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**TITLE 326 AIR POLLUTION CONTROL BOARD****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #12-636

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING STAGE II GASOLINE VAPOR RECOVERY SYSTEM REQUIREMENTS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 2-11-2](#) and [326 IAC 8-4-6](#) concerning Stage II gasoline vapor recovery system (Stage II) requirements. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 2-11-2](#); [326 IAC 8-4-6](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-14](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

On May 16, 2012, the United States Environmental Protection Agency (U.S. EPA) determined that onboard refueling vapor recovery (ORVR) technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions, (77 Federal Register (FR) 28772). Since 2006, ORVR has been a required control on nearly all new highway vehicles. Stage II and ORVR emission control systems are redundant and U.S. EPA has determined that emission reductions from ORVR are essentially equal to and will soon surpass the emission reductions achieved by Stage II requirements. U.S. EPA has, therefore, waived the requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities (GDFs) in nonattainment areas classified as Serious and above for the ozone national ambient air quality standards (NAAQS).

Under Section 182(b)(3) of the Clean Air Act (CAA), Stage II gasoline vapor recovery systems are required to be used at GDFs that sell more than 10,000 gallons of gasoline per month or 50,000 gallons of gasoline per month in the case of independent small business marketers of gasoline located in Serious, Severe, and Extreme nonattainment areas for ozone. Stage II gasoline vapor recovery systems are designed to control gasoline vapors that are emitted when partially empty gas tanks are filled with liquid gasoline. Gasoline vapors can react with sunlight, nitrogen oxides and other volatile organic compounds to form ozone. States were initially required to adopt a Stage II program into their state implementation plans (SIPs).

U.S. EPA promulgated ORVR standards on April 6, 1994 (59 FR 16262). ORVR consists of an activated carbon canister installed on a vehicle into which vapors are routed from the vehicle fuel tank during refueling. The vapors are captured by the activated carbon canister and prevented from escaping the fuel tank fill pipe by use of a seal. The ORVR standards were implemented on a progressive schedule and by 2006, all new gasoline-powered vehicles with a gross vehicle weight rating (GVWR) of less than 14,000 pounds (lbs) were equipped with ORVR technology. U.S. EPA estimates that by the end of 2012, more than 71 percent of vehicles currently on the road will have ORVR. Section 202(a)(6) of the CAA provides U.S. EPA discretionary authority to revise or waive the Stage II requirements in Section 182(b)(3) if it is determined that ORVR is in widespread use.

States adopt state-specific or area-specific rules under the CAA, which are submitted to U.S. EPA for approval into their respective SIPs. These rules are independently enforceable under state law and become federally enforceable when U.S. EPA approves them into the SIP. Accordingly, states must submit and receive approval from U.S. EPA for a revision to their SIPs before removing Stage II requirements.

This rulemaking will amend rules concerning permitting by rule for specific source categories, including gasoline dispensing operations at [326 IAC 2-11-2](#), and rules concerning petroleum sources, including GDFs, at [326 IAC 8-4-6](#). Specifically, Stage II requirements and references will be removed from the rules in a manner consistent with U.S. EPA guidance. IDEM is requesting comment on the phase out of state Stage II requirements, in particular as it relates to newly constructed or reconstructed GDFs and GDFs conducting equipment replacement.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend rules concerning permitting by rule for specific source categories, including gasoline dispensing operations at [326 IAC 2-11-2](#), and rules concerning petroleum sources, including GDFs, at [326 IAC 8-4-6](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? Not applicable.

- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend [326 IAC 2-11-2](#) and [326 IAC 8-4-6](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. This alternative would be different from federal law because it would not allow the state to amend [326 IAC 2-11-2](#) and [326 IAC 8-4-6](#).

### **Applicable Federal Law**

The requirements for Stage II gasoline vapor recovery systems are found under Section 182(b)(3) of the CAA. The requirements for ORVR are found under Section 202(a)(6) of the CAA. U.S. EPA's determination that ORVR is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions and, therefore, redundant to Stage II requirements (77 FR 28772), allows IDEM to discontinue Stage II vapor recovery programs.

### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. Phasing out the use of Stage II systems may lead to long-term cost savings for gas station owners and operators while air quality protections are maintained.

Potential Fiscal Impact of Alternative 2. There is no fiscal impact associated with this alternative.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin  
IDEM Small Business Regulatory Coordinator  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 234-3997  
[smallbizombudsman@iedc.in.gov](mailto:smallbizombudsman@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386 or (800) 451-6027  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Ryan Knapick, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 232-8229 or (800) 451-6027 (in Indiana).

### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

#### REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #12-636 Stage II Vapor Recovery  
Ryan Knapick Mail Code 61-50  
Rule and State Implementation Plan Development Section  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5967. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

- (3) By electronic mail to [rknepick@idem.in.gov](mailto:rknepick@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the email address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than January 11, 2013. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Ryan Knapick, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief  
Air Programs Branch  
Office of Air Quality

*Posted: 12/12/2012 by Legislative Services Agency*

An [html](#) version of this document.