

California Environmental Protection Agency



**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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Acknowledgments

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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 Ranjit Bhullar, Section Manager, and R. Neil Nipper, Lead Staff, of the Vapor Recovery In-Use Program Section, of the Monitoring and Laboratory Division, of the Air Resources Board.

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State of California
AIR RESOURCES BOARD

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

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

Public Hearing Date: August 24, 2004
Agenda Item No.: EO-04-1-1

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking ("staff report"), entitled "Proposed Amendments to the List of Equipment Defects that Substantially Impair the Effectiveness of Gasoline Vapor Recovery Systems", released July 9, 2004, is incorporated by reference herein.

California Health and Safety Code (HSC) section 41960.2 requires the Air Resources Board (ARB or Board) to identify and list equipment defects that substantially impair the effectiveness of systems used for the control of gasoline vapors resulting from motor vehicle fueling operations. Furthermore, the ARB must review the List at a public workshop at least once every three years after January 1, 2001, to determine whether or not an update is necessary. The Executive Officer (E.O.) of the ARB is authorized to initiate a public review of the list at any time, upon a written request that demonstrates the need for the review.

In response to the requirement that the E.O. review the list at least once every three years, a public workshop was held on November 5, 2003. At this workshop, the Vapor Recovery Equipment Defects List (VRED List or List) incorporated in California Code of Regulations (CCR) section 94006 was reviewed, stakeholders expressed their opinions and concerns, and the ARB determined that an update of the List was necessary.

After several meetings and workshops, ARB staff presented the proposed updated VRED List and amended 17 CCR section 94006 at an Executive Officer (E.O.) public hearing on August 24, 2004. The public hearing was held at CalEPA Headquarters, 1001 I St., Sacramento. In accordance with HSC section 39015 and 39016, the Executive Officer Catherine Witherspoon, delegated the authority to Bill Loscutoff, Chief, Monitoring and Laboratory Division, to preside over the hearing. No oral or written testimony was presented in opposition to the proposed changes.

Additional proposed modifications were brought to staff's attention shortly before the hearing, giving rise to the need for a 15-day notice and public comment period from February 25, 2005 to March 14, 2005. The public comment period for the 15-day changes closed on March 14, 2005, and all VRED List changes have been reviewed by Mr. Loscutoff, whose recommendations for final approval were made to Ms. Witherspoon.

The ARB staff's proposed modifications to the originally proposed regulatory amendments include: the incorporation of several additional substantially impairing defects from Executive Orders for aboveground storage tanks (G-70-139 and G-70-181) and for the OPW Vaporsaver (G-70-204) which was issued subsequent to the hearing; and changes to verification procedures in the Executive Orders for Healy Phase II systems (G-70-165, -183, -186, -187, and -191). Staff proposed these changes in response to informal comments received subsequent to the publication of the hearing notice and ISOR, and they are described in the following five paragraphs.

The five Healy Phase II Executive Orders each have a "defective vapor valve" defect. In the VRED List proposed prior to the 15-day changes, each Healy vapor valve defect had an associated verification procedure which, even though it worked for testing other vapor valves, did not fully confirm the impaired nature of the Healy vapor valve. For this reason, a test specific to Healy systems is included in the Healy Executive Orders. Reference to the verification procedures associated with general vapor valve defects has been removed from the proposed VRED List and replaced by a reference to the test specified in the Healy Executive Orders.

Executive Order G-70-204 "Gilbarco VaporVac/OPW Vaporsaver ORVR-Compatible Phase II Vapor Recovery System" became effective after the Executive Officer public hearing on August 24, 2004. One of the 15-day changes was to wait until G-70-204 was signed and to then incorporate any G-70-204 substantially impairing defects into the proposed VRED List. This has been accomplished by the addition of page 20 to the proposed VRED List.

After the Notice of Public Hearing and the Initial Statement of Reasons were issued but before the Executive Officer public hearing on August 24, 2004, ongoing staff discussions with stakeholders revealed that the defects from two existing aboveground storage tank (AST) Executive Orders had not been incorporated into the List. The Executive Orders are G-70-139 and G-70-181. The defects in these AST Executive Orders meet the existing criteria for substantially impairing defects and 15-day modifications accordingly add them to the VRED List.

Executive Order G-70-139 covers the “Hirt Model VCS-200 Phase II Vapor Recovery System.” This is a balance type AST system and as such shares the defects listed on page 3 of the VRED List with other balance systems. To add this system to the List, “G-70-139 series Hirt” was added to the list of balance systems on the top of page 3 of the VRED List.

The other Executive Order excluded from the originally proposed list: was G-70-181, for the “Hirt VCS400-7 AST.” While there is a table in the VRED List for G-70-177 – a “Hirt VCS400-7” system – a separate Executive Order certifies the VCS400-7 for AST applications. A table has been added to page 13 of the VRED List for substantially impairing defects associated with G-70-181: the Hirt VCS400-7 AST system.

The initial VRED List was adopted on September 23, 2002, and incorporated by reference in CCR section 94006. The List has been accessible through a number of ARB website links or by mail. In this 2.5 year period, it has been consulted 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. The 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.

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 and less burdensome to affected private persons than the action taken by the E.O. An alternative to updating the VRED List is to do nothing. This had been the approach since the adoption of the original defects regulation in 1982, until amendments to HSC section 41960.2 led to the adoption of the criteria for determining which defects would substantially impair the effectiveness of the system in collecting vapor and the incorporated VRED List in 2002. Lack of action had perpetuated the decentralization of defect specification (i.e. in the myriad of Executive Orders), making both compliance and enforcement more difficult and inconsistent among the air districts. At the public workshops, a “no-action” alternative was discussed. General agreement was that the List needed to be updated; the VRED List presented at the hearing was based on progressive evaluations of the options.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

No oral or written comments were submitted during the 45-day comment period, at the public hearing, or on the modifications during the 15-day comment period.