicals required to conduct risk evaluation by May 27, 2020. Delays needed to gather information from many sources in short timeframe.
- Chemical testing requirements
  - Laboratory capacity may be affected – could impact TSCA testing requests/requirements.
- Chemical Data Reporting (CDR)
  - EPA extending CDR reporting 2 months; EPA should consider additional extensions from potential delays due to needed EPA training, electronic reporting system functioning, etc.

### **Category 3: Operability of Assets**

The industry is already prioritizing their resources for the continued maintenance of its facilities, which is a business-critical activity. This is necessary to not only provide for the safety of its constrained employee and contractor workforce, but also to continue to produce the fuels that the nation depends upon daily. Operators are continuing to obtain permits for activities that are deemed essential to the safe operation of their facilities.

Temporary relief from the agency requirements outlined in Categories 1 and 2 are not expected to result in a significant impact to human health or the environment. By providing temporary relief from those requirements, operators and suppliers will be able to prioritize their resources on those critical activities to enable the continued production of fuels and products.