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Mr. Michael Goo
Associate Administrator, Office of Policy
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Submitted via www.regulations.gov

Re: [Retrospective Review Plan Docket](#) (Docket EPA-HQ-OA-2011-0156).

Dear Mr. Goo:

The American Petroleum Institute ("API") appreciates the opportunity to submit these comments to the Improving Regulations Docket of the U.S. Environmental Protection Agency's ("EPA") in response to the May 24, 2011 EPA document **Improving Our Regulations: A Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations** found at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OA-2011-0156-0119>. API is a nationwide, non-profit, trade association headquartered in Washington, D.C. that represents over 470 members of all sizes engaged in all aspects of the petroleum and natural gas industry, including exploration, production, refining, and distribution of petroleum products.

As called for by President Obama in Executive Order 13563, "to facilitate the periodic review of existing significant regulations," EPA shall "consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."

API remains concerned and frustrated that the EPA is not proposing reasonable steps to ease the burden of unreasonable regulations on industry. We applaud the few limited steps the agency plans to take to curb unnecessary regulations on American businesses, but this administration needs to go much further if it is serious about getting the economy back on track. We do not believe that EPA has met the spirit or the intent of the President's Executive Order to address the breadth of outmoded, ineffective, insufficient or excessively burdensome regulations. Overly burdensome regulations reduce investment and cost jobs and put businesses at a competitive disadvantage in the global marketplace. API and the American public support reasonable and necessary cost-effective environmental regulations that are based on sound science. Nonetheless, the American people want EPA to be mindful of the impact of its

regulations and avoid stifling the economy. For example, according to a recent Rasmussen survey, by a margin of 51% to 31% voters overwhelmingly support “creating jobs” over “protecting the environment.”

When EPA asked for comments on overly burdensome regulations, API submitted 30 pages of suggestions to EPA and almost 20 pages to the Department of Interior. However, in its May 24th report, EPA listed only a few regulations that would be reviewed, including a few that we suggested. Unfortunately, EPA completely skipped over the major obstacles we see to job creation while the economy desperately needs job creation. We encourage EPA to review the detailed comments we submitted on April 4, 2011 and address additional regulations.

As we have repeatedly warned, EPA is in the process of implementing enormously costly regulations on the very businesses that can and will create American jobs while continuing to improve environmental performance provided they are not faced with uncertain and potentially onerous new regulatory requirements. We are particularly concerned with the agency’s plans to tighten the ozone standard and implement greenhouse gas controls on industry. In January 2010, EPA proposed a rule to lower the primary National Ambient Air Quality Standard – or NAAQS – for ozone from the current standard of 75 parts per billion to a level between 60 and 70 ppb. While this rule is typically reviewed on a five-year cycle, EPA is pushing forward with this new standard just three years after its previous review, despite the fact that no new data are being considered, and well before states have planned, EPA has approved, and states have even begun real implementation of the steps needed to meet the last ozone standard update.

The current economic circumstances highlight the need to be circumspect about overregulation and API believes that revising the ozone standards at this time represents a threat to employment and the recovery. To highlight the case of this overregulation, the proposed primary standard is so low that it approaches natural background levels of ozone --- even Yellowstone National Park would not meet the new standards. Under EPA’s own analysis, tightening the ozone standards will cause up to 96 percent of all U.S. counties with air quality monitors to fail the standards. This would bring numerous consequences in economic development, business expansion and investment. It would force states to meet additional regulatory burdens for these areas at a time when many of them are struggling with financial strains. A Manufacturers Alliance/MAPI study finds that EPA’s ozone proposal could result in 7.3 million U.S. jobs lost by 2020 and add \$1 trillion in new regulatory costs per year between 2020 and 2030.

The EPA’s mission of protecting public health can and should be met with responsible requirements that are attainable by businesses trying to create new jobs needed to support our growing population. We have made remarkable progress improving the air quality across the country and we can do more. But we can’t continue to make sustainable progress if we harm the ability to grow the economy and create jobs. Simply, EPA should stick to the regular cycle for reviewing the ozone NAAQS.

With respect to stationary source greenhouse gas (GHG) regulation, effective January 2, 2011, greenhouse gas emissions became subject to regulation by EPA and to best available control technology (BACT) review, subject to the limits in EPA’s so-called tailoring rule. The Clean Air Act is not the right tool to address greenhouse gas emissions. These regulations will eventually impact as

many as six million of America's industrial facilities, power plants, hospitals, and agricultural and commercial establishments. In order to comply, businesses would need to obtain permits before moving forward with construction and modification. This expansion of the Clean Air Act imposes on sources additional, unnecessary energy efficiency reviews and consideration of admittedly cost-ineffective Carbon Capture and Sequestration. EPA should drop its imposition of GHG BACT on stationary sources of GHG emissions.

With respect to GHG New Source Performance Standards (NSPS), EPA has indicated that it will propose NSPS for refinery greenhouse gas emissions in December, 2011 and finalize those standards in November, 2012. We recommend that EPA drop its efforts to regulate refinery GHG emissions. According to the Energy Information Agency, over the last five years refineries spent between \$10 billion and \$18 billion a year on "refinery process energy expense." The refining industry is an energy intensive, trade exposed industry and is already incentivized to install energy efficient controls and practices. Therefore refineries do not need an additional EPA program imposing unproductive requirements. In case EPA does proceed with the refinery GHG NSPS, the Agency should first issue an Advanced Notice of Proposed Rulemaking to solicit comments and data before proposing a rule.

EPA has never estimated the cost of its GHG regulations to stationary sources. The American Council for Capital Formation (ACCF) has estimated that just the uncertainty regarding EPA's GHG regulations on only the most directly impacted US industries could decrease capital investment by \$25 billion to \$75 billion and result in an economy-wide job loss of 476,000 to 1,400,000 jobs.

We would like to make one additional point regarding the need for changes in fuel regulations. Absent compelling scientific justification, we are not supportive of any further changes to fuels specifications. EPA needs to assess the environmental and energy impacts of new fuels controls, and rely on an adequate body of sound scientific research, vetted by stakeholders, that demonstrates cost-effective, real emissions reductions and air quality benefits while allowing industry to maintain the integrity of the Nation's refining and distribution system. We are concerned that we have not seen such a justification yet in the case of Tier 3 gasoline.

In closing, if President Obama's regulatory review is truly going to be effective – and by that we mean achieving its environmental goals without harming the nation's fragile economy – it needs to address these threats and the others highlighted in our April 4, 2011 submission.

Sincerely,

Howard J. Feldman