

State of California
AIR RESOURCES BOARD

Executive Order G-04-058

August 24, 2004

Agenda Item No.: EO-04-1-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, at its November 15, 2001 hearing, the Board approved amendments to title 17 of the California Code of Regulations, section 94006 – Defects Substantially Impairing the Effectiveness of Vapor Recovery Systems Used in Motor Fueling Operations;

WHEREAS, in Resolution 01-52, which approved the November 15, 2001 rulemaking action, the Board directed the Executive Officer to update the Vapor Recovery Equipment Defects List incorporated by reference in section 94006, title 17, California Code of Regulations (CCR);

WHEREAS, the delegation of authority contained in Resolution 01-52 allows the Executive Officer (or her delegate) to conduct these activities on behalf of the Board, as authorized by sections 39515, 39516, 39600, and 39601 of the Health and Safety Code;

WHEREAS, the Executive Officer delegated to the Chief of the Monitoring and Laboratory Division (Hearing Officer) the authority to conduct a public hearing to consider updates to the list of equipment defects in systems for control of gasoline vapors from motor vehicle fueling operations as required by section 47960.2(c) of Health and Safety Code, and set forth in title 13, CCR, section 94006;

WHEREAS, section 41960.2(c)(1) of the Health and Safety Code requires the Executive Officer of the ARB to identify and list equipment defects in systems for the control of gasoline vapors resulting from motor vehicle fueling operations that substantially impair the effectiveness of the systems in reducing air contaminants;

WHEREAS, section 41960.2(c)(1) of the Health and Safety Code also requires the Executive Officer to specify the defects in the applicable certification documents for each system;

WHEREAS, section 41960.2(c)(2) of the Health and Safety Code requires the Executive Officer to review the list at a public workshop at least once every three years to determine whether the list should be updated to reflect changes in equipment technology or performance;

WHEREAS, section 41960.2(c)(3) of the Health and Safety Code authorizes the Executive Officer to initiate a public review of the list upon a written request that demonstrates, to the satisfaction of the Executive Officer, the need for such a review notwithstanding the timeframes specified in section 41960.2(c)(2);

WHEREAS, section 94006 of Title 17 of the California Code of Regulations, titled, "Defects Substantially Impairing the Effectiveness of Vapor Recovery Systems Used in Motor Vehicle Fueling Operations," was amended in 2002 to add criteria for the determination of "substantial impairment" and to consolidate defects listed in separate certification orders into a single Vapor Recovery Equipment Defects List, incorporated by reference therein;

WHEREAS, a public workshop was held on November 5, 2003, to review the Vapor Recovery Equipment Defects List and the E.O. determined that an update of the list was necessary to ensure that all substantial defects are described, capable of being understood, and easy to cite;

WHEREAS, staff anticipates a period of unprecedented change in vapor recovery equipment over the next six years, with many of the currently listed substantial defects being superseded as components meeting the Board's requirements are certified;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the proposed defects list update has been developed at meetings with air district vapor recovery enforcement staff, vapor recovery equipment manufacturers, and gasoline facility operator associations; as well as at two public workshops on November 5, 2003 and March 10, 2004;

WHEREAS, a public hearing was held on August 24, 2004, and other administrative proceedings have been conducted in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, following the August 24, 2005 public hearing, the Hearing Officer prepared a Hearing Officer's Report containing his findings, conclusions, and recommendations; the Hearing Officer's Report recommends that the Executive Officer adopt the amendments proposed by staff; and

WHEREAS, after considering the Hearing Officer's Report and the recommendations of the Hearing Officer, the Executive Officer finds that:

1. The emissions captured by vapor recovery equipment include volatile organic carbons, an ozone precursor, and benzene, a toxic air contaminant.

2. The emissions reductions attributed to the vapor recovery program currently set forth in the State Implementation Plan (SIP) are 410 tons per day of hydrocarbons.
3. The defects listed in the document titled "Vapor Recovery Equipment Defects List," set forth in Attachment A hereto and incorporated by reference herein, substantially impair the effectiveness of the gasoline vapor recovery systems in reducing air contaminants during motor vehicle fueling operations.
4. More effective and consistent enforcement of gasoline vapor recovery requirements is necessary statewide in order to meet the emission reduction targets for vapor recovery equipment in the SIP.
5. Clearer identification of listed equipment defects, currently set forth in the Vapor Recovery Equipment Defects List incorporated by reference into section 94006(b) of Title 17 of the California Code of Regulations or in the individual certification documents, will enhance both compliance by station operators and enforcement by air district inspection personnel of vapor recovery requirements pertaining to equipment used in vehicle fueling operations.
6. The phase-in of enhanced vapor recovery (EVR) will result in new systems and equipment being certified and the need to keep pace with their certification by identifying associated defects that substantially impair the effectiveness of those systems and equipment.
7. The enhanced compliance and enforcement that will result from the proposed amendments may result in decreased emissions from vapor recovery equipment used in motor vehicle fueling activities, which would have a positive impact on the state's air quality.
8. There is no reasonable alternative considered by the Board or otherwise identified by those who testified that would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons or businesses.
9. No adverse environmental impacts are expected to result from the proposed amendments to the Vapor Recovery Equipment Defects List.
10. Amendment of the Vapor Recovery Equipment Defects List, as set forth in Attachment A hereto, is necessary and appropriate to satisfy the requirements of section 41960.2 of the Health and Safety Code.

NOW, THEREFORE, BE IT ORDERED that the Executive Officer hereby adopts the amendments to the Vapor Recovery Equipment Defects List, incorporated by reference into section 94006, title 17, California Code of Regulations, as set forth in Attachment A hereto.

BE IT FURTHER ORDERED that the Executive Officer, when certifying EVR systems and equipment, will identify any substantial defects for each system or component in each applicable Executive Order and will revise the list of substantial defects to ensure that it remains current.

Executed this 22nd day of June 2005, at Sacramento, California.

/s/
Catherine Witherspoon
Executive Officer

Attachment