Contractor Assistance for Proposed Tier 2 Gasoline Rule
Stakeholder Convening on Refinery Permitting Issues
Contract Number 68-W-99-010
Task Order #30

Proposed Tier 2 Gasoline Rule

Summary of the Phase II Stakeholder Convening on Refinery Permitting Issues

Submitted by

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Executive Summary

The U.S. Environmental Protection Agency (EPA) proposed the Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements Rule (Tier 2 Rules) in May 1999. During the period between the Tier 2 proposal and issuance of the final rule, EPA initiated a two-phased convening assessment to identify the key issues and associated concerns of the major relevant stakeholder groups. Phase I focused primarily on permitting issues discussed in the proposal. Phase II focused on EPA process support during permitting activities required for compliance with Tier 2 Rules.

The major relevant stakeholder groups contacted were Local Environmental/ Environmental Justice (EJ) Organizations, National Environmental Groups, Refining Industry, and State Environmental Agencies. The table below summarizes the key dynamics of these groups.

Stakeholder Group	Key Dynamics
Local Environmental/EJ Organizations	Overburdened by existing pollutants Distrust of state environmental agencies Lack of input prior to proposed rule Lack of enforcement at refineries
National Environmental Groups	Expect Tier 2 implementation with no increase in emissions Fear of breach between national and local environmental organizations
Refining Industry	Timeframe for compliance Potential for community opposition
State Environmental Agencies	Capacity to efficiently process permits

As a result of the convening assessment, three process components were recommended to assist in implementing the permit process required for compliance with the Tier 2 Rules: creation of permit teams, response to informational needs, and enhanced community participation.

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I. BACKGROUND/PURPOSE

The U.S. Environmental Protection Agency's (EPA or the Agency) proposed Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements Rule (Tier 2 Rule or the rule) is a major regulatory program designed to significantly reduce emissions from cars and light trucks nationwide. The rule is designed to help achieve significant national reductions in emissions of several pollutants, including nitrogen oxides (NOx), volatile organic compounds (VOCs), particulate matter (PM), and sulfur dioxide (SO2). These reductions will improve air quality across the country. One of the means of reducing motor vehicle emissions is through the use of low-sulfur gasoline. The proposed Tier 2 Rule sets new standards for gasoline sulfur levels, generally decreasing the sulfur content of gasoline from an average of 300 parts per million (ppm) today to 30 ppm by the year 2004.

Many oil refineries will need to make operational changes and capital investments in desulfurization technology to produce gasoline that meets the proposed Tier 2 fuel standards. These modifications may trigger permitting obligations under one or more Clean Air Act permitting programs.

Industry stakeholders have expressed concerns about the permitting process impeding their ability to meet the deadlines for production of low-sulfur gasoline. In its proposed rule, the Agency identified several permit-streamlining approaches that might be adopted to expedite the permitting process. Environmentalists and members of communities abutting refineries expressed concerns about a "streamlined permitting" process, which they expect would reduce opportunities for public involvement.

In November 1999, which was during the period between the Tier 2 proposal and issuance of the final rule, Susan Podziba and Dawn Davenport (SP&DD) completed a Phase I convening to ascertain the key issues and associated concerns of the major stakeholder groups with regard to permitting issues. As a followup, prior to issuance of the final rule, the Agency retained SP&DD to conduct a Phase II convening to focus on the potential for Agency support to the states, communities, and refineries relative to permitting issues required to implement the Tier 2 Rule. As recommended in the Phase I report, SP&DD interviewed representative individuals within each stakeholder group, but focused much of their attention on local environmental groups, given that few local environmentalists were interviewed during Phase I. During the period of November and December 1999, SP&DD interviewed 21 individuals. (See Appendix A for the List of Phase II and Phase I Interviewees.) This report summarizes the findings of the Phase II convening assessment.

II. STAKEHOLDERS AND RELEVANT DYNAMICS

The following stakeholder groups were contacted: Local Environmental / Environmental Justice (EJ) Organizations, National Environmental Groups, Refining Industry, and State Environmental Agencies.

A. LOCAL ENVIRONMENTAL/EJ ORGANIZATIONS:

The key dynamics related to this stakeholder group are:

- Overwhelming perception of being overburdened by existing pollutants;
- Distrust of state environmental agencies;
- Lack of input prior to proposed rule; and
- Perception of a lack of enforcement at refineries.

Overburdened by existing pollutants: The individuals we spoke with expressed grave concerns about the health of "fence line" communities. They do not distinguish refinery emissions resulting from Tier 2 from refineries emissions generally, or from emissions of other nearby sources such as landfills and petrochemical plants. As a result, they do not want any added emissions to their air, even if there will be a net benefit to the nation's environment.

Distrust of state environmental agencies and the refineries: There are many stories that contribute to a history of distrust between "fence line" communities and the industry and state regulators. There is a lot of frustration about being unable to protect the health of their children, of feeling lied to, tricked, and otherwise shut down in their efforts to improve their air quality. Said one interviewee, "Someone from an environmental agency once told me, 'What you smell is the smell of money.'" Some, though not all, were more trusting of EPA, but perceived it as backing off when the state issued permits despite EPA efforts to intervene.

Lack of input prior to proposed rule: There is a perception that the Agency talked extensively with industry representatives prior to developing the proposed rule, but not to the local environmental organizations. The "streamlined permitting" strategies proposed by the Agency are perceived as a means to limit public participation, and the term itself is perceived negatively.

Perception of a lack of enforcement at refineries: There are grave concerns about the level of enforcement at the plants. Over and over interviewees demanded greater enforcement of the existing regulations. One person went so far as to say that "a permit for increased emissions coupled with greater enforcement, would lead to a net decrease in emissions." Another would like to see aggressive enforcement in the form of fines that are put into an escrow account to be used to create buffer zones around the refineries.

B. NATIONAL ENVIRONMENTAL ORGANIZATIONS

The key dynamics related to this stakeholder group are:

- Belief that Tier 2 implementation can be achieved with no increase in emissions and
- Fear of a breach between national and local environmental organizations.

No increase in emissions: National environmental organizations, which strongly supported and lobbied for the Tier 2 rules, believe that the regulations can be implemented without increasing emissions, given that no refinery is operating with BACT on all equipment. Others expect that there will be reductions in the emissions of certain pollutants, such as sulphur, as a result of compliance with the Tier 2 regulations . They see industry as trying to implement the rules with the lowest expense; said one, "It's a matter of using technologies that may cost more, but will reduce the pollutants."

Relationship between national and local environmental organizations: The national organizations are concerned about "sacrificing the local communities for the environmental health of the nation." In other words, they don't want to see increases in emissions that will impact "fence line" communities. In addition, they are concerned about a breach between national and local environmental organizations and do not want to see a chasm open between the two over implementation of the Tier 2 rules. They fear that local groups may try to scuttle the rules if they expect impacts in their communities. This would put the national groups in the difficult position of either continuing to support the rules despite local communities' objections or opposing the implementation of rules they have fought hard for.

C. REFINING INDUSTRY

The key dynamics related to this stakeholder group are:

- timeframe for compliance and
- potential for community opposition.

Timing: The key issue raised by industry representatives continues to be the timeframe for compliance. They are concerned about the time it will take to complete the permit application, timing for permit approval, timing for technology manufacture, and timing for installation. Some states do not give industry clear guidance on required elements of the application and industry representatives have experienced long delays in getting information about additional required elements necessary for an application to be considered complete. Industry raised concerns about existing permit backlogs and the fact that some state agencies will be reviewing multiple permit applications. Finally, since all the refineries will need to retrofit their plants at the same time, they expect the manufacturers and contractors to suffer backlogs as well. In addition, because of a perceived tight timeframe, industry feels it will be less innovative in its approaches to complying with Tier 2 because of little time to experiment, and therefore, compliance will be more expensive.

Potential for Community Opposition: Some refineries are concerned about "fence line" communities opposing their permits and taking actions that will further reduce their time available to comply with the rules.

D. STATE ENVIRONMENTAL AGENCIES

The key dynamic related to this stakeholder group is:

- capacity to efficiently process permit applications.

Capacity to efficiently process permit applications: Most states are confident that they have the ability and human resources available to effectively manage Tier 2 implementation. However, there are great discrepancies in planning and available resources among state agencies. Some states have already met with some of the refineries within their borders to discuss Tier 2 compliance issues. Other states are overwhelmed with permit backlogs and experience a consistent turnover in staff, yet plan to give priority attention to Tier 2 permit applications.

All the state interviewees believed that they would be able to process the Tier 2 permits in a timely manner and within the timeframe necessary for industry to meet its required 2004 compliance date.

III. RECOMMENDATIONS

SP&DD recommend three process components to assist in implementing the permit process under Tier 2: permit teams, response to informational needs, and enhanced community participation.

The Agency's proposed rule discussed permit teams (Team) of federal and state officials. SP&DD support this concept, but further define its composition, method of establishment, and roles and responsibilities. A major value of such teams is that the activities and strategies can be tailored to the specific needs of the given community, refinery, and region. We expect that the Agency will need to lead the states in promoting the permit teams as described below.

SP&DD also recommend ways to respond to community informational needs and a method for enhanced community participation based on local need and degree of concern. The level of these activities should be determined by the permit teams.

A. PERMIT TEAMS

Composition: The permit teams should be composed of state and federal technical environmental staff as well as state and federal community liaisons. At locations with multiple refineries and/or histories of adversarial relations between the communities and refineries, it may be necessary to include high level state officials and EPA staff from Headquarters.

The composition of the Teams nationwide should be developed according to the distinct needs within each state. EPA staff should contact state technical staff and community liaisons to initiate a meeting to discuss permit review expectations, determine resource needs, and decide who, in addition to themselves, needs to be on the permit team. For example, they may need to add environmental justice or enforcement staff. Decisions about the permit team composition should be based on the key issues and concerns of the given communities and refineries.

Establishment of Team: Given that the team will be composed of personnel from multiple federal and state agencies, the Team should be established through a process known as partnering.

"Partnering uses team-building activities to help define common goals, improve communication, and foster a problem-solving attitude among a group of individuals who must work together."

The partnering process begins with a workshop that brings together all the individuals who will have some responsibility for attaining the goal of the group. This workshop, typically one-day long, follows a detailed agenda and is administered by a facilitator. (See Appendix B for a partnering workshop draft agenda.)

The partnering workshop results in the development of a group mission or charter, for example, a timely permit process with legitimate community involvement. Each member also identifies his/her responsibilities related to achieving this mission. The group works to identify potential problems and conflicts that might arise and to develop solutions and/or processes for dealing with such situations. Responsibilities for particular issues will be assigned. For example, a person will be identified to interact with the refinery on particular technical issues. Another person will be identified to respond to community questions and concerns. Thus, if a technical person gets a call from a community member, he will know exactly who to route the call to.

At the initial workshop, the Team will also decide on a regular meeting schedule -- weekly, bi-weekly or monthly. These regularly scheduled meetings will keep all permit team members updated on related issues and provide an opportunity to discuss potential problems early on.

The permit teams should be created nationwide to manage the Tier 2 permitting process, but the teams will localize the issues because each Team will prepare to respond to the actual expected needs relative to each facility and each permit application.

Responsibilities: Within the Permit Team there should be personnel responsible for every possible aspect of permitting. For example, if environmental justice may be an issue near a particular refinery, then that permit team should include an environmental justice expert. Whereas the state team members will maintain their responsibility for reviewing the permit, EPA team members will provide guidance on issues such as BACT and LAER and regulatory interpretation.

The members of the permit team and their associated responsibilities should be made known to both the community and the refinery. They will serve as point people for particular problems. By providing the names of who to call on the part of the public and the regulated community, information can be exchanged more readily and timely. These point people will be prepared to respond quickly and accurately when requests are made of them.

The strategies developed by the permit teams will vary from refinery to refinery, state to state, and region to region. At this point, it is not known which refineries will be able to net out of a major new source review, what technologies each will choose to apply, the reductions and/or increases in emissions, or the degree of community concern. In other words, there are too many unknowns at this point against which to recommend a standard way for all the teams to approach their missions at a national level. Thus, the

teams will decide what to do and the strategies to employ based on specific needs of communities.

B. Informational Needs

Community

Due to historical adversarial relationships among some communities and refineries, a lack of information will lead to negative assumptions and conclusions. The permit team should provide accurate information early to affected communities. Many interviewees of the local environmental organizations had little knowledge about Tier 2, though they were knowledgeable about refineries in general. This stakeholder group will need information about Tier 2, including specific information about the impact of the rule on communities adjacent to refineries as well as regional and national impacts; technological options for reducing sulfur in gasoline; and expectations concerning increases and/or decreases of particular pollutants in their neighborhoods. This information should be provided prior to the regulatory requirements of public notice for permitting.

The permit teams may decide to provide this information in writing, for example, flyers with general Tier 2 information accompanying local information, or in meetings with community leaders, or by holding public informational meetings. The community liaison member of the permit team should work to determine what and how information will be distributed to the public, what meetings, e.g. local or regional, will need to be convened, and to identify a local partner to coordinate this effort.

The permit team should notify the public of the points at which the community will have opportunities for comment and when to expect the permit application to be available. Permit team members should also clarify each of their roles relative to the permit process and invite the community to contact them directly should related issues arise. Names, toll-free telephone numbers, and email addresses for the team members should be provided.

The permit team might also include in its flyer or presentation, state and federal enforcement strategies for the industry. Since the communities believe that limited enforcement of existing rules greatly contributes to pollutants in their air, any information about existing targeted enforcement initiatives should be shared.

Industry

Permit team members should meet with the refineries early in the permit application process. The efficient application processes described by interviewees all included multiple meetings between the state and the refinery early on to determine acceptable methods, modeling requirements, etc. Some state officials are already meeting with refineries to discuss their permit applications; all others should be encouraged to do so. In addition, the refineries should be informed of the members of the permit team and each member's responsibilities relative to the permit. In this way, the refinery engineers will know who to contact when questions arise.

C. Enhanced Public Involvement

Some communities will require enhanced public involvement because of specific questions and/or issues related to their community and the permit application of the

refinery or refineries in their area. The permit team should establish the following staged response to provide enhanced community involvement. These levels of enhanced community involvement should be implemented at the judgment of the permit teams and as needs arise in the communities.

Stage 1: Informational Requests.
A community may request additional information on, for example, technology proposed by the refinery in its permit application and/or expected emissions and related health impacts resulting from such a change to the refinery. If a permit team expects this level of engagement by the community, its community involvement person should research these questions even before the community asks for it so as to be able to quickly provide the requested information to the community.

Stage 2: Technical Concerns.
Particular concerns may be expressed about technical elements of the permit, for example, a request for more stringent emission controls or backup units. The permit team should meet with and listen to the community and provide information about the particular technical issue of concern. If the community continues to expresses strong disapproval of the proposed technology and strongly favors an alternative that would further reduce emissions, the Team should meet to discuss what it will require of the refinery. If the community identifies a reasonable alternative, but not an alternative that the Team would itself require of industry, then the Team should initiate Stage 3.

Stage 3: Technical Alternatives for the Permit.
At this stage, the permit team has not decided whether or not to require in the permit a technical alternative proposed by the community, but sees value in its proposal. At this stage, the permit team should bring together the refinery, the permit team, and the community to discuss the community proposals. To do so, it may need to provide resources for technical assistance to the community, and it should retain a facilitator to assist with communications during the meeting. At this meeting, proposals would be offered by the community and the refinery regarding the issue. Attempts would be made to negotiate a solution that is acceptable to all the parties, but the state retains its authority to determine the requirements of the permit and all other parties may continue to follow the established regulatory procedures.

Appendix A: Lists of Phase II and Phase I Interviewees

Phase II Interviewees

Velma Champion, People Protecting People
Rebecca Dayries, Tulane Environmental Law Clinic
Lois Epstein, Environmental Defense Fund
Klane Forsgren, Sinclair Oil
Angela Graves, Marathon Ashland Petroleum
Grover Hankins, Texas Southern University, Environmental Law Clinic
Rueben Herrera, Texas Natural Resource Conservation Commission
Mike Krugh, Marathon Ashland Petroleum
Hilry Lance, Louisiana Department of Environmental Quality
Denny Larsen, Communities for a Better Environment
Alicia Lyttle, Tulane Environmental Law Clinic
Roy Malveaux, PACE
Gary Miller, Louisiana Environmental Action Network
Alan Newman, Washington State Department of Ecology
Mary Lee Orr, Louisiana Environmental Action Network
Vickie Patton, Environmental Defense Fund
Florence Robinson, Louisiana Environmental Action Network
Alex Sagady, Sagady & Associates
Kent Veron, Marathon Ashland Petroleum
Carolyn Woullard, Deep South Center for Environmental Justice

Phase I Interviewees

Neil Carman, Lone Star Chapter (Texas), Sierra Club,
Richard Drury, Communities for a Better Environment
Max Friedman, New Jersey Department of Environmental Protection
Monique Hardin, Earth Justice Legal Defense Fund
David Hawkins, Natural Resources Defence Council
Reuben Herrera, Texas Natural Resource Conservation Commission
Bliss Higgins, Louisiana Department Environment Quality
Robert King, Sun Company
William Luthans, Region 6, U.S. EPA
Michael McWilliams, Exxon Corporation
Robin Moran, Office of Mobile Sources, U.S. EPA
Robert Morris, Coastal/ National Petroleum Refiners Association
Mark Pike, Exxon Corporation
Gary Rabik, Sun Company
David Solomon, Office of Air Quality Planning and Standards, U.S. EPA
Wilma Subra, Louisiana Environmental Action Network
Nicholas Targ, Office of Environmental Justice, U.S. EPA

Appendix B: Draft Partnering Workshop Agenda

Self introductions
Review of partnering process
Review of permitting requirements
Develop team goals
Develop individual goals
Define success through group discussion
Identify potential problems
Identify solutions to the problems
Identify individual responsibilities
Develop a partnering charter which lists common goals and which will be agreed to by all permit team members
Determine next steps and schedule for ongoing permit team meetings