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Subject: Update on Enhanced Vapor Recovery and In Station Diagnostics for Gasoline Dispenser Regulations; Agenda Item 08-6-7

Board Members:

This letter is written to provide information for your consideration regarding the Board hearing you are holding on an update on Enhanced Vapor Recovery and In Station Diagnostics (EVR-ISD) for gasoline dispenser regulations. In our previous communications to you we have expressed concerns regarding the implementation of retrofit requirements for the approximately 12,500 gasoline dispensing facilities (GDF's) in this state.

We continue to have serious reservations regarding the implementation timeline. In August, 2007 we suggested a simple two year extension of the deadline, but that request was rejected.

Before we get into our specific concerns, we need to address the actual environmental benefit of this program. In numerous locations CARB staff indicates that EVR/ISD will result in "Emission reductions from EVR vapor recovery systems will total 372 tons/day of reactive organic gases (ROG) statewide once fully implemented." This is a fabrication. EVR/ISD only adds 25 tons/day to emission reductions¹. The vast majority of the 372 tons in emission reductions is already in place with the *current* vapor recovery equipment. This misleads the reader into thinking that the program is a highly cost-effective requirement. This type of misleading information may be appropriate in car sales - it is unacceptable in honest public policy endeavors.

There remain many obstacles in achieving this complete overhaul of the state's retail gasoline delivery system by April 2009. We do not believe things will go as smoothly as your staff presents in their update report to you. Presented in the following items are issues and concerns we have regarding this program. We are not asking for a delay at this point, but

¹ We dispute that the 25 tons per day estimate is accurate as we do not believe the ISD program brings 8.5 tons in emission reductions.

unless some very aggressive steps are taken, the specter of service station closures and impediments to customer refueling will become reality.

Our issues and concerns:

- Four years is not four years – In our communication to you last October we pointed out a serious concern we have with the way CARB staff has interpreted state law regarding the amount of time service stations have to comply with retrofit requirements. State law (HSC section 41956.1) allows owners/operators to have four years from the time of certification of equipment to upgrade equipment. This law was passed to allow adequate time for station owners/operators to make timely and economic adjustments to continuing revisions to state dispensing requirements.

The problem is that CARB staff has misinterpreted this law to mean that once CARB has adopted *any* certification – regardless whether that certification meets the needs of the systems being replaced – the four year clock “starts ticking”. When CARB adopted the initial certification (April, 2005) it only applied to about 10% of the dispensers in service. It wasn’t until May, 2007 that CARB issued a certification that allowed the remainder of the GDF systems to meet the certification requirements. And, it wasn’t until November, 2007 that a balance replacement system (without ISD) was certified. So, balance systems (90% of the GDF population) will have had *less than 2 years to achieve compliance!*

We believe this is a legal opinion that *flies in the face of the original legislative intent*. Another case on this point is the development of a 2-year “extension” by CARB staff to allow development of an EVR system for bulk plants that have a common truck-loading system and fuel dispensers. This is a *wholly unique system* deserving a separate system development and certification. Owner/operators with such systems should, under state law, be given *a full four years after a compliance system is certified*, not just “extensions” to the current systems which have nothing to do with the special circumstances encountered in bulk plant fuel delivery operations.

- Difficulties encountered with the new systems – CARB has done an insufficient job of understanding the complexities involved with installing the new systems. The primary problem has been with the installation of the “back end” vapor container. This is a large and unsightly device. And it has run afoul of local fire district authorities who believe it must be contained in a fire-rated enclosure. This new equipment has caused permitting/expense problems (need to offset loss of landscaping and/or parking area); difficulties in finding adequate space on constrained sites; need to maintain fire-rated setbacks and/or fire rated containment; and aesthetic/appearance permitting problems.

In addition there are some emerging problems with the veracity of the in station diagnostic (ISD) equipment. This has been encountered primarily on high volume stations, but even others are noting software and hardware problems leading to the hiring of expensive technical assistance to test and rectify the issues. If the equipment is not holding up in the field, this may create undue enforcement problems (see below-related bullet) and excessive expense to test and re-verify equipment operations.

- Small service stations may be unable to afford upgrades – As we venture further into a tightening economy many small volume service stations are finding difficulty in obtaining financing, or affording, the upgrades. Senator Dave Cox has introduced legislation, SB 155, exempting small, rural service stations from the EVR requirement. A solution needs to be developed to assure small service stations are not closed due to this requirement. Motorists traveling expanded distances will encounter much higher risks than that provided by a 3% efficiency increase in vapor recovery.
- Need for air district enforcement discretion – Local air districts have yet to indicate the exact nature of whether enforcement discretion that would be exercised if insurmountable problems are encountered during installation. We have asked CAPCOA to take a leadership role in this, but we have not been informed of any action in this regard. In fact, our most recent questions have been most disturbing. The only options that were presented were: 1) variance; or 2) stipulated enforcement action. Both these options carry significant penalties if deadlines are not met. We are merely asking for enforcement discretion guidelines that would indicate delay only if good faith efforts have been made to comply, but cannot be reached due to circumstances beyond the control of the permittee.
- Some districts adding ISD enforcement provisions in their permits – Some larger air districts are beginning to add unwarranted and disturbing permit conditions that require further testing and other actions when there are warnings and alarms. Failure to take prescribed actions result in violations. The extent of these additional permit conditions is contrary to the initial and often repeated purpose of ISD as a *management tool*, not an enforcement mechanism. CARB needs to become much more aggressive in their role on directing local districts to employ ISD in the correct manner.
- General concerns regarding independent operators as the deadline draws closer – We have expressed in earlier communications the general problems independent service station operators have in these situations. Those include: limited access to installation crews as large chains are able to obtain priority scheduling; higher per-unit pricing; difficulties in obtaining and coordinating complex permit requirements (no dedicated compliance or permitting staff); and, difficulty in obtaining financing.

So, the sum total of these problems create serious pause in our vision of how this deadline may unfold. Our members remain committed to the practical and economically prudent improvement of our state's environment. However, unyielding adherence to arbitrary deadlines will certainly cause unintended consequences. We hope you are ready to accept the responsibility, or work with us in achieving a smoother road map to compliance.

Sincerely



Jay McKeeman,
Vice President of Government Relations and Communications

cc: Governor Arnold Schwarzenegger
Linda Adams, Secretary, Cal/EPA
Jackalyne Pfannenstiel, Chair, California Energy Commission
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