



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

310 CMR 7.24(6) U. Dispensing of Motor Vehicle Fuel

(Stage II Vapor Recovery)

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 2008

I. INTRODUCTION

In accordance with the provisions of M.G.L. chapter 30A, public hearings were held at the Springfield City Hall and the Boston office of the Department of Environmental Protection (MADEP) on April 30 and May 1, 2008, respectively, to receive testimony on proposed amendments to the Air Pollution Control Regulations at 310 CMR 7.00. The public comment period remained open until 5 p.m. on May 12, 2008. This document provides a response to the comments presented during the public comment period and additional revisions to the proposed amendments to 310 CMR 7.24(6) as a result of editorial review and changes to documents cited in the proposed amendments that were revised subsequent to MADEP initiating the public hearing process.

II. BACKGROUND

The MADEP proposed to adopt revisions to 310 CMR 7.24(6) U Dispensing of Motor Vehicle Fuel (Stage II) because certain sections of the current regulation were found to be unclear or at odds with efficient and effective program implementation and facility compliance. The proposed amendments address those issues as well as a number of housekeeping measures to update applicable program requirements.

Once promulgated, MADEP 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.

III. COMMENTS RECEIVED DURING PUBLIC HEARING/COMMENT PERIOD

Commenter: USEPA New England Region

A. P/V Vent Caps

The language in proposed Section 7 of the rule reads:

“On or after (THE EFFECTIVE DATE OF THESE AMENDMENTS), any person who owns, leases, operates or controls a newly installed motor vehicle fuel dispensing facility where a Stage II system is installed in compliance with 310 CMR 7.24(6)(a) 1. shall install a pressure/vacuum (P/V) vent cap on each underground motor vehicle fuel storage tank vent located at said facility, prior to commencing operation. Any person who owns, leases, operates or controls an existing motor vehicle fuel dispensing facility where a vapor balance Stage II system is installed as of (THE EFFECTIVE DATE OF THESE AMENDMENTS) shall install a P/V vent cap on each underground motor vehicle fuel storage tank vent on or before said facility’s first Annual In-Use Compliance Certification submittal due date after (THE EFFECTIVE DATE OF THESE AMENDMENTS + 30 days). Each P/V vent cap shall maintain 3.0+/-0.5 inches of water pressure, and 8.0+/-2.0 inches of vacuum.”

We understand that P/V vents are already required on facilities which have Stage II vacuum assist type systems under other provisions of this rule. Nevertheless, we believe it should be made clear that such a requirement exists in this section as well which

directly addresses P/V vent requirements, and includes the P/V performance requirements.

MADEP Response: In response to this comment, the Department added the underlined clarifying note below.

“On or after (THE EFFECTIVE DATE OF THESE AMENDMENTS), any person who owns, leases, operates or controls a newly installed motor vehicle fuel dispensing facility where a Stage II system is installed in compliance with 310 CMR 7.24(6)(a) 1. shall install a pressure/vacuum (P/V) vent cap on each underground motor vehicle fuel storage tank vent located at said facility, prior to commencing operation. Any person who owns, leases, operates or controls an existing motor vehicle fuel dispensing facility where a vapor balance Stage II system is installed as of (THE EFFECTIVE DATE OF THESE AMENDMENTS) shall install a P/V vent cap on each underground motor vehicle fuel storage tank vent on or before said facility’s first Annual In-Use Compliance Certification submittal due date after (THE EFFECTIVE DATE OF THESE AMENDMENTS + 30 days) Each P/V vent cap shall maintain 3.0+/-0.5 inches of water pressure, and 8.0+/-2.0 inches of vacuum.” Note: Per the applicable CARB Executive Orders, above ground motor vehicle fuel storage tanks and all underground motor vehicle fuel storage tanks with vacuum assist type Stage II systems are also required to have P/V vent caps.

B. E85 and Stage II Vapor Recovery

In the past few months, several questions have been raised about the need to install Stage II vapor recovery systems on new gasoline stations which will dispense only E85 (fuel which is 85% ethanol and 15% petroleum based gasoline). EPA policy would not require such new stations to install Stage II controls,¹ and we understand the Commonwealth has put forward a policy addressing this issue. We believe the Commonwealth has the opportunity to address this issue directly in the revised rule.

MADEP Response: MADEP agrees with this comment, Stage II vapor recovery systems are unnecessary for the dispensing of E85. MADEP will propose regulations for the dispensing of gasoline/ethanol blends in January 2009.

C. Requiring the Installation of ORVR Compatible Stage II Systems At New or Substantially Modified Motor Vehicle Fuel Dispensing Systems

We recommend that Massachusetts consider requiring Stage II systems that are ORVR compatible (i.e., compatible with onboard refueling vapor recovery controls on vehicles). An earlier draft of the rule included language which would have required new and modified stations to install Stage II ORVR-compatible equipment. That language, however, has not been included in the proposal. Based on discussions with staff at the California Air Resources Board (CARB), we understand that if stations are able to just install ORVR nozzles and other hanging hardware, without needing to excavate, the cost

¹ See http://www.epa.gov/ttn/oarpg/t1/memoranda/stage_ii_vapor_recovery121806.pdf

could be between \$5,000 and \$10,000 per station. New installations or these facilities that are changing out the nozzles and other hanging hardware as part of routine maintenance could expect a much smaller incremental cost to become ORVR compatible. Therefore, such controls should be considered as the state contemplates potential cost-effective control strategies to meet future air quality goals.

MADEP Response: The proposed amendments did not include any discussion of requiring the installation of ORVR compatible Stage II equipment. Changing the proposed amendments to include such a requirement would not be appropriate without proper notice and public hearing.

IV. EDITORIAL CORRECTIONS AS A RESULT OF DEPARTMENT REVIEW

As a result of Department review certain editorial corrections were made throughout the text of the regulation. These corrections are noted in the attached Redline/Strikeout copy of the final amendments to 310 CMR. 7.24 (6).

V. REVISION TO MADEP'S USE OF DEPARTMENT OF FIRE SAFETY'S FP-290 DOCUMENTS RELATIVE TO STAGE II FACILITY CLOSURES.

Between the time MADEP initiated the public hearing process for the proposed amendments to the Stage II regulations and the current final promulgation of those amendments, the Department of Fire Safety revised its FP-290 documents. As a result, MADEP has revised those sections of the proposed amendments relating to the temporary and permanent closure of Stage II facilities (310 CMR 7.24(6)(e) 3.) to reflect those changes.

Below are the changes made to 310 CMR 7.24(6)(e) 3.

3. Any person subject to the requirements of 310 CMR 7.24(6) seeking to permanently or temporarily take out of use an existing motor vehicle fuel dispensing facility or tank truck shall submit to the Department a fully completed and signed Stage II System Closure Notification, on a form obtained from the Department.

a. Said Notification shall include the following:

i. the name of the Stage II facility owner, operator, lessee or controller and related business information, including the name and address of the facility where the Stage II system was located or from which the tank truck was principally operated, as applicable;

ii. the Stage II Facility Customer Code number for the applicable facility or tank truck; and

~~iii. a fully completed Notification For Storage Tanks Regulated Under 527 CMR 9.00 (FP-290) Form, as issued by the local Fire Department, documenting that the applicable facility or tank truck is either permanently or temporarily taken out of use.~~
iii. a copy of the Notification For

Removal or Closure of In Place Underground Storage Tanks Regulated under 527 CMR 9.00 (FP-290R) Form, documenting the permanent or temporary out of use status of said facility or tank truck or record with the Massachusetts Department of Fire Safety.

~~b. Any person subject to the requirements of 310 CMR 7.24(6) who temporarily takes out of use a motor vehicle fuel dispensing facility shall, prior to re-commencing the distribution of motor vehicle fuel, perform and pass all applicable compliance tests and submit to the Department a fully completed Installation/Substantial Modification Certification as required by 310 CMR 7.24(6)(c) 1. Said temporary Notification shall be renewed as necessary by submitting an updated, fully completed Installation/Substantial Modification Certification, on or before the annual anniversary of the date the local Fire Department signed the required FP-290 Form. Said renewal shall include a current FP-290 Form, as issued by the local Fire Department, documenting the facility's continued temporary out of use status.~~
b. The temporary out of use status of a motor vehicle fuel dispensing system shall be renewed as necessary by any person subject to the requirements of 310 CMR 7.24(6) by submitting a new fully completed Stage II System Closure Notification on or before the annual anniversary of the effective date said dispensing system was taken out of use, as noted in the required FP-290R Form. Said renewal shall include a current FP-290R Form for said dispensing system on record with the Massachusetts Department of Fire Safety documenting the system's continued temporary out of use status.

c. Any person subject to the requirements of 310 CMR 7.24(6) who temporarily takes out of use a motor vehicle fuel dispensing system shall, prior to re-commencing the distribution of motor vehicle fuel, perform and pass all applicable compliance tests and submit to the Department a fully completed Installation/Substantial Modification Certification as required by 310 CMR 7.24(6)(c) 2.

e.d. Any person subject to the requirements of 310 CMR 7.24(6), where the motor vehicle fuel dispensing facility is ~~either permanently or temporarily~~ taken out of use, shall no longer be subject to 310 CMR 7.24(6) as of the effective date the facility was permanently taken out of service as referenced in the required FP-290R Form.

The changes to the proposed 310 CMR 7.24(6)(e) 3., with respect to the Department's use of the Department of Fire Safety's FP-290 documents, are not substantively different from the proposed amendments and clarify the proper forms to use.