



South Coast Air Quality Management District

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General Counsel's Office

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October 19, 2021

Mr. Joseph Okpaku
Chief Policy Officer
Booster Fuels, Inc.
1840 Gateway Drive, Suite 200
San Mateo, CA 94404

Re: Proposed Rule 461.1—Response to Comments in Your Letter Dated September 1, 2021

Dear Mr. Okpaku:

Thank you for your input into the rulemaking process for Proposed Rule 461.1. We appreciate the time and effort you have put into this project. We have carefully reviewed your comments, and we conclude that we will modify the proposal to be consistent with one of your comments. However, we disagree with the rest of the comments.

As you point out, the Health and Safety Code Section 41954(a) provides that the state board (CARB) shall adopt procedures and performance standards for systems for the control of gasoline vapor emissions during gasoline marketing, including storage and transfer operations. Footnote: All section references are to the Health & Safety Code. Section 41954(g)(1) states that except as authorized by other law or this subdivision (g), no district may adopt or enforce stricter procedures or performance standards than those adopted by the state board. Section 41954(g)(3) goes on to provide that “any stricter procedures or performance standards shall not be implemented until at least two systems meeting the stricter performance standards have been certified by the state board.” We do not believe that PR 461.1 establishes a stricter performance standard for two reasons: (1) the standard (Phase II vapor recovery) was set by CARB long ago, and (2) even if the South Coast AQMD established the standard, it did so in 1995 in Rule 461, and is not setting a stricter standard now in PR 461.1. Nevertheless, out of an abundance of caution, we have agreed to modify our proposed rule such that use of Phase II vapor recovery will not be required until at least two such systems have been certified by the state board. This modification to our proposal should also help alleviate concerns about the cost of Phase II systems since there will be market competition among the two or more certified systems.

Joseph Okpaku
Booster Fuels, Inc.
October 19, 2021

We do not agree, however, that the South Coast AQMD is establishing a best available retrofit control technology (BARCT) limit by adopting the proposed rule. Therefore, sections 40406 and 40920.6 are not applicable. By definition, a BARCT limit is based on the “maximum degree of reduction achievable”, taking into consideration “environmental, energy, and economic impacts by each class or category of source.” Section 40406. In this case, Section 41954(g) significantly circumscribes the South Coast District’s discretion in setting performance standards and limits it to systems that have been certified by CARB. The South Coast AQMD does not have the legal ability to conduct a typical BARCT analysis which would require compliance with Section 40920.6. Moreover, Proposed Rule 461.1 is being adopted following the requirements of Section 41954, which is found in an entirely separate Part (Part 4, Nonvehicular Air Pollution Control, Chapter (Chapter 3 “Emissions Limitations”) , and Article (Article 5, “Gasoline Vapor Control”) from the provisions relating to BARCT. This buttresses the conclusion that BARCT requirements do not apply to gasoline vapor recovery rules. But even if those provisions applied as a general rule, they do not apply to this case. This is because Proposed Rule 461.1 iws not setting a new performance standard or new BARCT. Instead the standard was set by CARB many years ago for vapor recovery systems, and it has been applicable to mobile fuelers in the South Coast AQMD since 1995 under existing Rule 461. Proposed Rule 461.1 does not make a standard more stringent, but rather aligns the existing standard with Section 41954(g)(3), so that if anything it is making the existing standard less stringent. Accordingly, BARCT cost-effectiveness requirements under Section 40920.6 do not apply. For the same reason, Section 40703, requiring a finding concerning the cost-effectiveness of a proposed control measure, does not apply. Finally, 40922 does not apply to the adoption of rules and regulations but only the adoption of the air quality management plan. *Sherwin Williams Co. v. South Coast Air Quality Management Dist.*, (2001) 86 Cal. App. 4th 1258, 1269.

With regard to 40001(d), we doubt whether this section applies to gasoline vapor recovery rules, which are completely covered by Article 5 commencing with Section 41950. Moreover, the language of the statute refers to a “facility” demonstrating to the satisfaction of the district, and a mobile fueler is not a facility. But even if it applies, the district is only required to provide alternative methods of compliance if the “facility demonstrates to the satisfaction of the district that those alternative methods will provide equivalent performance.” Section 40001(d)(2). Staff does not agree that the Booster certified system provides equivalent performance to the use of a Phase II system.

Joseph Okpaku
Booster Fuels, Inc.
October 19, 2021

We hope that our decision not to require Phase II vapor recovery until at least two systems are certified will alleviate many of your concerns and provide a mutually acceptable path forward.

Sincerely,

A handwritten signature in black ink that reads "Barbara Baird". The signature is written in a cursive, flowing style.

Barbara Baird
Chief Deputy District Counsel

BB/lal