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310 CMR 7.24(9) U. Dispensing of E85 Motor Vehicle Fuel/Ethanol Blends

RESPONSE TO COMMENTS
FOR
AMENDMENT TO
REGULATIONS 310 CMR 7.00
FOR THE CONTROL OF AIR POLLUTION
IN THE

BERKSHIRE AIR POLLUTION CONTROL DISTRICT
PIONEER VALLEY AIR POLLUTION CONTROL DISTRICT
MERRIMACK VALLEY AIR POLLUTION CONTROL DISTRICT
METROPOLITAN BOSTON AIR POLLUTION CONTROL DISTRICT
CENTRAL MASSACHUSETTS AIR POLLUTION CONTROL DISTRICT
SOUTHEASTERN MASSACHUSETTS AIR POLLUTION CONTROL DISTRICT

STATUTORY AUTHORITY
M.G.L. c. 111, Sections 142A through 142N

December 2009

I. INTRODUCTION

For the purpose of reducing actual or perceived roadblocks to the introduction of ethanol blended fuels in Massachusetts, MassDEP proposed 310 CMR 7.24(9) Dispensing of E85 Motor Vehicle Fuel/Ethanol Blends applicable to the installation, operation and maintenance of E85 (85% ethanol, 15% gasoline) ethanol blended gasoline dispensing facilities in Massachusetts.

By proposing this new regulation, MassDEP seeks to clarify for potential owners/operators of E85 dispensing facilities the types of vapor controls required for the dispensing of E85. As proposed, E85 facilities must correctly install, operate and maintain Stage I vapor controls. Stage II vapor controls, however, are not required, because all motor vehicles approved for use with E85 are manufactured with Onboard Refueling Vapor Recovery (ORVR) systems that collect the fuel vapors that otherwise would be controlled by Stage II.

Once promulgated, MassDEP will submit the amended regulations to the United States Environmental Protection Agency (USEPA) as a formal revision to the Commonwealth of Massachusetts Ozone State Implementation Plan (SIP) pursuant to the provisions of 40 CFR Part 51.

II. COMMENTS RECEIVED DURING PUBLIC HEARING/COMMENT PERIOD

The Department only received comments from Cumberland Farms. Below are the comments and the Department's response.

1. 310 CMR 7.24 (9) (b):

As drafted, 310 CMR 7.24 (9) (b) (and Section 3.0 of the BWP Background Document) is ambiguous and/or misleading because it suggests the CAA prohibits the use of any product other than RFG as a blending stock for E85, which is incorrect. Cumberland Farms' proposed change¹ corrects this ambiguity and is in harmony with the CAA and industry standards for the manufacture, dispensing and sale of E85 as a finished product. Cumberland Farms' change would also be consistent with ASTM standards and specifications for the manufacture of E85.

MassDEP Response:

The issue raised by Cumberland Farms is, that Federal Reformulated Gasoline (RFG) in Massachusetts is blended locally with ethanol to avoid distribution problems associated with ethanol absorbing moisture and phase separation. Cumberland Farms wishes to add the full 85% ethanol with the reformulated blendstock in order to blend E85 locally, rather than a two step process of blending 10% ethanol to create RFG and then the second step of blending in additional ethanol to create E85.

¹ Cumberland Farms proposes deleting the reference to 42 U.S.C. § 7545 (k) of the federal Clean Air Act (CAA) because that subsection of the Act does not apply to the manufacture, dispensing or sale of E85 fuel and does not proscribe hydrocarbons or other products to which ethanol may be blended. Moreover, Cumberland Farms comments that the Energy Policy Act of 1992, 42 U.S.C. § 13201, *et seq.*, defines E85 as an "alternative fuel" that is "substantially not petroleum." Subsection k of § 7545 applies generally to the sale or dispensing of reformulated gasoline (RFG) for conventional vehicles (*i.e.*, non-E85 compatible cars), and specifically prohibits the sale of conventional gas as a final product to the ultimate consumer in certain geographic locations. Further, and although not controlling, there is no EPA rule, guidance or policy that expressly prohibits the use of any product other than RFG as a blending stock in the manufacture, dispensing or sale of E85.

In response to this comment, the definition of “Fuel Quality” was revised to include the text highlighted below in order to clarify that RFG blendstocks can be blended directly to create E85.

(b) Fuel Quality:

For purposes of compliance with 310 CMR 7.24(9), only ethanol meeting American Society for Testing and Materials (ASTM) Ed75Ed85 *Standard Specifications for Fuel Ethanol* may be blended with motor vehicle fuel, **including reformulated blendstock for oxygenate blending**, meeting applicable Federal Reformulated Gasoline requirements (42 U.S.C. §7545(k)). Such blends shall only be blended in accordance with ASTM D5798-99 *Standard Specifications for Fuel Ethanol for Automotive Spark Ignition Engines*. Hereafter, said motor vehicle fuel and ethanol blend is referred to as E85.

2. 310 CMR 7.24 (9) (d) (2):

The current Stage II visual inspection requirement is weekly and the new requirement is every 7 days, which is less flexible and does not allow for uncontrolled events, including weather conditions in the Commonwealth (especially during the winter months), emergencies and similar *force majeure* events that are more prevalent in this geographic region than in warmer climates like California.

MassDEP Response:

The proposed language in 310 CMR 7.24(9)(d)2. is identical to that recently adopted under the Stage II regulation (310 CMR 7.24(6) Dispensing of Motor Vehicle Fuel. Effective March 1, 2009). Under the proposed language, applicable E85 dispensing systems must be inspected once every seven (7) days. There is no prohibition against performing required inspections more frequently, as circumstances require.

3. 310 CMR 7.24 (9) (f) (1) (b):

Cumberland Farms believes that 30 days is a more practical and realistic time frame for achieving a passing test result, particularly because E85 is a new product in the Commonwealth and market conditions might affect the availability of parts and/or service.

MassDEP Response:

Section 310 CMR 7.24 (9)(f)1. b. applies to how soon an E85 facility owner/operator must submit the required Installation/Substantial Modification Certification (Form A) to the Department after performing and passing all required tests. This requirement is consistent with the same requirement under the recently amended Stage II regulation. To ensure consistency and avoid confusion between these programs, the Department will not revise 310 CMR 7.24(9)(f)1. b., as suggested.

4. 310 CMR 7.24 (9) (f) (2) (a):

This comment applies to several subsections. The current BWP-Stage II Vapor Recovery Program Form B is entitled "Vacuum Assist 120-Day Compliance Certification." The proposed E85 Form B would not be consistent with that title, causing confusion when reporting for gasoline and E85. We believe the forms should be consistent.

We are also asking for clarification because it appears the proposed E85 Form B should correspond to Form C for Stage II.

MassDEP Response:

310 CMR 7.24(9) Dispensing of E85 Motor Vehicle Fuel/Ethanol Blends, while similar to the Stage II regulation, is a separate and distinct regulation with its own certification documents.

In response to the concern that facility owners/operators may be confused by similarities between E85 and Stage II program documents, under the recently amended Stage II regulation, the referenced Stage II Form B (Vacuum Assist 120-Day Compliance Certification) has been repealed, thereby eliminating potential confusion for owners and operators of both gasoline and E85 dispensing facilities.

5. 310 CMR 7.24 (9) (f) (2) (d) (iii):

The current Stage II regulation allow for 14 days after a Stage II failure to retest and submit a passing result, as opposed to 7 days. The proposed E85 regulatory requirement is less flexible and does not take into consideration the fact E85 is a new product in the Commonwealth and market conditions that might affect the availability of parts and/or service.

MassDEP Response:

Section 310 CMR 7.24 (9)(f)2. d. iii. applies to how soon an E85 facility owner/operator must submit the required Annual In-Use Compliance Certification (Form B) to the Department after performing and passing all required tests. This requirement is consistent with the same requirement under the recently amended Stage II regulation. To ensure consistency and avoid confusion between these programs, the Department will not revise 310 CMR 7.24(9)(f)2. d. iii, as suggested.

6. 310 CMR 7.24 (9) (f) (2) (e):

The current Stage II regulations have no provision for handling a station in the event that a repair and retest cannot be performed within the allotted timeframe. The proposed requirement is more onerous and inconsistent with the current regulations, and might discourage the sale of E85 within the Commonwealth.

MassDEP Response:

This requirement is consistent with the same requirement under the recently amended Stage II regulation. To ensure consistency and avoid confusion between these programs, the Department will not revise 310 CMR 7.24(9)(f)2. e., as suggested.

7. 310 CMR 7.24 (9) (g) (3):

This requirement differs from the current Stage II regulations in that it applies to transactions other than sales or purchases. Again, the proposed requirement is more onerous and inconsistent with the current regulations, and might discourage sales of E85 within the Commonwealth.

MassDEP Response:

This requirement is consistent with the same requirement under the recently amended Stage II regulation. To ensure consistency and avoid confusion between these programs, the Department will not revise 310 CMR 7.24(9)(g) 3., as suggested.