

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Newman, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code 1124:
Section 36 - Vapor Emission Control at Gasoline Dispensing Facilities**

DATE: January 27, 2021

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Tuesday, December 8, 2020, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform by the Department of Natural Resources and Environmental Control (“DNREC,” “Department”) to receive comment on proposed regulation amendments (“Amendments”) to 7 DE Admin. Code 1124: Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities* (“Regulation”). This action is taken by the Department to update the California Air Resources Board (“CARB”) Executive Orders (as modified between July 17, 2019 and June 3, 2020) referenced in the Amendments regarding Stage I enhanced vapor recovery systems used at Delaware gasoline dispensing facilities. The proposed Amendments include updates of the latest Executive Order numbers, the effective dates, and will provide the regulated community with additional Stage I enhanced vapor recovery (“EVR”) system component flexibility.

On July 11, 2020 the Department adopted amendments to 7 DE Admin. Code 1124, Section 36.0 (hereafter referred to as the “2020 Amendment”) to establish adjustments to the Regulation and specific compliance schedules. The 2020 Amendment requires gasoline dispensing facilities in Delaware to install one of the Stage I EVR systems certified in CARB Executive Orders, to meet 98% volatile organic compound’s emission control efficiency. The Executive Orders demonstrate compliance with the CARB certification and list the individual components that can be used within a certified

Stage I EVR system. Six (6) CARB Executive Orders for Stage I EVR systems are incorporated as referenced in the 2020 Amendment.

During the regulatory development of the 2020 Amendments, CARB modified its Executive Orders for Stage I EVR systems between July 17, 2019 and June 3, 2020. These modifications were not included in the 2020 Amendment; therefore, the Department is proposing the Amendments to update the CARB Executive Orders referenced in Section 36.0. The latest update to CARB Executive Orders include: (1) modifications to the Husky Model 5885 Pressure/Vacuum vent valve; (2) the extension of certifications of the modified 5885 Pressure/Vacuum vent valve to May 31, 2021; (3) addition of OPW 723 Pressure/Vacuum vent valve for E85 applications; and (4) in Executive Order VR 102, addition of the Franklin Fueling aluminum drop tube and Defender Overfill Protection Valve to the equipment list as alternate parts.

The proposed Amendments will update the Executive Order numbers and effective dates and provide the regulated community with additional component flexibility when installing Stage I enhanced vapor recovery systems. More specifically, the proposed Amendments include the title number changes of CARB Executive Orders as referenced in 7 DE Admin. Code 1124, Section 36 at subsections: (1) 36.4.1 from 36.4.1.1.1 through 36.4.1.1.4 and from 36.4.1.2.1 through 36.4.1.2.2, (2) subsection 36.10.2, and (3) subsection 36.11.3.1 through 36.11.3.6. In addition, the proposed Amendments also add a phrase in subsection 36.1.3 to specify July 1, 2019 as the effective date of 40 CFR 80.22(j).

After the public hearing notice was issued, the Department revised the proposed Amendments to include a non-substantive change to the Amendments. As referenced in subsections 36.5.1, 36.5.3, and 36.11.5, the non-substantive change revises the reference to CARB Executive Order “VR-202-W (August 30, 2018)” to “VR-202-Z (November 5, 2019)”. The proposed change of VR-202-W to VR-202-Z in Section 36.0 is only a change to update the version number of VR-202.

The Department has the statutory basis and legal authority to act with regard to the proposed Amendments, pursuant to 7 *Del. C.* §6010(a) and (c). The Department published its initial proposed Amendments in the November 1, 2020 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on December 8, 2020. There were two (2) members of the public in attendance at the virtual public hearing. Pursuant to Delaware law, the hearing record (“Record”) shall remain open for fifteen (15) days subsequent to the date of the public hearing for receipt of public comment. At the virtual public hearing the Division of Air Quality suggested that the record remain open for an additional fifteen (15) days to allow the public the opportunity to review the proposed *revised* Amendments as presented at the hearing. The Record formally closed with regard to public comment at close of business on January 07, 2021, with one (1) written comment received by the Department. It should be noted that the proposed *revised* Amendments were fully vetted at the time of the virtual public hearing.

After the record closed, the Department’s Division of Air Quality staff prepared a Technical Response Memorandum (“TRM”.)

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents: (1) a verbatim transcript; and (2) nineteen (19) documents introduced by Department staff at the public hearing held on December 8, 2020 and marked by this Hearing Officer at the time of the hearing accordingly as Department Exhibits 1-19. The Department’s person primarily responsible for the drafting and overall promulgation of the proposed Amendments, Frank Gao, Engineer IV, Division of Air Quality, developed the Record with the relevant documents in the Department’s files.

As stated previously, a TRM was provided by the Department's staff. The TRM responded to one written comment received after the hearing. I find that the DAQ's TRM identifies the concern raised by the public, and responds to the concern in a balanced manner, accurately reflecting the information contained in the Record.

Accordingly, the Department's proposed *revised* Amendments are attached hereto as Appendix "A" and the Department's TRM is attached hereto as Appendix "B".

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the Record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed *revised* Amendments to 7 DE Admin. Code 1124: Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities*, specifically to update the CARB Executive Orders (as modified between July 17, 2019 and June 3, 2020) referenced in the Amendments regarding Stage I EVR systems used at Delaware gasoline dispensing facilities, by updating the latest Executive Order numbers and effective dates, and providing the regulated community with additional Stage I EVR system component flexibility. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;

3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on December 8, 2021 and during the 30 days subsequent to the hearing (through January 07, 2021), before making any final decision;
4. Promulgation of the proposed *revised* Amendments to 7 DE Admin. Code 1124: Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities*, will enable the Department to update the CARB Executive Order numbers and effective dates (as modified between July 17, 2019 and June 3, 2020), referenced in the Amendments regarding Stage I EVR systems used at Delaware gasoline dispensing facilities, and will provide the regulated community with additional Stage I EVR system component flexibility;
5. The Department has reviewed the proposed *revised* Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's proposed regulatory Amendments, as initially published in the November 1, 2020 *Delaware Register of Regulations*, and then subsequently *revised*, as and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed *revised* Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



Theresa L. Newman
Public Hearing Officer

(Amendments to 1124-36 addressed in Public Hearing on 12/08/2020)

1124 Control of Volatile Organic Compound Emissions

36.0 Vapor Emission Control at Gasoline Dispensing Facilities

07/11/2020 xx/xx/xxxx

36.1 Applicability

36.1.1 The provisions of Section 36.0 apply to any gasoline dispensing facility (GDF) located in the State of Delaware, except:

36.1.1.1 Any gasoline dispensing facility, which never has a monthly throughput greater than 10,000 gallons of gasoline, shall be subject only to the requirements of subsection 36.7.2. Any gasoline dispensing facility that ever exceeds this throughput shall be subject to all of the requirements of Section 36.0, and shall remain subject to these requirements even if its throughput later falls below the exemption throughput.

36.1.1.2 Any gasoline dispensing facility that is used exclusively for refueling marine vehicles, aircraft, farm equipment, or emergency vehicles.

36.1.2 The requirements of subsection 36.8 apply to any owner or operator of any company that performs compliance testing at gasoline dispensing facilities within the State of Delaware.

36.1.3 The requirements of Section 36.0 are in addition to all other State and Federal requirements, to include the requirements in 40 CFR 80.22(j), dated July 1, 2019 and hereby incorporated by reference, the nozzle flow rate limit of 10 gallons per minute, and the permitting requirements of 7 **DE Admin. Code** 1102. Any gasoline dispensing facility that is currently subject to any rule promulgated pursuant to the Clean Air Act Amendments of 1990 by exceeding an applicability threshold is and shall remain subject to those provisions.

36.1.4 Compliance Schedule. Any gasoline dispensing facility subject to the requirements of Section 36.0 shall be in compliance as follows:

36.1.4.1 Decommission of Stage II vapor recovery system

36.1.4.1.1 Any GDF, which has a Stage II vapor recovery system in operation or under installation, shall decommission its Stage II vapor recovery system before December 31, 2021, pursuant to the procedures in subsection 36.9. Before decommissioning its Stage II system, a GDF shall comply with subsection 36.3 and other applicable requirements of Section 36.0.

36.1.4.1.2 On or after 07/11/2020, any new facility that first commences construction shall not install a Stage II vapor recovery system.

36.1.4.2 Installation of Stage I enhanced vapor recovery (EVR) system

36.1.4.2.1 Any existing facility shall install and operate a Stage I EVR system prior to December 31, 2025.

36.1.4.2.2 On or after 07/11/2020, any new facility that commences construction shall install a Stage I EVR system at construction and shall start operation of the Stage I EVR system when the facility commences the gasoline dispensing operation.

36.1.4.2.3 On or after 07/11/2020, gasoline dispensing facilities (GDFs) with continuous pressure monitoring (CPM) systems shall comply with subsection 36.5, and GDFs without CPM systems shall comply with subsection 36.6, and all other applicable requirements of Section 36.0.

36.2 Definitions

36.2.1 Terms being defined in subsection 36.2 are used exclusively for Section 36.0. Other terms not defined herein shall have meanings defined in the Clean Air Act Amendments of 1990 (CAA), or 7 **DE Admin. Code** 1101, or Section 2.0 of 7 **DE Admin. Code** 1124.

“Assist System” means a system that creates a vacuum to assist the movement of vapors back into the storage tank.

“Balance System” means a system where pressure develops in the vehicle tank during fueling operations, and vacuum in the storage tank created when the fuel is removed, forces displaced vapors out the vehicle tank.

“Day” means a calendar day. However, when used to determine when a required document is due and the day falls on a weekend or holiday, the document may be submitted on the first working Day after the weekend or holiday.

“Monthly” means, when describing a compliance requirement, every 30 days or at least once each calendar month.

“Monthly Throughput” means the total volume of gasoline dispensed from all the gasoline storage tanks located at a single affected GDF in a calendar month.

“Pressure/Vacuum Valve” or “P/V Valve” means a relief valve installed on the vent stack of a tank system that is designed to open at specific pressure and vacuum settings to protect the system from excessive pressure or vacuum.

“Tank System” means a storage tank or a set of manifolded storage tanks containing gasoline at a gas dispensing facility.

“Ullage” means the empty volume of a gasoline storage tank system that contains liquid gasoline. Ullage is expressed as accumulated gallons of empty volume for all of the gasoline storage tanks in a manifolded system.

36.3 Standards for Facilities with Stage II Vapor Recovery Systems

36.3.1 The owner or operator of any gasoline dispensing facility that operates a Stage II vapor recovery system shall meet the following requirements:

36.3.1.1 To operate and maintain one of the Stage II Vapor Recovery Systems identified in subsection 36.10.1.

36.3.1.2 For systems with manifolded vapor lines, the liquid shall return into the lowest octane tank. For non-manifolded systems with separate vapor lines, the liquid shall return to the tank that has the same product as is dispensed at the nozzle where the liquid was introduced into the vapor lines.

36.3.1.3 To maintain a vapor shear valve that functions similarly to the product shear valve. Valves of any kind other than the vapor shear valve in the vapor return line under each dispenser shall be prohibited, and if existing shall be removed.

36.3.1.4 To conspicuously post "Operating Instructions" on both sides of each gasoline dispenser. Such instructions shall include:

36.3.1.4.1 A clear description of how to correctly dispense gasoline.

36.3.1.4.2 A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline.

36.3.1.4.3 A toll-free telephone number to report problems experienced with the vapor recovery system to the Department.

36.3.2 At least one representative (an owner, facility manager, or designated employee) from each facility, or facilities under common ownership, shall attend a training program on the operation and maintenance requirements of the Stage II equipment that is installed on their facility premises. Acceptable forms of training include equipment manufacturer's seminars, classes or workshops, or any other training approved by the Department.

36.3.2.1 Verification, such as a certificate of attendance from the training program, shall be obtained by the attendee. The certificate shall display the name of the person who completed the training program.

36.3.2.2 The representative that completed the training program is then responsible for informing all facility employees about conducting routine maintenance pursuant to subsection 36.3.3 and about the operation and maintenance of the Stage II system. The representative shall maintain proof of training for all employees who will be conducting daily inspections. If such representative leaves that facility, or the company owning several facilities, another representative shall take and successfully complete the training within three months.

36.3.2.3 Training shall include, but not be limited to, the following subjects:

36.3.2.3.1 Purposes and effects of the Stage II Vapor Control Program.

36.3.2.3.2 Equipment operation and function specific to their facility's equipment.

36.3.2.3.3 Maintenance schedules and requirements for the facility's equipment.

36.3.2.3.4 Equipment warranties.

36.3.2.3.5 Equipment manufacturer contracts (names, addresses, and phone numbers) for parts and service.

36.3.3 Each day personnel trained pursuant to subsection 36.3.2 shall perform routine maintenance inspections and record the inspection results.

36.3.3.1 Such inspections shall consist of inspection of the Stage II system for the following defects:

36.3.3.1.1 A faceplate or face cone of a balance or assist system nozzle that does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or face cone is over 25% of its' surface.

36.3.3.1.2 A vapor assist system nozzle fitted with an efficiency compliance device that is damaged over 25% of its' surface.

36.3.3.1.3 A nozzle bellows with a triangular tear measuring ½ inch or more to a side, a hole measuring ½ inch or more in diameter, or a slit or tear measuring one inch or more in length.

36.3.3.1.4 A nozzle bellows or efficiency compliance device that is loosely attached to the nozzle body, not attached by a manufacturer approved method, or a vapor check valve frozen in the open position.

36.3.3.1.5 A nozzle liquid shutoff mechanism that malfunctions in any manner, where the spring or latching knurl is damaged or missing.

36.3.3.1.6 A nozzle with a vapor check valve that is defective, or a hose with a disconnected or damaged breakaway.

36.3.3.1.7 A vapor assist system nozzle spout that is damaged and the vapor collection holes are obstructed.

36.3.3.1.8 A dispenser mounted vacuum pump that is not functioning.

36.3.3.1.9 A vacuum assist system with a central vacuum unit or vapor processing unit that is inoperative.

36.3.3.1.10 A hose retractor that does not fully retract.

36.3.3.1.11 Any other component required by the Department for use in the system that is missing, disconnected, or malfunctioning.

36.3.3.2 The owner or operator shall post "Out of Order" signs and bag-out the nozzle associated with any part of the defective vapor recovery system until said system has been repaired or replaced.

36.3.4 Testing requirements. Any gasoline dispensing facility subject to subsection 36.3 shall perform the following tests annually (every 12 calendar months) for its Stage II vapor recovery system, or as otherwise approved by the Department and US Environmental Protection Agency (EPA).

36.3.4.1 A Pressure Decay/Leak Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III (March 1, 1996). This test procedure is hereby incorporated by reference, as specified in subsection 36.11.1.

36.3.4.2 For balance systems, a Dynamic Backpressure and Liquid Blockage Test, conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-19, Chapter 9 (2019)". This test procedure is hereby incorporated by reference, as specified in subsection 36.11.2.

36.3.4.3 For assist systems, an Air to Liquid Volume Ratio Test conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-19, Chapter 10 (2019)". This test procedure is hereby incorporated by reference, as specified in subsection 36.11.2.

36.3.5 Written notification shall be submitted to the Department at least 10 days prior to the performance of any test required in subsection 36.3, unless otherwise approved by the Department.

36.3.6 All test results shall be reported to the Department within two (2) days after the test. If any test fails, repair, corrective action and retesting shall be completed within 14 days.

36.4 Standards for Facilities with Stage I Vapor Recovery Systems

36.4.1 The owner or operator of any gasoline dispensing facility identified in subsection 36.1.4.2 shall design, install, operate, and maintain one of the Stage I enhanced vapor recovery (EVR) systems identified in California Air Resource Board (CARB) Executive Orders (EOs) as listed in subsection 36.10.2. All Stage I EVR systems shall be designed, installed, maintained and repaired by a contractor that is trained and certified by the Stage I EVR system manufacturer of the selected system. In addition, the Stage I EVR systems shall be maintained and tested in accordance with CARB Executive Orders ~~VR-101-QT~~, ~~VR-102-RU~~, ~~VR-104-IK~~, ~~VR-105-FI~~, ~~VR-401-EE~~, and ~~VR-402-DE~~, hereby incorporated by reference as specified in subsection 36.11.3.

36.4.1.1 For an Underground Storage Tank (UST) system, the following components of the Stage I EVR system shall be routinely tested: rotatable phase I vapor adaptors, overfill prevention device, spill container drain valve, and P/V valve. Specifically:

36.4.1.1.1 For ~~VR-101-QT~~ Phil-Tite Phase I Vapor Recovery System, following subsection 36.11.3.1.

36.4.1.1.2 For ~~VR-102-RU~~ OPW Phase I Vapor Recovery System, following subsection 36.11.3.2.

36.4.1.1.3 For ~~VR-104-IK~~ CNI Manufacturing Phase I Vapor Recovery System, following subsection 36.11.3.3.

36.4.1.1.4 For ~~VR-105-FI~~ EMCO Wheaton Retail Phase I Vapor Recovery System, following subsection 36.11.3.4.

36.4.1.2 For an Aboveground Storage Tank (AST) system, the following components of the Stage I EVR system shall be routinely tested: rotatable phase I vapor adaptors (if existing), phase I adaptors, emergency vents, drain valve, dedicated gauging port with drop tube and tank gauge components. Specifically:

36.4.1.2.1 For ~~VR-401-EE~~ OPW Phase I EVR System for ASTs (Aboveground Storage Tanks), following subsection 36.11.3.5.

36.4.1.2.2 For ~~VR-402-DE~~ Morrison Brothers Phase I EVR System for ASTs, following subsection 36.11.3.6.

36.4.2 The following tests shall be performed within 10 days after installation of the Stage I EVR system:

36.4.2.1 A pressure decay/leak test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III (March 1, 1996), but excluding testing on the P/V valve. This test procedure is hereby incorporated by reference, as specified in subsection 36.11.1.

36.4.2.2 A vapor tie test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III (March 1, 1996). This test procedure is hereby incorporated by reference, as specified in subsection 36.11.1.

36.4.2.3 A pressure/vacuum (P/V) valve leak rate and cracking pressure test, conducted in accordance with CARB Test Procedure TP-201.1E (October 8, 2003). This test procedure is hereby incorporated by reference, as specified in subsection 36.11.4.

36.4.2.4 Written notification shall be submitted to the Department at least 10 days prior to the performance of any test required in Section 36.4, unless otherwise approved by the Department.

36.4.2.5 All test results shall be reported to the Department within two (2) days after the tests. If any test fails, repair, corrective action and retesting shall be completed within 14 days.

36.4.3 Reserved.

36.4.4 Enhanced conventional nozzles: Reserved.

36.4.5 Dispensing hose requirements: Reserved.

36.4.6 Any facility subject to subsection 36.4 shall meet the following posting and maintenance inspection requirements.

36.4.6.1 Posting. Conspicuously post "Operating Instructions" on both sides of each gasoline dispenser. Such instructions shall include:

36.4.6.1.1 A clear description of how to correctly dispense gasoline.

36.4.6.1.2 A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage.

36.4.6.1.3 A toll-free telephone number to report problems experienced with the gasoline dispensing system to the Department.

36.4.6.1.4 The owner or operator shall post "Out of Order" signs and "bag-out" the nozzle associated with any part of the defective gasoline dispensing system until said system has been repaired or replaced.

36.4.6.2 Inspection. Personnel shall perform daily routine maintenance inspections and record the inspection results following the recordkeeping requirements in subsection 36.7.1. Such inspections shall consist of, but not limited to, inspection of the dispensing systems for the following defects:

36.4.6.2.1 A nozzle liquid shutoff mechanism that malfunctions in any manner, where the spring or latching knurl is damaged or missing.

36.4.6.2.2 A hose with a disconnected or damaged breakaway.

36.4.6.2.3 A hose retractor that does not fully retract.

36.4.6.2.4 Any other component required by the Department for use in the dispensing system that is missing, disconnected, or malfunctioning.

36.5 Requirements for Stage I Facilities with Continuous Pressure Monitoring Systems

36.5.1 The owner or operator of any gasoline dispensing facility identified in subsection 36.1.4.2 shall use a continuous pressure monitoring (CPM) system as identified in Exhibit 1 Section II, Exhibit 2 Section II, and Exhibit 3 Section II of CARB Executive Order ~~[VR-202-W (August 30, 2018)]~~ **VR-202-Z (November 5, 2019)**, hereby incorporated by reference as specified in subsection 36.11.5.1, to include the leak detection software identified in ~~[VR-202-W VR-202-Z]~~, and use a console, a vapor pressure sensor, and an automatic tank gauge as compatible per the CPM manufacturer. The owner or operator of any gasoline dispensing facility may petition the Department to allow the use of any other CPM system that is certified by CARB as being equivalent to the systems identified in CARB Executive Order ~~[VR-202-W VR-202-Z]~~, and the Department may allow such a system on a case-by-case basis.

36.5.2 The CPM system shall be designed, installed, maintained and repaired by the system manufacturer, or by a contractor that is trained and certified by the system manufacturer.

36.5.3 Within 10 days after installation of the required Stage I EVR system, an operability test of the CPM system shall be performed and passed in accordance with Exhibit 9 or Exhibit 10, as applicable, of CARB Executive Order ~~[VR-202-W (August 30, 2018)]~~ **VR-202-Z (November 5, 2019)**, hereby incorporated by reference as specified in subsection 36.11.5.2 or subsection 36.11.5.3, as applicable.

36.5.4 The CPM system operability test, as specified in subsection 36.5.3, shall be performed and passed every 36 calendar months after the CPM system is installed.

36.5.5 Performance standards for the CPM system

36.5.5.1 The owner or operator of a gasoline dispensing facility with a CPM system shall maintain the tank vapor system at a volumetric leak rate less than or equal to two times the vapor volumetric leak rate allowed in accordance with California Air Resources Board (CARB) Vapor Recovery Test Procedure TP-201.3, "Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities" (July 26, 2012), hereby incorporated by reference as specified in subsection 36.11.6. Equation 9-2 with $N=1-6$ in TP-201.3 shall be used for the determination.

36.5.5.2 The CPM system shall be operational a minimum of 95% of the time on a monthly basis and shall calculate and record the percentage of CPM operational time.

36.5.5.3 The CPM system shall be capable of assessing the vapor volumetric leak rate of the tank system at any working ullage pressure, both positive and negative.

36.5.5.4 The CPM system shall assess, on a weekly basis (every seven days), the tank system vapor volumetric leak rate.

36.5.6 CPM system warnings and correction requirements for tank leaks

36.5.6.1 When the tank system vapor volumetric leak rate exceeds the requirement specified in subsection 36.5.5.1 the CPM system shall activate warnings.

36.5.6.2 Within 21 days after the initial warning, the owner or operator shall:

36.5.6.2.1 Use a certified contractor or contractors to correct the excessive vapor volumetric leaks.

36.5.6.2.2 Notify the Department with all alarm data, information of the certified company or companies used for testing and corrective action or repair, details of corrective action or repair completed, results of all tests performed before and after the corrective action, and other information that the Department may require.

36.5.6.3 The CPM system shall be reset, only after necessary corrective action or repair is performed, by the manufacturer or the certified contractor who has performed the correction or repair.

36.5.7 Written notification shall be submitted to the Department at least 10 days prior to the performance of any test required in subsection 36.5, unless otherwise approved by the Department.

36.5.8 All test results shall be reported to the Department within two (2) days after the tests. If a test fails, repair, corrective action and retesting shall be completed within 14 days.

36.6 Requirements for Stage I Facilities without Continuous Pressure Monitoring Systems

36.6.1 The owner or operator of a gasoline dispensing facility identified in subsection 36.1.4.2 shall conduct monthly an inspection for the Stage I EVR system, which includes the following:

36.6.1.1 Manually check all dust caps for tightness. Check fill and Stage I swivel adapters to ensure they are tightly positioned. Check and ensure the jackscrew assembly is tight.

36.6.1.2 Manually check Stage I dry breaks to ensure they are tightly sealed. Check all dry break caps manually for tightness.

36.6.1.3 Manually check the automatic tank gauge (ATG) caps to ensure they are tightly sealed and that the associated electrical grommets and vent extractor caps are in good working condition.

36.6.1.4 Visually inspect the vent riser, P/V valve and cap for damage visible from the ground level.

36.6.1.5 Repair or replace any damaged or malfunctioning parts as soon as possible, but no later than the next monthly inspection.

36.6.1.6 Record all inspection results, and repairs if conducted, in a monthly log book, following the recordkeeping requirements in subsection 36.7.1.

36.6.2 Testing requirements. The owner or operator of a gasoline dispensing facility subject to subsection 36.6 shall conduct annually (every 12 calendar months) a pressure decay test as specified in subsection 36.4.2.1 and a P/V valve test as specified in subsection 36.4.2.3, without any corrective action taken before or during the test on the day of the test; and

36.6.2.1 If the pressure decay test fails, necessary repair and retesting shall be performed, and quarterly (every 3 calendar months) testing shall be required. The original annual testing schedule shall resume upon passing of two (2) consecutive quarterly tests.

36.6.2.2 If the P/V valve test fails, the valve shall be replaced with a new valve, and the new valve shall be tested before installation, as specified in subsection 36.4.2.3. If the P/V valve passes the test, the valve shall be reinstalled. The reinstalled the valve shall be retested with the next quarterly or annual pressure decay test, whichever comes first.

36.6.3 The Department may require the performance of any of the tests identified in subsection 36.6.2 at anytime at the owner's expense when the Department determines

that the performance of such tests are necessary to ensure the proper operation of the facility or emission control equipment.

36.6.4 Written notification shall be submitted to the Department at least 10 days prior to the performance of any compliance test required in subsection 36.6, unless otherwise approved by the Department.

36.6.5 The owner or operator and test contractor shall report all test failures to the Department within two (2) days after the failure. If a test fails, repairs and testing specified in subsection 36.6.2 shall be completed and reported to the Department within 14 days after the failure.

36.7 Recordkeeping and Reporting

36.7.1 The owner or operator of a gasoline dispensing facility subject to the requirements of Section 36.0 shall keep on the facility premises and in a form acceptable to the Department, all of the following information. This information shall be retained for at least five (5) years, unless otherwise specified by the Department, from the date of record and shall be made immediately available to the Department upon request.

36.7.1.1 Permits and Applications. Copies of all GDF permit applications and the current Construction and Operation Permits shall be permanently maintained.

36.7.1.2 Installation and Post-Installation Testing Records. The records shall be dated, and shall note the installation and test companies' names, addresses, and phone numbers. These records shall be kept on file until they are replaced with new installation and post-installation testing records that also verify proper functioning of the Stage I and Stage II systems, as applicable.

36.7.1.3 Maintenance Records. Any maintenance conducted on any part of the Stage I or Stage II vapor recovery system shall be logged on a maintenance record. This maintenance record shall include a general part description, the date repaired or replaced, the replacement part manufacturer's information, and a description of the problem and solution. Maintenance records shall also include results of all tests, and corrective actions or repairs, if applicable, as required in subsections 36.3, 36.4, 36.5 and 36.6.

36.7.1.4 Inspection Records. A file shall be maintained of all inspection reports including records of daily and monthly inspections, and any third party inspection records.

36.7.1.5 For facilities with a CPM system specified in subsection 36.5, the CPM system shall generate a daily report which includes the following:

36.7.1.5.1 CPM system operational time as a percentage;

36.7.1.5.2 Percentage of time the tank system pressure is above atmospheric pressure;

36.7.1.5.3 The vapor volumetric leak rate in cubic feet per hour (CFH) if any is observed.

36.7.1.6 For facilities with a CPM system specified in subsection 36.5, the CPM system shall generate a monthly report which includes the following:

36.7.1.6.1 CPM system operational time as a percentage;

36.7.1.6.2 Percentage of time the tank system pressure is above atmospheric pressure;

36.7.1.6.3 The vapor volumetric leak rate in cubic feet per hour (CFH) if any is observed.

36.7.1.6.4 Warnings, including the date and time of each warning.

36.7.1.7 Compliance Records. A file shall be maintained of all compliance records. This record shall include:

36.7.1.7.1 Any warning letters and notices of violations issued by the Department to the facility within the past five years, the facility's responses and actions to the Department's warning or notice of violation, the facility's report of compliance to the Department after the facility's actions, and the Department's approval of compliance.

36.7.1.7.2 Daily and monthly CPM system data records and reports shall be available for printing and electronic download at the facility, and be made available to the Department upon request. Daily reports shall be available for the previous 12 months. Monthly reports shall be available for the previous 36 months.

36.7.1.7.3 The CPM system shall store the electronic records of the daily and monthly reports, such that the records are maintained despite loss of power to the CPM system.

36.7.1.7.4 Proof of attendance and completion of a training program for each person trained in accordance with subsection 36.3.2. This does not apply to the records of an employee who is no longer in service for at least one year.

36.7.2 Any gasoline dispensing facility, including a GDF exempted from the requirements of Section 36.0 pursuant to subsection 36.1.1.1 shall maintain records of monthly throughput, and shall furnish these records to the Department upon request. These records shall be maintained on file for a minimum of five (5) years from the date of record.

36.7.3 The owner or operator, or both, of any facility containing sources subject to Section 36.0 shall also comply with the requirements of Section 5.0 of 7 **DE Admin. Code** 1124 "Compliance Certification, Recordkeeping, and Reporting Requirement for Non-Coating Sources".

36.8 Compliance Testing Company Requirements

36.8.1 Any owner or operator, or both, of any company that performs compliance testing pursuant to applicable subsections 36.3, 36.4, 36.5, 36.6 and 36.9 within the State of Delaware shall submit all of the following information to the Department to become qualified to perform any compliance testing within the State of Delaware:

36.8.1.1 The name and business mailing address of the compliance testing company owner or operator;

36.8.1.2 The address and telephone number of the facility or facilities from which the daily compliance testing activities of the compliance testing company originate;

36.8.1.3 A written description of the employee training systems in place at the compliance testing company to ensure required compliance tests are performed in accordance with applicable protocols and procedures.

36.8.1.4 Certification by an individual who is a responsible and trained representative of the compliance testing company shall contain the following language:

36.8.1.4.1 I certify that I personally examined and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment; and

36.8.1.4.2 Employee training systems are in place at the company to ensure compliance tests are performed in accordance with all applicable protocols and procedures; and

36.8.1.4.3 I am fully authorized to make this attestation on behalf of this Compliance Testing Company.

36.8.1.5 Any training or certification for performing the compliance tests on the systems as described in subsections 36.3, 36.4, 36.5 and 36.6, deemed necessary by the Department, shall be renewed as scheduled by the system manufacturer or the manufacturer's training contractor.

36.8.2 Any company subject to the requirements of subsection 36.8.1 shall notify the Department in writing of any change to any information submitted to the Department within 14 days of the effective date of such change.

36.8.3 No company or any of its employees or representatives subject to the requirements of subsection 36.8 shall perform any compliance test, equipment installation or service procedures, unless said person has first been trained in accordance to applicable compliance test protocols and procedures.

36.8.4 Any person subject to subsection 36.8 shall certify to the owner or operator of the gasoline dispensing facility that each compliance test performed to meet the applicable requirements of subsections 36.3, 36.4, 36.5 and 36.6 was performed in accordance with subsections 36.3, 36.4, 36.5 and 36.6. Certification shall include:

36.8.4.1 The date each compliance test was first performed and the test results; and

36.8.4.2 An itemized list of all corrective action performed. This list shall include, but not be limited to, component re-installation, tightening, repair or replacement, as necessary, for the system to pass the applicable test or tests; and

36.8.4.3 The date each compliance test was performed and passed; and

36.8.4.4 Certification by a responsible and trained representative or representatives of the compliance testing company containing the following language verbatim:

36.8.4.4.1 I certify that I personally examined and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment; and

36.8.4.4.2 I am fully authorized to make this attestation on behalf of this Compliance Testing Company.

36.8.5 If at any time the Department determines that the owner or operator, or both, of any company that performs compliance testing does not meet the requirements of subsections 36.3, 36.4, 36.5, 36.6 and 36.9, a violation of this regulation may have occurred and enforcement action may ensue.

36.9 Stage II Decommissioning Requirements

36.9.1 The owner or operator of a gasoline dispensing facility shall decommission the Stage II vapor recovery system in accordance with all of the procedures specified in Chapter 14, except Section 14.6.14, of the Petroleum Equipment Institute's (PEI) "Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites", PEI/RP300-19 (2019), which is hereby incorporated by reference as specified in subsection 36.11.2.

36.9.2 On or after the effective date of Section 36.0, any site that has decommissioned a Stage II Vapor Recovery System shall cap the vapor return line at the tank top if accessible at the time of decommissioning, per PEI/RP300-19 (2019), which is hereby incorporated by reference as specified in subsection 36.11.2. If not accessible at the time of decommissioning, the vapor return line shall be capped when a replacement or repair of the gasoline storage tank system or associated piping/components involves breaking concrete on top of the tank where the vapor return line terminates or when a pressure decay test indicates a problem with the vapor return line.

36.9.3 As a part of the decommissioning process, additional storage tank system requirements governing retrofits, repairs, upgrades and testing are incorporated by reference as specified in subsection 36.11.7, pursuant to **7 DE Admin. Code 1351** Underground Storage Tanks and **7 DE Admin. Code 1352** Aboveground Storage Tanks.

36.9.4 Decommissioning procedures shall be performed only by Stage II vapor recovery system installers certified in the State of Delaware.

36.10 Approved Systems

The following lists of California Air Resources Board (CARB) executive orders (EOs) are hereby adopted by reference. In the lists, the term “Phase I” is equivalent to the term “Stage I,” and the term “Phase II” is equivalent to the term “Stage II,” as used in Section 36.0.

36.10.1 Stage II Vapor Recovery Systems.

Executive Order Number & Date	Description
G-70-7-AD (03/22/93)	Certification of the Hasstech Model VCP-2 and VCP 2A Phase II Vapor Recovery System.
G-70-14-AA (02/08/83)	Recertification of Red Jacket Aspirator Assist Phase II Vapor Recovery System.
G-70-17-AD (05/06/93)	Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System.
G-70-18-C (08/28/79)	Modification of Certification of the Shell Model 75B1 and 75B1-R3 Service Station Phase II Vapor Recovery System.

G-70-23-AC (04/29/96)	Recertification of the Exxon Balance Phase II Vapor Recovery System.
G-70-25-AA (02/08/83)	Recertification of the Atlantic Richfield Balance Phase II Vapor Recovery System.
G-70-33-AB (03/09/84)	Certification of the Modified Hirt VCS-200 Vacuum Assist Phase II Vapor Recovery System.
G-70-36-AD (09/18/92)	Modification of Certification of the OPW Balance Phase II Vapor Recovery System.
G-70-37-B (01/22/80)	Modification of the Certification of the Chevron Balance Phase II Vapor Recovery System with OPW nozzles for Service.
G-70-38-AB (12/19/90)	Recertification of the Texaco Balance Phase II Vapor Recovery System.
G-70-48-AA (02/08/83)	Recertification of the Mobil Oil Balance Phase II Vapor Recovery System.
G-70-49-AA (02/08/83)	Recertification of the Union Balance Phase II Vapor Recovery System.
G-70-52-AM (10/04/91)	Certification of Components for Red Jacket, Hirt and Balance Phase II Vapor Recovery System.
G-70-53-AA (02/08/83)	Recertification of the Chevron Balance Phase II Vapor Recovery System.
G-70-70-AC (06/23/92)	Certification of the Healy Phase II Vapor Recovery System of Service Stations.
G-70-77 (09/15/82)	Certification of the OPW Repair/Replacement Parts and Modification of the Certification of the OPW Balance Phase II Vapor Recovery System.

G-70-78 (05/20/83)	Certification of the E-Z Flo Nozzle Company Rebuilt Vapor Recovery Nozzles and Vapor Recovery Components.
G-70-101-B (11/15/85)	Certification of the E-Z Flo Model 3006 and 3007 Vapor Recovery Nozzles and Use of E-Z Flo Components with OPW Models 11 VC and 11 VE Vapor Recovery Nozzles.
G-70-107 (05/15/86)	Certification of Rainbow Petroleum Products Model RA3003, RA3005, RA3006 and RA3007 Vapor Recovery Nozzles and Vapor Recovery Components.
G-70-110 (01/20/87)	Certification of Stage I and II Vapor Recovery Systems for Methanol Fueling Facilities.
G-70-118-AB (03/31/95)	Certification of Amoco V-1 Vapor Recovery System.
G-70-125-AA (03/16/93)	Modification of the Certification of the Husky Model V Phase II Balance Vapor Recovery Nozzle.
G-70-127 (08/16/90)	Certification of the OPW Model 111-V Phase Vapor Recovery Nozzle.
G-70-134 (12/21/90)	Certification of the EZ Flo Rebuilt A-4000 Series and 11V-Series Vapor Recovery System.
G-70-139 (03/17/92)	Addition to the Certification of the Hirt Model VCS-200 Phase II Vapor Recovery System.
G-70-150-AE (07/12/00)	Modification of the Certification of the Gilbarco Vapor Vac Phase II Vapor Recovery System.
G-70-153-AD (04/03/00)	Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System.
G-70-154-AA (06/10/97)	Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System.

G-70-159-AB (07/17/95)	Modification of the Certification of the Saber Nozzle for Use with the Gilbarco VaporVac Phase II Vapor Recovery System.
G-70-163-AA (09/04/96)	Certification of the OPW VaporEZ Phase II Vapor Recovery System.
G-70-164-AA (12/10/96)	Modification to the Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System.
G-70-165 (04/20/95)	Healy Vacuum Assist Phase II Vapor Recovery System.
G-70-169-AA (08/11/97)	Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System.
G-70-170 (02/22/96)	Certification of the EZ-flo Rebuilt 5005 and 5015 for use with the Balance Phase II Vapor Recovery System.
G-70-177-AA (06/22/00)	Certification of the VCS400-7 Vacuum Assist Phase II Vapor Recovery System.
G-70-179 (07/02/97)	Certification of the Catlow ICVN-V1 Vacuum Assist Phase II Vapor Recovery System.
G-70-180 (04/17/97)	Order Revoking Certification of the Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Systems.
G-70-183 (03/04/98)	Certification of the Healy/Franklin Vacuum Assist Phase II Vapor Recovery System.
G-70-186 (10/26/98)	Certification of the Healy Model 400 ORVR Vapor Recovery System.
G-70-188 (05/18/99)	Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System.

G-70-191 (08/08/99)	Healy/Franklin VP-1000 Vapor Pump Phase II Vapor Recovery System (Healy ORVR Phase II Vapor Recovery System).
G-70-196 (12/30/00)	Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System.

36.10.2 Stage I Enhanced Vapor Recovery (EVR) Systems

Executive Order Number	Description	Date
VR-101- RT	Phil-Tite Phase I Vapor Recovery System	June 3, 2019 <u>2020</u>
VR-102- SU	OPW Phase I Vapor Recovery System	June 3, 2019 <u>2020</u>
VR-104- JK	CNI Manufacturing Phase I Vapor Recovery System	June 3, 2019 <u>2020</u>
VR-105- GI	EMCO Wheaton Retail Phase I Vapor Recovery	June 3, 2019 <u>2020</u>
VR-401- EF	OPW Phase I EVR System for ASTs	June 29, 2015 <u>July 17, 2019</u>
VR-402- DE	Morrison Brothers Phase I EVR System for ASTs	March 29, 2016 <u>July 17, 2019</u>

36.11 Referenced Standards

36.11.1 Test Procedure TP-96-1 of the San Diego Protocol, Revision III (March 1, 1996). San Diego County Air Pollution Control District.

36.11.2 Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-19 (2019). Petroleum Equipment Institute (PEI).

36.11.3 Stage I EVR system maintenance and test requirements. California Air Resources Board. Specifically:

36.11.3.1 For Phil-Tite Phase I Vapor Recovery System: Exhibit 2 Installation, Maintenance and Compliance Specifications, Table 2-1 and Table 2-2, Executive Order VR-101-~~QT~~ (~~June 1, 2018~~ June 3, 2020).

36.11.3.2 For OPW Phase I Vapor Recovery System: Exhibit 2 Installation, Maintenance and Compliance Standards and Specifications, Table 2-1 and Table 2-2, Executive Order VR-102-~~RU~~ (~~June 1, 2018~~ June 3, 2020).

36.11.3.3 For CNI Manufacturing Phase I Vapor Recovery System: Exhibit 2 Installation, Maintenance and Compliance Specifications, Table 2-1 and Table 2-2, Executive Order VR-104-~~IK~~ (~~June 1, 2018~~ June 3, 2020).

36.11.3.4 For EMCO Wheaton Retail Phase I Vapor Recovery: Exhibit 2 Installation, Maintenance and Compliance Specifications, Table 2-1 and Table 2-2, Executive Order VR-105-~~FI~~ (~~June 1, 2018~~ June 3, 2020).

36.11.3.5 For OPW Phase I EVR System for ASTs (Aboveground Storage Tanks): Exhibit 2 Installation, Maintenance, and Compliance Standards and Specifications, Table 2-1 and Table 2-2, Executive Order VR-401-~~EF~~ (~~June 29, 2015~~ July 17, 2019).

36.11.3.6 For Morrison Brothers Phase I EVR System for ASTs: Exhibit 2 Installation, Maintenance, and Compliance Standards and Specifications, Table 2-1 and Table 2-2, Executive Order VR-402-~~DE~~ (~~March 29, 2016~~ July 17, 2019).

36.11.4 Vapor Recovery Test Procedure TP-201.1E Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valve (October 8, 2003). California Air Resources Board.

36.11.5 Assist Phase II Enhanced Vapor Recovery (EVR) System including In-Station Diagnostics (ISD), Executive Order [~~VR-202-W (August 30, 2018)~~ **VR-202-Z (November 5, 2019)**]. California Air Resources Board. Specifically, the referenced standards include:

36.11.5.1 Exhibit 1 Section II, Exhibit 2 Section II, and Exhibit 3 Section II, for In-Station Diagnostics Systems.

36.11.5.2 Exhibit 9 Veeder-Root ISD (In-Station Diagnostics System) Operability Test Procedure.

36.11.5.3 Exhibit 10 Incon VRM (Vapor Recovery Monitoring System) Operability Test Procedure.

36.11.6 Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities (July 26, 2012). California Air Resources Board.

36.11.7 **7 DE Admin. Code** 1351 Underground Storage Tanks and **7 DE Admin. Code** 1352 Aboveground Storage Tanks. Tank Management Section, Division of Waste & Hazardous Substances, Delaware Department of Natural Resources and Environmental Control.

36.11.8 The referenced standards listed above have served in part as the basis for the standards in Section 36.0. The source from which a referenced standard is available is also listed. In addition, the referenced standards are available for review, with prior notification, at the offices of the Department's Division of Air Quality. The notification shall be made at least ten days prior to the review date.

36.11.9 All referenced standards in subsection 36.11 are specified by their codes or effective dates for their applicable editions or versions. Where there is an irreconcilable conflict between a referenced standard in subsection 36.11 and standards published by an industry or professional organization, the most stringent standard shall apply and control.

36.11.10 In subsection 36.11, the term "Phase I" is equivalent to the term "Stage I," and the term "Phase II" is equivalent to the term "Stage II".

19 DE Reg. 199 (09/01/15)

24 DE Reg. 61 (07/01/20)

TECHNICAL RESPONSE MEMORANDUM

Date: January 21, 2021

To: Theresa Newman, Hearing Officer

Through: Valerie Gray *vag*
Renaë Held *rh*

From: Frank Gao *ffg*

Re: Department’s responses to comments received on the proposed amendments to 7 **DE Admin. Code** 1124 – *Control of Volatile Organic Compound Emissions*, Section 36.0 Vapor Emission Control at Gasoline Dispensing Facilities.

You presided over a virtual public hearing on Tuesday, December 8, 2020 beginning at 6:00 PM, conducted by the Division of Air Quality, on behalf of the Department of Natural Resources and Environmental Control (the Department). The subject of the public hearing was the proposed amendments to 7 **DE Admin. Code** 1124 Section 36.0 “Vapor Emission Control at Gasoline Dispensing Facilities.”

At the hearing, the Department received verbal comments from the following:

<u>Name</u>	<u>Affiliation</u>	<u>Position</u>
Sandy Carl	Crompco LLC (testing company)	Company Representative

On December 9, 2020, Ms. S. Carl submitted a written copy of her comments via the Department’s Public Hearing Comment Form (see Attachment 1 to this memorandum).

As administered by you, the public comment period of this hearing extended to January 7, 2021. Throughout the entire 30-day comment period, the Department did not receive any additional comments.

This memorandum provides the responses of the Division of Air Quality, on behalf of the Department, to Ms. S. Carl’s comments.

Comment

I've been in the in the fuel and compliance industry for well over 36 years and know that CARB along with any other agencies/manufacturers in this industry update and amend documentation frequently to keep up with technology and better equipment and changes to testing protocols/equipment. Since CARB EOs are known to change frequently, why not consider creating

language that can be used in the DNREC Air Regs to allow for any changes that may occur overtime so that Public Hearings like the one that occurred on 12/8/2020, can be avoided. The 12/8/2020 meeting was only 18-20 mins. long which used up valuable time, energy and funds from DNREC which could be avoided. Language could be added to the Regs to state that the Air Regs look to incorporate by reference the most current version of any CARB Executive Order that is in place.

Department Response

The Department appreciates the concern regarding automatic updates for CARB Executive Orders. However, Delaware law requires that the Department provide notice and the opportunity for public comment prior to adopting regulatory changes. Consequently, we are unable to include language in the regulation that would provide for automatic future adoption of regulatory provisions.

Delaware Code Title 29 Chapter 101 “Administrative Procedures” Subpart II “Agency Regulations” requires the Department to provide the public opportunity to review and comment on substantive changes in its regulations when amending these regulations. To fulfill the requirement, the Department is required to go through a process which involves: publishing the notice and proposed amendment language, announcement of the public hearing in advance, conducting public hearing, and providing necessary pre-hearing and post-hearing comment periods. For the CARB Executive Orders incorporated by reference in its regulations, the Department must follow the same procedural requirement for public involvement when these incorporated executive orders are updated and amended.

Attachment 1

Wednesday, December 9, 2020

Comments on Docket #2020-R-A-0022 (Vapor Emission Control Regulations)

Name: Sandra Carl

Phone: 215-518-8191

Email Address: Sandra.Carl@Crompco.com

Organization: Crompco LLC

Comments:

Division of Air Quality: Thank you for providing the Public Hearing to make it known about the changes to the DNREC Air Regs. I was online for this hearing and do have a comment. I've been in the fuel and compliance industry for well over 36 years and know that CARB along with any other agencies/manufacturers in this industry update and amend documentation frequently to keep up with technology and better equipment and changes to testing protocols/equipment. Since CARB EOs are known to change frequently, why not consider creating language that can be used in the DNREC Air Regs to allow for any changes that may occur overtime so that Public Hearings like the one that occurred on 12/8/2020, can be avoided. The 12/8/2020 meeting was only 18-20 mins. long which used up valuable time, energy and funds from DNREC which could be avoided. Language could be added to the Regs to state that the Air Regs look to incorporate

by reference the most current version of any CARB Executive Order that is in place. Why not simplify the process? Thank you for the platform to comment.