

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN PETROLEUM	)	
INSTITUTE, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 08-1277
	)	(and consolidated cases)
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	
_____	)	

**STATUS REPORT**

Respondent United States Environmental Protection Agency (“EPA”) hereby provides a status report in Cases 08-1279 and 08-1281, as ordered by this Court on March 11, 2011.

1. On August 21 and August 25, 2008, twenty-one petitioners filed four separate petitions for review of an EPA final rule titled “Standards of Performance for Petroleum Refineries; Final Rule,” published at 73 Fed. Reg. 35,838 (June 24, 2008). The Final Rule, promulgated under Section 111 of the Clean Air Act, 42 U.S.C. § 7411, sets new source performance standards (“NSPS”) that limit the emission of air pollutants from petroleum refineries. The Court has consolidated these four petitions for review into the above-captioned case.

2. In addition to the petitions for review that are pending before this Court, the petitioners in three of those cases filed petitions for administrative reconsideration with EPA pursuant to Clean Air Act Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B). EPA granted reconsideration with respect to some of the issues raised in those petitions. *See* “Standards of Performance for Petroleum Refineries,” 73 Fed. Reg. 55,751 (Sept. 26, 2008). EPA subsequently granted reconsideration of all remaining issues that were raised in the petitions for administrative reconsideration, by letter to counsel for those petitioners sent on December 29, 2009. EPA moved that this Court hold this case in abeyance while EPA conducted the process of administrative reconsideration of the Final Rule. By various orders of this Court, most recently on March 11, 2011, this case has been held in abeyance since April 1, 2009.

3. The issues raised in the petitions for reconsideration fall generally into two categories: Issues raised by petitioner states and environmental organizations (“Environmental Petitioners”), and issues raised by petitioners representing the industry that is subject to the NSPS (“Industry Petitioners”). This Status Report concerns the status of certain issues raised by Environmental Petitioners in Cases 08-1279 and 08-1281. In its Order of March 11, 2011, this Court ordered EPA to provide reports on the status of those issues every 90 days, starting on March 11, 2011. EPA filed its last such status report on September 6, 2012.

4. On March 2, 2011, EPA notified Environmental Petitioners of its final consent to a Settlement Agreement resolving the issues that those Petitioners had raised in this case. Pursuant to the Settlement Agreement, EPA agreed to sign a proposed rule by December 10, 2011, that would include, *inter alia*, standards of performance for greenhouse gas emissions from certain affected facilities at refineries (the “Proposed Rule”).

5. EPA has held five listening sessions to gain important information and feedback from key stakeholders and the public, in preparation for its Proposed Rule. Each listening session featured a facilitated round table discussion among stakeholder representatives who were identified for their expertise in the Clean Air Act standard-setting process. There was also a short period of time at the end of each session for the public to provide comments. In addition, EPA accepted the public’s written comments stemming from the listening sessions.

6. EPA issued an information collection request to petroleum refineries in support of its proposed rulemaking. The deadline for submitting information has passed and EPA is now analyzing the information received for use in its proposed rulemaking. EPA has made this data available to the public on its website at <http://www.epa.gov/ttn/atw/petref/petrefpg.html>.

7. EPA convened a Small Business Advocacy Review Panel to provide outreach to, and collect advice and recommendations from, small businesses, small

governments, and small not-for-profit organizations. The Panel outreach meeting took place on August 18. The Panel itself did not conclude or produce a Panel Report, as the scope of this rulemaking was narrowed and could therefore be certified as not having a significant economic impact on a substantial number of small entities. However, EPA will provide a summary of the outreach at the time the proposal is published.

8. On June 1, 2012, EPA signed a final rule addressing issues raised by the Environmental Petitioners in their petition for reconsideration regarding flares.

9. EPA has developed a draft proposal package to address the risk and technology review (RTR) for the Refinery sector, which includes the RTR review of 40 CFR Part 63, Subpart UUU. On September 4, 2012, the proposal package was sent to OMB to begin the interagency review process.

10. EPA has concluded the external peer review regarding refinery flare performance and has made available to the public the report that went to the review panel, the charge questions to the review panel, and the peer review panel responses. EPA is currently analyzing the options for addressing combustion efficiency and is considering the responses from the flare peer review panel.

11. While EPA continues to work diligently on the rule envisioned by the Settlement Agreement, EPA was not able to complete the Proposed Rule by

December 10, 2011. EPA's progress on the Proposed Rule justifies the continued abeyance status of Cases 08-1279 and 08-1281.

Respectfully submitted,

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Dated: December 5, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2012, I filed a copy of the foregoing Status Report with the Court's Electronic Case Filing system. All counsel are registered to receive service through that system except the following, who will be served by U.S. Mail sent on December 5, 2012.

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