May 1, 2006

Peter Tsirigotis
Director, Sector Policies and Programs Division
US EPA
Research Triangle Park, NC, 27711

Dear Peter:

API and the Independent Liquid Terminals Association (ILTA) offers the following comments on the inventory of source categories under Section 112 (c)(6) of the Clean Air Act, 42 U.S.C Section 7412 (c)(6). The only conclusion that can be drawn is that EPA should remove the Gasoline Distribution (GD) source category from the list of categories in the 112(c)(6) inventory and republish the list of (c)(6) sources. This action will effectively remove the GD source category as a candidate for regulation under 112(c)(6). API is a national trade organization representing over 400 companies involved in all aspects of the oil and natural gas industry including exploration, production, refining, marketing, distribution and marine activities. ILTA is an international trade organization representing over 70 terminal companies in the bulk liquid storage, handling and transport industry. Underlying these comments, we understand that EPA anticipates promulgating a proposed rule on the GD area sources by October 31, 2006 pursuant to a consent decree (attached) lodged in Sierra Club v. EPA, Case No. 1:01CV01537 (D. D.C May 22, 2003)

As explained more fully below, the GD source category is a negligible source of 112(c)(6) HAPs, and with a contribution of 0.02% of the inventory, it does not contribute in any meaningful way to the 90% inventory analysis of those pollutants.

Section 112 (c)(6) of the Clean Air Act instructs EPA to list categories and subcategories of sources that account for 90% of aggregate emissions of seven specific HAPs. In 1998, EPA published the first list of these categories, 63 FR 17838 (Apr. 10, 1998). In that notice, EPA stated that:

> Some area categories may be negligible contributors to the 90% goal, and as such pose unwarranted burdens for subjecting to standards. These trivial source categories will be removed from the listing as they are evaluated since they will not contribute significantly to the 90 percent goal.

63 FR 17841.

As explained in the attached letter, originally sent to Steve Shedd on December 5, 2005, EPA's original estimation of naphthalene from gasoline emissions was approximately two orders of magnitude too high. The initial data presented erroneously attributed 3.8% of aggregate emissions to GD whereas corrected data reflects a contribution of only 0.02% of the total inventory. During subsequent meetings with Peter Tsirigotis and EPA staff, API was informed

that the EPA agreed with API's corrected naphthalene emissions calculation. These data demonstrate that the GD source category is a negligible source of 112(c)(6) HAPs and does not contribute in any meaningful way to the list of sources minimally accounting for 90% of aggregate emissions for these pollutants.

Using corrected data, with 92% of aggregate emissions being addressed before reaching GD in the seriatim, and given that naphthalene emissions from GD area sources constitute a negligible contribution to nationwide emissions of polycyclic organic matter (POM), regulation under 112 (c)(6) would pose an unwarranted burden on GD facilities. Furthermore, the regulation would be both costly and ineffective in meeting the objectives of reducing emissions of pollutants in the 112(c)(6) inventory. Clearly the standard set by EPA in 63 FR 17841 (Apr. 10, 1998) cited above, providing for trivial source categories to be removed from the list, applies to GD. Therefore, EPA should remove GD area sources from its list of 112(c)(6) sources before it promulgates the GD area source rule.

Lastly, nothing in the consent decree would prevent this action. The consent decree has two sections that address potential regulation of GD area sources. Under paragraph 2(d), the consent decree states that EPA shall promulgate regulations pursuant to CAA sections 112 (c)(3) and 112 (k), apparently contemplating allowing for regulation under any appropriate authority, including 112(d)(5).[1] In contrast, paragraph 2(f) of the consent decree requires EPA to promulgate standards pursuant to CAA section 112 (c)(6). One must conclude the only way to reconcile the inclusion of both sections 112 (c)(3) and 112 (c)(6) is that EPA may regulate GD area sources under 112(c)(6) only if they are included in the 112(c)(6) 90% calculation. Otherwise, GD sources should be regulated as "regular" area source under sections 112 (c)(3) and (k), with the potential to use EPA's authority under section 112(d)(5).

This reading conclusion is reinforced by the savings clause of the consent decree. Paragraphs 8, 9, and 10 of the consent decree all expressly reserve EPA discretion to implement any sections of the consent decree in an appropriate manner. Since GD area sources are negligible contributors to the total POM emissions, it is consistent with both the express terms of the consent decree and the EPA's inherent authority to remove GD area sources from the 112(c)(6) list.

If you have any questions or comments, please contact Matt Todd via email at toddm@api.org or by phone at 202-682-8319.

Sincerely,

API and the Independent Liquid Terminals Association

CC: K.C. Hustvedt, EPA
Steve Shedd, EPA
Air Toxics Task Force
Peter Weaver, ILTA

[1] The title section of paragraph (d) refers to both 112 (c)(3) and 112(k).