



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

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Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

RICHARD K. SULLIVAN JR.  
Secretary

KENNETH L. KIMMELL  
Commissioner

July 2, 2012

***Re: Stage II Vapor Recovery Enforcement Discretion for New and Modified Motor Vehicle Fuel Dispensing Facilities subject to 310 CMR 7.24(6).***

Dear Motor Vehicle Fuel Dispensing Facility Owners and Operators:

On May 16, 2012, the U.S. Environmental Protection Agency (EPA) issued a rule that allows states to phase out their Stage II vapor recovery programs. The EPA rule provides that any state previously required to have a Stage II program may take appropriate action to remove the program from its State Implementation Plan (SIP). EPA's action is based on its determination that onboard refueling vapor recovery (ORVR) systems are in widespread use in the motor vehicle fleet nationwide.

EPA's rule does not require a state to terminate its Stage II program. Rather, EPA encourages each state to assess whether and how to phase out its Stage II program considering state-specific information about program effectiveness, the characteristics of the state vehicle fleet, and SIP requirements. If a state decides to terminate its program it must submit a SIP revision to EPA that includes an analysis of the emissions impact of eliminating Stage II, a plan to address any resulting emissions increase and revisions to the state's Stage II regulation. EPA must then determine whether the request for a SIP revision is approvable.

MassDEP currently is assessing when to phase out its Stage II program. Because Stage II systems are costly to install, it is not reasonable to require new or modified motor vehicle fuel dispensing facilities to incur the expense of installing or modifying Stage II systems while awaiting finalization of the necessary regulatory changes. **Therefore MassDEP will exercise its enforcement discretion to allow new or modified motor vehicle fuel dispensing facilities to be constructed without Stage II systems.**

**Existing facilities that do not meet the criteria below for a new or modified motor vehicle fuel dispensing facility are required to maintain and operate existing Stage II systems in accordance with 310 CMR 7.24(6).**

**For purposes of this letter a new or modified motor vehicle fuel dispensing facility is a facility that, after July 9, 2012:**

- **begins dispensing fuel for the first time;**
- **excavates below a shear valve or tank pad in order to repair or replace its Stage II system or an underground storage tank; or**
- **replaces fifty percent (50%) or more of its dispensers.**

Any motor vehicle fuel dispensing facility that removes or discontinues operation of its existing Stage II system in reliance on this enforcement discretion, must decommission its entire existing Stage II system in accordance with all applicable steps listed in the *Petroleum Equipment Institute Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09, Section 14, Decommissioning Stage II Vapor Recovery Piping*.

**A facility must notify MassDEP that it intends to act in accordance with this enforcement discretion prior to removing or discontinuing its existing Stage II system or prior to dispensing fuel for the first time. Notices should be sent to [aq.stage2@state.ma.us](mailto:aq.stage2@state.ma.us).**

MassDEP is developing a decommissioning form that facilities will be required to complete and submit to MassDEP no later than 60 days after decommissioning a Stage II system.

Please be advised that MassDEP's Stage II regulation, 310 CMR 7.24(6), is part of the Massachusetts SIP and is, therefore, enforceable as a federal requirement. The federal requirement remains in place irrespective of MassDEP's exercise of enforcement discretion. In addition, any final regulation phasing out the Stage II program must be approved by EPA.

Finally, MassDEP is currently reviewing possible upgrades to the Stage I vapor recovery systems required at gasoline dispensing facilities. Owners and operators of new or modified facilities should be aware that MassDEP may propose that all facilities install Stage I upgrades at a future date. **Any facility that removes its Stage II system in reliance on this exercise of enforcement discretion should consider installing a Stage I system that meets California Air Resources Board requirements for Stage I Enhanced Vapor Recovery as well as a system that monitors for vapor leaks.** For more information on California's Stage I requirements, please refer to MassDEP's Stage II Vapor Recovery Fleet Exemption Amendments proposed in April 2012, which are available at <http://www.mass.gov/dep/service/regulations/newregs.htm#proposed>

MassDEP will have more information about any proposed changes to its Stage I or II programs this summer. We are working with a consultant to analyze the implications of various potential program changes and expect to have a draft report available for public review in July. We will work with stakeholders in the fall on any proposed changes to our regulations, and submit draft regulations for public comment. Once finalized, we will submit the regulations for EPA approval.

July 2, 2012  
Stage II Enforcement Discretion

If you have any questions, please call the MassDEP Stage II/UST hotline at 617-556-1035 or Jeff Gifford at 617-556-1144; [jeffrey.gifford@state.ma.us](mailto:jeffrey.gifford@state.ma.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Kimmell", written in a cursive style.

Kenneth Kimmell  
Commissioner