

TO: PMAA Association Executives

FROM: Mark S. Morgan Esq., Regulatory Counsel

RE: New Stage I Vapor Recovery Rule

DATE: April 25, 2008

There has been considerable confusion generated by the PMAA Regulatory Alert sent out last week on Stage I notification for new area sources. I am responsible for some of the confusion because I inadvertently dropped a very important zero on the monthly throughput threshold for facilities that must install vapor balancing systems under the new rule.

Unfortunately, the "corrected" version of the Regulatory Alert sent yesterday did not entirely clarify the issue. Contributing to the confusion is the fact that this regulation is a complicated and multi-layered rule that does not easily lend itself to a simple, straightforward explanation. The Regulatory Alert was my attempt to translate the complex regulatory language of the rule into an easily understandable format. This approach didn't work. I think the following narrative approach is better suited to explaining the notification requirements of the rule.

First, it is important to understand that only gasoline dispensing facilities (facilities that dispense gasoline directly into the fuel tank of a motor vehicle) with 100,000 gallons or more per month of gasoline throughput are required to install vapor balancing equipment under the new rule. The remaining facilities described in this memo must only comply with at most, submerged fill pipe requirements or, at least simple tank management practices designed to reduce evaporative gasoline emissions. It is likely that many facilities are already equipped with compliant submerged fill pipes.

Second, this memo and the PMAA Compliance Bulletin on this same subject do not address the regulatory requirements for bulk plants and loading racks with daily gasoline throughput of 20,000 gallons or more. These facilities are regulated as "terminals" under the rule and are subject to complex and highly technical requirements that should be addressed by a professional engineer.

Third, any facility built on or before November 9, 2006 is not required to comply with the rule until January 10, 2011 (except for the notification requirements that must be submitted by May 9, 2008 that are described below). Any facility built after November 9, 2006 was required to comply by the date that the final rule was published. But, since no petroleum marketer could possibly comply with the rule without first knowing the requirements they were expected to meet, PMAA has requested that the U.S. EPA provide an enforcement delay for these facilities. The EPA is now considering PMAA's request.

Right now, petroleum marketers should concentrate on complying with the notification provisions required under the rule. These notifications must be submitted to both the EPA and applicable state enforcement officials by May 9, 2008.

Notification Requirements Under the Stage I Rule:

The EPA requires that gasoline dispensing facilities, bulk plants and loading racks with certain gasoline throughputs provide **written notice** whether or not they comply with a variety of vapor control requirements in the rule. The written notice must be sent to the applicable EPA regional air office and state air pollution control authority where the facility is located. There are two types of notifications. One notification is called the *Initial Notification* and is used if a facility does not currently comply with the new rule. The other notification is called the *Notification of Compliance Status* and is used for facilities that already comply with the new rule.

The EPA has drafted two sample notification forms for gasoline dispensing facilities and another for bulk plants and loading racks. Each of these two sample notification forms combines the *Initial Notification* and the *Notification of Compliance Status* into a single form. The forms may be found at http://www.pmaa.org/govt_relations/regulatory.asp. Directions to submit both notices are found at the bottom on each form.

Not every facility is required to file the notification forms. The following facilities **are not required** to file any forms:

- Gasoline dispensing facilities with **monthly** gasoline throughput of less than 10,000 gallons. These facilities are not required to file any forms.
- Gasoline dispensing facilities with **monthly** gasoline throughput of 10,000 to 99,999 gallons **that are required** by a state, local government or tribal authority to be equipped with compliant submerged drop tubes (if the GDF was built after November 9, 2006, then the drop tube must discharge product within six-inches of the bottom of the tank. If the GDF was built on or before November 9, 2006, then the drop tube must discharge product within 12 inches of the bottom of the tank). These facilities are **not** required to file any forms.
- Gasolines dispensing facilities with monthly gasoline throughput of 100,000 gallons or more **that are required** by a state, local government or tribal authority to be equipped with compliant vapor balancing equipment. These facilities are **not** required to file any forms.
- Bulk plants or loading racks with **daily** gasoline throughput of less than 20,000 gallons **that are required** by a state, local government or tribal authority to be equipped with submerged fill pipes (if the bulk plant or loading rack was built after November 9, 2006 then the submerged fill pipe must discharge product within six-inches of the bottom of the tank. If the bulk plant or loading rack was built on or before November 9, 2006, then the submerged fill pipe must discharge product within 12 inches of the bottom of the tank). These facilities are **not** required to file any forms.

The following facilities **must** file **one** of the two forms:

- Gasoline dispensing facilities with **monthly** gasoline throughput between 10,000 and 99,999 gallons that are not equipped with compliant submerged drop tubes must file an *Initial Notification*. Those facilities already equipped with compliant submerged drop tubes, but not required to have such equipment by a state, local government or tribal authority, must file a *Notification of Compliance Status*.

- Gasoline dispensing facilities with **monthly** gasoline throughput of 100,000 gallons or more that are not equipped with vapor balancing equipment, must file an *Initial Notification*. Those facilities, already equipped with compliant vapor balancing systems, but not required to have such equipment by a state, local government or tribal authority, must file a *Notification of Compliance Status*.
- Bulk plants or loading racks with **daily** gasoline throughput of less than 20,000 gallons that are not equipped with compliant submerged fill pipes must file an *Initial Notification*. Those facilities already equipped with compliant submerged fill pipes, but not required to have such equipment by a state, local government or tribal government must file a *Notification of Compliance*.

Conclusion

It is important to remember that petroleum marketers are not required to send *Initial Notification* or *Notification of Compliance Status* forms if they must have compliant vapor recovery equipment or submerged fill pipes/drop tubes under state, local government or tribal law or regulation, including permitting and consent orders, etc. Also, please note that many fire codes, which are incorporated into state and local regulations already require the six-inch standard for submerged fill in both ASTs and USTs.

Finally, the question of how to determine throughput for purposes of the rule remains controversial. For bulk plants, the EPA says that throughput is defined as the daily maximum design specification for throughput of the tank, piping, pump and loading rack system. This definition could push many bulk plants above the 20,000 gallons per day threshold that imposes very stringent vapor recovery requirements that are now only applicable to major terminal operations.

PMAA is working with the EPA to more clearly define the definition of throughput to prevent this from happening. In the meantime, one way to avoid this outcome is for State Association Executives to work with their state air program authorities to establish a general bulk plant permit or consent order that would limit gasoline throughput to less than 20,000 gallons per day for bulk plants. Individual bulk plants operators could opt into the permit based on their specific gasoline throughput requirements. Those operators that opt in would not be required to meet more stringent vapor recovery requirements that apply to throughputs of 20,000 gallons or more under the EPA rule. This approach would effectively solve the throughput definition problem with the rule.

Again, this is a very complex rule that is not written in a clear and effective manner.

I am available by phone at 202-364-6767 or via email at mmorganptsa@cox.net if you have any questions.