

September 23, 1997

Ms. Carol M. Browner
Administrator
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Administrator Browner:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel convened for EPA's proposed rulemaking entitled "**Effluent Limitations Guidelines and Standards for the Transportation Equipment Cleaning Industry.**" These proposed regulations are currently being developed by the Environmental Protection Agency (EPA) under the Clean Water Act sections 304 and 307. They will control the direct discharge of pollutants to surface waters of the United States, as well as the indirect discharge to publicly owned treatment works (POTWs) of pollutants that pass through or interfere with their operations, by establishing, for the first time, effluent limits and pretreatment standards for transportation equipment cleaning facilities.

The Panel was convened on July 16, 1997, by EPA's Small Business Advocacy Chairperson, Thomas E. Kelly, under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The other members of the Panel are Sally Katzen, Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB); Jere W. Glover, Chief Counsel for Advocacy of the Small Business Administration (SBA); and Sheila E. Frace, Acting Director of the Engineering and Analysis Division in EPA's Office of Water.

It is important to note that the Panel's findings and discussion are based on the information available at the time the report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process and from public comment on the proposed rule. Any options the Panel identified for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound, and consistent with the Clean Water Act.

Summary of Small Entity Outreach

The proposed effluent limitations and pretreatment standards for transportation equipment cleaning facilities would apply to facilities that generate wastewater from cleaning the interior of tanks. Transportation equipment cleaning is performed for tank trucks, rail tank cars, tank barges, intermodal

tank containers, intermediate bulk containers, ocean/sea tankers, hopper trucks, hopper rail cars, and hopper barges. This rule would apply to tanks that transport commodities such as chemicals, food, and dry bulk products such as grain.

Since the inception of this project in 1992, EPA has solicited input from the industry, other federal agencies, the States, municipalities, and the environmental community to ensure the quality of information, understand potential implementation issues, and explore regulatory alternatives. EPA has performed 39 site visits and 20 sampling episodes at transportation equipment cleaning facilities. EPA has also participated in numerous meetings, seminars, and workshops that included substantial small business representation. A more complete summary of EPA's outreach activities is contained in the enclosed Panel report.

In April of this year, EPA decided to convene a Small Business Advocacy Review Panel for this proposal due to the large number of small businesses potentially affected by the regulation. In May, four small entity representatives (SERs) were identified by EPA to formally advise the Panel on this proposed rulemaking. Throughout the development of the proposed rule, EPA has involved these SERs in many aspects of regulatory development, from questionnaire design to identification of regulatory options and compliance issues. An additional SER identified by the SBA Chief Counsel for Advocacy and one identified through a public meeting in May were included in recent outreach activities such as reviewing the projected impacts of the proposal on small businesses and advising the Panel on regulatory alternatives to minimize these impacts. The SERs received extensive background materials about the transportation equipment cleaning industry and the proposed regulation. A meeting for the SERs was held July 2, 1997, to discuss the background materials and address questions. The Panel also met with the SERs by conference call on August 13, 1997.

Altogether, four SERs provided written comments to the Panel. The full Panel report summarizes their comments, oral and written; appends their written comments; and lists all of the materials provided to the SERs. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

Panel Findings and Discussion

Under the RFA, the Panel is to consider four regulatory flexibility issues related to the preparation of an Initial Regulatory Flexibility Analysis (IRFA) to determine the potential impact of the rule on small entities: (1) the type and number of small entities to which the rule will apply; (2) record keeping, reporting and other compliance requirements applicable to those small entities; (3) the rule's interaction with other Federal rules; and (4) regulatory alternatives that would minimize the impact on small entities consistent with the stated objectives of the statute authorizing the rule. The Panel's findings and discussion with respect to each of these issues are summarized below.

Type and Number of Affected Small Entities. Based on a survey of the industry, EPA estimates that 692 transportation equipment cleaning facilities will be affected by this rule. Of these, 191 facilities are owned by small businesses, based on a small business definition for this industry of \$5 million in annual revenues¹. The Panel discussed an SER concern that the estimated number of affected facilities (and small entities) that would fall within the scope of the Tank Truck Chemical Subcategory may not include all cleaners of intermediate bulk containers (IBCs) and noted differences between EPA and SER estimates of affected shipyards. EPA intends to work with SERs to identify additional facilities that may be covered solely due to their cleaning of IBCs and additional shipyards that may be missing from EPA's database, and solicit comments and information on the number of affected facilities in the preamble to the proposal. The Panel also discussed SER concerns relating to the type of facilities that will be covered by the proposed rule. EPA does not currently intend to cover repair facilities that clean transportation equipment as part of repair operations, captive facilities that commingle cleaning wastewaters with production wastewaters for combined treatment, or facilities already covered by other effluent guidelines.

Record keeping, Reporting and other Compliance Requirements. The proposed rule will not contain specific record keeping or reporting requirements. EPA intends to issue guidance to local permitting authorities recommending that they use the monitoring frequencies suggested in the preamble, which are less than those generally imposed by permitting authorities, when issuing permits to facilities in this industry. Prior to proposal, upon making a final decision on which pollutants will have effluent limitations, EPA will re-evaluate and verify the costs associated with compliance in consideration of the comments made by one of the SERs. EPA will fully document all models and assumptions used to predict compliance costs, and will solicit comment on these models and assumptions.

Interaction with Other Federal Rules. The Panel received comments that the economic assessment for the proposed rule does not account for Clean Air Act compliance costs imposed on tank barge cleaning facilities in ozone non-attainment areas in the fall of 1996. The Panel recommends that EPA perform a sensitivity analysis to determine if these additional costs would likely change the regulatory options recommended for proposal, and obtain information that would allow this additional expense to be factored into the economic analysis before promulgation.

Regulatory Alternatives. Supporting the preferred EPA option for the hopper, petroleum, and indirect food grade subcategories of no regulation, and recognizing that the preferred EPA option for the direct food grade subcategory is not projected to have a substantial effect on small businesses, the

¹ Because facilities potentially affected by this rule are included in multiple SIC codes, there is no single SBA definition of a "small business" that would apply to all covered facilities. EPA based its analysis of small business impacts on one of the SBA size standards applicable to this industry, which ranged from annual business entity revenues of \$5 million to \$20.5 million and employment of 100 to 1,000 employees.

Panel focused its discussions on the most impacted subcategories--the chemical subcategories. The Panel invested a great deal of effort in examining the characteristics of these subcategories (particularly the largest subcategory, truck/chemical) in hopes of developing specific recommendations for a small business exemption that could be proposed without jeopardizing the pollutant removals and environmental benefits anticipated as result of this regulation.

The Panel notes that EPA's recommended treatment technology for the truck/chemical subcategory is considerably more advanced than its recommended technology for the rail/chemical subcategory, and recommends that EPA examine the effects on costs and removals of applying less advanced technologies to facilities in the truck/chemical subcategory. The Panel also recommends that EPA take the following actions to provide additional information to explore regulatory alternatives: (1) solicit comment on specific control and treatment alternatives that are less expensive than those considered by the Agency for the chemical subcategories, but still remove a significant share of toxic pollutants; and (2) include a clear discussion of the analysis EPA has conducted to date on the economic impacts and related removals of alternative treatment technologies.

The Panel also discussed the concern raised by one of the SERs regarding the small pollutant loadings being contributed by intermediate bulk containers (IBCs), and the SER recommendation that IBCs be exempt from coverage under the regulation. The Panel recommends that EPA evaluate any information related to discharges from IBCs to determine if facilities that clean IBCs but no other transportation equipment warrant regulation. SBA further recommends, based on SER comments, the insignificant pollutant loadings, and the significant small business economic impact, that wastewater generated by IBCs be exempt from this rulemaking.

SBA also raised concerns regarding whether the pollutant loadings in the rail/chemical and truck/chemical subcategories are representative of those subcategories, noting that seven pesticides alone account for the vast majority of the pollutant loadings in those two subcategories. EPA is currently reexamining loadings estimates to ensure that they are representative for those two subcategories. Once these loading estimates are reexamined, the Panel recommends that EPA request comment on whether or not the loadings of non-pesticide chemicals warrant regulation. SBA recommends that EPA employ pesticide-only subcategories in the proposal instead of the EPA proposed subcategories that include all chemicals, in order to increase the cost-effectiveness of the rule and reduce small business burdens.

Small Business Exemption. Based on EPA's analysis to date, it appears that the rule may have a significant economic impact on a substantial number of small businesses. Although the Agency's modeling projects no firm closures as a result of the rule, EPA's analysis indicates that compliance costs are high, relative to revenues and cashflow, for many of the small businesses. EPA believes that despite these results, the recommended options will be economically achievable through price increases. Given the uncertainty inherent in modeling future market responses, however, the Panel remains concerned

about the magnitude of the estimated compliance costs for the proposed rule relative to the sales and income of small firms.

The Agency has so far been unable to identify a small business exemption that would provide economic relief without also eliminating a significant portion of the potential benefits. Some small firms that specialize in equipment cleaning contribute significantly more pollutant loadings than larger firms that perform only a limited amount of cleaning incidental to their primary line of business. The Panel notes, however, that baseline pollutant loadings from facilities in this industry are modest relative to those from facilities in most other industries for which effluent guidelines have been promulgated.

The Panel thus recommends that EPA continue to work on developing a small business exemption. One option would be for the Agency to propose and take comment on an exemption for firms with revenues under \$5 million, including a discussion of the effects of such an exemption on both economic achievability and pollutant removals. Alternatively, the Agency might wish to propose an exemption based on some other variable, such as wastewater flow or tanks cleaned, that would target firms with low pollutant discharges while still providing economic relief to the most economically vulnerable.

Sincerely,

/S/

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/S/

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Enclosure