California Environmental Protection Agency

Air Resources Board

FINAL STATEMENT OF REASONS FOR RULEMAKING
Including Summary of Comments and Agency Responses

AMENDMENTS TO THE LIST OF EQUIPMENT DEFECTS THAT SUBSTANTIALLY IMPAIR THE EFFECTIVENESS OF GASOLINE VAPOR RECOVERY SYSTEMS

Location:

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This report and the proposed amendments to the Vapor Recovery Equipment Defects List incorporated by reference into Title 17 of the California Code of Regulations, section 94006, were developed by Melinda Weaver, Vapor Recovery In-Use Program Section, of the Monitoring and Laboratory Division, Air Resources Board.

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Final Statement of Reasons for Amendments to the List of Equipment Defects that Substantially Impair the Effectiveness of Gasoline Vapor Recovery Systems

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State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response

PUBLIC COMMENT PERIOD TO CONSIDER THE PROPOSED AMENDMENTS TO THE LIST OF EQUIPMENT DEFECTS THAT SUBSTANTIALLY IMPAIR THE EFFECTIVENESS OF GASOLINE VAPOR RECOVERY SYSTEMS

Public Comment Period: June 7, 2011 to August 3, 2011

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking ("staff report or ISOR"), entitled "Proposed Amendments to the List of Equipment Defects that Substantially Impair the Effectiveness of Gasoline Vapor Recovery Systems," released June 15, 2011, is incorporated by reference herein.

The Executive Officer of the Air Resources Board (ARB or Board) is required by California Health and Safety Code (Health & Saf. Code) section 41960.2(c), to identify and list those defects in the vapor recovery equipment that substantially impair the effectiveness of gasoline vapor recovery systems used to collect vehicle gasoline refueling emissions.

Furthermore, ARB must review the Vapor Recovery Equipment Defects (VRED) List at a public workshop at least once every three years to determine whether or not an update is necessary. The Executive Officer (E.O.) of ARB is authorized to initiate a public review of the VRED List at any time, upon a written request that demonstrates the need for the review.

To abide by the requirement that the E.O. review the VRED List at least once every three years, a public workshop was held on January 10, 2011. At this workshop, the VRED List, incorporated by reference in California Code of Regulations (Cal. Code Regs.), title 17, section 94006(b), was reviewed. Stakeholders expressed their opinions and concerns, and ARB determined that an update of the VRED List was necessary.

A notice of a 45-day public comment period on the proposed amendments to the VRED List and amended section 94006 was issued by ARB on June 15, 2011. These documents are incorporated by reference in Cal. Code Regs., title 17, section 94006(b). The 45-day notice explained that no public hearing was scheduled, but provided instructions to request a hearing and if requested the E.O. would conduct a public hearing in August 2011. No request for a public hearing was received. However, two official comments were submitted during the 45-day public comment period proposing changes. These additional proposed changes were investigated and are discussed in detail in Section II. This 45-day public comment period ended on August 3, 2011.

ARB initiated a 15-day notice announcing a public comment period from February 16 to March 2, 2012 to disclose and contemplate the proposed changes. No comments were

submitted during the 15-day comment period. After the 15-day public comment period ended on March 2, 2012, per Executive Order EO-01-032 *Delegation of Authority - Chief, Monitoring and Laboratory Division,* Dr. Alberto Ayala, Chief of the Monitoring and Laboratory Division, acting on behalf of the ARB Executive Officer, considered the proposed amendments to the VRED List and in light of the material in the record; he has made recommendations to the E.O. for final adoption.

The initial updated VRED List was adopted on September 23, 2002, and incorporated by reference in Cal. Code Regs., title 17, section 94006. Since then the VRED List has been accessible through a number of ARB website links as well as by mail. Since adoption, it has been used by many stakeholders throughout California and other states.

This regulatory action will not create any fiscal impacts or mandate to any local governmental agency or school district, whether or not reimbursable by the State, or other non-discretionary savings to local agencies, nor will the proposed regulatory action create costs or savings to any State agency. ARB has programs currently in place to identify the defects that would substantially impair the effectiveness of vapor recovery equipment as new systems are certified. Resources are also available for completing future reviews and revisions of the VRED List.

Evaluation of Alternatives

The E.O. has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective as and less burdensome to affected private persons than the action taken by the E.O.

An updated VRED List establishes a uniform reference for use in statewide enforcement programs and creates specific criteria that can be used by regulatory agencies and operators to ensure that these systems remain in compliance and realize maximum operating effectiveness. California air pollution control districts or air quality management district are responsible for inspecting local gasoline dispensing facilities (GDFs) and enforcing vapor recovery violations involving equipment defects and performance test failures (Health & Saf. Code §§ 40752 and 41960.2(d) - (e)).

There are no comparable federal regulations that certify gasoline vapor recovery systems for GDFs to consider as an alternative; however, ARB certification is required by many other states that mandate Phase I or Phase II vapor recovery at GDFs.

An alternative to updating the VRED List is to do nothing. This had been the approach since the adoption of the original VRED List regulation in 1982, until amendments to Health & Saf. Code section 41960.2 in 1999 mandated that the VRED List be considered for updates at least once every three years.

Lack of action prior to this had perpetuated the decentralization of defect specification (i.e. in the myriad of Executive Orders and approval letters), making both compliance and enforcement more difficult and inconsistent among the air districts.

The alternative to amending the VRED List is only viable if it is determined, after public review, that an update to the VRED List is not necessary. To not consider amending the VRED List is not a viable alternative since Health & Saf. Code section 41960.2(c)(1)

mandates that the VRED List be considered for updates at least once every three years. At the January 10, 2011 public workshop, a “no-action” alternative was discussed and general agreement was that the VRED List needed to be updated. The update to the current VRED List includes: (1) inclusion of defects for equipment certified in EOs since the last amendment to the VRED List, June17, 2008; (2) new defect verification procedures; and (3) editorial changes to remove minor inconsistencies, and improve clarity.

The VRED List as amended in 2002, 2005, and 2008 included several items that were discovered by using the VRED List in the field. From the first VRED List a number of successive options have been developed, and evaluated in public and private meetings. The currently modified VRED List, presented to the E.O. for approval, is based on these progressive evaluations of options.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

During the 45-day comment period, two official comments requesting VRED List changes were submitted to the Clerk of the Board. One was submitted by a spokesperson from the California Air Pollution Control Officers Association Vapor Recovery Committee and the second was from a manufacturer of certified vapor recovery equipment. The changes were considered by ARB staff resulting in some modifications to the proposed VRED List.

1. The first comment, which was received from a spokesperson for the California Air Pollution Control Officers Association Vapor Recovery Committee, was a request to clarify or amend a defect verification procedure in two VRED List tables.

1. Agency Response:
This change was made since it met criteria as a new defect verification procedure and improved clarity.

2. The second official comment was submitted by a manufacturer of certified vapor recovery equipment and had several parts to it requesting changes to some of their equipment listed in two separate VRED List tables:

(a) The manufacturer requested that their processor equipment be removed from two specific VRED tables. The manufacturer stated there are no documented defects for this processor that result in emissions.

(b) The manufacturer requested that if their processor is found to be in 'defect status' that the following requirement not be applied to their processor: '*when the identified defect is detected in the listed equipment, the defect determination applies to all affected interrelated systems (which may include all systems at the motor vehicle fueling operation.)"*

2. (a) (b) Agency Response:
These two requests could not be granted. Exhibit 2 within each Executive Order lists the System Specifications for that system. Each related Exhibit 2 has an Equipment Defects section that lists system equipment conditions identified during the certification testing and engineering evaluation, that each system undergoes prior to being issued an Executive Order, as having the potential to substantially impair a fueling point or system efficiency (defined in Cal. Code Regs., title 17, section 94006).

The removal of an identified Equipment Defect from an Executive Order requires the manufacturer/applicant to submit an initial application requesting ARB amend a specific Executive Order/s. The Engineering Evaluation and Vapor Recovery Certification sections review this initial application to verify it includes a proposal of specific VRED mode test procedures, and the applicants' results of those tests, as well as any other observations or analyses conducted by the applicant. The Executive Officer may, for good cause, require modification of, and/or testing in addition to, VRED testing proposed by the applicant. Only after this process has been conducted, can a decision be made to leave the Equipment Defect as listed, or remove it from the Equipment Defects section of Exhibit 2 and from the corresponding VRED List table.

(c) Additionally, the manufacturer requested their processor's defect of *'unit inoperative'* should be deleted from the VRED List because it is not listed in the two specific Executive Orders.

2. (c) Agency Response:
This request could not be granted. 'Inoperative units' are covered as a VRED in the 'General Vapor Recovery' Table of the VRED List. It is the first table of the VRED List, 'GVR All Systems/any EO', and it states in part:

> "… (2) absence, improper installation, or disconnection of any component required to be used in the Executive Order(s) (EOs) that certified the system as verified by direct observation."

(d) An additional request in this comment was to delete the defect 'unit inoperative' and its verification procedure 'direct observation'. The manufacturers' position is no direct observation verification procedure is defined in the corresponding Executive Order for an 'inoperative unit'.

2. (d) Agency Response:
This request was granted. While reviewing those two specific VRED List tables the manufacturer cited, staff found those tables still contained this processor defect that had been removed from the Equipment Defects section of Exhibit 2 of the corresponding Executive Order. Removal of this defect was overlooked during the 45-day public notice release. The defect 'unit inoperative' and its verification procedure were deleted from the two requested VRED List tables.

(e) Their final request was that ARB add an exception for maintenance and testing in regards to the position of ball valves to their two specific VRED List tables.

2. (e) Agency Response:
This request was granted. This exception is listed in Exhibit 2 of the related Executive Orders therefore; text in the VRED List tables has been updated to reflect this.