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c/o Dennis Deziel  
U.S. Department of Homeland Security  
National Protection and Programs Directorate  
Office of Infrastructure Protection  
Infrastructure Security Compliance Division  
Mail Stop 8100  
Washington, DC 20528-8610

**Re: Risk-Based Performance Standards Guidance for Chemical Facility Anti-Terrorism Standards**

Dear Mr. Deziel:

As the leading national trade association for the U. S. oil and gas industry, American Petroleum Institute (API) respectfully submits the following comments and observations on the Department's draft Risk-Based Performance Standards (RBPS) Guidance for Chemical Facility Anti-Terrorism Standards (CFATS) (73 Fed. Reg. 63719, October 27, 2008). API represents nearly 400 member companies involved in all aspects of the oil and natural gas industry from exploration and production to retail marketing and distribution.

In general, API members believe that the draft RBPS provides the right level of specificity without unduly restricting a facility's ability to address its security issues in a manner and level appropriate for their specific needs. Each oil and gas facility has its own unique set of security issues based on site specific factors such as geographic location and topography, size and type of processes, and level of importance to the national energy network. In this regard, the draft RBPS guidance provides the necessary flexibility while providing specific examples of current practices and technology being used in the industry.

However, API and its members offer the following observations and suggestions regarding petroleum distribution terminals that will further enhance the draft RBPS by providing the regulated community with clearer direction on specific issues to help enhance security at their location.

Gasoline Storage and Loading Facilities (Terminals)

In general, the RBPS guidance appears to have been developed for large chemical manufacturing facilities that store and handle large quantities of covered chemicals with continuous staffing levels and

relatively few vehicles requiring access throughout the day. However, the reality is that CFATS covers a broad and diverse range of facilities. One specific example of concern is the gasoline storage and loading facility. While gasoline itself is not designated as a chemical of interest, gasoline typically includes a small percentage of butane, depending on seasonal specifications. Therefore, by virtue of the fuels mixtures rule in Appendix A, many gasoline storage and terminal loading facilities are covered by CFATS. These facilities historically have been considered low-risk sites by the industry and many are unmanned.

Currently, to gain access, authorized tank truck drivers are issued an access card and security code. This two level security system, the card and code, are used to enter the loading area and acquire a receipt of motor fuel for distribution to local retail stations for sale to consumers. These facilities can see hundreds of vehicles a day entering and accessing to the loading area. This unique type of facility makes it impractical and unnecessary to implement several of the RBPS as they are currently written due to their low risk nature. Following is a description of each RBPS that presents a concern:

#### RBPS 3 – Screen and Control Access

This RBPS requires a covered facility to restrict access by screening and/or inspecting individuals and vehicles as they enter the facility. In Metric 3.2 (Identity and Verification System) for Tiers 2, 3 and 4, guidance is offered as to how one might achieve this goal including:

- Issuance of a tamper resistant electronic ID badge with the driver's name and photo to be worn in a visible location, which is integrated with the facility's access control system.
- Escorting or monitoring all individuals without permanent ID badges.

Due to the unique nature of gasoline storage and loading facilities, the guidance offered is not practical to implement. Commercial tank truck drivers are normally independent employees and are not direct employees of the owner/operator of the facility. In addition, the drivers normally require access to numerous facilities within a geographic region, which are owned and operated by different companies. These drivers are already required to have a U. S. Department of Transportation (DOT) issued a Hazardous Materials Endorsement (HME), which requires an extensive background check that is identical to the Transportation Worker Identification Card (TWIC). In addition, many are further required to have a TWIC card as well. Further requiring an additional layer of ID is unnecessary, impractical and costly to implement.

In Metric 3.4 (Screening and Inspections), for Tiers 2-3, it is recommended that facilities have the ability to inspect all vehicles and perform random, rigorous inspections of at least 15% of all vehicles. As discussed earlier, these facilities are normally unmanned and see hundreds of vehicles daily. This could require that 15-30 vehicles be inspected at a location per day, which could take easily 10-30 minutes per inspection resulting in upwards of 2.5 - 15 hours of inspection capability per day. Requiring this level of screening and inspection at a gasoline loading terminal is impractical, unnecessary and costly.

#### RBPS 4 - Detect, Deter and Delay

This RBPS requires a covered facility to have the ability to create sufficient time between detection of an attack and the point at which the attack becomes successful. Metric 4.3 (Detection Monitoring and Surveillance) requires that Tier 4 facilities have a security patrol or an integrated monitoring system that provides intrusion detection and video surveillance. This Metric would require that a security guard be posted 24/7 at the facility or install Closed Circuit Television (CCTV) equipment and connected into a network being channeled back into a central location. Due to the low risk nature of these facilities, both

of these options would be unnecessary and would divert attention and resources away from other higher risk facilities.

Metric 4.5 (Interdiction by Security Forces or Other Means) requires that Tier 2-4 facilities have the ability to detect and initiate a response to armed intruders resulting in interdiction of the armed intruders before they can reach a Chemical of Interest (COI) target asset or other potentially critical target. This is perhaps one of the most concerning RBPS Metrics. To comply with this Metric, one would be required to have full-time armed security guards at the location. This creates an increased liability and cost, which again is unnecessary and inappropriate for this type of facility. The other concern with this metric is that it includes the phrase "...other potentially critical target." This requirement seems to imply that DHS has authority to regulate other chemicals/assets that are not listed as a COI. It also does not define the term and it is unclear what some other potentially critical target would be.

*Recommendation:*

*The API and its members recommend that DHS work with the industry to develop a more appropriate and uniform approach for gasoline storage and loading facilities that meets the intent of CFATS, while minimizing the burden on facility owners, operators and tank truck drivers.*

Thank you for this opportunity to comment on behalf of the oil and natural gas industry. We look forward to working with you as we continue to progress our efforts on security our Nation's critical assets. Please feel free to contact me if you need further explanation.

Sincerely,

Robin Rorick  
Director Security