



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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SECRETARY

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Secretary's Order No.: 2020-A-0017

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1124:
Section 26 - *Gasoline Dispensing Facility Stage I Vapor Recovery* and
Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities***

Date of Issuance: June 11, 2020

Effective Date of the Amendment: July 11, 2020

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments to 7 DE Admin. Code 1124: Section 26 - *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities* ("Amendments"). Specifically, the Department proposes Amendments to update requirements for gasoline dispensing facilities ("GDFs"): (1) to require all GDF's to decommission existing Stage II vapor recovery systems in light of the redundancy of on-board refueling vapor recovery canisters that exist in vehicles starting with model year 1998, (2) to remove the requirement that new GDFs must install Stage II systems, and (3) to update Stage I requirements to ensure all GDFs remain well controlled. The proposed amendments will also require regulated GDFs to monitor a vapor-tight status of gasoline storage tanks by performing annual pressure decay tests or by installing a continuous pressure monitoring ("CPM") system.

Pursuant to 7 *Del.C.* §6010(a) and (c), the Department is also proposing revisions to the Delaware State Implementation Plan (“SIP”), entitled *Decommissioning Stage II Vapor Recovery Systems and Requiring Stage I Enhanced Vapor Recovery Systems at Gasoline Dispensing Facilities*. The objectives of the revised SIP are to analyze the regulatory impacts of the Amendments on Delaware’s emissions of volatile organic compounds (“VOC”) and to demonstrate that the Amendments meet the anti-backsliding requirements of the federal Clean Air Act (“CAA”), Sections 182(b)(2) and 110(l).

Since 1993, Delaware has required GDFs with a throughput of greater than 10,000 gallons of gasoline to install Stage I and Stage II vapor recovery systems (“VRS”) to control gasoline vapor emissions. A Stage I VRS controls gasoline vapor emissions by collecting gasoline vapors displaced during the delivery of gasoline from a fuel tank truck to the GDF’s underground storage tank (“UST”) or aboveground storage tank (“AST”) and returns the collected vapors into the delivery truck’s fuel tank. A Stage II VRS collects gasoline vapors displaced during the transfer of gasoline from a UST or AST to the vehicle’s gasoline tank and returns the collected vapors to the UST or AST.

To further control gasoline vapor emissions during the refueling process, the United States’ automobile manufacturers were required to install on-board refueling vapor recovery (“ORVR”) systems on new vehicles in 1998. An ORVR system is a vehicle’s fuel vapor emission control system that captures VOCs during vehicle refueling. While Stage II and ORVR systems are both effective for controlling gasoline vapor emissions during the refueling process, these two systems are incompatible. When a Stage II-equipped GDF refuels an ORVR-equipped vehicle, the ORVR system will force the Stage II’s vacuum pump to pull fresh air into the UST or AST, causing vapor pressure growth in the storage tanks, leading to additional vapor emissions from the USTs or ASTs, especially when those tanks are not vapor-tight. Due to the incompatibility of the two vapor recovery systems, the United States Environmental Protection Agency (“EPA”) issued a final rule in May 2012 to waive Section 182(b)(3) Stage II requirements (77 FR 28772). This rule allowed states in the ozone transport region to remove Stage II vapor recovery requirements, provided the overall emissions do not increase without the use of a Stage II system.

Pursuant to the May 2012 EPA final rule, the Department revised 7 DE Admin. Code 1124: Section 36.0- *Vapor Emission Control at Gasoline Dispensing Facilities* (“2015 Stage II Regulation”). The 2015 Stage II Regulation allowed the option for a GDF to decommission their Stage II system or continue the use of a Stage II system for an unspecified trial period. The 2015 Stage II Regulation also removed the requirement for new GDF’s to install a Stage II system upon construction. Non-Stage II GDFs were then required to maintain their gasoline UST or AST vapor-tight by installing one of the California Air Resources Board (“CARB”) approved Stage I enhanced vapor recovery (“EVR”) systems. To monitor the proper function of the Stage I EVR system, the non-Stage II GDFs were further required to (1) install a CPM system, or (2) perform an annual pressure decay test and follow other testing requirements as defined in the 2015 Stage II Regulation.

The Department’s Division of Air Quality (“DAQ”) assessed the impacts of the Stage II-ORVR incompatibility on Delaware’s GDF refueling emissions using the methods provided in the 2012 EPA guidance document entitled “*Guidance on Removing Stage II Gasoline Vapor Program from State Implementation Plans and Assessing Comparable Measures.*” The Department’s DAQ analyses calculated that in 2017, Delaware reached a point where ORVR systems provided a 30.7% greater emission reduction benefit than the Stage II systems provided. The incremental emissions benefit (the calculation of the state-wide emission control gain from a Stage II system as the ORVR technology phases in) decreased to -0.7% at the midpoint of 2017. It is estimated that by 2021, the Stage II-ORVR incompatibility will lead to an emission increase of 30.87 tons in the ozone season (May – September) or 71.13 tons per year. The Department finds that the removal of Stage II systems at Delaware GDFs is necessary to avoid excess emissions and to maintain Delaware’s ozone air quality.

In 2019, the Department convened a review committee consisting of representatives from the regulated community (i.e., GDFs’ owners or operators), testing companies, regional organizations of the gasoline distribution industry, environmental organizations, and regulatory agencies. The review committee met 4 times from May to August 2019 to discuss solutions to the incompatibility of Stage II and ORVR systems, as well as the impacts to the regulated community. At the conclusion of said meetings, the review concluded with the proposed Amendments herein.

The purpose of the Amendments are: (1) to finalize the deadline for decommissioning all Stage II systems in Delaware, (2) to implement necessary requirements for GDFs to ensure that gasoline vapor emissions are well-controlled at both existing and new GDFs, and (3) to provide flexibilities for adopting new and revised requirements for GDFs. To establish an effective connection between Section 26 and Section 36 of the Regulations, the Department also proposes revisions to the Stage I regulations *Gasoline Dispensing Facility Stage I Vapor Recovery* so that the GDFs in Delaware will be subject to the relevant Stage I EVR system requirements and testing of Section 36.

Pursuant to CAA Section 184(b)(2) and Section 110(l), the Department also proposes revisions to Delaware's SIP to demonstrate that the Amendments will result in a decrease of emissions, thus satisfying the CAA anti-backsliding requirements. As Delaware is in the ozone transport region, the Department proposes a plan that shall not increase VOC emissions and shall not contribute to violations of the 2015 Ozone National Ambient Air Quality Standards established by the EPA. The Delaware SIP analyses projects that the decommissioning of Stage II systems by December 31, 2021, and installing Stage I EVR systems by December 31, 2025, will: (1) avoid incompatibility VOC emission of 71 tons in 2021, (2) provide 58 tons of VOC emission reduction after 2025, and (3) total 129 tons of long term VOC emission reductions for attaining and maintain the ozone air quality.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del.C.* §6010(a) and (c).

The Department published its initial proposed regulation Amendments in the December 1, 2019 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 8, 2020. There were six (6) members of the public in attendance at the public hearing, four (4) of which provided verbal comment. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on January 23, 2020, with additional written comments received by the Department.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Newman, the Department's Division of Air Quality staff prepared a Technical Response Memorandum ("TRM"). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion with regard to concerns of the Amendments.

The Department's experts in the Division of Air Quality concluded that by decommissioning Stage II systems and implementing CARB approved Stage I EVR systems, VOC gasoline vapors will be reduced, and will ultimately help decrease adverse health effects to at-risk populations from ground level ozone. Based on a 98% control efficiency of an approved Stage I EVR system, the Department expects 9 tons of VOC emission reductions during the ozone season and a 21 tons of VOC emission reductions annually by 2021. Furthermore, by 2026 the Department expects more than 58 tons of VOC emission reductions on an annual basis. The Department believes that by requiring an approved CARB complete system, there will be cost savings for GDFs due to fewer leaks and less shutdown time for a station.

The Department also believes that by adopting CARB Executive Orders by reference in Section 36 of this Amendment, it will alleviate additional certifications and testing procedures that would be an unnecessary cost to the gasoline industry within Delaware. Moreover, the testing and certification procedures would be redundant to the CARB certification process that is already established. Pursuant to the updates of the CARB Executive Orders, the Department will modify relevant provisions as needed.

Hearing Officer Theresa Newman prepared her report dated May 7, 2020 ("Report"), which expressly incorporated the Department's proposed Amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

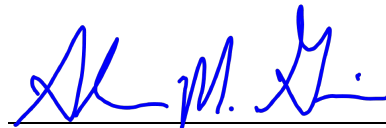
Reasons and Conclusions

Based on the record developed by the Department's experts in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 DE Admin. Code 1124: Section 26 - *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities*, are well-supported. I further find that the Department's Air Quality experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch.60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on January 8, 2020, and during the 15 days subsequent to the hearing (through January 23, 2020), before making any final decision;
4. Promulgation of the proposed amendments to 7 DE Admin. Code 1124: Section 26 - *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36 - *Vapor Emission Control at Gasoline Dispensing Facilities*, will enable the Department to update requirements: (1) to require all GDF's to decommission existing Stage II vapor recovery systems in light of the redundancy of on-board refueling vapor recovery canisters that exist in vehicles starting with model year 1998, (2) to remove the requirement that new GDFs must install Stage II systems, and (3) to update Stage I requirements to ensure all GDFs remain well controlled;

5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the December 1, 2019 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
8. The Department shall submit this Order approving the proposed Amendments as final regulatory to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



Shawn M. Garvin
Secretary