

1 OFFICE OF THE DISTRICT PROSECUTOR
2 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
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SOUTH COAST AQMD
CLERK OF THE BOARDS

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10 Attorneys for Petitioner
11 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

12 **BEFORE THE HEARING BOARD OF THE**
13 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

14 In the Matter of

Case No. 5732-1

15 SOUTH COAST AIR QUALITY MANAGEMENT
16 DISTRICT,

**PETITION FOR STIPULATED GROUP
ORDER FOR ABATEMENT; PROPOSED
ORDER**

Petitioner,

vs.

17 GAS DISPENSING FACILITIES, DOES 1-2600

DATE: 9:00 a.m.
TIME: 21865 Copley Drive
PLACE: Diamond Bar, CA 91765

Respondents.

18
19 Petitioner SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT states:

20 1. Petitioner is a body corporate and politic established and existing
21 pursuant to Health and Safety Code § 40400, *et seq.*, and is the sole and exclusive
22 local agency with the responsibility for comprehensive air pollution control in the
23 South Coast Basin.

24 2. Respondent currently owns, operates, leases or licenses for operation
25 one or more gasoline dispensing facilities ("GDFs"), which are or will be in violation
26 of the California Air Resources Board ("CARB") requirements for Phase II Enhanced
27 Vapor Recovery ("PII-EVR"). PII-EVR is required to be installed and successfully
28

1 tested on GDFs by April 1, 2009 pursuant to Title 17 Section 94011 of the California
2 Code of Regulations (CCR) as well as District Rule 461(c)(2)(A) and (e). In addition,
3 pursuant to the same requirements, a GDF that has an annual throughput that
4 exceeds 1.8 million gallons of gasoline must install and successfully test by September
5 1, 2009 an In-Station Diagnostic ("ISD") system, which monitors the performance of
6 the installed PII-EVR equipment. As a result, those large through-put GDF's may also
7 be in violation of the ISD requirements. Moreover, each of these GDF's may be in
8 continuing violation of Rule 203(b) by violating a permit condition contained in its
9 respective permit that requires the GDF to be maintained to meet all CARB
10 certification requirements.

11 3. Petitioner alleges that CARB approved the EVR Program in March 2000,
12 which required GDFs to phase in equipment upgrades over a 10-year period. See
13 November 2008 CARB staff report¹ "Progress Towards April 2009 Deadline for
14 Enhanced Vapor Recovery Phase II Systems," at 1. The first EVR Phase II system
15 became available in April 2005, triggering a four (4) year requirement to meet the PII-
16 EVR deadline. *Ibid.* Since January 2008, CARB and the local air districts have made
17 concerted efforts to outreach to the GDFs to inform them of the upcoming PII-EVR
18 deadline, conducting about 40 meetings and workshops. *Id.* at 4-5 (listing in Table 1
19 these outreach efforts).

20 4. Separately, the SCAQMD commenced rulemaking in December 2007 to
21 require GDFs to begin early planning for the PII-EVR deadline. On March 7, 2008, the
22 Governing Board amended Rule 461 by requiring GDFs to file by October 1, 2008, a
23 compliance plan specifying the dates by which the GDF would meet certain specified
24 milestones. See District Rule 461(i). In addition to attending and hosting those CARB
25 meetings in the South Coast Air Basin, the SCAQMD also mailed or handed out
26 advisories on December 17, 2007 and in July 2008 to all active GDF permit holders.

27
28

¹ This staff report may be found at www.arb.ca.gov/vapor/Nov08Progressreport.pdf.

1 Copies of these two advisories are attached hereto as Exhibit A, respectively. Finally,
2 on December 12 and 16, 2008, SCAQMD mailed out by certified mail to all active GDF
3 permit holders who had failed to file a required compliance plan, a Notice to Comply
4 to do so by the end of December 2008. A copy of that Notice is attached hereto as
5 Exhibit B.

6 5. Petitioner seeks a stipulated Order for Abatement to require each
7 Respondent to cease violation of the PII-EVR requirements and any violation of the ISD
8 requirement, both of which are embodied in 17 CCR §§ 94010-94011 and Rule 461, as
9 well as Rule 203(b), by either ceasing its non-compliant operations on and after April
10 1, 2009 or by taking the following actions:

11 a) Install CARB certified Phase II EVR and any September 1, 2009
12 required ISD equipment; and conduct all required testing at the earliest
13 feasible date but no later than December 31, 2009; and

14 b) Notify the District within five (5) days of full compliance with this
15 Order in the manner specified by the District.

16 6. This Group Order for Abatement is not intended to be nor will it act as a
17 variance as to any Respondent.

18 7. Respondents' operation under the proposed Order is not expected to
19 result in a violation of Health and Safety Code § 41700.

20 WHEREFORE, the District prays that the Hearing Board issues an Order for Abatement
21 in substantially the same form as attached.

22 Dated: March 20, 2009

23 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
24 DISTRICT PROSECTUOR'S OFFICE
25 KIRK A. DUBLIN, District Prosecutor

26 By: 
27 William B. Wong
28 Attorney for Petitioner

EXHIBIT A

Enhanced Vapor Recovery and In-Station Diagnostic Systems

All gasoline dispensing or fueling operations with underground storage tanks **must have** both of these pieces of equipment by the deadlines listed below:

- Phase II Enhanced Vapor Recovery (EVR) equipment
- In-Station Diagnostic (ISD) monitoring system

If your current equipment is not a Healy Phase II EVR system (ARB Executive Order VR-201 or 202), it will need to be upgraded.

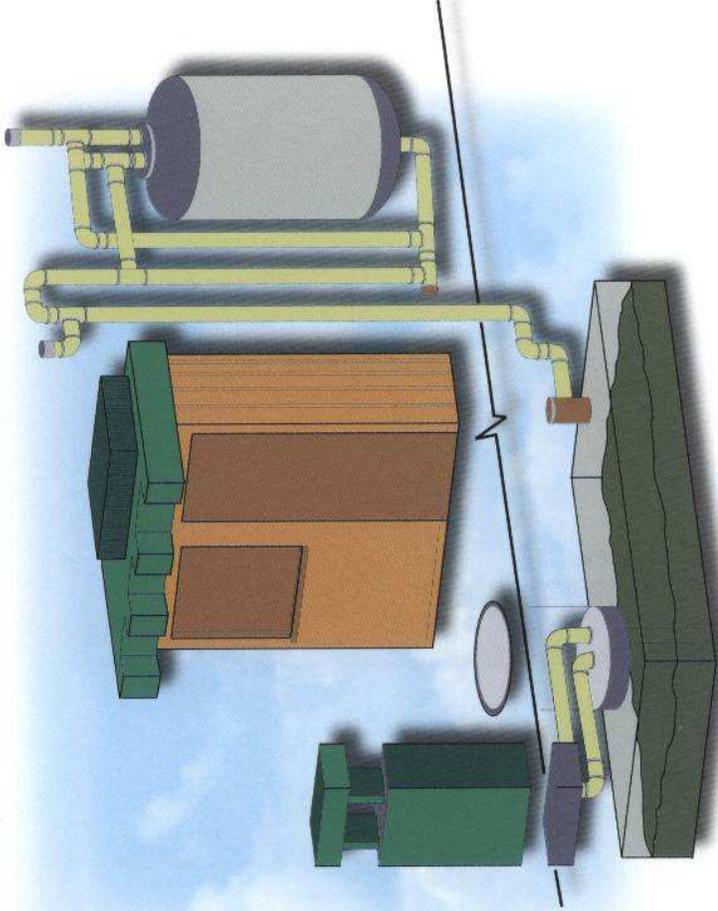
The deadlines for completing the necessary upgrades are as follow:

Phase II EVR equipment upgrades (regardless of annual throughput):

- April 1, 2009

ISD installations

- Facilities with annual throughputs greater than 1,800,000 gallons per year: September 1, 2009
- Facilities with annual throughputs between 600,000 and 1,800,000 gallons/year: September 1, 2010
- Facilities with throughputs less than 600,000 gallons per year are currently exempt from the ISD installations requirement.



Enhanced Vapor Recovery (EVR) prevents the escape of smog-forming gasoline vapors

Vapor recovery systems collect gasoline vapors during bulk fuel delivery (Phase I) or vehicle fueling (Phase II). These vapors are a major culprit in the formation of smog and pose major health risks to the community.

The EVR program adopted by the California Air Resources Board (ARB) in March 2000 provides strict requirements for vapor recovery systems to prevent gasoline vapors from escaping into the air.

The In-Station Diagnostic (ISD) system monitors performance

ISD monitors the performance of the vapor recovery systems and triggers alarms when failures occur. If the problem is not corrected, the ISD may lead to station shut-down.

Allow plenty of time to get the permits before starting

You must get a permit from the South Coast Air Quality Management District, as well as appropriate government agencies (such as the Planning Department and Fire Department) starting construction or modifications of a facility.

The large numbers of gas station owners/operators applying for permits will put a high demand on these agencies. This will mean it takes longer for you to get your permits, so start the process as soon as possible.

For help with AQMD permit applications, contact:

Randy Matsuyama
South Coast Air Quality Management
(909) 396-2551
or
Small Business Assistance Hotline
(800) 388-2121

Use only certified contractors

Only contractors/installers who are certified by the equipment manufacturer and by the California Code Council (CCC) as approved vapor recovery installers are allowed to perform system upgrades and repairs. Ask for proof of these certifications before hiring a contractor.

For more information

The California Air Resources Board website has detailed information on the EVR and ISD requirements. Visit <http://www.arb.ca.gov/vapor/vapor.htm> or <http://www.arb.ca.gov/vapor/eo-evrph>

List of certified equipment available on ARB website

The California ARB website (shown at the end of this pamphlet) lists the certified equipment. Because the certification process involves a six-month testing period, there is no guarantee that there will be any new certified equipment available in time to be installed by the April 2009 deadline. We recommend that you select your equipment now.

Act now to avoid extra costs and penalties!

Start planning now. Early preparation could save you money and give you better installation scheduling options. Waiting until the last minute could cost you more in installation costs, loss of business, and unexpected fines and penalties. It will be illegal to operate any vehicle fueling system without the required Phase II EVR after April 1, 2009. Act now to avoid loss of revenues.



South Coast
Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-
www.aqmd.gov



**SOUTH COAST
AIR QUALITY MANAGEMENT DISTRICT**
21865 COPLEY DRIVE, DIAMOND BAR, CA 91765
(909) 396-2000 Website: <http://www.aqmd.gov>

AQMD Rule 461 Advisory No. 01-08

Critical Deadline to Install Phase II Enhanced Vapor Recovery Systems AND Recent Amendments to Rule 461 – Gasoline Dispensing Operations

State of California law requires that all retail and non-retail gasoline dispensing facilities (GDF) with underground storage tanks be equipped with a certified Phase II Enhanced Vapor Recovery system. The deadline for this state requirement is **April 1, 2009**. This requirement is one of several in the State's Enhanced Vapor Recovery (EVR) program designed to further reduce emissions of gasoline vapors which contain toxic compounds and which contribute to the formation of atmospheric ozone (smog). **Failure to comply by the applicable deadline will result in closure of your gasoline dispensing operation and may result in significant penalties.** As the regional air pollution control agency, the South Coast Air Quality Management District (AQMD) is responsible for implementing and enforcing these State requirements.

Presently, the California Air Resources Board (CARB) has certified two Phase II EVR systems:

1. Balance Systems – Vapor Systems Technologies, Inc.(VST)
2. Vacuum Assist System - Franklin Fueling Systems Inc./Healy

At this time the likelihood of any additional certified system being commercially available in time to meet the up-coming April 2009 installation deadline is doubtful.

Amended Rule 461

To ensure timely compliance with this state requirement, the AQMD adopted amendments to Rule 461 on March 7, 2008 to require a Compliance Plan if equipment upgrades are not completed by October 1, 2008. Highlights of the amendments to the Rule are:

1. The Compliance Plan Requirements, which lists deadlines for the following incremental steps towards completion of Phase II EVR upgrades:
 - a. Application submittal
 - b. Installation contract
 - c. Equipment order
 - d. Equipment installation
 - e. Testing contract
 - f. Equipment testing
2. Performance and re-verification testing schedule revisions
3. Testing contractor requirements
4. Certification for contractors and operators
5. Delay to year 2012 EVR implementation on E85 and ORVR fleets.

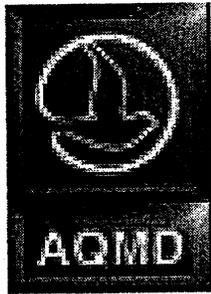
Of course we strongly suggest reading the entire Rule for a full knowledge of all the requirements. Should you have questions, please call the Rule 461 Hotline (866)770-9140

Compliance Plan Form

A form has been developed to collect information required for the submittal of a compliance plan. In addition, an informational sheet has been compiled to help guide the preparation of the compliance plan. Both documents are attached. The Compliance Plan along with an application (Form 400-A, which can be obtained at <http://www.aqmd.gov/permit/Formspdf/Basic/AQMDForm400-A.pdf>) and a plan fee of \$224.60 must be submitted to AQMD on or before October 1, 2008.

Public Meeting

A public meeting is also scheduled on August 7, 2008 to help answer any question GDF operators may have. The meeting will be held at the AQMD Headquarters in Diamond Bar. Details regarding the planned meeting are on the back of this page.



ATTENTION



Gasoline Dispensing Facility Owners and Operators

In an ongoing effort to help gasoline dispensing facilities operating within our jurisdiction to comply with State of California Phase II EVR upgrade requirements, South Coast Air Quality Management District is conducting another conference on:

August 7, 2008, Thursday

1:30 PM to 5:00 PM

SCAQMD

21865 Copley Dr.

Diamond Bar, CA 91765

Conference Room GB

Topics to be discussed are:

- Phase II EVR requirements
- The new requirement for a compliance plan
- Implementation Issues
- Amended rules requirements

Staff from the Air Resources Board will also be available to answer questions you may have on Phase II EVR systems.

This conference is FREE, but due to limited space pre-registration is required.

If you are interested, please register by August 5th, 2008 by:

- Sending an email with your name, company name, telephone number and email address to gdfconference@aqmd.gov; or
- Contact **Evangelina Barrera** at (909) 396-2583.

EXHIBIT B

NOTICE TO COMPLY

Facility Name: _____ Date Issued: _____
ID#: _____ Facility
Address: _____

Served by Certified Mail to:
Equipment location:

PURSUANT TO RULE 461 – GASOLINE TRANSFER AND DISPENSING, YOU ARE DIRECTED TO SUBMIT ONE OF THE FOLLOWING:

1. Proof of having submitted a compliance plan to AQMD (Application receipt or approved compliance plan); OR
2. A true statement that the above gasoline dispensing facility (GDF) has been successfully upgraded to a certified Phase II Enhanced Vapor Recovery (EVR) system; OR
3. Proof that the above GDF qualifies is not subject to the EVR deadline of April 1, 2009; OR
4. A Compliance Plan Package fully completed in accordance with Rule 461.

See reverse for further information.

On or before **December 31, 2008** (as evidenced by a postmark):

- The owner/responsible officer of the facility must return a copy of this document with any one of the four items mentioned above to:
Rule 461 Compliance Plan
Proof of Compliance
South Coast Air Quality Management District
21865 Copley Dr.
Diamond Bar, CA 91765-0941
- Failure to comply with Rule 461 may subject you to criminal and civil penalties of up to \$25,000 per day. Submission of a false statement may subject you to civil penalties of up to \$35,000. In addition, your equipment may be tagged out of service if they are not upgraded to Phase II EVR by April 1, 2009.

Danny Luong
Senior Enforcement Manager
Engineering & Compliance Division

Background

In response to the current State of California Phase II Enhanced Vapor Recovery (EVR) upgrade requirement, South Coast Air Quality Management District (AQMD) adopted an amendment to Rule 461 in March 2008. Subdivision (i) of Rule 461 requires all non-exempt gasoline dispensing facilities (GDF) to submit a Compliance Plan by October 1, 2008. An Advisory was issued to all GDF operators in July 2008 reminding them of this deadline and the requirements to install Phase II EVR Systems by April 1, 2009. A Form 461-CP – Rule 461(i) Compliance Plan for Upgrading to Phase II Enhanced Vapor Recovery System and a set of frequently asked questions on the same subject were also attached to the Advisory.

Our records show that your facility did not submit a compliance plan in accordance with Rule 461. Therefore, the AQMD is taking this first step toward enforcement by issuing you this Notice to Comply requiring you to submit by December 31, 2008 one of the four items listed in the front of this notice. If you intend to submit a Rule 461 Compliance Plan Package, you must also submit at the same time a completed Form 400A – Application for a Permit to Construct and Permit to Operate, a completed Form 461-CP, and an application fee of \$224.60. The above mentioned documents contain further information on this requirement and can be accessed on the AQMD web page via the following web addresses:

Advisory: http://www.aqmd.gov/comply/Rule461/Useful_doc/461Advisory01_08.pdf

Compliance Plan Form: <http://www.aqmd.gov/comply/Forms/R461CP.pdf>

General Application Form: <http://www.aqmd.gov/permit/Formspdf/Basic/AQMDForm400-A.pdf>

Below is a list of facilities not subject to the April 1, 2009 EVR Phase II Deadline:

Type of facilities	Required Proof to be submitted by December 31, 2008
100% ORVR (On board Refueling Vapor Recovery) Fleet [See Rule 461 (c)(5)]	Applications for or permits with a condition that limit fueling of only ORVR equipped vehicles
Bulk Plant [See CARB EO G-70-210]	Applications or permits for a fuel bulk loading operation at the facility
Vapor Pot [See CARB EO G-70-211]	Statement that the GDF currently has a vapor pot in the vapor return line.
Mobile Fueler	Statement that the GDF currently has only mobile fuelers.
Above ground storage tanks	Permit showing the facility has ONLY aboveground storage tanks supplying fuel to the fueling nozzle(s)
Marinas	Statement that the facility is located at a marina