

In The Matter Of:
*Department of Natural Resources
& Environmental Control*

*ITMO: Section 36, of 7 DE Admin Code 1124
August 28, 2014*

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DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL CONTROL

..

-- PUBLIC HEARING --

IN THE MATTER OF:)
)
Revision to Section 36, "Stage II Vapor)
Recovery" of 7 DE Admin Code 1124)
"Control of Volatile Organic Compound)
Emissions.")

..

DNREC Auditorium
Richardson & Robbins Building
89 Kings Highway
Dover, DE 19901

Thursday, August 28, 2014
6:00 p.m.

..

BEFORE: ROBERT P. HAYNES, Public Hearing Officer
Department of Natural Resources &
Environmental Control

..

-- Transcript of Proceedings --

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1 MR. HAYNES: While people are still
2 signing in, we will go ahead and start on the record
3 on time.

4 Some preliminary matters: First,
5 welcome. My name is Robert Haynes. I'm here on
6 behalf of the Secretary of the Department, David
7 Small. Basically, tonight's hearing is the Proposed
8 Amendment to 7 Delaware Administrative Code,
9 Regulation 1124, Section 36, which is called the
10 Stage II Vapor Recovery.

11 A couple of housekeeping matters: If
12 you have an electronic device, please put it on
13 silent. If you do receive a phone call, please leave
14 the hearing room before speaking, because that will
15 interfere with the conduct of the hearing. In
16 particularly, the court reporter, who is sitting up
17 here, needs to hear the speakers and can only take
18 down one person at a time, which is why there is a
19 sign-in sheet at the entrance to the room. And if
20 you have not signed in, please do. I will be calling
21 the speakers up to the extent that they indicated
22 they wanted to speak.

23 And, as time allows it, we will open up
24 for people who did not sign up. We will have a



1 presentation from the representatives of the Division
2 of Air Quality, and then we will take the public
3 comments.

4 Thank you all for coming. And I will
5 turn it over to Mr. Gao.

6 MR. GAO: Can everybody hear me? Well,
7 first of all, welcome to this public hearing.
8 Today's hearing is to address a proposed revision to
9 7 de Admin Code 1124 Section 36.0, "Stage II Vapor
10 Recovery," briefly 1124, Section 36.

11 My name is Frank Gao. I'm an engineer
12 in the Planning Branch of the Division of Air
13 Quality, Department of Natural Resources and
14 Environmental Control, DNREC. I am coordinating this
15 rule-making process for the proposed revision being
16 addressed today.

17 For more than 20 years, gasoline
18 stations throughout Delaware have installed and
19 operated vapor recovery equipment to capture gasoline
20 vapors from vehicles' fuel tanks when refueling.
21 This technology, known as Stage II Vapor Recovery,
22 has significantly reduced emissions of volatile
23 organic compounds (VOC). VOCs contribute to
24 summertime ground-level ozone and also contains



1 certain air toxics.

2 Beginning in 1998, new vehicles started
3 to be equipped with on-board refueling vapor recovery
4 canisters, or ORVR. For these vehicles, the vapors
5 displaced during the refueling process are controlled
6 through the vehicle's canister, not through the Stage
7 II system.

8 In May 2012, the U.S. Environmental
9 Protection Agency (EPA) issued a rule in which the
10 agency determined that ORVR technology was in
11 widespread use, and as such, was largely making Stage
12 II Vapor Recovery obsolete.

13 The Division of Air Quality (DAQ) has
14 evaluated the shrinking benefit of Stage II systems
15 as older vehicles are replaced with newer
16 ORVR-equipped vehicles, and determined that
17 alternative requirements at gas stations would be
18 more cost-effective than retaining the requirement of
19 Stage II systems. Therefore, DAQ has embarked on an
20 effort to revise the Stage II Vapor Recovery
21 regulation, that is, Regulation 1124, Section 36.

22 The DAQ's goals for the revision, for
23 this regulatory revision, are one, to require all gas
24 stations to be well-controlled for gasoline vapor



1 emissions in Delaware; two, to provide flexibility to
2 station owners in meeting the new requirements;
3 three, not to increase overall costs compared to the
4 current requirements.

5 In early August 2013, DAQ organized a
6 review committee consisting of gas station owners and
7 operators, petroleum marketers, tank testing
8 companies, public interest groups, and DNREC staff
9 from DAQ and the Tanks Management Section (TMS).

10 The review committee was tasked with
11 discussing relevant issues and assessing technologies
12 that would protect air quality while limiting the
13 burden on the regulated community. The committee has
14 been also reviewing and commenting on draft revision
15 of the regulatory language. The committee met fives
16 times from August 2013 to June 2014.

17 Relevant materials in this rule-making
18 process, including the review committee meeting
19 records, have been collected and are posted on the
20 DNREC web page. The link to this web page is
21 provided at the bottom of the contact information
22 sheet being distributed today. They are on the front
23 desk.

24 The proposed revision being addressed



1 today has been available for public review in DAQ
2 offices in New Castle and Dover since July 16, 2014.
3 The document was published in Delaware Register of
4 Regulations on August 1, 2014 for public review. A
5 legal notice regarding the availability and
6 publication of the proposed revision and the schedule
7 of today's hearing was announced in the Sunday News
8 Journal and the Delaware State News on Wednesday,
9 July 23, 2014. Meanwhile, a public notice for
10 today's hearing was also posted on the Statewide
11 Public Meeting Calendar.

12 Now we submit the following exhibits
13 for the hearing record for the hearing officer. I
14 will give it to you as a package.

15 Exhibit 1: The Start-Action-Notice
16 that was approved by the DNREC Secretary to start the
17 rule-making process for the proposed revision being
18 addressed in today's hearing.

19 Exhibit 2: A collection of relevant
20 records of this rule-making process, including review
21 committee meeting notices on the Statewide Public
22 Meeting Calendar, committee meeting agendas,
23 attendance lists, presentations, surveys, survey
24 responses, survey summaries, regulation revision



1 drafts, DAQ web page for this rule-making, DAQ
2 cost-and-benefit analysis, and comments received
3 throughout the review process and prior to submitting
4 the proposed regulatory revision to the Delaware
5 Register.

6 Exhibit 3: The proposed revision and
7 register notice as published on August 1, 2014 in
8 Delaware Register of Regulations.

9 Exhibit 4: The Regulatory Flexibility
10 Act Compliance analysis for the proposed revision.

11 Exhibit 5: A collection of California
12 Air Resources Board (or CARB) Phase I vapor recovery
13 systems as incorporated in 36.4.1 and 36.10.2 of the
14 proposed revision.

15 Exhibit 6: A copy of CARB "Test
16 Procedure TP-201.3, Determination of 2-inch Water
17 Column Static Pressure Performance of Vapor Recovery
18 Systems of Dispensing Facilities," dated July 26,
19 2012, as incorporated in 36.4.2 of the proposed
20 revision.

21 Exhibit 7: A copy of "CARB Executive
22 Order VR-202-P, and Exhibit 1 Section II, Exhibit 2
23 Section II, Exhibit 3 Section II" of this order dated
24 December 10, 2013, as incorporated in 36.5.1 of the



1 proposed revision.

2 Exhibit 8: A copy of "CARB Test
3 Procedure TP-201.1E, P/V Valve Leak Rate and Cracking
4 Pressure Test," dated October 8, 2003, as
5 incorporated in 36.6.2.1.3 of the proposed revision.

6 Exhibit 9: A copy of "Exhibit 9 and
7 Exhibit 10 of CARB Executive Order VR-202-P," dated
8 December 10, 2013, as incorporated in 36.6.2.1.4 and
9 36.6.2.2 of the proposed revision.

10 Exhibit 10: A copy of Chapter 14 of
11 the Petroleum Equipment Institute (PEI) document
12 PEI/RP300-09, "Recommended Practices for Installation
13 and Testing of Vapor-Recovery Systems at
14 Vehicle-Fueling Sites."

15 Chapter 14 of this document, entitled
16 "Decommissioning Stage II Vapor Recovery Piping," is
17 incorporated in 36.9 of the proposed revision. The
18 public is hereby advised that this exhibit is a
19 copyrighted document, and therefore is provided
20 herein for use to comment on the proposed revision
21 only. Reproduction of this document for any other
22 use is prohibited.

23 Exhibit 11: Copies of affidavits from
24 the publishers of the Sunday News Journal and the



1 Delaware State News for publication of DNREC's legal
2 notice on July 23, 2014, announcing today's public
3 hearing, and copies of legal notice of public
4 hearing.

5 Exhibit 12: A copy of the public
6 notice on the Statewide Public Meeting Calendar
7 announcing today's public hearing.

8 Exhibit 13: A collection of comments,
9 including e-mails and letters, received by DNREC
10 after the proposed revision was submitted to the
11 Delaware Register and prior to the hearing today. It
12 also contains materials presented by Ellen Valentino
13 and five other industry representatives to DNREC
14 Secretary Dave Small at a meeting on August 12, 2014,
15 and a letter faxed to Governor Markell's office from
16 Brian Pepper presenting his comments along with an
17 alerting note on the proposed revision.

18 Exhibit 14: An updated version of the
19 proposed revision. This updated version contains
20 changes being made based on comments received after
21 the proposed revision was submitted to the Delaware
22 Register, as well as DAQ-TMS consideration for
23 clarifications. The three-page attachment to the
24 updated revision provides a list of the changes, and



1 under each change, DAQ provides explanations for that
2 change.

3 This exhibit is provided as a handout
4 for today's hearing, and they are available at the
5 front desk.

6 That concludes the Department's
7 statements. So back to the hearing officer.

8 MR. HAYNES: Thank you. The exhibits
9 that the Division of Air Quality had submitted for
10 the record will be available for the public up here.
11 Do you have another copy, per chance? They are
12 voluminous.

13 MR. GAO: Yes, we will have four
14 copies, one at Dover's office and another one at New
15 Castle's office available for public review.

16 MR. HAYNES: Right now we will begin
17 with the public comments. We will get the sign-in
18 sheet. Basically, public comments can provide your
19 position on the proposed amendment in favor or
20 against. You can also ask the Department
21 representatives questions. Let's wait till Mr. Gao
22 gets back. He is getting the list of speakers.

23 I'm curious. Raise hands how many
24 participated in the informal regulatory development



1 processes and the committees. Okay. We have a good
2 representation.

3 There was another sheet. Do you have
4 those too? Because those people had signed in
5 before.

6 MR. GAO: Oh, yeah. (Handing)

7 MR. HAYNES: Going to the top, Gary
8 Patterson, did you want to speak? There is two
9 sign-in sheets. I apologize. I came in here to set
10 up for the hearing, and it was being used by some
11 health group, so I put my papers over there.

12 MR. PATTERSON: Thank you. Good
13 evening. I'm Gary B. Patterson, a registered
14 representative for the American Petroleum Institute,
15 the oldest and largest American petroleum industry
16 trade association with over 600 members known for
17 nearly a century for the establishment of best
18 practices and standards covering all aspects of
19 petroleum products discovery, production, refining,
20 transportation, and retailing.

21 I have given the hearing officer, in
22 addition to my testimony, a letter from Richard
23 Heffron, the President of the Delaware State Chamber
24 of Commerce, directed to Secretary Small. But it is



1 at Mr. Heffron's request that I also ask that that be
2 entered into the record for this hearing.

3 On behalf of the American Petroleum
4 Institute, let me take issue with the proposed
5 regulation and the absence of any provision for a
6 waiver of Stage II requirements for new construction
7 or major renovations at existing gasoline dispensing
8 facilities. My industry has been asking that action
9 of the Air Quality Division for over three years and
10 are dispirited that this proposal attempts what no
11 other state east of the Rockies has done, by coupling
12 that with an untested and expensive technology.

13 In Arizona that enforcement discretion
14 was provided on February 27, 2014; in Connecticut in
15 February of 2012; in Florida they were exempted; in
16 Georgia regulation no longer requires Stage II; in
17 Illinois a decommissioning rule was adopted in
18 December 19, 2013; in Indiana enforcement discretion
19 was authorized in April of 2013; in Maine Stage II
20 requirements were repealed in January of 2012; in
21 Massachusetts an August 2012 enforcement discretion
22 strategy was published followed by a more-detailed
23 decommissioning policy in June of 2013, and a
24 proposal for a continuous pressure monitoring system



1 was studied and rejected; in Missouri, the show-me
2 state, decommissioning was allowed as of March 2013;
3 and in New Hampshire where they promise to breathe
4 free or fight -- I think that's the phrase -- the
5 Stage II must be decommissioned by December of 2015.

6 Not to belabor the point, Mr. Hearing
7 Officer, but the rest of the alphabet of states, New
8 York, North Carolina, Ohio, Pennsylvania, Rhode
9 Island, Tennessee, the pristine state of Vermont,
10 Virginia, and Wisconsin all have adopted a repeal or
11 some form of enforcement discretion.

12 What do we know in Delaware that those
13 states do not, or what lesser life value do we think
14 those regulators and legislators ascribe to their
15 residents?

16 I have participated in many productive
17 and reasonable regulatory development initiatives on
18 behalf of my industry and with DNREC staff for nearly
19 three decades, and the final product normally
20 reflects good science, good economics when possible,
21 and good sense. But all three are missing here.

22 We know that your task is a difficult
23 one and that the Secretary's concurrence is necessary
24 and request that you recommend setting aside this



1 proposal and ask your counterparts to return to the
2 table to examine the experiential data that has been
3 shared since July 1 with the Air Quality staff
4 members and allow the industry-volunteered testing
5 under Delaware conditions to go forward.

6 MR. HAYNES: Thank you. I will make
7 the prepared statement petroleum -- what was the
8 organization? I'm sorry. Mr. Patterson?

9 MR. PATTERSON: Yes, sir?

10 MR. HAYNES: What's the name of the
11 organization?

12 MR. PATTERSON: Mine?

13 MR. HAYNES: Yes.

14 MR. PATTERSON: The American Petroleum
15 Institute. And the other letter was Delaware State
16 Chamber of Commerce.

17 MR. HAYNES: I will mark that as
18 Delaware State Chamber of Commerce 1, and this will
19 be American Petroleum Institute Exhibit 1.

20 Does Kurt McCulley want to speak? Yes?
21 I guess that's a yes. Does Seth Ross want to speak?

22 MR. ROSS: Yes.

23 MR. MCCULLEY: Yes. I'm here
24 representing independent service stations, and we



1 represent independent service stations in Maryland,
2 District of Columbia, and Delaware.

3 I'm going to leave the technical issues
4 to the technical people. Our concern is we feel like
5 we are being used for guinea pigs, an experimental
6 stage. From just reading, none of this science has
7 been proven or ever used before with Stage II.

8 You all estimate \$5,000 to implement a
9 constant pressure monitoring system, but that's just
10 the tip of the iceberg. In California where they
11 have had this, they had to discontinue it for five
12 months out of the year because it didn't work when
13 the weather got cool.

14 Now, I don't know -- I'm not a weather
15 expert -- but I do believe Delaware has got a little
16 cooler weather than California. So it just doesn't
17 make sense from an economic wise. And when you have
18 so many failures, according to these regulations, you
19 got to spend another \$50,000.

20 The small businesses have been kicked
21 to the dirt. They are down as low as they can get.
22 They don't need someone to put a boot in their face
23 new. They need help. And we certainly can't help
24 them by taking more money out of their pockets.



1 That's all. Thank you.

2 MR. HAYNES: Thank you. Mr. Ross.

3 Next person, George Simpson, did you want to speak?

4 Next person is Mike Channel, did you want to speak?

5 MR. CHANNEL: No.

6 MR. ROSS: This is working? My name is
7 Seth Ross. I'm on the board of the Delaware Nature
8 Society, a retired engineer. I spent a lot of time
9 working with hazardous chemicals in my career. I
10 have a lot of the experience. I have been on a
11 number of state committees, hearings and so forth
12 representing the society.

13 I was a participant in this workshop,
14 and I worked pretty hard. I made all but one
15 meeting, had a lot of e-mail contacts, telephone
16 contacts. And I'm in a rather difficult spot right
17 now, because when I have talked to the State, they
18 make a pretty persuasive case, and I come away
19 thinking this is the way to go. And I talk to the
20 industry, and they make a pretty persuasive case, and
21 that's not a good position to be in for somebody like
22 me.

23 As an environmentalist, I want a good
24 outcome. And the good outcome, I think, can be



1 achieved with a system that does monitor pressure and
2 the removal of the Stage II. Ultimately, I think
3 that's what we want to do, but I'm very concerned
4 about all the difficulties in getting there. We
5 don't want to have a -- we don't want to have this
6 blow up in our face because of all potential
7 difficulties in implementing it.

8 So I'm going to suggest that maybe we
9 go back to the table. I know this is a
10 disappointment to the DNREC folks for me to say this.
11 But I'm very concerned about the potential for
12 problems. So I think we have to take another look at
13 it, go back to the table and talk about it some more.

14 I want to repeat, conceptually, I'm
15 okay with it -- I think it's the way to go -- but I'm
16 a little bit concerned about what's got to happen in
17 getting there. Thank you.

18 MR. HAYNES: Thank you. Is Robert
19 Weber going to speak? Paul Hufschmidt.

20 MR. HUFSCHMIDT: No, thank you.

21 MR. HAYNES: Paul Kelly?

22 MR. KELLY: No, thank you.

23 MR. HAYNES: Julian Wills?

24 MR. WILLS: No, thank you.



1 MR. HAYNES: Matt Lauber?

2 MR. LAUBER: Yes.

3 MR. HAYNES: State and spell your last
4 name.

5 MR. LAUBER: Matt Lauber, L-A-U-B-E-R.
6 I'm with OPW Fueling Components. First, I would like
7 to congratulate Delaware for removing Stage II and
8 moving forward. The one thing that I would like to
9 bring to the point, though, is continuous pressure
10 management systems have only been tested and proven
11 to work on Stage II systems.

12 Technically, the only state that
13 requires it would be the state of California, which
14 is a Stage II EVR state. In OPW's past when we have
15 hooked up data loggers which monitor tank pressures,
16 atmospheric pressure, temperature as well as
17 humidity, we have found that Stage I systems with EVR
18 components, Stage I EVR components, to be specific,
19 have remained in a deep vacuum throughout the night
20 and throughout the day.

21 This is a sealed system. It's a proven
22 technology. And it would come at a minimal cost to
23 the station owner. I would ask that the State of
24 Delaware do a little bit more research on the use of



1 this system on a Stage I EVR system and determine if
2 it's really required. Because in OPW's past
3 experience with that, it's not. In fact, OPW's
4 continuous vapor recovery systems, the CVS, the
5 CVS-2, and the Vapor Saver are currently on a barge
6 right now for China, okay, because it doesn't make
7 sense for Stage II systems. Those systems were
8 designed for when the tank went into a positive
9 pressure that they would activate. But the problem
10 was is none of our states or none of these sites are
11 going into a pressure, so they are never activating.
12 They just sit there in a deep vacuum and never turn
13 on.

14 The racetrack, for example, in Atlanta
15 had these and removed them because they never turned
16 on, and it was just costing them money.

17 So, again, I would like to ask the
18 State of Delaware to review them a little further.
19 And, again, OPW has offered our data logger, you
20 know, if you guys would like to set up a test site
21 somewhere in the state to kind of prove and gather
22 more information regarding the benefits of installing
23 Stage I EVR equipment.

24 MR. HAYNES: Can you give me some idea



1 what's your background with OPW?

2 MR. LAUBER: OPW is Ohio Pattern Works.
3 We are a retail petroleum manufacturer. We design
4 and build basically underground storage piping vents,
5 breakaways, nozzles, manhole covers, pressure vacuum
6 vents. We are actually one of the largest in the
7 United States.

8 My background, I was an engineer for
9 ten years. I was project manager for four years.
10 And I'm product manager for a bunch of years now.

11 MR. HAYNES: Okay. Thank you. Tom
12 Ruszin, do you want to speak?

13 MR. RUSZIN: Yes.

14 MR. HAYNES: Let me make sure I got
15 your name right.

16 MR. RUSZIN: Ruszin.

17 MR. HAYNES: If you can spell it for
18 the court reporter.

19 MR. RUSZIN: Okay. Will do. My name
20 is Tom Ruszin with Royal Farms, R-U-S-Z-I-N, spelling
21 the last name.

22 I have a feeling that you are going to
23 hear a lot of opposition to the pressure monitoring
24 system that's being proposed in this regulation, so



1 I'm not going to spend a lot of time on it. I think
2 other folks will probably do a good deal of covering
3 that topic.

4 But what I do want to point out is
5 that, you know, one of the questions you have to ask
6 yourself is why, if it's considered to be a best
7 practice and something that's going to save
8 considerable VOC emissions, why only one state in the
9 United States has adopted it at this point.

10 And, as has been mentioned before, the
11 Stage I system without Stage II Vapor Recovery
12 pushing air into it, it's going to operate under
13 negative pressure. Our Stage I sites on the eastern
14 shore of Maryland, Pennsylvania, Virginia, they
15 operate under negative pressure. So monitoring that
16 pressure to make sure it doesn't go positive would
17 not be, you know, ideal. And what it's really going
18 to hurt is the smaller stations who may have a bit of
19 a struggle maintaining that negative pressure. So
20 they would be forced to install an expensive pressure
21 management system while the bigger guys are not going
22 to have to.

23 But what I do want to spend a little
24 bit more time talking about is what is right about



1 this regulation. And I think what OPW mentioned with
2 Stage I EVR is right on. It's just the right thing
3 to do. It's been kind of lost in the conversation.
4 A lot of focus has been towards the pressure
5 monitoring system and pressure management.

6 And the reason I think it's been lost
7 is because the industry accepts it, it's proven, it
8 will increase the efficiency of Stage I from
9 95 percent to 98 percent. A lot of folks are doing
10 it because it's a best practice. And there is a cost
11 associated with it by folks who haven't done it,
12 probably about a \$10,000 upgrade to your system.
13 But, again, people aren't complaining about that
14 \$10,000 upgrade, because it's been proven to work and
15 it serves a purpose for the fuel system.

16 So thank you for letting me speak, and
17 that's all.

18 MR. HAYNES: Thank you. The next
19 person, Luke Howard, did you want to speak?

20 MR. HOWARD: Yes. Yeah, hello. My
21 name is Luke Howard. I'm with ARID Technologies, and
22 we are suppliers of continuous pressure monitoring
23 systems and vapor processors.

24 Before the meeting started tonight, I



1 was asked if I'm for or against. I really didn't
2 know how to answer that, but I said I'm basically
3 neutral. But, as a CPM manufacturer, if that's the
4 way it's going to go in Delaware, then we would like
5 to be considered as a vendor.

6 We had some previous conversations with
7 DNREC, and we have some concerns about the Executive
8 Order VR-202-P. We feel it's too restrictive and
9 limits the number of CPM vendors to essentially two.
10 The executive order is based on a Stage II system,
11 and it basically over specifies the requirements for
12 a CPM in the State of Delaware, which would be a
13 non-Stage II system.

14 We feel that the test procedures,
15 TP201.7 and TP201.2I will be more appropriate for
16 non-Stage II systems and would be less restrictive
17 and allow additional vendors to participate.

18 Now, I know Ted spoke with some of the
19 DNREC people about the -- he is concerned about some
20 of the constitutional restrictions and formal
21 regulation language in the regulations. So he would
22 like to ask that simple language be added now to
23 avoid complexities in the future.

24 That's all I have.



1 MR. HAYNES: You said Ted is?

2 MR. HOWARD: Ted Tiberi. I'm sorry.

3 MR. HAYNES: He will speak later?

4 Okay.

5 MR. HOWARD: Well, he wanted to be here
6 tonight, but he had another engagement.

7 MR. HAYNES: Oh, he is submitting
8 written comment?

9 MR. HOWARD: Yes. He sent me in his
10 place, and we will be sending some written comments.
11 Thank you.

12 MR. HAYNES: The next person who signed
13 in was Ron Kingsbury. Did you want to speak?

14 MR. KINGSBURY: No.

15 MR. HAYNES: Mark Divvy?

16 MR. DEVI: Yes.

17 MR. HAYNES: Vernon Redden, did you
18 want to speak?

19 MR. REDDEN: No.

20 MR. HAYNES: Josh Zay, do you want to
21 speak?

22 MR. ZAY: No, thanks.

23 MR. HAYNES: Go ahead.

24 MR. DEVI: Okay. Good evening. My



1 name is Mark Devi. I'm with USD Services. We are a
2 petroleum contractor. We do installations, testing.

3 I just want to -- I was also on the
4 DNREC committee. And I am against the continual
5 pressuring monitoring system for the simple fact that
6 just my field data and observations from neighboring
7 states that do not have decommissioned Stage II or
8 don't have Stage II are consistently under negative
9 pressure. We see that from a testing standpoint as
10 soon as we hook up.

11 And I just feel that installing this
12 monitoring system is just going to be a burden for
13 all the stations that need to put this in. It's just
14 an untested technology, and I don't feel there is a
15 need for that at this time.

16 MR. HAYNES: Thank you. Joseph Zay?
17 Steve Sloski, you want to speak?

18 MR. STOOKEY: Slokey, yes.

19 MR. ZAY: Joseph Zay, Z-A-Y. I'm an
20 environmental consultant. Any work that will be done
21 on a gas station will involve us, so that incurs a
22 cost, so a tier zero. So I just wanted to let you
23 realize that. It's about 2,000, so that's all.

24 MR. HAYNES: Okay. Thank you.



1 MR. ZAY: Thank you.

2 MR. HAYNES: Sookey? Part of it's
3 handwriting. It not just me.

4 MR. STOOKEY: Sorry.

5 MR. HAYNES: Actually, it's the Y from
6 the guy before you came down into yours.

7 MR. STOOKEY: I'm an engineer, so I
8 actually print pretty well, so I don't know how that
9 happened. (Laughter)

10 Good evening. My name is Steve
11 Stookey, I'm a manager of the engineering for the
12 Wills Group and our subsidiary companies, SMO and
13 Dash In Food stores. We operate or supply over 300
14 locations in the Mid-Atlantic area, including 40-plus
15 stations in the State of Delaware.

16 I also served on the DNREC Stage II
17 decommissioning committee, and I attended all of the
18 meetings. The committee, as noted before, was
19 represented pretty well by regulatory personnel,
20 industry experts, gas station owners, distributors,
21 and many others.

22 While everyone at the committee
23 meetings were encouraged to participate, it seemed as
24 though all of the opinions and technical information



1 and recommendations that were provided by the
2 industry experts to the regulatory attendees fell on
3 deaf ears.

4 None of the proposed alternatives that
5 were provided were, we felt, ever considered. Tom
6 from Royal Farms mentioned the, you know, addition of
7 EVR. And, like I said, there was quite a few other
8 alternatives.

9 And, frankly, at all five meetings we
10 never, ever got a comment back that said, "We
11 considered that proposal from you from the last
12 meeting and felt it wasn't sufficient."

13 The agenda was set that there was going
14 to be some kind of pressure management monitoring
15 system or pressure management controls. And that was
16 obvious from the start.

17 Our company and our 40-plus independent
18 business owners of operators that run our gas
19 stations are opposed to this regulation. The
20 requirement under these proposed regs will cause
21 further financial burden on our industry and our
22 independent operators.

23 And, as everybody said, regarding
24 technical issues -- and you are going to hear some



1 more -- these requirements, the continuous pressure
2 monitoring and the pressure management systems have
3 yet to be proven effective or even needed. So we
4 encourage you to reject these proposed regulations.
5 Thank you.

6 MR. HAYNES: Thank you. And I
7 apologize to the next speaker for not recognizing him
8 as Senator Venables sooner. Senator Hocker, did you
9 want to speak? You can fight it out. (Laughter)

10 SENATOR VENABLES: The main reason why
11 I'm here is to show that the General Assembly, and
12 especially me, have some concern after talking to a
13 lot of the people in the business.

14 I'm certainly not in that business, but
15 I can tell you this: When a candidate is running or
16 a proposed candidate is running, when you ask him
17 what the most important thing is in the State of
18 Delaware now, it's jobs. And Delaware is not doing a
19 very good job of creating jobs. And I see this as
20 hurting the industry. It's probably making the price
21 go up. And when I see other states up and down the
22 coast that have chosen to just get rid of Stage II
23 and not install another expensive system, I don't
24 know why Delaware, in the shape our economy is, that



1 we can't do the same thing.

2 I don't understand why people want to
3 keep pressing and pressing and pressing on businesses
4 when we try to get business to come here. I think
5 this will hurt businesses coming to Delaware, and we
6 should not do it.

7 And I think it's an issue of, what I
8 know about it, that probably will end up on the floor
9 of the General Assembly if we go through with
10 something like this. It will be, I'm sure, debated
11 on the floor. I feel that strong about it, and I
12 hope I can get my colleagues to join me. Thank you.

13 MR. HAYNES: Thank you. Senator
14 Hocker.

15 SENATOR HOCKER: I would really like to
16 echo what Senator Venables said. But, Senator
17 Venables, I want to be a prime sponsor on that bill
18 with you if it goes any farther than here tonight.

19 You said we could ask questions. I
20 would like to ask a question. Why are we doing this?

21 MR. HAYNES: (Laughter)

22 SENATOR HOCKER: I don't know why we
23 are doing it. I would like to know why we are doing
24 this. I'm not only here as a state senator. I'm



1 also here as --

2 MR. HAYNES: I'm also here getting my
3 first impression of this myself, so I will turn it
4 over to either Mr. Gao or someone else. You want to
5 take a shot?

6 MR. AMIRIKIAN: We're doing it -- we
7 looked at gas stations -- I'm Ron Amirikian,
8 Department of Air Quality. We are doing it, we
9 looked at gas stations --

10 MR. HAYNES: Do you want to come up
11 here?

12 MR. AMIRIKIAN: Yes. I'm Ron
13 Amirikian, Division of Air Quality. And the purpose
14 of the proposal, first, is Frank Gao talked about the
15 three goals we had.

16 We wanted the stations to be well
17 controlled. And well controlled in this case means
18 we are controlling leaks.

19 The second thing is we wanted to
20 provide flexibility.

21 The third thing is we did not want to
22 increase costs.

23 And I believe the proposal meets all
24 three of those requirements.



1 The first requirement is continuous
2 pressure monitoring. And I think, as explained,
3 continuous pressure monitoring is what you're doing.
4 First, we're establishing the fact that at first
5 we're establishing an allowable leak load.

6 So we're allowing stations to leak, but
7 we're not allowing them to leak excessively. But
8 we're demonstrating how you determine whether there
9 is a leak or not. You determine whether there is a
10 leak or not by putting a continuous pressure
11 monitoring system on.

12 So that's what that's doing. That's
13 the whole purpose of that, is making sure there is no
14 leaking in excess.

15 Currently, the Stage II stations and
16 the stations here will continue to do an annual
17 pressure to K test. And a pressure to K test costs
18 about a thousand dollars a year to do. What this
19 will do is this will stop that. The proposal gets
20 rid of that test, gets rid of that thousand dollars.

21 The cost of continuous pressure
22 monitoring is a pressure sensor. And what it's doing
23 is making sure you don't have leaks. So that's
24 accomplishing the same thing. The cost of that is



1 about \$5,000. So, over five years, you are going to
2 pay yourself back, and then you're going to start
3 saving.

4 In addition, you don't have to close
5 your station down if you do this test. So we feel it
6 has a savings for the station.

7 The second part is, if you have a
8 leak-tight system, your pressure vacuum valve is your
9 control device. And as long as everything is working
10 and it's pulling negative pressure, that's as far as
11 the regulation goes. It goes no further.

12 If you're venting up the PB valve, at
13 that point we require additional controls. At that
14 point you're emitting in excess.

15 We calculated the amount of emissions,
16 and the dollars per ton comes out to about \$5,000 at
17 that point. \$5,000 a ton, a ton of volatile organic
18 compounds and hazardous air pollutants.

19 So we do not view this as an increased
20 cost. The cost numbers you have seen, you probably
21 hear \$50,000. I don't know where that number comes
22 from. The only correlation we have is, if California
23 installs the system, California keeps Stage II.
24 California Stage II systems cost about \$50,000. But



1 we are not requiring California Stage II systems. We
2 are decommissioning Stage II, and we are only
3 requiring one aspect of their in-state diagnostic
4 system, which is the pressure control, the pressure
5 monitoring system.

6 So we don't view it as an excess. We
7 view the whole thing as to ensure it's holding. If
8 they don't leak, the pressure valve is an adequate
9 control.

10 That's basically what our proposal is.

11 SENATOR HOCKER: I'm not only here as a
12 state senator. I'm also here because I operate two
13 stations.

14 We put in equipment several years ago
15 that does mostly of what you're saying. I know if I
16 have a leak within minutes right now.

17 To do this, I don't want -- I
18 appreciate Delaware being first, but I don't want to
19 be the first state to put in something that's totally
20 not going to work.

21 You had it spoken here tonight that
22 California has it, and they can't do it five months a
23 year or six months a year because of cold weather.
24 Delaware is much colder than California. This is



1 going to be a total additional cost.

2 I called my gas supplier today. Right
3 now we're paying about 2.8 cents a gallon for
4 maintenance. If we put this into effect, we're going
5 to pay a lot more. The EPA said Delaware does not
6 even have to be a recovery state now. Why are we not
7 doing away with it and saving our residents money?
8 This would save them money.

9 I will give you an example. A hose for
10 the vapor recovery system that we have today is
11 roughly 200 bucks, but it used to be 40 bucks before
12 we put in all this equipment.

13 The maintenance is just totally higher.
14 We got a governor that wants ten cents a gallon
15 additional gas tax for road money, road maintenance,
16 and all that. We can get it if we just cut wasteful
17 spending. And to force this on the residents of the
18 State of Delaware for something that is proven not to
19 work is totally ridiculous. I'm hoping you're
20 scrapping this after tonight. If not, I want to be a
21 prime sponsor with Senator Venables to make sure we
22 get it done.

23 MR. HAYNES: Thank you. Mark Baker, do
24 you want to speak?



1 MR. BAKER: Why not? My name is Mark
2 Baker. I'm here representing my family's business,
3 Wilson Baker Incorporated. We have been a petroleum
4 distributor in the State of Delaware since the early
5 fifties. I'm the third generation of that business.
6 I also served on the review committee, DNREC's review
7 committee, and attended all of the meetings.

8 I will try not to repeat too much of
9 what's been said, but I'm going to have to touch on
10 some of those topics.

11 This regulation is a case study of
12 what's wrong with the regulatory environment in
13 Delaware. This regulation and the process to develop
14 it has already been and will continue to be harmful
15 to the environment and small businesses in Delaware.

16 It's been published with little to no
17 real proof of environmental benefit. It mandates the
18 use of equipment not tested or used anywhere outside
19 of California, and it has real problems with the
20 regulatory language itself.

21 This process has done harm, as I
22 stated. In May of 2012, the EPA issued the rule to
23 allow the removal of Stage II. And, in fact, in
24 August of 2012 they permitted to remove Stage II



1 programs if they demonstrate that phasing out of the
2 Stage II program is estimated to have no or a di
3 minimis incremental loss of area-wide emission
4 controls.

5 As previously stated, many states did,
6 including nine states in the northeast. Most of
7 those were in 2012. The process in Delaware didn't
8 even start until August of 2013 with a review
9 committee to look at decommissioning of Stage II.

10 After the second meeting in September
11 of 2013, it became apparent that the goal of DNREC
12 was to use the decommissioning of Stage II as
13 leverage for the regulated community to gain
14 acceptance of a new set of regulations. We know this
15 because they refused to move forward on any
16 discussions involving Stage II without also
17 discussing the regulations.

18 In October 2013 I sent an e-mail asking
19 if DNREC had performed the necessary calculations to
20 show that Stage II in Delaware could be eliminated
21 according to EPA standards.

22 In the December meeting, I was told
23 that those calculations had not been performed
24 because they wanted to proceed in a different



1 direction, and that's the continuous pressure
2 monitoring and management.

3 In an e-mail, just a couple of days
4 ago, on August, 26, 2014, DNREC finally provided
5 their review committee with data, or at least a
6 statement of what I suggested in October. Delaware
7 could have already started decommissioning Stage II
8 with an EPA acknowledged minimal effect.

9 The process has been agenda driven
10 since the beginning. As early as the third committee
11 meeting, we were presented with a draft regulation
12 that did not come from any work or any discussion in
13 that committee.

14 So we know where it came from. It was
15 written before we started the meeting process.

16 In late June of this year, Mid-Atlantic
17 Petroleum Distributors' Association, MAPDA, attempted
18 to have an amendment added to a bill in the
19 legislature that would have eliminated Stage II, at
20 least on new and modified facilities.

21 That was met with swift resistance from
22 the Director of Air Quality. Unfortunately, it was
23 with a letter to Representative Debra Heffernan that
24 was misleading, at best. And I'm being generous to



1 describe it as misleading. And I have that record
2 letter to submit. I have a packet of stuff I will be
3 giving you when I'm finished. That letter is part of
4 that.

5 And it states, "The proposed
6 amendment," I quote, "The proposed amendment
7 circumvents a robust stakeholder process."

8 It says that the amendment "is contrary
9 to what the State of Maryland is doing, contrary to
10 the tentative agreement that the Division has managed
11 to reach with active participants in the last two
12 months."

13 And that was news to me, because I've
14 been to every committee, a very active participant,
15 and I wasn't aware of any agreement that had been
16 reached.

17 I also have a letter from the State of
18 Maryland and a memorandum of their enforcement
19 discretion that they enacted in March of 2013, three
20 months before the Director of Air Quality said that
21 an amendment to eliminate Stage II in Delaware was
22 contrary to what Maryland was doing. It's exactly
23 what Maryland had already done three months ago, and
24 he knew that information. I truly believe he did.



1 And it goes on to say that "such
2 outcomes are best achieved from an open and
3 collaborative stakeholder process. Unfortunately,
4 this amendment tries to up-end the regulatory
5 process, discourage participation in stakeholder
6 discussion, and degrades our collaborative approach."

7 Well, I have to tell you, having been
8 at those meetings, I know there was no agreement
9 reached, and I also know because in a meeting with
10 the Director and the Secretary earlier this month, it
11 was discussed that they had been having meetings with
12 other suppliers in the State of Delaware outside of
13 the committee process. And it attempted, in my
14 opinion, to use companies that have pending
15 applications to get them to go along with installing
16 with the implementation of these new regs.

17 And that, to me, is certainly not an
18 open and collaborative stakeholder process. It's
19 everything against what was said here. To go out and
20 try to strike agreements with other companies outside
21 of the review committee, I think, and then to write
22 this to a state representative, should be insulting
23 to the General Assembly. I did want to put that on
24 the record.



1 I want to note that in January of 2013,
2 seven months before the review committee process
3 started, I offered one of our sites for a test site
4 to move forward from Stage II. I didn't even -- I
5 wasn't even really sure what I was offering to do,
6 but -- and it was in an e-mail to Alex Ripper, and we
7 had phone conversations about it. And it never went
8 anywhere. But I did offer that.

9 And I know that other companies and
10 throughout the review committee process have done the
11 same. I believe Wawa, Royal Farms, and Sunoco have
12 all offered their sites to gather information and
13 data that would be relevant to Delaware. And we
14 received nothing from DNREC in response to want to do
15 that.

16 You know, and there is this other
17 notion out there, to continue with this that it was
18 an agenda approach: DNREC has stated several times,
19 most recently by the Director of Air Quality in that
20 same meeting with the Secretary, that they could just
21 leave Stage II in place. "After all, you know, we're
22 still getting a minimal benefit from it for a number
23 of years to come, so why do we even have to do
24 anything?"



1 Well, that's an intentionally
2 misleading, I feel, statement, because you have to do
3 something because when that benefit goes away in a
4 couple of years, Stage II actually starts to do harm
5 to air quality. Okay? It's a line that's decreasing
6 and heading in a certain direction. And at some
7 point the Stage II systems are going to start to do
8 harm, and you're going to want them out.

9 So why would you not allow any of them
10 to come out before that date? The thing that makes
11 sense is to start the decommissioning process now.
12 And I just think it goes to show that this has been,
13 as previously mentioned by someone, it's been an
14 agenda from the beginning.

15 And there is not good data to the
16 benefit of these standards. We were only recently,
17 this spring, provided with this data of 225 tons per
18 year emission number for tank breathe. Now, this is
19 a number that comes from AP-42, which is a 17-page
20 document that has three sentences about tank breathe.

21 It's a horrible place to make an
22 assumption on statewide emissions from the breathing
23 of underground storage tanks. It's an outdated
24 document with references from 1959 to 1985. It



1 doesn't mention if they are Stage I on this system.
2 It doesn't mention that there is pressure vac vents
3 or what their settings are. It doesn't mention what
4 the vapor pressure of the gasoline involved in this
5 study is.

6 We were told to come up with better
7 numbers if we don't like the assumptions. So I would
8 like to also submit to the record, this is a paper
9 that was done by Tech Environmental. It was
10 submitted in the State of Massachusetts, where you
11 understand it was mentioned earlier that they looked
12 at this and went away from continuous pressure
13 monitoring.

14 And some of the information that -- I'm
15 going to submit this fully into the record, but some
16 things I would like to read a couple quick notes
17 tonight -- is that the proposed stage one continuous
18 monitoring and pressure management proposal should be
19 eliminated due to a lack of data regarding the
20 effectiveness of these systems when operated without
21 Stage II programs in place.

22 That's exactly what you heard here
23 tonight, a year and a half after Massachusetts
24 already came to this conclusion.



1 One of the items mentioned is the first
2 factor to update is this breathing loss calculation
3 that comes from AP-42, which they state is from a
4 1962 paper which cites the emissions of one pound per
5 1,000 gallons of through-put through a gasoline
6 dispensing facility.

7 They did some calculations and decided
8 that the uncontrolled breathing losses should be
9 reduced to .76 pounds per 1,000 gallons. That's
10 almost a 25 percent reduction right there.

11 And there is a whole bunch of technical
12 information on that and how they got to that
13 conclusion, but they ended up with the same
14 conclusion that I have tonight, is that the Stage I
15 enhancements, the installation of continuous pressure
16 monitoring and management systems are unproven; they
17 were unproven in Massachusetts harsh winter, and they
18 would be unproven in ours, and they are untested when
19 used without Stage II in place. I think this is
20 important for everyone to look at.

21 Another factor, when we look at that
22 225 tons per year number, is tank reading occurs as
23 sites sit overnight, the slower-volume sites. And
24 most of the volume of gasoline in Delaware is moved



1 through sites that are open 24 hours; thus, they are
2 dispensing fuel, more often pulling the vacuum on
3 their tanks. Why is this factor not taken into
4 account when looking at the standing breathing
5 number? We just get the overall tank breathing 1
6 pound per 1,000 gallons.

7 The other item is that 225 tons per
8 year is based on 450 million gallons of gasoline
9 being sold in Delaware. There is only one problem
10 with that. It has never happened.

11 In fact, the break-even analysis posted
12 on DNREC'S website shows 416 million gallons for
13 2014, and it never reaches 450 million through 2019
14 of their projections, which their projections assume
15 an ever-increasing volume of gasoline being sold in
16 Delaware. And that runs contrary to everything that
17 anyone in the industry is saying about gasoline
18 volumes in the United States are expected to continue
19 to see a slight decline.

20 And that's referenced in this Tech
21 Environmental study, as well, and it's from a
22 document published by Exxon Mobile as they look at
23 the future of fuels in the United States. I think
24 it's pretty important to their business to be



1 accurate on that.

2 So, if you made corrections to the gas
3 volume and the breathing numbers, that 225 tons
4 becomes 158 tons. Boom, just like that, almost
5 30 percent reduction in what they think the emissions
6 are without these controls. And that didn't cost you
7 anything.

8 So the other discussion that came up
9 earlier was when there could be leaks in the system,
10 this is all not going in and out of the pressure
11 vacuum. But no one has provided any data from DNREC
12 to show what the emissions are from those leaks, how
13 frequent they are, what percent of that 225 tons of
14 tank reading could possibly come from leaks, and what
15 the real impact of those are to the environment. And
16 I suspect it's minimal to none.

17 And this whole thing is over emissions
18 that, even in the inflated numbers provided by DNREC,
19 are far less than 1 percent of statewide emissions.
20 And it's for a state that, according to DNREC and the
21 governor, receives a majority of its air pollution
22 from other states.

23 There are several technical reasons
24 which I'm going to just go over quickly. And, again,



1 some of this is references to the CARB regulation or
2 the CARB executive orders that are in the
3 regulations.

4 Equipment is mostly designed for
5 stations with Stage II. One of the executive orders,
6 it's only valid through September 1, 2015. Are we
7 going to come back and have another public hearing
8 when CARB issues another document to replace the one
9 that expires in a year?

10 They exempt sites that are less than
11 600,000 gallons per year in most of the CARB
12 documents, so we're not going to have this on sites
13 in Delaware that are less than 600,000 gallons per
14 year? It's not exactly clear in the regulation. If
15 so, that's probably eliminating the sites where there
16 is most likely to be a pressure buildup. So what are
17 we really accomplishing?

18 And I'm just concerned that no such
19 system has been approved for use on non-Stage II
20 systems by a regulatory agency or a third-party
21 tester. Again, it's been mentioned about the
22 problems, so I won't go through that again.

23 One important item to note, that I
24 think DNREC needs to take a hard look at when this



1 hearing is over, is that the 1124, Control of
2 Volatile Organic Compound Emissions, which is what
3 we're amending tonight, Section 1.0 is the general
4 provisions of that entire regulation. 1.2 states,
5 "This regulation is applicable to the sources of
6 volatile organic compounds as set forth herein,
7 except 1.2.1. Sources: Whose emissions of volatile
8 organic compounds are not more than 15 pounds per
9 day, unless other limits are specified herein."

10 Under 2.0 definitions, a source is any
11 building structure, equipment, or installation that
12 directly or indirectly releases or discharges VOCs.
13 So I would think that would be a gas station. Not
14 all gas stations, but a gas station.

15 So the questions I have for DNREC and
16 the Secretary, before he signs this order, does a
17 gasoline-dispensing facility release or discharge
18 more than 15 pounds per day of volatile organic
19 compounds? No release or discharge rates anywhere
20 near 15 pounds per day have ever been presented or
21 discussed in any of the review committee meetings or
22 any of the documents presented.

23 In fact, the pressure management
24 calculations supplied by DNREC and on their website



1 right now suggests a rate of 1.08 pounds per day,
2 well under 15.

3 So the second question is: Are there
4 other limits specified herein? No. There are not.
5 There are no limits for VOC emissions specified in
6 Section 36 to apply to gasoline-dispensing
7 facilities.

8 The conclusion could be drawn that this
9 regulatory revision will not apply to any
10 gasoline-dispensing facility in the State of
11 Delaware. And that's something that DNREC needs to
12 take a hard legal look at before the Secretary would
13 put this order in place.

14 So this is another example, just like
15 the references to CARB and all those things, that
16 shows that this regulation was not well put together.
17 It's another example of how we're regulating, to
18 quote a DNREC representative in the review committee,
19 nap guards for gas stations, because that's what we
20 are after here.

21 Industry suggestions: I don't want to
22 leave this out. We tried to get suggestions
23 throughout the committee. We gave comments to
24 Secretary Small earlier this month. Some of the



1 following suggestions were made: Immediately remove
2 the requirement for Stage II in all new or modified
3 facilities; provide for one or more testing sites for
4 pressure monitoring systems in Delaware on a site
5 without Stage II. Stage I EVR has been brought up.
6 So there were a lot of direction that this could have
7 gone, but it was never able to go that way from the
8 beginning on the insistence of DNREC.

9 This test could have started probably a
10 year ago if they were proactive in those designs.

11 I don't know why it was refused to be
12 done. But one thing that's certain, is that that
13 path did not promise a new regulation. All it would
14 do is promise the data to support or reject one. And
15 that's all we're really after here tonight.

16 This delay in removing Stage II has
17 caused regulatory uncertainty. It has delayed
18 capital improvements. It has delayed environmental
19 upgrades. And passing this regulation would continue
20 this affect. Companies will not venture into the
21 uncertainty of this untested equipment. Stage II
22 will largely stay in place, and we will march forward
23 to the date where we cross from benefit to harm.

24 Proof of that: I just ordered four new



1 dispensers of Stage II. I spent an extra \$11,000 to
2 do so about a week and a half ago. Why? Because if
3 this regulation fails, it will still be in place with
4 no signs from DNREC on removing it, none at all.
5 They don't want to get rid of Stage II unless they
6 can get something else.

7 And if this regulation is signed by the
8 Secretary, I'm not going to be an experiment for
9 DNREC at that facility.

10 So these regulations are not only very
11 harmful to my family's business and the customers we
12 serve; they make little sense, are riddled with
13 conflicts, and there is no promise of environmental
14 benefit.

15 As a taxpayer in Delaware and a small
16 business owner, this proposed regulation is a
17 teachable moment for DNREC and our elected officials.
18 This is what needs to stop if you want Delaware to
19 grow jobs and business owners to invest in this
20 state. Because a lot of these companies here that
21 own and operate gas stations, they have options.
22 They don't have to build in Delaware. They don't
23 have to invest in Delaware. They can go anywhere in
24 the northeast, and they will look to other states



1 that have a more welcoming environment.

2 So I'm going to encourage the Secretary
3 to reject this regulation and move forward with a
4 true stakeholder process that is not seeking a
5 predetermined outcome and that will allow for the
6 protection of the environment along with a healthy
7 business environment for the citizens in Delaware.

8 MR. HAYNES: Thank you. The next
9 person to sign up is Ellen Valentino. Are you here?

10 MS. VALENTINO: Thank you, and good
11 evening. My name is Ellen Valentino. I'm here today
12 on behalf of the Mid-Atlantic Petroleum Distributors.
13 And we have nothing further to add after Mr. Baker's
14 statement. I submit our comments for the record.
15 Thank you.

16 MR. HAYNES: Thank you. Jen Celeste,
17 did you want to speak? I believe you did.

18 MS. CELESTE: Yes.

19 MR. HAYNES: The person after that
20 would be Josh Worth.

21 MS. CELESTE: I'm a little short.

22 (Moving microphone) My name is Jennifer Celeste,
23 C-E-L-E-S-T-E. I work for Sunoco. Sunoco
24 appreciates the opportunity to provide a statement



1 regarding the proposed changes to the regulation.
2 Sunoco owns and operates approximately ten locations
3 in Delaware, including the Delaware Turnpike, and we
4 also have approximately ten locations that are
5 branded Sunoco and owner operated by other entities
6 which include small mom and pop type dealers.

7 Sunoco previously submitted written
8 comments. They were dated 8/25. Frank, you got
9 those; correct? They should be in the hearing.

10 MR. HAYNES: Yes, they are in the
11 package.

12 MS. CELESTE: So I just want to take
13 this opportunity to give a broad overview of the
14 issues that we have found with this regulation,
15 proposed regulation.

16 The first issue is determine a need.
17 It's Sunoco's position that the Department should
18 utilize the EPA guidance document entitled "Guidance
19 on Removing Stage II Gasoline Vapor Control Programs
20 from State Implementation Plans and assessing
21 comparable measures to determine if any additional
22 measures are required to provide comparable measures
23 for removing Stage II vapor recovery.

24 The EPA states that the incremental



1 emission control that Stage II achieves beyond
2 on-board refueling vapor recovery, or ORVR, is de
3 minimis if it's less than 10 percent of the area-wide
4 emissions associated with refueling highway motor
5 vehicles.

6 Surrounding states have not required
7 any further offsets for removing Stage II Vapor
8 Recovery. However, if it is determined that further
9 offsets are needed in Delaware, then move forward
10 with reviewing your options.

11 The second point is reviewing options.
12 It's Sunoco's position that the Department should
13 fully review all options that are available. Once
14 Stage II is removed, the Stage I system is much
15 simpler, and the likely parts that could cause a tank
16 to not be tight, which are fill caps, drain valves,
17 fittings, these are all things that could be
18 inspected on a monthly basis. And they are easily
19 accessible items.

20 Test new technology. This has already
21 been mentioned before. But if the Department
22 scientifically determines that the additional
23 measures are needed to control gas stations and,
24 after reviewing all the options, determines that a



1 pressure monitoring system is the best fit, the new
2 technology should be tested before it's put into
3 regulation. The proposed pressure monitoring system
4 is only used in the State of California on systems
5 with Stage II vapor recovery.

6 And although the California Air
7 Resource Board, or CARB, requires equipment to be
8 tested for 180 days prior to approval, the test
9 period did not find the issues with the false alarms
10 in the winter. There were so many false alarms in
11 the winter that CARB had to write more than one
12 special advisory that allowed station owners to
13 ignore certain types of alarms in the winter. That
14 was after 180 days of testing and CARB approval.

15 The climate is much different in
16 California, and so is their fuel. California uses a
17 specially formulated fuel as compared to the federal
18 reformulated gasoline that we use in Delaware. The
19 California fuel has a lower vapor pressure than our
20 fuel does in the summertime, which causes concern for
21 false alarms in the summer months if these systems
22 were used in Delaware.

23 According to tables within the
24 aforementioned EPA guidance document, it lists



1 California and Delaware in separate regions with
2 average temperatures over 10 degrees colder in
3 Delaware overall, which factors in both winter and
4 summer.

5 Will 10 degrees colder in the winter or
6 summer make a difference with respect to false
7 alarms? It needs to be tested.

8 Lastly, if the Department wants to
9 forge ahead with equipment that has neither been
10 tested nor certified for use of a non-Stage II
11 system, then the Department needs to allow additional
12 flexibility in the regulation to account for
13 potential false alarms and issues that may arise by
14 using non-tested equipment.

15 For example, California allows
16 operators 40 hours to see if alarms clear out on
17 their own. However, Delaware's proposed regulation
18 does not have any such contingencies.

19 Currently, the proposed regulation
20 states that if the site has two alarms within two
21 weeks, you need to install -- or you need to come up
22 with a resolution plan. One of the options is to
23 install a pressure management system.

24 In a matter of two weeks, a site could



1 have several false alarms which could move them up to
2 installing a pressure management system that, in our
3 experience, a site in California costs a little over
4 \$60,000. And that was not for the California ISD;
5 that was literally for a carbon canister vapor
6 system, \$60,000.

7 Sunoco has offered to assist the State
8 by providing a test site, and that offer still
9 stands.

10 New documents: The Department posted
11 two new documents regarding the proposed regulations
12 late last week entitled Stage II Cost Benefit
13 Analysis and Delaware Break-Even Point Analysis.

14 Based on a brief review, there is some
15 concerns as to why one equation was used to calculate
16 the statewide savings emissions based on breathing
17 losses of the tank and statewide throughput, which
18 incorrectly assumes that all tanks are leaking.

19 In a different equation, it was used to
20 calculate the cost effectiveness of a pressure
21 management system, not the pressure monitoring system
22 that is in the regulations.

23 As previously stated, a pressure
24 management system with a carbon canister costs Sunoco



1 a little over \$60,000 to install at a site in
2 California in 2009. And the Department's price
3 estimate was \$12,000. That's a huge discrepancy.

4 After more thorough review of the newly
5 posted documents, Sunoco may have a second letter
6 with additional comments to submit to the Department
7 before the period closes. And I am still waiting for
8 the rationale on the two equations that were used.
9 Thank you.

10 MR. HAYNES: Are those documents she
11 was referencing in the exhibits?

12 MR. GAO: Yes.

13 MR. HAYNES: And Josh Worth. From my
14 list, that concludes people who signed up to speak.
15 Is there anybody else who still wants to? Okay. We
16 will get you. What's your name?

17 MR. STEWART: Kevin Stewart. I was on
18 the list.

19 MR. HAYNES: Go ahead.

20 MR. WORTH: I'm Josh Worth with Wawa.
21 I echo many of the opinions expressed already this
22 evening. But my main concern I want to stress is the
23 installation and operation of a piece of equipment
24 under the continuous monitoring, pressure monitoring



1 system without being tested yet.

2 As mentioned before, CARB requires a
3 180-day test where they actually test it themselves.
4 They work with the industry and test it out before
5 they put it in their executive order and require it.

6 One of the concerns is, you know, we
7 get a lot of technology involved. You have to make
8 sure it's compatible.

9 But one of the big things that no one
10 has mentioned -- and I don't know if anyone thought
11 about it -- but if we tie in the continuous pressure
12 monitoring system with our tank management system,
13 then, if there is alarms coming in, if it follows
14 CARB where you ignore the alarms during the very cold
15 months, we cannot have our associates ignoring
16 alarms, because they could start ignoring tank
17 monitoring alarms, fuel alarms, sudden loss alarms.
18 And that's one of our major concerns.

19 So we just think that before you
20 require the installation/operation of a new system,
21 that it needs to be tested first. It's been tested
22 in California in a totally different landscape where
23 there is Stage II. This will be without Stage II.
24 And, certainly, as mentioned before, the weather



1 factor is obviously a large variance.

2 And so, again, I echo many other
3 thoughts, but I'm not going to stress on those. It's
4 just really a concern about installing something
5 that you are not even sure about its feasibility and
6 compatibility.

7 Thank you.

8 MR. HAYNES: Thank you. Mr. Stewart.
9 Anybody else who would like to speak?

10 MR. STEWART: Mr. Chairman, good
11 evening. The American Lung Association in Delaware,
12 in commenting on the proposed revisions, advocates
13 for and represents not only on the order of a hundred
14 thousand Delawareans who suffer from chronic lung
15 disease, but also the millions, here and throughout
16 the region, who desire to breathe clean air and so
17 protect their good health.

18 Our predecessor agency was founded over
19 a century ago to fight tuberculosis. The Lung
20 Association is now dedicated to our broader mission
21 of savings lives by improving lung health and
22 preventing lung disease. We have been fighting for
23 relief from ambient air pollution since the middle of
24 the last century.



1 And the following constitutes our
2 statement with respect to the proposed revisions.
3 Although we are endeavoring to make our position as
4 clear as possible, the Lung Association will do its
5 best to respond to any inquiries from the Department
6 for clarification or for further information.

7 The American Lung Association has
8 recognized, with EPA and the Department, that
9 existing Stage II vapor recovery systems were
10 gradually being made obsolete by the increasing
11 prevalence of vehicles equipped with ORVR technology.
12 And, as such, we support the Department's recognition
13 of that fact and its proposal to establish an
14 appropriate regulatory regime for use in the post
15 Stage II era.

16 Specifically, the American Lung
17 Association in Delaware does support the Department's
18 proposal that its CPM be substituted for the current
19 annual pressure decay testing, in conjunction with an
20 orderly process for decommissioning Stage II systems.

21 As vapor growth in storage tanks at
22 gasoline dispensing facilities has become an
23 increasing problem as use of ORVR has become
24 widespread in the vehicle fleet, deficiencies of the



1 current facility inspection process have become
2 increasingly apparent.

3 For example, our understanding is that
4 the Department has data showing that on the order of
5 70 percent of Delaware stations leak at the time of
6 the annual pressure decay testing.

7 The American Lung Association regards
8 such a failure rate to be grossly unacceptable. We
9 are aware that a range of 2 percent to 70 percent
10 failure rate for the pressure decay test was cited by
11 one of the members of the Department's review
12 committee.

13 So, if nothing else, it is plain that
14 the current system for evaluating compliance may
15 possess huge uncertainties regarding the degree of
16 emission control. Such variability in compliance is
17 also unacceptable.

18 And we make two observations here.
19 In the case in which the 2 percent figure is more
20 representative of the current failure rate, then the
21 proposed CPM system will pay for itself, compared to
22 the status quo, in a handful of years for the great
23 majority of stations, since the annual pressure decay
24 testing would no longer be required.



1 However, if a failure rate at one year
2 of 70 percent is more representative, then this is
3 simply a sign of a system for inspection and
4 compliance that is broken and sorely in need of
5 repair.

6 We understand that it has been claimed
7 that simple tightening of drain valves on spill
8 buckets, Stage I adaptors, and ATG caps accounts for
9 much of these problems. Why such frequent and easily
10 fixed failures are not already being promptly
11 identified and routinely immediately addressed,
12 rather than waiting for the annual pressure decay
13 test to make the need to fix them obvious, is clearly
14 an unacceptable state of affairs.

15 Passing the annual pressure decay test
16 is not a meaningless exercise. The goal all along
17 should have been that that test was rarely failed,
18 and to achieve that goal required attention to the
19 system functioning well throughout the year.

20 We are pleased to hear today that there
21 are some individuals who find out within a matter of
22 minutes that there are failures in their system, and
23 that is to be commended.

24 To the extent that even more egregious



1 problems exist, as in the case of a pressure relief
2 system that was simply an open pipe without a p/v
3 valve, such problems would again show the need for
4 there to be far better oversight than there has been
5 here before.

6 The American Lung Association believes
7 that the level of demonstration performance and of
8 requirements for response inherent in the use of CPM
9 and in the proposed revisions regarding assessments,
10 alarms, and corrective actions help to afford that
11 necessary degree of oversight.

12 I would be remiss if I did not take the
13 opportunity to emphasize why it is important to
14 control these emissions. In it's annual "State of
15 the Air Report," published this past spring, the
16 American Lung Association found that all of Delaware
17 earned a failing grade for ozone, even as the current
18 National Ambient Air Quality Standard for this
19 pollutant has long been recognized by the medical and
20 scientific community as being inadequate to protect
21 public health.

22 Higher ozone concentrations are, of
23 course, the result in part from releases to the
24 atmosphere of volatile organic compounds, the very



1 compounds constituting the principal releases from
2 GDFs.

3 Researchers have repeatedly found that
4 the risk of premature death increased with higher
5 levels of ozone. Newer research has confirmed that
6 ozone increased the risk of premature death even when
7 other pollutants also exist. Even at low levels,
8 exposure to ozone was associated with deaths from
9 cardiovascular disease, strokes, and respiratory
10 causes.

11 As the Department has recognized, ozone
12 can also cause health problems that can be felt right
13 away. Immediate problems, in addition to increased
14 risk of premature death, include shortness of breath,
15 wheezing and coughing, asthma attacks, increased risk
16 of respiratory infections, increased susceptibility
17 to pulmonary inflammation, increased likelihood to
18 suffer from respiratory allergies, and increased need
19 for people with lung diseases, such as asthma or
20 chronic obstructive pulmonary disease, to receive
21 medical treatment, to go to emergency rooms, and to
22 be hospitalized.

23 All of these affects have their costs
24 which also need to be evaluated.



1 Scientists are also finding that
2 long-term exposure to ozone is associated with
3 increased risk of premature death from respiratory
4 and cardiovascular disease, increased hospitalization
5 of children for asthma, increased risk of asthma
6 induction among adolescents, and increasing evidence
7 that ozone may result in lower birthweight and
8 decreased lung function among newborns.

9 Nationwide, each year ambient air
10 pollutants including ozone cause millions of lost
11 workdays, hundreds of thousands of asthma attacks,
12 and tens of thousands of premature deaths.

13 In addition to recognizing the need to
14 address GTF emissions as a precursor to ozone, we
15 also underscore the need for properly maintained
16 systems to limit the public's direct exposure to the
17 components of gasoline that are hazardous air
18 pollutants, or HAPs. We recognize that HAP exposures
19 associated with gasoline include but are not limited
20 to benzene, toluylene, ethylbenzene, and xylenes, and
21 the EPA's analysis has found that the GDFs emit on
22 the order of 25,000 tons of emissions nationally of
23 just these four pollutants.

24 Many toxic air pollutants can cause



1 cancer, but they also pose risks for an extensive
2 array of non-cancer health effects. Benzene is
3 recognized as a known human carcinogen, while
4 ethylbenzene is considered a possible human
5 carcinogen.

6 Long-term exposures to benzene can
7 cause leukemia, a blood cancer, and other blood
8 disorders such as anemia and depressed lymphocyte
9 count.

10 According to the Agency for Toxic
11 Substances and Disease Registry, non-cancer health
12 effects resulting from exposure to HAPs include
13 irritation of skin, eyes, nose, throat, and
14 respiratory tract; dizziness, nausea, and vomiting;
15 difficulty in breathing, impaired lung function and
16 respiratory systems; adverse effects on the nervous
17 system, impairment of memory and neurological
18 function, including effects on hearing, speech,
19 vision, and motor coordination; effects on vital
20 organs, such as damage to the liver and kidneys; and
21 developmental disorders.

22 And, furthermore, since children
23 generally display greater sensitivity to
24 environmental carcinogens than do adults, exposures



1 to HAPs may put children at a chronically greater
2 risk than adults.

3 Communities of color and poorer people
4 also appear to face higher risk, since research shows
5 that these minorities are more likely to live both in
6 areas that do not meet federal ambient air quality
7 standards and in areas with above average numbers of
8 air-polluting facilities.

9 Both African Americans and Hispanics
10 have been found to be more likely than Caucasians to
11 live in areas with high levels of air toxics.

12 Indeed, more specifically, the
13 Northeast States for Coordinated Air Use Management
14 has expressed concern about how a state or local air
15 pollution control agency's request to retire Stage II
16 will impact environmental justice communities,
17 recognizing that GDFs pose significant potential for
18 public exposure to VOCs and HAPs.

19 The concern is amplified by the fact of
20 the public's nearness to the sources. Not only are
21 many of these facilities located in residential
22 areas, including environmental justice communities,
23 but research shows that individuals living in close
24 proximity to GDFs are exposed to elevated levels of



1 several HAPs. As one might expect, measurements show
2 that the highest short-term exposure to benzene occur
3 during refueling operations.

4 These realities should inspire the
5 department and GDF owners and operators to take
6 appropriate care in transitioning from the existing
7 Stage II program to the new regulatory regime. For
8 example, the possibility should not remain unexplored
9 that the vehicle fleets refueling at GDFs in
10 neighborhoods of lower socioeconomic status might
11 tend to be older, and hence not yet at the same
12 higher prevalence of ORVR equipment as the population
13 as a whole.

14 For such local scenarios, facilities
15 equipped with properly maintained Stage II systems
16 may substantially mitigate public exposures to these
17 pollutants for longer than the statewide average
18 might indicate.

19 I take a moment to note that the
20 Department, through this revision, is attempting to
21 step up oversight enforcement of the systems in place
22 to control emissions from GDFs. And this is
23 something that the American Lung Association always
24 supports.



1 We also encourage the Department to
2 continue to pursue improvements in other areas that
3 may not be addressed by the proposed revision, from
4 technological changes such as low-permeability
5 refueling hoses and non-dripping nozzles to public
6 education programs to deal with poor behaviors that
7 defeat the purpose of these much-needed air pollution
8 abatement measures.

9 In short, the American Lung Association
10 in Delaware supports a solution that works in the
11 real world. As always, if suggestions are made for
12 air pollution control techniques that demonstrably
13 accomplish the same or increased reductions in the
14 same time frame but that are less burdensome for the
15 affected facilities, the Lung Association is
16 certainly open to their being considered.

17 But make no mistake: There are, today,
18 serious deficiencies in how air pollution from this
19 source category is controlled. And we find that the
20 proposed revisions to the regulation go a long way,
21 not only toward dealing with the problem of Stage II
22 incompatibility excess emissions, but also toward
23 dealing with those systemic deficiencies.

24 In conclusion, we ask the Department in



1 its deliberations to remember that air pollution
2 worsens and causes disease and even death for real
3 people. In Delaware, the populations at increased
4 risk from air pollution include: 200,000 infants,
5 children and teens under 18; 140,000 persons aged 65
6 and above; 18,000 children with asthma; 70,000 adults
7 with asthma; 50,000 adults with COPD; 70,000 with
8 cardiovascular disease, and that excludes
9 hypertension; 70,000 persons with diabetes; and
10 110,000 persons living in poverty. Pregnant women,
11 their developing unborn, persons who work or exercise
12 outdoors, and many others with existing health
13 problems are also at risk.

14 While we estimate that on the order of
15 about half of this state's population is described by
16 at least one of these categories, every one of these
17 hundreds of thousands is a real person, not a
18 nameless statistic.

19 Every one of these people is a family
20 member, a neighbor, a coworker, a friend, someone
21 whose health and life deserve to be protected. And,
22 therefore, the American Lung Association in Delaware
23 strongly supports the proposed revisions and
24 encourages the Department to resist making weakening



1 changes to them.

2 Thank you.

3 MR. HAYNES: Thank you. And that
4 concludes the speakers that have indicated they
5 wanted to speak. One more is coming up. Go ahead.
6 What's your name?

7 MS. WENGER: My name is Julie Miro
8 Wenger, and I'm the executive director of the
9 Delaware Food Industry Council.

10 And we are tonight to just support our
11 retailers and echo their concerns. To that end, it's
12 of great concern over the published proposed
13 regulations. As proposed, they raise many questions
14 regarding the environmental impact, economic
15 feasibility for compliance, and effectiveness of the
16 mandated technology. We strongly, strongly urge
17 DNREC to withdraw and revise the regulations.
18 Thanks.

19 MR. HAYNES: Thank you. Any other
20 people want to speak? I'm going to employ what
21 happened at last night's hearing, which was much more
22 exciting than this one. (Laughter) How many in this
23 room support the removal of the Stage II? (Hands
24 raised). Let's do it the other way around. Who



1 opposes the removal of the Stage II? To the
2 continuous monitoring; correct?

3 MR. STEWART: I think it depends how
4 you are phrasing the question.

5 MR. HAYNES: I know. Okay, I'm just
6 curious. There is a public comment period extended
7 to -- what did we decide it was going to be to?

8 MR. AMIRIKIAN: To the 12th.

9 MR. HAYNES: So to the 12th to submit
10 more written comments to e-mail. Mr. Ross? Yes?

11 MR. ROSS: What was that date again?

12 MR. HAYNES: September 12.

13 MR. ROSS: Okay.

14 MR. HAYNES: The contact information is
15 in the front of the room, I believe. E-mail would be
16 preferred to the person on that contact. Thank you
17 all for coming.

18 (Concluded at 7:31 p.m.)

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DNREC EXHIBITS

Exhibits 1-14 (As described in Frank Gao's testimony)
(Retained by DNREC)

SPEAKER EXHIBITS

American Petroleum Institute 1 - 8/28/14 Remarks, 1 Pg

Delaware State Chamber of Commerce 1 - 8/27/14 Letter
to David Small from Richard Heffron, 1 Pg.

Sunoco 1 - Statement for Public Hearing, 2 Pgs.

American Lung Association 1 - 8/28/14 Written Remarks



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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 11th day of September 2014.



Lorena J. Hartnett
Registered Professional Reporter

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