

September 12, 2008. Both the Delaware River Basin Water Code and the Administrative Manual Part III Water Quality Regulations are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain or inspect a copy at the Delaware River Basin Commission (DRBC), 25 State Police Drive, West Trenton, New Jersey 08628-0360, 609-883-9500, <http://www.drbc.net>, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Dated: September 18, 2008.

**Pamela M. Bush,**

*Secretary and Assistant General Counsel.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA-HQ-OAR-2007-0011; FRL-8721-5]

RIN 2060-AN72

### Standards of Performance for Petroleum Refineries

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; reconsideration and stay of effective date.

**SUMMARY:** This action grants Petitioners' request for reconsideration and Petitioners' request for a stay until December 25, 2008 for certain specific provisions in the newly promulgated standards of performance for new, modified, or reconstructed process units at petroleum refineries. The effective date for the final rule promulgating amendments to the current standards of performance for petroleum refineries has not changed and remains June 24, 2008.

**DATES:** Effective September 26, 2008, in Title 40 CFR part 60, subpart Ja, § 60.100a(c), the definition of "flare" in § 60.101a, and §§ 60.102a(g), 60.107a(d), and 60.107a(e) are stayed until December 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency,

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#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Environmental Protection Agency published a final rule on June 24, 2008 that contained the following: (1) Final amendments to the existing refineries new source performance standards (NSPS) in 40 CFR part 60, subpart J; and (2) a new refineries NSPS in 40 CFR part 60, subpart Ja (73 FR 35838). The preamble to that rule contained an incorrect effective date and contained an error in the Congressional Review Act (CRA) statement in the Statutory and Executive Order Reviews section. To address that error, the effective date of NSPS subpart Ja was stayed for 60 days until September 26, 2008. The amendments in NSPS subpart J were not affected and remained effective from June 24, 2008.

On June 13, 2008, the American Petroleum Institute (API), the National Petrochemical and Refiners Association (NPRO), and the Western States Petroleum Association (WSPA) (collectively referred to as "Industry Petitioners") requested an administrative stay under Clean Air Act (CAA) section 307(d)(7)(B) of certain provisions of 40 CFR part 60, subpart Ja. On July 25, 2008, the Industry Petitioners sought reconsideration of the provisions of NSPS subpart Ja for which they had previously requested a stay. Specifically, Industry Petitioners requested that EPA reconsider the following provisions in NSPS subpart Ja: (1) The definition of "modification" (40 CFR 60.100a(c)); (2) the definition of "flare" (40 CFR 60.101a); (3) the fuel gas combustion device sulfur limits as they relate to flares (40 CFR 60.102a(g)(1)); (4) the flow limit for flare systems (40 CFR 60.102a(g)(3)); (5) the total reduced sulfur and flow monitoring requirements for flares (40 CFR 60.107a(d), (e)); and (6) the nitrogen oxide (NO<sub>x</sub>) limit for process heaters (40 CFR 60.102a(g)(2)). Subsequently, on August 21, 2008, the Industry Petitioners identified additional issues for reconsideration.

On August 25, 2008, HOVENSA, LLC ("HOVENSA") filed a petition for reconsideration of the following provisions of 40 CFR part 60, subpart Ja: (1) the NO<sub>x</sub> limit for process heaters (40 CFR 60.102a(g)(2)); (2) the flaring requirements, including the definitions of "flare" and "modification" (40 CFR 60.100a(c), 60.101a, 60.102a(g)-(i), 60.103a(a)-(b)); and (3) the depressurization work practice standard

for delayed coking units (40 CFR 60.103a(c)). The petition also requested that EPA stay the effectiveness of these provisions during the reconsideration process.

EPA received a third petition for reconsideration on August 25, 2008, from the Environmental Integrity Project, Sierra Club, and Natural Resources Defense Council ("Environmental Petitioners") requesting EPA reconsider several aspects of 40 CFR part 60, subpart Ja. The petition identifies the following issues for reconsideration: (1) EPA's decision not to promulgate NSPS for carbon dioxide and methane emissions from refineries; (2) the flaring requirements (40 CFR 60.100a(c), 60.101a, 60.102a(g)-(i), 60.103a(a)-(b)); (3) the NO<sub>x</sub> limit for fluid catalytic cracking units (FCCU) (40 CFR 60.102a(b)(2)); and (4) the particulate matter limit for FCCU (40 CFR 60.102a(b)(1)). Unlike the other Petitioners, Environmental Petitioners did not seek a stay of these provisions during reconsideration.

EPA has begun reviewing all of these petitions and is addressing in this notice only those issues for which Industry Petitioners and HOVENSA sought reconsideration *and* a stay of those specific provisions during reconsideration. EPA is taking no action on all of the other issues raised in the petitions but will consider all of the outstanding issues in a future notice.

In this action, EPA is granting reconsideration with respect to the following provisions: (1) The definition of "modification;" (2) the definition of "flare;" (3) the fuel gas combustion device sulfur limits as they apply to flares; (4) the flow limit for flare systems; (5) the total reduced sulfur and flow monitoring requirements for flares; and (6) the NO<sub>x</sub> limit for process heaters. We are granting reconsideration on these specific issues because the grounds for Petitioners' objections arose after the public comment period (but within the time specified for judicial review) and the objections are of central relevance to the outcome of the final rule pursuant to CAA section 307(d)(7)(B).

EPA is also granting Industry Petitioners and HOVENSA's request for a 90-day stay of the following provisions that are under reconsideration (see CAA section 307(d)(7)(B)): (1) The definition of "modification;" (2) the definition of "flare;" (3) the fuel gas combustion device sulfur limits; (4) the flow limit for flare systems; (5) the total reduced sulfur and flow monitoring requirements for flares; and (6) the NO<sub>x</sub> limit for process heaters. We are staying

the first five provisions listed above because the final approach to regulating flare emissions was first introduced in the final rule and represented significant changes from the proposal. Facilities had no chance to comment on these new requirements in the final rule. Accordingly, we have reason to believe that certain facilities may be out of compliance with requirements for which they had no notice or time to come into compliance. Moreover, a stay is appropriate because in reconsidering these requirements both the affected universe and the substantive requirements could change. It should be noted that as a consequence of staying the fuel gas combustion device sulfur limits as they apply to flares we are staying the requirement for all fuel gas combustion devices. The effect of this action is to delay compliance obligations for 90 days of the sulfur limits under NSPS subpart Ja for fuel gas combustion devices other than flares such as process heaters and boilers. Although this is not a preferred outcome, it is unavoidable due to the structure of the rule and is an unintended consequence of this action.

We are staying the sixth provision listed above because information provided by Industry Petitioners and HOVENSA has led the Agency to question whether the emission limits in the final rule are achievable and represent best demonstrated technology. The information provided has convinced us that certain facilities may suffer undue hardship in attempting compliance with this limit. Granting a stay of this requirement while we reconsider this limit is, therefore, necessary to prevent any possible harm that may occur.

EPA is denying HOVENSA's request for a 90-day stay of the depressurization work practice standard for delayed coking units. HOVENSA provided no individual demonstration regarding its need for EPA to stay this work practice standard. HOVENSA provided no specific information or explanation of why staying this provision of a nationally applicable rule is the appropriate recourse for protecting its individual facility. HOVENSA's generalized assertions of incurring compliance costs absent a stay are not enough reason for granting this request for a stay. EPA, therefore, denies HOVENSA's request for a stay of this provision.

All other requirements promulgated in 40 CFR part 60, subpart Ja become effective as of September 26, 2008.

EPA will address the substantive aspects of this reconsideration in a separate notice in the **Federal Register**.

## II. Statutory and Executive Order Reviews

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 24, 2008 **Federal Register** document.

### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this notice and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The stay of these particular provisions in NSPS subpart Ja is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Monitoring, reporting and recordkeeping.

Dated: September 22, 2008.

**Stephen L. Johnson**,  
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

### PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

#### § 60.100a [Amended]

2. In § 60.100a, paragraph (c) is stayed from September 26, 2008, until December 25, 2008.

#### § 60.101a [Amended]

■ 3. The definition of "flare" in § 60.101a is stayed from September 26, 2008, until December 25, 2008.

#### § 60.102a [Amended]

■ 4. In § 60.102a, paragraph (g) is stayed from September 26, 2008, until December 25, 2008.

#### § 60.107a [Amended]

■ 5. In § 60.107a, paragraphs (d) and (e) are stayed from September 26, 2008, until December 25, 2008.

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