

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

Table of Contents

I. GENERAL	1
II. SUMMARY OF COMMENTS AND AGENCY RESPONSE	3

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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 26, 2007 to August 21, 2007

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 7, 2007, 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.

To abide by the requirement that the E.O. review the list at least once every three years, a public workshop was held on November 9, 2006. 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 ARB determined that an update of the List was necessary.

A notice of public comment period on the proposed amendments to the List and amended section 94006 was issued on June 26, 2007. The notice explained no public hearing was scheduled, but instructions to request a hearing were provided and if requested the Executive Officer would conduct a public hearing in August 2007. No request for an oral public hearing was received. However, additional proposed changes were brought to staff's attention during the public comment period. These additional proposed changes were thoroughly investigated from September 2007 through February 2008 and are discussed here in detail

in Section II. A 15-day notice announced a comment period from April 16, to May 1, 2008 to disclose and contemplate the proposed changes. No comments were received with respect to the 15-day changes. The VRED List changes have been reviewed by Mr. Loscutoff, Chief, Monitoring and Laboratory Division, and in light of the material in the record, he has made recommendations to the E.O. for final adoption.

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 the six years since approval, 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. 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 criteria for determining which defects would substantially impair the effectiveness of systems in collecting gasoline 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 and approval letters), 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 proposed VRED List was based on progressive evaluations of the options.

The Vapor Recovery Equipment Defects List is incorporated by reference in the regulation. The list’s composition and complexity makes it impractical to publish the complete list in the California Code of Regulations.

All of the documents incorporated by reference were made available upon request directly from the agency and were available via the agency’s web

site for this rulemaking, as documented in the original public hearing notice and the 15-day notice.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Three written comments were submitted during the 45-day comment period in a fax from the California Air Pollution Control Officers Association Vapor Recovery Committee.

1. Most of the balance executive orders are struck out yet the systems are allowed to be installed. What is ARB's intent on striking out these systems?

Agency Response: The ARB's intent in removing any VRED List table is to update the List to reflect only those executive orders certified to be used in California. Some of the balance executive orders removed from the VRED List were deleted from the proposed List because they are not listed in Executive Order G-70-199 as having nozzles which meet the 350 ml liquid retention standard. Upon further examination, legal language in some of the struck-out executive orders specifically reference allowing any equipment certified in EO G-70-52. Given the fact that G-70-52 is listed in G-70-199 as having nozzles compliant with the 350 ml liquid retention standard, those executive orders with this legal language, which were struck-out, have been reinserted into the proposed VRED List.

2. The verification procedure to determine if vapor pumps are inoperative for G-70-191, VR-201, and VR-202 is "direct observation in accordance with the Healy Phase II System IOMM." The committee recommends a more specific reference as to specific sections and/or pages in the IOMM.

Agency Response: More specific references to the IOMM have been added to the proposed VRED List for the inoperative vapor pump defect in each of these executive order tables.

3. The committee requests ARB consider adding "insertion interlock mechanism which will allow dispensing when the vapor collection boot is uncompressed" as a defect for all Healy Systems as has been done for balance systems.

Agency Response: During the rulemaking process, several vapor recovery enforcement regulators asked for a VRED item for failure of the Healy 900 "insertion interlock." The reason for this request is a number of Healy 900 nozzles allow the dispensing of fuel with the mini-boot in the uncompressed position. Unlike the balance systems,

dispensing control and an enhanced nozzle face-seal vehicle fillpipe interface is not the purpose of the insertion interlock in the 900 nozzle.

The purpose in the balance systems is to insure a functional face-seal vehicle fillpipe interface. Without this interface, the vapor collection efficiency is reduced in refueling. Given this condition, it is appropriate to have a VRED for insertion interlock devices in balance systems.

The Healy EVR system “insertion interlock” device has a completely different function than the balance insertion interlock devices. When considering a nozzle for their EVR system, Healy realized the only thing limiting their existing 800 nozzle from complying with the new EVR standards was the inability to meet the spitting requirement in section 6.4 of TP-201.2E. The Healy 800 nozzle was adapted to fulfill this requirement by adding what Healy referred to as an “insertion interlock” device. With this modification, the Healy 800 nozzle became the EVR Healy 900 nozzle. Ergo, the purpose of the Healy “insertion interlock” is exclusively to reduce spitting and is the primary distinction between the 800 and 900 nozzles. In addition, unlike other listed defects, the “insertion interlock” device for the 900 nozzle does not have a performance specification listed in the Healy executive orders. This is significant because it was not tested for dispensing control as part of the certification process.

Based on the functionality distinction between the Healy and traditional balance insertion interlock devices, absence of any insertion interlock performance specification, and no certification testing; Healy 900 nozzles which allow the dispensing of fuel with the mini-boot in the uncompressed position are not considered a vapor recovery equipment defect for insertion interlock device failure and have not been added to the proposed VRED List.

No comments on the modifications were submitted during the 15-day comment period.