

COMMONWEALTH of VIRGINIA

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GUIDANCE MEMORANDUM

TO: Regional Directors

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FROM:

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Secretary of Natural Resources

Michael G. Dowd, Director, Air Division

Jefferson D. Reynolds, Director, Enforcement Division

SUBJECT:

Enforcement Discretion Guidance for New & Modified Gasoline Dispensing Facilities

Related to Installation of Stage II Vapor Recovery Systems

DATE:

August 8, 2012

Introduction and Background

The Department of Environmental Quality (DEQ) is providing this guidance document in response to questions regarding the Environmental Protection Agency's (EPA) May 16, 2012, waiver of Stage II Vapor Recovery Systems (Stage II) implementation requirements. Current regulatory requirements for Stage II can be found in the Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, 9 VAC 5 Chapter 40, Existing Stationary Sources, Part II, Emission Standards, Article 37, Emission Standards for Petroleum Liquid Storage and Transfer Operations (Rule 4-37). Section 9 VAC 5-40-5220(F) requires affected Gasoline Dispensing Facilities (GDFs) located in the Northern Virginia and Richmond Volatile Organic Compound (VOC) Emission Control Areas to install, certify, maintain and test Stage II systems.

Due to the required installation of on-board refueling vapor recovery (ORVR) systems for all passenger cars since 2000, all light trucks since 2003, and all medium duty trucks since 2006, EPA has estimated that beginning in 2013 70% of all vehicles will be equipped with ORVR to capture the vapors, rendering the use of Stage II systems redundant. In light of the prevalence of ORVR and EPA's expectations of diminishing emissions benefits from Stage II and publication of the final May 16, 2012 determination by EPA, DEQ believes it is difficult to justify continuing to require new GDFs to incur the cost of installing Stage II. From this point forward, therefore, DEQ will exercise enforcement discretion with respect to new GDFs that do not install and maintain Stage II equipment, provided they comply with the criteria outlined in this guidance, thereby relieving them of the costs associated with Stage II requirements. This guidance is effective until 9 VAC 5-40 Article 37 has been revised accordingly.

Discussion

Gasoline is a volatile liquid. If not contained, its vapor escapes into the ambient air. The Clean Air Act (CAA) requires two controls for capturing gasoline vapor during vehicle refueling: 1) so-called Stage II, pursuant to CAA § 182(b)(3); and 2) ORVR, pursuant to CAA §202(a)(6). Stage II captures vapor displaced from the vehicle fuel tank during refueling and returns it to the gasoline dispensing facility storage tank. CAA Section 182(b)(3)'s Stage II requirements apply in certain ozone nonattainment areas and maintenance areas. In contrast to Stage II, ORVR directs the vapor away from the fuel tank fill pipe and into an activated carbon canister on the vehicle.

As ORVR-equipped vehicles replace older vehicles without ORVR, EPA estimates that the amount of displaced gasoline vapors available for capture by Stage II continually diminishes. Accordingly, CAA §202(a)(6) allows the EPA administrator to waive Stage II requirements once ORVR is in widespread use. On May 16, 2012, EPA determined ORVR to be in widespread use for the national highway fleet. Several states already have eliminated Stage II based on the following criteria: 1) EPA's widespread use modeling parameters; 2) the state's vehicle fleet characteristics; 3) the benefits/costs of keeping Stage II to capture vapors from older vehicles that do not have ORVR; and 4) the potential for fugitive emissions resulting from certain incompatibilities between ORVR and Stage II equipment.

Enforcement Discretion

DEQ will exercise enforcement discretion by not assessing a violation to new or modified GDFs for failure to comply with current Stage II requirements in 9 VAC 5-40-5220 (F), thereby allowing new or modified GDFs to be constructed without Stage II systems. For purposes of this guidance a new or modified GDF is a facility that, after July 1, 2012:

- 1. Begins dispensing fuel for the first time;
- 2. Excavates below a shear valve or tank pad in order to repair or replace its Stage II system or an underground storage tank;
- 3. Installs a new dispenser system. A dispenser system is considered new when:
 - a. A dispenser is installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system), **or**

- b. An existing dispenser system is removed and replaced with a brand new dispenser system manufactured without Stage II, provided all decommissioning requirements and any UST secondary containment and under-dispenser containment requirements (if applicable) have been met.
- 4. Undergoes major system modification. See 9 VAC 5-40-5210C "Major system modification" means the replacement, repair or upgrade of 75% of a facility's Stage II vapor recovery system equipment.

Decommissioning

Any new or modified GDF that qualifies for enforcement discretion pursuant to the previous section that discontinues operation of all **or** part of its existing Stage II system <u>must complete steps 1, 2, and 3 listed below:</u>

- 1. **Notify DEQ in writing that it intends to act** in accordance with this enforcement discretion **prior** to removing or discontinuing all **or** part of its existing Stage II system. <u>All notifications</u> must include:
 - a. Name, address, contact name, phone number and Registration number of GDF;
 - b. Details and cost of project, and name of service provider for the project;
 - c. Start date and projected completion date; and
 - d. A copy of this notification must be kept with on-site records.
- Decommission the discontinued Stage II system <u>or</u> in the case of removal and replacement of an existing dispenser system, decommission each dispenser system piping in accordance with all applicable steps provided in the <u>Petroleum Equipment Institute Recommended Practices</u> <u>for Installation and Testing of Vapor Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09, Section 14, Decommissioning Stage II Vapor Recovery Piping;</u>
- 3. **Notify DEQ in writing no later than 30 days after** decommissioning all **or** part of a Stage II system. All notifications should be sent via email **osba@deq.virginia.gov** or mailed to the Department of Environmental Quality, Air Division, Office of Air Compliance Coordination, P.O. Box 1105, Richmond, Virginia 23218 (*Attention: Patti Higgins*). All notifications must include:
 - a. Name, address, contact name, phone number and Registration number of GDF;
 - b. Name and phone number of qualified technician and/or qualified service provider who decommissioned the Stage II equipment;
 - c. Date decommissioning was complete and type of Stage II system;
 - d. Steps used in decommissioning or attach completed PEI RP300 checklist form;
 - e. Copy of pressure decay test conducted after decommissioning was complete;
 - f. Statement from the service provider verifying the storage system has been left in a condition that will reliably prevent the release of any vapors or liquids from any component of the storage system associated with the Stage II system; and
 - g. A copy of this notification must be kept with on-site records.

Please be advised that DEQ's Stage II regulation, 9 VAC 5-40 Article 37 is part of the Virginia SIP and is, therefore, enforceable as a federal requirement. The federal requirement remains in place irrespective of DEQ's exercise of enforcement discretion. In addition, notwithstanding this guidance document, GDFs are required to comply with all other state or federal regulations as applicable (i.e. CFR 63, Subpart CCCCCC, remainder of Rule 4-37, and Rule 4-25), and any final regulation phasing out the Stage II program must be approved by EPA.

Existing GDFs

All existing facilities that do not meet the criteria above and currently equipped with Stage II systems must continue to certify, maintain, test and must continue to comply with all existing Stage II requirements in 9 VAC 5-40-5220(F) until such time as the Virginia Stage II regulatory requirements for existing facilities are repealed. DEQ may exercise enforcement discretion on a case-by-case basis in situations where an existing GDF must incur significant capital costs to properly operate and maintain its Stage II equipment but where such costs do not amount to a major Stage II system modification provided the facility submits a written request and whereby a case determination is made by DEQ granting or denying such request.

Underground Storage Tanks (UST)

Nothing in this guidance relieves an UST owner or operator from the duty to comply with the technical requirements described in the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation (9 VAC 580). In particular, tank system upgrades <u>and new installations</u> may trigger secondary containment and under-dispenser containment requirements. Please see §25-580-50.7 for the relevant containment requirements. Questions regarding UST/AST can be directed to the UST & AST Program Coordinator, Russell Ellison (804) 698-4269.

Questions regarding Stage II or this guidance can be directed to the Office of Air Compliance Coordination, Patti Higgins (804) 698-4065 or information can be found at www.deq.virginia.gov/Programs/Air/SmallBusinessAssistance.aspx