



California Independent Oil Marketers Association
3835 N. Freeway Blvd. • #240 • Sacramento, CA 95834
(916) 646-5999 • (916) 646-5985 (fax)
www.cioma.com

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Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814
Submitted electronically

Subject: CIOMA Comments on Enhanced Vapor Recovery Regulation Changes;
Item # 11-7-4.

Members of the Air Resources Board:

This letter contains comments from the California Independent Oil Marketers Association (CIOMA) regarding the above-noted rulemaking. CIOMA has been deeply involved in the evolution of enhanced vapor recovery (EVR) regulations and related regulatory programs. In fact, a significant portion of the regulatory changes – the “4-year clock” regulation changes stem directly from CIOMA’s concerns with the way the retrofit deadlines have been interpreted and implemented. We are fully supportive of the “4-year clock” regulatory changes as proposed by staff.

From our perspective these changes are *essential*. We believe that the failure of over half of the state’s service stations to meet the April 1, 2001 EVR retrofit deadline were directly related to issues in CARB interpretation of when the “4-year clock” starts and when retrofit deadlines occur. Specifically, about one-third of the state’s service stations that employed “balance” vapor recovery technology had less than 4 months to perform upgrades that replaced the technology they utilized with state-certified equipment. Beyond that, confusion reigned regarding what technology was appropriate, economically feasible and available. The necessity for CIOMA to spend hundreds of hours working on a reasonable compromise to enormous penalties being administered by air districts, and the black eye CARB received in this compliance fiasco would have been avoided if these changes were in place at that time. The staff report accurately depicts the good reasons for adoption of the changes.

To emphasize the needed adjustment, the “4-year clock” begins at the time staff certifies equipment, not when a “best-guess” occurs.

For the record, it is important to know how CIOMA interprets the changes and the application of the new rules. The provisions that allow and owner/operator to petition CARB regarding applicability of equipment are *crucial*. Here is the essence of our interpretation on how the petition provisions need to operate. As mentioned above, about one-third of the service stations in the state (about 3000 locations) failed to meet the 4/1/09 EVR deadline because they had “balance” vapor-return systems. CARB did not certify a balance-type EVR system until December, 2008. So owners of such systems had less than four months to purchase, install, test and permit this equipment. This was an absolute impossibility.

However, CARB maintained that such systems were “optional” since an owner/operator could, at significant additional expense and complexity, retrofit their dispensers with “vacuum assist” technology. This “cost-be-damned” approach was certainly not recognized in CARB’s staff reports on adoption of EVR requirements. Many owner/operators believed they needed to wait until technology, which replaced their existing technology, was available. The need to completely switch technologies was not anticipated in CARB’s analysis of how EVR systems would be certified and implemented, nor was it estimated in their regulatory cost impacts.

So a gap between CARB’s rigid interpretation of EVR deadlines and conflicting understandings/expectations between CARB and the regulated community existed, along with a gross non-compliance condition. It is our expectation that the new petition process will significantly help alleviate these situations *if employed correctly*.

We are somewhat concerned with the staff explanation of the petition process and the criteria used to determine if a waiver or delay of retrofit requirements will be allowed. It seems to hinge on a “technical review” of the petition. Our concern is that this technical review will focus entirely on the ability to physically employ technology, regardless of cost, inconvenience and system operation/durability/safety. We could easily wind up with another “battle royal” over the interpretation of a deadline that ignores the financial aspect of “practicability”. We absolutely expect CARB staff to consider the costs of technology application in their decision-making on waivers. And we will use CARB’s estimates of how technology is expected to be employed and their cost estimates in supporting analysis as the basis of whether application of a technology is practical and feasible.

Low-permeation hose requirement

While we support the “4-year clock” requirements we **DO NOT** support the requirement of installing new hoses on all “vac-assist” systems (approximately 6000 fueling locations) for the following reasons:

- Requiring additional expenses for station owner/operators during this stressed economy is poor judgment. These costs will be added onto the high and unanticipated costs owners/operators are experiencing in having to maintain their EVR systems, in responding to false in-station diagnostics (ISD) alarms and in high-cost equipment replacement needs. It is no wonder that California average gasoline prices typically are 25-50¢/gallon higher than the national average.
- We are very skeptical of the emission estimates used to justify this requirement.
- We are peeved that we have not received a long-promised “back-cast” on how much emission reductions have been achieved by current EVR requirements. We believe it is premature to add additional requirements until a thorough understanding of existing requirements’ reductions have been determined. (As a note, it is interesting that the modeling unit has continued to state that they cannot get to the long-standing back-cast request due to their excessive work load, but they have the time to model these hose permeation, staff-requested, emission reduction estimates leading to additional regulation.

- In the wake of last year's EVR nozzle fiasco, we are very worried that these new hoses will potentially not live up to durability/safety expectations. We understand they will have the standard one-year warranty. We are very concerned that if operational problems are encountered like last year's nozzle problems owner/operators will be left with the responsibility and cost of equipment replacement. CARB is currently developing better protections and transparency on equipment durability and operational issues.
- CARB estimates that the new hoses will cost approximately \$10 more than current hoses. Given CARB's very poor estimates of additional costs related to EVR systems and equipment we are highly skeptical of this estimate.
- We **strongly recommend that this requirement be held in abeyance until:**
 - Emissions reductions from overall EVR performance are better understood; and
 - CARB has finished its regulations improving warranty protection and information sharing on EVR equipment and systems.
 - CARB can guarantee that new hoses will cost no more than \$10 apiece for the new equipment.

Providing 4 years for equipment change-out is the only rational part of this proposal.

Should you have any questions regarding the above comments please contact Jay McKeeman at jaymck@cioma.com.

Sincerely,



Jay McKeeman, Vice President of Government Relations & Communications

cc: CARB Ombudsman Office
CIOMA Board of Directors
CIOMA Government Relations Committee