

September 12, 2014

Ms. Jill Inahara
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

RE: Emission Standards for Gasoline Dispensing Facilities (OAR 340-244-0232)

Dear Ms. Inahara:

Thank you for the opportunity to comment on DEQ's rule package. I have substantial respect for the technical capabilities of DEQ staff and offer my comments in a spirit of contributing to a positive and reasonable regulatory environment with reasonable costs for both sources and taxpayers during implementation. I offer these comments as an individual and do not represent any company as either an employee or a contractor.

In reviewing the minor changes proposed to the Gasoline Dispensing Facilities (GDF) rule, I noted some more substantive issues that should be remedied prior to the proposed rule's adoption into the State Implementation Plan (SIP). At promulgation, DEQ adopted the compliance dates for the federal area source GDF NESHAP (40 CFR 63, Subpart CCCCCC). This is consistent with the federal approach of adopting compliance dates based on the proposal date of a rule. However, DEQ applied the compliance dates to many more sources than the federal rule affects and did not adopt a separate set of compliance dates for sources covered only by the state rule. Concurrently, the exemptions contained in the state rule prior to 2008 were eliminated. The outcome of this combination of events is that sources not covered by the federal NESHAP were put into retroactive non-compliance at promulgation of the state rule.

Example:

A small industrial source with a GDF supplying fuel to their small fleet of vehicles has a 1600 gallon tank and dispenses 200 gallons of fuel per month in the Portland-Vancouver AQMA. Prior to promulgation of the GDF rule, the tank is exempt from submerged fill and vapor balance requirements because it is an existing tank with an installation date prior to October 12, 1998. At the effective date of the DEQ rule on December 31, 2008 the facility was immediately subject to requirements to install submerged fill and a vapor balance system by December 13, 2008. The facility is now potentially subject to federal enforcement under the NESHAP rules for non-compliance if the current rules are adopted into the SIP.

I have attached a brief table of some key regulatory changes to the GDF rules over time (Table 1). Many of the rule changes were characterized as "housekeeping", or minor rule changes and the types of sources affected, and key rule changes such as the elimination of exemptions were not explicitly identified in public notice and information.

During the NESHAP rule making process, DEQ conducted outreach to petroleum industry sources. However, the effects of these rules on industrial sources has not been made clear and many sources not subject to the federal NESHAP, particularly those in the Air Quality Maintenance Areas where the state rule applies some level of control to all tanks over 250 gallon capacity regardless of throughput, are likely not aware of the rule's applicability.

Recommendations:

Traditionally, DEQ has worked with sources to support compliance. At a minimum, DEQ needs to address any retroactive compliance issues they have created, provide an effective notice to sources that clearly identifies facilities likely to be affected by rule changes, and provide a reasonable compliance schedule for sources not covered by the federal NESHAP.

As a recommendation for future NESHAP rulemakings, I urge DEQ to consider that the federal NESHAP regulations are commonly complex, frequently modified multiple times before finalization, and commonly stayed or modified after finalization. Adding another (state) layer of complexity to these rules provides an unduly challenging exercise for rule development, and for sources attempting to maintain compliance. I recommend that DEQ only adopt the federal NESHAPs in their entirety and without modification for any future rulemakings. If there is a compelling need for additional stringency at the state level, DEQ could prepare a "gap" NESHAP that covers sources not addressed in the federal rules.

Discussion:

With regard to the GDF rules, I question the reasonableness of requiring older, limited use (low throughput) tanks to install these controls. It seems like a lot of money for very little benefit and a change that is likely to affect many small businesses, many of which may still not be aware of this rule. I suspect the costs of these changes were not properly analyzed during the rule development.

I have a reasonable knowledge of the federal NESHAPs, and substantial experience with assisting sources (large and small) with NESHAP compliance. I believe that DEQ would be more effective at reducing air toxic emissions through accepting delegation of all federal NESHAPs without modification (including the reciprocating internal combustion engine NESHAP), and providing support and enforcement for the federal NESHAP programs.

Please feel free to contact me if you have any questions.

Martha Moore

Table 1: Summary of Applicability History of GDF Rules

	Key Rule Changes
1998 Rulemaking	<ul style="list-style-type: none"> - Modified rule to apply to ALL tanks dispensing fuel instead of underground tanks at service stations - Exempted existing tanks 1500 gallons or less from submerged fill and vapor balance requirements - Exempted new tanks 1500 gallons or less from vapor balance requirements - Effective date for determining “new” October 12, 1998
2008 Rulemaking	<ul style="list-style-type: none"> - Eliminated exemptions established in 1998 rules for existing tanks and tanks 1500 gallons or less - All tanks must have submerged fill regardless of throughput or installation date - All tanks in the Portland AQMA, Medford AQMA, Salem SATS over 1500 gallon capacity must install vapor controls, regardless of throughput - Tanks with capacities between 1500 and 40,000 gallons in the Portland AQMA, Medford AQMA, or Salem SATS required to comply with submerged fill and vapor balance by Dec 13, 2008 - Effective date of rule: December 31, 2008 - Effective date for “new” November 9, 2006 - Compliance date for “new” sources is January 10, 2008 (pushed to December 13, 2009 for sources less than 100,000 gallons per month outside of Portland, Medford, Salem)
Multiple Rulemakings – 2009, 2011, 2013	<ul style="list-style-type: none"> - Exempted tanks with capacity less than 250 gallons from submerged fill requirements - Modified compliance dates for transfer tanks not used to directly fill motor vehicles (unclear if this provision applies to only area sources, or all sources)
Current	<ul style="list-style-type: none"> - Made notification date change from 2013 to 2011 for transfer tanks - Eliminated reporting requirements for sources with less than 10,000 gallons per month throughput