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May 24, 2013

*VIA ELECTRONIC MAIL*

Suzanne Rudzinski  
Director  
Office of Resource Conservation and Recovery  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Re: Electronic Manifest (e-Manifest) Rulemaking

Dear Ms. Rudzinski:

The American Petroleum Institute (API) appreciates the opportunity to provide input to the U.S. Environmental Protection Agency's (EPA's) development of an electronic system for hazardous waste manifests (e-Manifest). API is a national trade association representing more than 500 member companies involved in all aspects of the oil and gas industry, including exploration, production, refining, transportation, distribution, and marketing of petroleum and petroleum products. Our member companies have been stakeholders in numerous Resource Conservation and Recovery Act (RCRA) rulemakings and follow all issues related to waste management. Petroleum industry facilities generate hazardous wastes and are responsible under RCRA for properly manifesting those wastes.

API appreciates the challenge EPA faces in developing the e-Manifest system under strict statutory deadlines and is generally supportive of the development of an e-Manifest system that reduces paperwork burdens on regulated entities. API offers the following seven comments regarding the e-Manifest system:

- 1. EPA's process for developing the e-Manifest rule does not allow for adequate public input and, at a minimum, EPA should release a draft rule for public comment.**

- 2. E-Manifest information should be made publicly available in a way that balances the need for public transparency with legitimate concerns about confidential business information (CBI).**
- 3. EPA should strongly encourage states to eliminate requirements for manifests to be sent to state agencies and associated manifest fees.**
- 4. EPA should ensure that redundancies or conflicts between the EPA e-Manifest system and state manifesting requirements are reduced or eliminated.**
- 5. Enforcement using the e-Manifest system should be undertaken in a manner that does not undermine the system.**
- 6. EPA needs to coordinate with DOT on how users of the e-Manifest system can meet DOT requirements at the same time.**
- 7. Hard copy recordkeeping and biennial reporting are unnecessary under an e-Manifest system.**

Below we have expanded on each of these comments.

- 1. EPA's process for developing the e-Manifest rule does not allow for adequate public input and, at a minimum, EPA should release a draft rule for public comment.**

The Administrative Procedures Act (APA) requires EPA, before issuing a final rule, to publish a notice of proposed rulemaking that includes "either the terms or substance of the proposed rule or a description of the subjects and issues involved."<sup>1</sup> EPA has never published a proposed rule for a centralized e-Manifest system. The 2001 proposal (66 FR 28240), which the Agency is relying on as the proposed rule for the planned October 2013 final rule, described a decentralized approach in which EPA would merely establish technical specifications for an electronic manifest system and various private parties would develop their own systems using these specifications. This bears little resemblance to EPA's current approach to develop and maintain a centralized e-Manifest system on a national basis. Therefore, the 2001 proposal does not include "either the terms or substance" of the rule or a "description of the subjects and issues involved." It fails to meet the APA requirements.

While EPA subsequently issued two separate Notices of Data Availability and Request for Public Comments (71 FR 19842 and 73 FR 10204) and has held several public meetings since the passage of the 2012 Hazardous Waste

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<sup>1</sup> Administrative Procedures Act, Section 553.

Electronic Manifest Establishment Act, these efforts do not substitute for the ability of stakeholders to comment on a specific regulatory proposal. The information provided by EPA at its public meetings and the general discussion at those meetings make it clear that many important issues associated with the e-Manifest system are unresolved. Without a new proposed rule, affected parties will not know EPA's preferred approach until the final rule is issued. Several of our comments provided below are based on a "best guess" of what EPA may include in a final rule, which is not a situation that allows adequate opportunity to comment.

While API is sympathetic to the tight statutory deadlines the Agency is working under, EPA has been focused on the concept of a centralized e-Manifest system since at least 2006. The public should have the ability to not only provide general input into the development of the e-Manifest system but to review and provide comments on a specific proposal. At a minimum, in the absence of a new proposed rule, EPA should release a draft final rule informally for public input. EPA could issue this draft to the public at the same time it submits the draft rule for interagency review.

**2. E-Manifest information should be made publicly available in a way that balances the need for public transparency with legitimate concerns about confidential business information (CBI).**

API is concerned that the unrestricted release of manifest information, including the release of aggregated information, presents legitimate CBI concerns. While much of the discussion on this issue has focused on the access to waste management companies' customer lists, there are legitimate concerns from generators since manifest information can be traced to both production levels and product types. As one example, petroleum refineries regularly schedule periodic shut downs to perform needed maintenance. Because these planned shutdowns have a real impact on supply, companies typically keep their maintenance schedules confidential. The availability of essentially real-time manifest information would potentially allow competitors to identify individual refinery maintenance schedules in a way that is not possible today and use that information for competitive purposes.<sup>2</sup> API recommends that EPA consider the following approaches to balance the need for public access to manifest information with real concerns regarding business confidentiality.

First, public access to individual manifests should be restricted for an appropriate period from the date of the initial waste shipment. EPA has stated it will restrict public access to individual manifests for 60 days to allow the manifest process to reach completion. API recommends EPA extend this restriction for a longer time to address business competition and confidentiality concerns. A longer lag time

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<sup>2</sup> While API recognizes that manifest information has been publicly available in a limited number of states, the national e-Manifest system will significantly change the ease of access to such information.

in releasing manifest information will help alleviate some, but not all, of industry's CBI concerns. At the same time, it does not materially affect the legitimate need for public access to manifest data. In the absence of a complete restriction, during this period EPA should at a minimum redact information on manifests that would allow competitors to specifically identify generators, such as generator names and facility addresses.

Second, API supports EPA's stated position that public access to aggregated manifest information be restricted. Providing aggregated manifest data would allow entities to "mine" the data for competitive purposes. We do not see any need for EPA to aggregate the data (which EPA does not do currently). Further, given the availability of information in biennial reports, aggregated data is not necessary for the public to gain access to hazardous waste generation and management information. EPA should limit public access to manifest information to individual manifest records in response to formal requests, following an appropriate restricted period. To the extent EPA eventually makes manifest information available through a public web site, the same limitation to individual manifests should apply.

**3. EPA should strongly encourage states to eliminate requirements for manifests to be sent to state agencies and associated manifest fees.**

Several states require a copy of the completed manifests be returned to the state and many states charge fees to cover the cost of processing these manifests. Once the e-Manifest system is in place, all manifest information will be made available to states, thereby eliminating the need for states to require a copy be sent to them. States also will not have a need to charge a manifest fee since they will not be processing manifests. Since generators and other users of the national e-Manifest system will be charged a user fee by EPA, any additional state fees would be unnecessary and redundant. API urges EPA to use appropriate mechanisms to strongly encourage states to modify their regulations requiring manifests to be returned to the state and to eliminate any associated fees.

**4. EPA should ensure that redundancies or conflicts between the EPA e-Manifest system and state manifesting requirements are reduced or eliminated.**

In addition to the concern raised in our previous comment, we believe it is important as a general principle for EPA to ensure that the e-Manifest system does not conflict with state manifesting requirements and is not redundant with those requirements. To do so, the system has to be flexible enough to address the differences inherent in state hazardous waste programs, including the variations in the universe of hazardous wastes in different states. To the extent

these differences are not addressed, the burden on generators in some states could actually be increased under the e-Manifest system.

**5. Enforcement using the e-Manifest system should be undertaken in a manner that does not undermine the system.**

API has two concerns regarding enforcement of manifest regulations under an e-Manifest system. First, there will be an inevitable learning curve as all parties involved, including generators, transporters, designated facilities, and those managing the e-Manifest system, become comfortable with the system. The system itself will likely require modifications in the early stages to address issues as they arise. During this period EPA and state enforcement officials should take these factors into consideration and consider a "grace period" for enforcement until the system reaches a steady state. This is particularly important so as not to create disincentives for parties to utilize the system. For EPA's part, it is important to provide sufficient technical and training resources to lessen this learning curve as much as possible.

Second, under the current paper manifest process, corrections can and are made to manifests before the manifest process is complete. Such corrections are a healthy part of the system and facilitate communication among the various parties to ensure wastes are treated and disposed of properly. When the e-Manifest system is in place, EPA and state agencies will have access to the manifest information while it is in-process. This presents the possibility of enforcement officials identifying (and enforcing against) routine discrepancies, even though the discrepancies would be identified and fixed before the process is completed. For example, if a designated facility notices a discrepancy in the waste quantity recorded by the generator, they will, after obtaining generator approval, modify the manifest to record the correct quantity. When the e-Manifest system is in place, EPA or a state agency could routinely track whenever such a change is made and then initiate an enforcement action against the generator for not having completed the manifest properly. API believes such in-process enforcement scrutiny would harm the existing beneficial relationship between waste management companies and their customers that facilitates open and honest efforts to ensure information is accurate. It would also discourage use of the e-Manifest system in general.

**6. EPA needs to coordinate with DOT on how users of the e-Manifest system can meet DOT requirements at the same time.**

API understands that after the e-Manifest system is operational, a hard copy of the manifest printed from e-Manifest system will still be needed to meet DOT's hazardous material shipping requirements. Having to print a hard copy of the document significantly decreases the efficiency and benefits of the electronic

system, the goal of which is to obviate the need for paper copies. API urges EPA to work with DOT to address this issue.

**7. Hard copy recordkeeping and biennial reporting are unnecessary under an e-Manifest system.**

Following implementation of the e-Manifest system, manifest records will be available in the system to both regulators and users of the system. Because these records are available electronically, generators should not be required to maintain hard copies of manifests to meet recordkeeping requirements. The e-Manifest record should be sufficient to meet recordkeeping obligations whether or not the generator used a paper manifest, since all paper manifests will also be entered into the system. The elimination of hard copy recordkeeping is one of the important efficiencies to be gained from the e-Manifest system.

Additionally, since hazardous waste generation data will be available in the e-Manifest system, API believes the e-Manifest system should make biennial reporting unnecessary. To the extent some hazardous waste information (e.g., waste that is generated and managed on-site) is not captured in the e-Manifest system, those generators can be required to file a supplemental report on such waste. Again, reducing redundant reporting is important if the e-Manifest system is to result in real gains in efficiency.

Feel free to contact me with any questions or should you require additional information from API.

Sincerely,



cc: Kristen Gunthardt, EPA OCRC  
API Waste and Remediation Group