

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Staff Report

Proposed Amended Rule 461.1 – Gasoline Transfer and Dispensing for Mobile Fueling Operations

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Table of Contents

BACKGROUND	1
PUBLIC PROCESS.....	1
AFFECTED FACILITIES.....	1
CONTROL TECHNOLOGY	1
EXPECTED EMISSIONS REDUCTIONS	2
SUMMARY OF PROPOSAL	2
Subdivision (b) – Applicability	2
Subdivision (n) – Exemptions	2
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	3
SOCIOECONOMIC IMPACT ASSESSMENT	3
DRAFT FINDINGS UNDER HEALTH AND SAFETY CODE SECTION 40727	4
Necessity.....	4
Authority.....	4
Clarity	4
Consistency.....	4
Non-Duplication	4
Reference	4
COMPARATIVE ANALYSIS.....	4
COST-EFFECTIVENESS ANALYSIS	4
INCREMENTAL COST-EFFECTIVENESS ANALYSIS	5
APPENDIX A - PUBLIC COMMENTS	6
COMMENT LETTERS.....	7

List of Figures

Figure 1: PAR 461.1 – Subdivision (b)	2
Figure 2: PAR 461.1 – Paragraph (n)(3).....	2
Figure 3: PAR 461.1 –Paragraphs (n)(3), (n)(4) & (n)(5)	3

BACKGROUND

Rule 461 was adopted on January 9, 1976, and regulates mobile and stationary gasoline dispensing facilities. Provisions for gasoline dispensing from mobile fuelers has been included in Rule 461 since 1995 and relied on the same approach as stationary gasoline dispensing which required the use of California Resource Air Board (CARB) certified Phase I and Phase II vapor recovery systems. However, the expansion of retail mobile fuelers within South Coast AQMD jurisdiction raised concerns that Rule 461 was not adequately addressing retail mobile fueller operations. Rule amendments were needed to address this regulatory gap. On January 7, 2022, Rule 461 was amended concurrently with the adoption of Rule 461.1. Rule 461 was amended to remove provisions for mobile fuelers, as these activities would now be subject to Rule 461.1. Rule 461 defined the term mobile fueller as any tank truck or trailer that is used to transport and dispense gasoline from an onboard storage tank into any motor vehicle and was not intended to apply to the dispensing of aviation gasoline into aircrafts. The adoption of Rule 461.1 addressed the regulatory gap in Rule 461 that allowed mobile fuelers to dispense gasoline without controlling gasoline vapor emissions. Rule 461.1 applies to mobile fueling operations and applies to the transfer of gasoline from any source into or out a mobile fueller as well as the dispensing of gasoline from the mobile fueller to any motor vehicle, fuel container, or equipment.

PAR 461.1 will clarify that aviation gasoline is exempt from the rule. This type of gasoline is used to fuel small aircraft powered by spark ignition engines. The purpose of this exemption is to align the applicability of Rule 461.1 with Rule 461. When Rule 461.1 was adopted, the applicability from Rule 461 was expanded to include gasoline dispensed from a mobile fueller into equipment or containers; however, the original intent was not to include aviation gasoline dispensed into an aircraft but to expand the requirements on retail mobile fueling operations.

PUBLIC PROCESS

PAR 461.1 was developed through a public process. Staff presented PAR 461.1 during a Public Workshop on November 29, 2023, with the respective staff report released in advance. Proposed amended rule language was made available on November 17, 2023, and it included in the presentation for the Public Workshop.

AFFECTED FACILITIES

Based on the South Coast AQMD permit database and a survey conducted during the original rulemaking process when Rule 461.1 was adopted, staff estimated that there are approximately 80 total mobile fuelers in operation. Among these, 37 mainly operate at small airports. The mobile fuelers affected by this proposed rule amendment are primarily stationed within the 38 airport locations under South Coast AQMD jurisdiction, but the amendment also exempts the dispensing of aviation gasoline into aircraft operated by military, law enforcement, and first responders independent of location. The affected mobile fuelers operating within these airport locations are only used to store and transport fuel for transfer into aircraft.

CONTROL TECHNOLOGY

The proposed amendments do not include any requirements for air pollution control technologies.

EXPECTED EMISSIONS REDUCTIONS

The proposed amendments are not expected to reduce emissions.

SUMMARY OF PROPOSAL

PAR 461.1 adds an exemption for the transfer and dispensing of aviation gasoline to clarify the rule's original intention and removes outdated provisions.

Subdivision (b) – Applicability

Staff is proposing to add a clarification to subdivision (b).

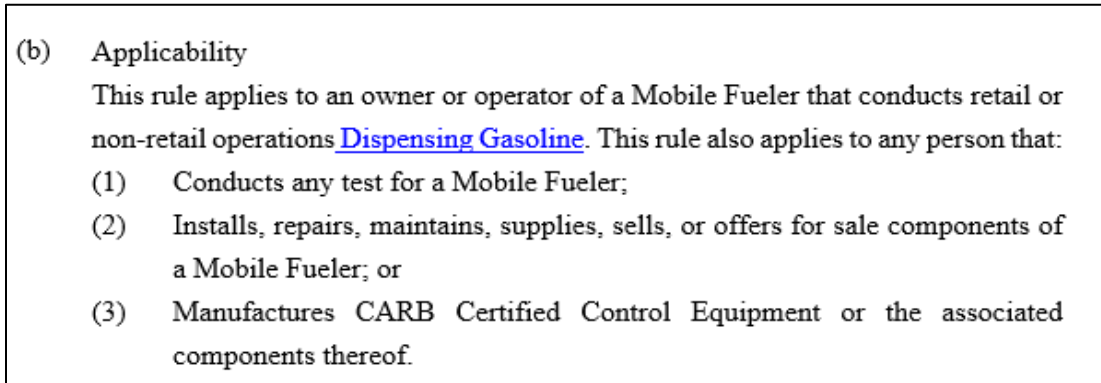


Figure 1: PAR 461.1 – Subdivision (b)

Subdivision (n) – Exemptions

In addition, staff is proposing to amend subdivision (n) to include a provision to exempt aviation gasoline.

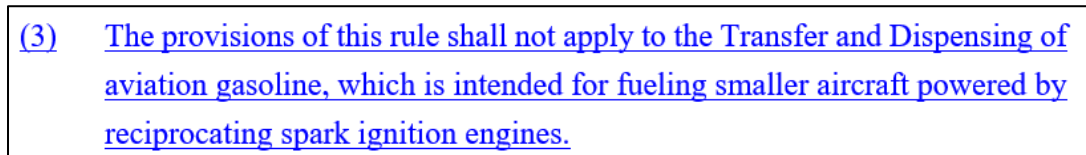


Figure 2: PAR 461.1 – Paragraph (n)(3)

Furthermore, staff is proposing to remove rule language under paragraphs (n)(3), (n)(4), and (n)(5) that is now outdated.

- (3) ~~Until July 1, 2022, the CARB Certified Phase I Vapor Recovery System requirements of paragraph (d)(1), subdivision (j), subdivision (k), and subdivision (m) shall not apply to the following Mobile Fuelers provided the Mobile Fueler is not equipped with a CARB Certified Phase I Vapor Recovery System:~~
- ~~(A) Retail Mobile Fueler with a Cumulative Capacity greater than 10 gallons and less than 251 gallons and no individual Cargo Tank is greater than 120 gallons that Dispenses into Motor Vehicles;~~
 - ~~(B) Non-Retail Mobile Fueler with a Cumulative Capacity greater than 120 gallons and less than 251 gallons and no individual Cargo Tank is greater than 120 gallons that Dispenses into Motor Vehicles; or~~
 - ~~(C) Non-Retail Mobile Fueler or a Retail Mobile Fueler that does not Dispense into Motor Vehicles.~~
- (4) ~~Until July 1, 2022, the CARB Certified Phase II Vapor Recovery System requirements of paragraph (d)(2), subdivision (j), subdivision (k), and subdivision (m) shall not apply to the following Mobile Fuelers provided the Mobile Fueler is not equipped with a CARB Certified Phase II Vapor Recovery System:~~
- ~~(A) Retail Mobile Fueler with a Cumulative Capacity greater than 10 gallons and less than 251 gallons and no individual Cargo Tank is greater than 120 gallons that Dispenses into Motor Vehicles; or~~
 - ~~(B) Non-Retail Mobile Fueler with a Cumulative Capacity greater than 120 gallons and less than 251 gallons and no individual Cargo Tank is greater than 120 gallons that Dispenses into Motor Vehicles.~~
- (5) ~~Until July 1, 2022, subdivision (g) shall not apply to a Retail Mobile Fueler or Non-Retail Mobile Fueler operating at a Dispensing Location.~~

Figure 3: PAR 461.1 –Paragraphs (n)(3), (n)(4) & (n)(5)

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15002(k) and 15061, the proposed project (PAR 461.1) is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3). A Notice of Exemption will be prepared pursuant to CEQA Guidelines Section 15062, and if the proposed project is approved, the Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside, and San Bernardino counties, and with the State Clearinghouse of the Governor’s Office of Planning and Research.

SOCIOECONOMIC IMPACT ASSESSMENT

The proposed amendments to Rule 461.1 are administrative in nature and do not significantly affect air quality or emission limitations. Therefore, a socioeconomic impact assessment is not required under Health and Safety Code Sections 40440.8 and 40728.5.

DRAFT FINDINGS UNDER HEALTH AND SAFETY CODE SECTION 40727

Before adopting, amending, or repealing a rule, the Health and Safety Code requires South Coast AQMD to adopt written findings of necessity, authority, clarity, consistency, non-duplication, and reference, as defined in Health and Safety Code Section 40727. The draft findings are as follows:

Necessity – PAR 461.1 is needed to align with the original intent of the rule by exempting aviation gasoline, which is used to fuel small aircrafts.

Authority – The South Coast AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Health and Safety Code Sections 39002, 40000, 40001, 40440, 40441, 40702, 40725 through 40728, 41508, 41700, and 42300 et seq. of the Health and Safety Code, and Federal Clean Air Act Section 116.

Clarity – The South Coast AQMD Governing Board has determined that PAR 461.1 is written and displayed so that the meaning can be easily understood by persons directly affected by it.

Consistency – The South Coast AQMD Governing Board has determined that PAR 461.1 is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, federal or state regulations.

Non-Duplication – The South Coast AQMD Governing Board has determined that PAR 461.1 does not impose the same requirement as any existing state or federal regulation, and the proposed amendments are necessary and proper to execute the powers and duties granted to, and imposed upon, the South Coast AQMD.

Reference – In adopting PAR 461.1, the South Coast AQMD Governing Board will be implementing, interpreting or making specific the provisions of the Health and Safety Code Section 39656 et seq. (toxic air contaminants), 40000 (non-vehicular air pollution), 40001 (rules to achieve and maintain ambient air quality standards), 40440 (adopt regulation to carry out plan), 40702 (adopt regulations to carry out plan), 41700 (nuisance), 41510 (right of entry), 41511 (rules to require source to determine emissions), 41954 (gasoline marketing operation performance standards), 41964 (enhanced vapor recovery Phase II upgrade), 42300 et seq. (permitting), 42303 (requests for information), Federal Clean Air Act section 112 (Hazard Air Pollutants), and Federal Clean Air Act Section 116 (Retention of State Authority).

COMPARATIVE ANALYSIS

Health and Safety Code Section 40727.2(g) is not applicable because the proposed amended rule does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements and therefore, a comparative analysis is not required.

COST-EFFECTIVENESS ANALYSIS

Health and Safety Code Section 40920.6 requires a cost-effectiveness analysis when establishing best available retrofit control technology (BARCT) requirements. PAR 461.1 is not establishing or imposing any BARCT requirements; therefore, a cost effectiveness analysis was not conducted. The amendment to Rule 461.1 is administrative in nature and it is not expected to have any associated costs.

INCREMENTAL COST-EFFECTIVENESS ANALYSIS

Health and Safety Code Section 40920.6(a)(3) states that an incremental cost-effectiveness assessment should be performed on identified potential control options that meet air quality objectives. PAR 461.1 is not establishing or imposing any BARCT requirements that require control options; therefore, an incremental cost-effectiveness analysis was not conducted.

APPENDIX A - PUBLIC COMMENTS

Staff held a Public Workshop on November 29, 2023, to provide a summary of PAR 461.1. One comment was made during the public comment period.

Commenter: Laurel Moorhead – Transfer Flow

Laurel Moorhead expressed concern regarding the proposed amendment and the potential impact on their existing mobile fueler business that dispenses gasoline into farm equipment.

Staff's response to Commentor:

Staff responded by clarifying that the amendments will have no impact to Transfer Flow Inc.'s current business operations as the proposed changes only affect mobile fuelers dispensing aviation gasoline into small aircraft.

COMMENT LETTERS**Comment Letter #1**

December 15th, 2023

Mr. Michael Krause
Assistant Deputy Executive Officer
Planning, Rule Development, and Implementation
South Coast Air Quality Management District
21865 Copley Dr., Diamond Bar, CA 91765

Ms. Heather Farr
Planning and Rules Manager
South Coast Air Quality Management District
21865 Copley Dr., Diamond Bar, CA 91765

Via: Electronic Submission

SUBJECT: Transfer Flow, Inc.'s public comment on the South Coast Air Quality Management District's proposed amended rule 461.1 Gasoline Transfer and Dispensing for Mobile Fueling Operations.

Dear Mr. Krause and Ms. Farr,

Transfer Flow, Inc. has been in business in beautiful Northern California for forty years, manufacturing high-quality liquid fuel systems and creating good-paying jobs contributing to our local economy. Transfer Flow refueling tanks are used in agriculture, construction, and public utilities operations. Equipment that is not certified for use on public roads cannot be driven to a gas station and, therefore, must have fuel brought to the equipment. This is the most common use for Transfer Flow refueling tanks and an essential component for many small businesses' operations.

SCAQMD rule 461.1 defines a "cargo tank" as "a container and associated equipment that is used to store, Transfer, and Dispense Gasoline." This definition is misaligned with both the California Code of Regulations definition of a cargo tank and the Code of Federal Regulations definition of a cargo tank.



13 CCR § 34003(a) defines Cargo Tanks as "any tank having a volumetric capacity in excess of 120 gallons that is used for the transportation of flammable liquids or combustible liquids."

Gasoline is a flammable liquid.

49 CFR § 171.8 defines a cargo tank as bulk packaging and bulk packaging is defined as having a maximum capacity greater than 119 gallons.

Rule 461.1 defines a "mobile fueler" as "a Motor Vehicle that has one or more Cargo Tanks on board or tows one or more Cargo Tanks," therefore making a vehicle with a Transfer Flow refueling tank properly and legally mounted in the bed a "mobile fueler."

Rule 461.1 then goes on to define a "Non-Retail Mobile Fueler" as "a Mobile Fueler with a Cumulative Capacity greater than 120 gallons and the owner or operator of the Mobile Fueler is not compensated for the Transfer or Dispensing of gasoline" and a "Retail Mobile Fueler" as "a Mobile Fueler with a Cumulative Capacity greater than 10 gallons and the owner or operator of the Mobile Fueler is compensated for the Transfer or Dispensing of Gasoline."

This leaves a truck mounted with a Transfer Flow refueling tank simply as a "Mobile Fueler." Not a "Retail Mobile Fueler" and not a "Non-Retail Mobile Fueler," just a "Mobile Fueler."

This misalignment of definitions between SCAQMD's definition of cargo tank and the California Code of Regulations and the Code of Federal Regulations is prone to cause confusion. Transfer Flow would like to suggest that for simplicity's sake, SCAQMD attempt to align definitions in rulemaking activities with other already established legal definitions.

Once someone engages in gasoline marketing operations, they are subjected to CARB's Vapor Recovery Program. In 2014, CARB conducted rulemaking activity and found that the best available control technology (BACT) for Transfer Flow refueling tanks is California's reduced Reid vapor pressure of gasoline and, therefore, chose not to regulate Transfer Flow refueling tanks.

This is the second time in only two years since this rule was created that the rulemaking activity has needed to be reopened. Every time SCAQMD reopens this rule, Transfer Flow must spend time reviewing the proposed changes. Transfer Flow hopes SCAQMD can create a robust rule that will not need to continually be re-opened.

In closing, Transfer Flow would like to thank SCAQMD staff for the opportunity to comment. We appreciate your consideration in this matter,

Sincerely,

Laurel Moorhead, E.I.T.

Regulatory Compliance Engineer

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[Staff Response to Comment Letter #1](#)

Staff appreciates Transfer Flow Inc. taking the time to submit the comment letter and the opportunity to provide further clarification. The original intent of Rule 461.1 was to address the regulatory gap for on demand retail mobile fueling operations that was a growing business and not adequately regulated by the gasoline dispensing regulation, Rule 461. The key requirements, e.g., the vapor recovery requirements, of Rule 461.1 impact:

1. “Retail” mobile fuelers with cumulative capacity greater than 10 gallons,
2. “Non-retail” mobile fuelers with cumulative capacity greater than 120 gallons,

In the unlikely circumstance a mobile fuel does not fit in those categories because their capacity is less, there are also requirements for:

3. Mobile fuelers with a Cargo Tank equipped with CARB Certified Control Equipment; and
4. Mobile fuelers with a Cargo Tank **not** equipped with CARB Certified Control Equipment.

As stated in the letter, Transfer Flow’s clients perform non-retail mobile fueling operations such as agriculture and construction. The letter also indicates the cumulative tank capacity is less than 120 gallons and their cargo tanks are not equipped with CARB certified control equipment. Transfer Flow is correct that they would be regulated as a “mobile fueler” and the only applicable requirements in Rule 461.1 are paragraphs (f)(2) and (f)(4), which include hose length limits and tagout procedures requirements for non-compliant equipment.

Regarding the comment on the misalignment of definition between the California Code of Regulations and the Code of Federal Regulations. The difference in definitions was intentional and important to address the previous regulatory gap in Rule 461. As stated during the adoption of Rule 461.1, staff believes it is important to include these smaller retail mobile fuelers in the rule to address the previous regulatory gap; therefore, is not proposing to change definitions and only regulate mobile fuelers with cargo tanks with a cumulative capacity greater than 120 gallons.

Regarding the California Air Resources Board’s decision not to regulate Transfer Flow, South Coast AQMD can have more stringent regulations than, and in many instances must have more stringent regulations than, state or federal requirements because the South Coast Air Basin is classified as an “extreme” non-attainment area.

Further, California Health and Safety Code § 41962 does not prohibit application of CP-204 (Certification Procedures for Vapor Recovery Systems of Cargo Tanks) to tanks less than 120 gallons. This is evidenced by CP-204 containing performance standards and test procedures applicable to tanks with a capacity less than 120 gallons, including two tables that list a cargo tank range of either “999 or less” or “between 0 to 999 gallons.”

Rule 461.1 was adopted January 2022, and this is the first rule amendment to make a minor change to address mobile fuelers dispensing aviation gasoline into smaller aircraft at airports. No other changes are being proposed that affect requirements for other mobile fueling operations nor does it impose any new requirements.