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Client Alert: Ohio EPA Proposes Rule Revisions to Its Stage II Vapor Control Requirements for Gasoline Dispensing Facilities

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The Ohio EPA has proposed a new exemption from its Stage II vapor recovery requirements for new gasoline dispensing facilities (GDFs) that install low permeation hoses and notify the Ohio EPA of their intent to comply with the requirements of the new rule. The proposed rule is in response to USEPA's rulemaking on May 16, 2012 in which the USEPA determined that onboard refueling vapor recovery (ORVR) systems are now in widespread use and that states could revise their state implementation plans (SIPs) to remove or phase-out Stage II requirements. While ORVR and Stage II were originally required with the passage of the 1990 Amendments to the Clean Air Act (CAA), Stage II became a common SIP requirement in the early to mid-1990s that many states used to meet the CAA's emission reduction requirements for ozone nonattainment areas, (areas that failed to meet the national ambient air quality standards or (NAAQS). The implementation of ORVR systems began in 1998 for passenger vehicles and 2001 for light-duty trucks and for most gasoline-powered heavy-duty vehicles. According to the USEPA, almost 99% of all new gasoline-powered vehicles are equipped with ORVR systems. The USEPA estimates that more than 75% of all gasoline refueling in the US involves vehicles with ORVR systems and that percentage will increase over time as older model vehicles are replaced by newer models that are equipped with ORVR systems. Based upon that data, and the CAA's express authorization allowing USEPA to revise or waive the Stage II requirements, USEPA issued its final rule allowing states to remove or phase-out their Stage II programs as long as the states are able to offset any short-term emission increases that result from the removal of Stage II controls.

Utilizing USEPA's approved methods for calculating the emissions from discontinuing the Stage II program, the Ohio EPA determined that the Stage II program requirements will no longer provide emission reduction benefits in 2017. This is largely a result of increased emissions that are caused by the incompatibility between Stage II controls at GDFs and the ORVR systems in modern motor vehicles. As a result of its emissions analysis, the Ohio EPA determined that it would be appropriate to exempt new GDFs from the Stage II requirements to

avoid the expense of installing new Stage II systems. The Ohio EPA believes that the capital costs for installing new Stage II systems are not warranted since they will only be required for a short period of time. Consequently, the Ohio EPA is proposing to exempt new GDFs from its Stage II requirements. However, the implementation of this exemption will result in a short-term increase in emissions that the Ohio EPA is required to offset under the CAA.

Under the proposed rules, a "new gasoline dispensing facility" is exempt from the Stage II requirements if it installs low permeation hoses by October 1, 2013 or within 30 days of starting operations, whichever is later and within 30 days of the effective date of the rule or within 30 days of commencing construction, it notifies the Ohio EPA of its intent to comply with the new exemption requirements of (OAC 3745-21-09 (DDD)(4)(g)). A "new gasoline dispensing facility" is defined as a facility that has not been operated as a gasoline dispensing facility at the location and after October 31, 2012, installs new underground storage tank ("UST") systems and dispensers that are compatible with ORVR. A new gasoline dispensing facility can also be an existing facility that suspends operations at all dispensers, excavates below each shear valve and tank pad to remove Stage II piping from the USTs to each dispenser or decommissions the vapor piping from the USTs to a point below the level of the dispensers, replaces all dispensers, nozzles, hanging hardware and piping with new equipment that is compatible with ORVR and installs low permeation hoses, conducts a leak test and within 30 days of the leak test, submits documentation and a certification to the Ohio EPA that it has met all of the requirements. Finally, the proposed rule (OAC 3745-21-09(DDD)(5) (c)) allows the Director of the Ohio EPA to extend the October 1, 2013 date for compliance for installing low permeation hoses if the equipment is not readily available or it does not adequately control permeation.

For those GDFs that plan to retain their existing Stage II systems, they will need to continue to comply with the Stage II requirements for testing, recordkeeping and reporting related to those systems.