

## Revised Express Terms Summary

### 6 NYCRR Part 230, “Gasoline Dispensing Sites and Transport Vehicles”

### 6 NYCRR Part 200, “General Provisions”

The New York State Department of Environmental Conservation (Department) has revised Part 200.9 “General Provisions, Referenced Material, Table1” and repealed and replaced Part 230 “Gasoline Dispensing Sites and Transport Vehicles” of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR).

The revisions to 6 NYCRR Part 200.9 “General Provisions, Referenced Material, Table1” were made to incorporate the applicable standards, guidelines and methodologies necessary to meet the specific requirements of 6 NYCRR Part 230.

Repeal and replacement of 6 NYCRR Part 230 “Gasoline Dispensing Sites and Transport Vehicles” will further reduce volatile organic compound (VOC) source emissions from gasoline dispensing facilities (GDFs) and transport vehicles across New York State.

The Department is also adopting EPA’s control measures for federal “enhanced” Stage I vapor recovery, submerged fill, dual-point vapor control systems, new performance test requirements and best management practices outlined in 40 CFR 63 Subpart CCCCCC (Subpart 6C).

The incorporation of federal “enhanced” Stage I controls into new Part 230 will provide better vapor capture efficiency during the loading of gasoline storage tanks than the existing regulation currently requires.

New submerged filling requirements are being adopted in Part 230 for all gasoline storage tanks at GDFs to address the requirements in the current New York State Fire Code and minimize the generation of gasoline vapors caused by splash loading.

The federal requirement for dual-point vapor control systems, equipping storage tanks with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection, is necessary to maintain a proper seal when the vapor recovery line is disconnected.

The addition of the federal performance test requirements for vapor recovery systems will ensure more consistent vapor capture at GDFs.

Other federal requirements being adopted include best management practices to minimize the amount of VOC released from spills and uncovered gasoline storage containers.

The changes also include the removal of Stage II vapor recovery systems due to the equipment incompatibility with onboard refueling vapor recovery (ORVR) systems.

The “phase-in” requirements for installation of Stage I and Stage II vapor recovery systems are being removed because they are no longer applicable.

Gasoline storage tanks with a capacity of less than 550 gallons and which are used exclusively for farm tractors engaging in agricultural or snowplowing activity and automobile dismantling facilities

will be exempt from the requirements of Stage I because it would not be cost effective to require these facilities to install vapor recovery systems.

The Department is also requiring test companies to certify that Stage I vapor recovery system tests will be performed in accordance with incorporated CARB regulation testing procedures and protocols.

The information regarding registration schedules is being removed because the schedules for compliance have already been completed.

The Department is requiring pressure-vacuum cargo tank testing and markings that coincide with the Federal Department of Transportation (DOT) testing and marking requirements making these requirements consistent on the state and federal level.

The revision to the gasoline transport vehicle recordkeeping retention requirements from 2 years to 5 years supports the recent recordkeeping amendment made to federal Subpart 6C.

## Revised Express Terms

### 6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles

Existing Part 230 is repealed.

A new Part 230 is added as follows:

230.1 Applicability

230.2 Definitions

230.3 Gasoline dispensing sites – prohibitions and requirements

230.4 Gasoline dispensing sites – recordkeeping and reporting

230.5 Gasoline dispensing sites – test company certification

230.6 Gasoline transport vehicles – prohibitions and requirements

230.7 Gasoline transport vehicles – recordkeeping and reporting

230.8 Variances

230.9 Severability Clause

§ 230.1 Applicability. This Part applies to all gasoline transport vehicles, and all gasoline dispensing sites that have gasoline storage tanks larger than 250 gallons.

§ 230.2 Definitions

(a) For the purposes of this Part, the general definitions of Part 200 apply.

(b) The following definitions shall also apply to this Part:

(1) 'Annual throughput'. The amount of gasoline transferred into or dispensed from a gasoline dispensing site during any 12 consecutive months.

(2) 'CARB'. California Air Resources Board as defined in California's Health and Safety Code, section 39003 (1975) (see Table 1, section 200.9 of this Title).

(3) 'Dual-point vapor recovery system'. A gasoline storage tank equipped with an entry port for gasoline and a separate exit port for vapor collection.

(4) 'Gasoline'. A petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater, which is used as a fuel for internal combustion engines.

(5) 'Gasoline dispensing site'. A site where gasoline is dispensed into motor vehicle fuel tanks or into portable containers from a stationary gasoline storage tank larger than 250 gallons.

(6) 'Gasoline storage tank'. A stationary storage tank larger than 250 gallons located at a gasoline dispensing site which is used to store gasoline.

(7) 'Gasoline transport vehicle'. A tank truck, trailer or railroad tank car, with a capacity of 300 gallons or more, used to transport gasoline.

(8) 'Gauge well'. An opening in the top of a gasoline storage tank used to measure the

amount of product in the tank.

(9) 'Reconstructed'. Any physical change to a gasoline storage tank where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source.

(10) 'Stage I vapor recovery system'. A system that forces gasoline vapors from a gasoline storage tank into a vapor-tight gasoline transport vehicle through direct displacement of the gasoline being transferred.

(11) 'Stage II vapor recovery system'. A system that captures gasoline vapors displaced or withdrawn from a vehicle fuel tank during refueling and returns the vapors back to the gasoline storage tank.

(12) 'Submerged filling'. The use of a fill pipe or drop tube intended to minimize splashing of gasoline when loading a gasoline storage tank.

(13) 'Vapor-tight'. A condition that precludes vapor loss. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is less than 100 percent of the lower explosive limit (LEL) when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.

(14) 'Vehicle dismantling facility'. A facility that decommissions, dismantles and recycles end of life vehicles.

### § 230.3 Gasoline dispensing sites – prohibitions and requirements

(a) Submerged filling. All gasoline storage tanks must be equipped with a metallic fill pipe designed and installed to minimize vapor emissions and the generation of static electricity by terminating the pipe within 6 inches of the bottom of the tank.

(b) Minimizing vapor releases. Owners and/or operators of any gasoline dispensing site must follow best management practices to minimize vapor releases to the atmosphere. Measures to minimize vapor releases include, but are not limited to, the following:

(1) minimizing gasoline spills;

(2) cleaning up spills as expeditiously as practicable;

(3) covering all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; and

(4) minimizing the amount of gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(c) Stage I vapor recovery systems. The installation and operation of Stage I vapor recovery systems are required for the transfer of gasoline into gasoline storage tanks, based upon the site location and/or the annual gasoline throughput of a gasoline dispensing site. Exempt sources are not

required to meet the provisions of paragraphs (2), (3), (4), (5), (6) and (7) of this subdivision.

(1) Exempt sources. The installation and operation of Stage I vapor recovery systems is not required for the transfer of gasoline into the following storage tanks:

(i) gasoline storage tanks with a capacity less than 550 gallons and which are used exclusively for farm tractors engaging in agricultural or snowplowing activities and

(ii) gasoline storage tanks used to store gasoline drained from vehicles at a vehicle dismantling facility.

(2) Minimum requirements. Owners and/or operators of any Stage I vapor recovery system must replace, repair or modify any worn or ineffective components or design elements to ensure the vapor-tight integrity and efficiency of the vapor collection and control system.

(3) Gasoline dispensing sites located in the New York City or Lower Orange County metropolitan areas with an annual throughput less than 120,000 gallons.

(i) No person may transfer or allow the transfer of gasoline into any gasoline storage tank, installed or reconstructed after January 1, 1979, located in the New York City metropolitan area without a Stage I vapor recovery system that meets the requirements of paragraph (2) of this subdivision.

(ii) No person may transfer or allow the transfer of gasoline into any gasoline



storage tank, installed or reconstructed after October 15, 1994, located in the Lower Orange County metropolitan area without a Stage I vapor recovery system that meets the requirements of paragraph (2) of this subdivision.

(4) Gasoline dispensing sites located in the New York City metropolitan areas with an annual throughput of 120,000 gallons or more.

(i) Gasoline dispensing sites with an annual throughput greater than or equal to 120,000 gallons but less than 800,000 gallons. No person may transfer or allow the transfer of gasoline into a gasoline storage tank without a Stage I vapor recovery system that meets the requirements of paragraph (2) of this subdivision.

(ii) Gasoline dispensing sites with an annual throughput greater than or equal to 800,000 gallons. Six months after the effective date of this regulation, no person may transfer or allow the transfer of gasoline into a gasoline storage tank without a Stage I vapor recovery system that meets the requirements of paragraphs (6)(i), (6)(ii), 6(iii), and 6(iv) of this subdivision.

(5) Gasoline dispensing sites located outside the New York City metropolitan areas with an annual throughput greater than or equal to 120,000 gallons but less than 1,200,000 gallons. No person may transfer or allow the transfer of gasoline into a gasoline storage tank without a Stage I vapor recovery system that meets the requirements of paragraph (2) of this subdivision.

(6) Gasoline dispensing sites located outside the New York City metropolitan areas with an annual throughput of 1,200,000 gallons or more.

(i) No person may transfer or allow the transfer of gasoline into a gasoline storage tank without a Stage I vapor recovery system that meets the following requirements:

(‘a’) vapor connections and lines must be equipped with closures that seal upon disconnect;

(‘b’) the vapor line from the gasoline storage tank to the gasoline cargo tank must be vapor-tight;

(‘c’) the pressure in the tank truck must not exceed 18 inches of water pressure or 5.9 inches of water vacuum during transfer of gasoline from the truck into the gasoline storage tank;

(‘d’) the vapor recovery and product adapters, and the method of connection with the delivery elbow, must be designed to prevent the over-tightening or loosening of fittings during normal delivery operations;

(‘e’) gauge wells must have a submerged drop tube that extends the same distance from the bottom of the gasoline storage tank as required by subdivision 230.3(a) of this Part;

(‘f’) liquid fill connections for all gasoline storage tanks must be equipped with vapor-tight caps;

(‘g’) pressure/vacuum (P/V) vent valves must be installed and maintained on the gasoline storage tank vent pipes in accordance with the following specifications:

(‘1’) a positive pressure setting of 2.5 to 6.0 inches of water;

(‘2’) a negative pressure setting of 6.0 to 10.0 inches of water; and

(‘3’) the total leak rate of all P/V vent valves at a gasoline dispensing site, including connections, may not exceed 0.17 cubic foot per hour at a pressure of 2.0 inches of water and 0.63 cubic foot per hour at a vacuum of 4.0 inches of water; and

(‘h’) Stage I vapor recovery systems must be capable of meeting the static pressure performance requirements of the following equation:

$$P_f = 2e^{-500.887/v}$$

Where:

$P_f$  = minimum allowable final pressure, inches of water

$v$  = total ullage affected by the test, gallons

$e$  = dimensionless constant equal to approximately 2.718

$2$  = the initial pressure, inches water

(ii) Any gasoline storage tank installed or reconstructed after November 9, 2006 must be equipped with a dual-point vapor recovery system as defined in section 230.2(b)(3) of this Part.

(iii) Upon installation of a Stage I vapor recovery system and every 3 years thereafter, an owner and/or operator must:

(‘a’) demonstrate compliance with the CARB Vapor Recovery Test Procedure TP-201.1E - Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves (see Table 1, Section 200.9 of this Title); and

(‘b’) demonstrate compliance with the CARB Vapor Recovery Test Procedure TP-201.3 - Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities (see Table 1, Section 200.9 of this Title).

(iv) the CARB vapor recovery tests required in subparagraph 230.3(c)(6)(iii) must be performed by a testing company that satisfies the certification requirements outlined in section 230.5 of this Part.

(7) A gasoline dispensing site that becomes subject to the regulatory requirements in paragraphs (3), (4), (5) or (6) of this subdivision due to an increase in monthly gasoline throughput, must comply with paragraphs (3), (4), (5) and (6) within 6 months of such increase.

(d) Stage II Decommissioning.

(1) An owner and/or operator of a gasoline dispensing site with a Stage II vapor recovery system shall decommission the system within 12 months of the effective date of this regulation in accordance with the following:

(i) drain and collect all accumulated liquids from all Stage II equipment;

(ii) if applicable, remove any liquid drop-out tank or condensate trap or remove any accumulated liquid and cap off any siphon line associated with the tank;

(iii) if the Stage II vapor recovery system includes a vacuum-assist vapor pump, either remove or disable the pump;

(iv) disconnect and cap off the Stage II vapor recovery line at the dispenser end with a vapor-tight cap or plug after purging the vapor recovery line with nitrogen to void accumulated liquid;

(v) if accessible without excavation, disconnect and cap off the Stage II vapor recovery line at the tank end with a vapor-tight cap or plug;

(vi) if excavation exposes the Stage II vapor recovery line after decommissioning, the vapor recovery line must be removed;

(vii) replace the Stage II vapor recovery system hanging hardware with conventional (non-Stage II) hanging hardware;

(viii) remove the Stage II vapor recovery system operating instructions from all dispensers;

(ix) conduct a passing CARB Vapor Recovery Test Procedure TP-201.3 - Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities (see Table 1, Section 200.9 of this Title); and

(x) within 30 days of completing the decommissioning of the Stage II vapor recovery system, provide documentation to the department of the procedures used to demonstrate that the Stage II vapor recovery system has been decommissioned accordingly. Documentation should include a completed copy of the Decommissioning Checklist found on the department's website and a copy of the leak testing report required by subparagraph 230.3(d)(1)(ix). Documentation in a format acceptable to the department shall be sent to the Division of Air Resources, New York State Department of Environmental Conservation at [dar.web@dec.ny.gov](mailto:dar.web@dec.ny.gov).

(2) Prior to decommissioning, owners and/or operators of a gasoline dispensing site with a Stage II vapor recovery system shall:

(i) continue to operate the system with equipment on the department approved equipment list; and

(ii) operate the system as designed and ensure that all necessary components of the system are maintained.

§ 230.4 Gasoline dispensing sites - recordkeeping and reporting

(a) The owner and/or operator of a gasoline dispensing site shall maintain records showing the quantity of all gasoline delivered to the site. These records must be kept at the gasoline dispensing site for at least 2 years, and must be made available to the department upon request. The sum of all gasoline deliveries to a gasoline dispensing site during every 12 consecutive months must be used to determine whether the requirements of this Part apply. Once a gasoline dispensing site becomes subject to the requirements of this Part because its annual gasoline throughput exceeds an applicability level, subsequent decreases in gasoline deliveries or throughput do not excuse a site owner from compliance with requirements of this Part for that applicability level.

(b) The owner and/or operator of a gasoline dispensing site required to demonstrate compliance with the leak rate and cracking pressure requirement and/or the static pressure performance requirement for a Stage I vapor recovery system pursuant to sections 230.3(c)(6)(iii)(‘a’) and (‘b’) of this Part shall report all test results to the Division of Air Resources, New York State Department of Environmental Conservation, within 30 days after the test at [dar.web@dec.ny.gov](mailto:dar.web@dec.ny.gov). A copy of the most recent test results must be retained at the gasoline dispensing site. The test results must contain:

(1) the pass/fail results;

(2) information on any failed tests including equipment repairs and replacements needed to attain passing test results; and

(3) site information including owner name, operator name, site address, telephone number, Petroleum Bulk Storage (PBS) program registration number, tank installation dates, and most recent annual throughput.

#### § 230.5 Gasoline dispensing sites - test company certification

Test companies shall certify that Stage I vapor recovery system compliance tests are performed in accordance with the procedures and protocols contained in the CARB test procedures referenced in section 230.3(c)(6)(iii)(‘a’) and (‘b’) of this Part (see Table 1, Section 200.9 of this Title) and that testing staff have been trained accordingly to perform these tests. Written certification must be submitted to the department 30 days prior to performing the tests or within 30 days after the effective date of this regulation, whichever is later. Notification to the department shall be sent to the Division of Air Resources, New York State Department of Environmental Conservation at [dar.web@dec.ny.gov](mailto:dar.web@dec.ny.gov).

#### § 230.6 Gasoline transport vehicles - prohibitions and requirements

(a) No owner or operator of a gasoline transport vehicle may transport gasoline or allow the vehicle to be filled or emptied in New York State unless the gasoline transport vehicle meets:

(1) the federal Department of Transportation (DOT) requirements for leak testing as required by 49 CFR 180.407(h) (see Table 1, Section 200.9 of this Title); and

(2) the federal DOT requirements for test markings as required by 49 CFR 180.415 (see Table 1, Section 200.9 of this Title).

(b) No operator of a gasoline transport vehicle may transfer gasoline into a gasoline storage tank with a Stage I vapor recovery system unless the vehicle operator:



(1) connects the Stage I vapor recovery hose before connecting the gasoline delivery hose prior to tank loading;

(2) ensures that all tank truck vapor return equipment is compatible in size and forms a vapor-tight connection with the vapor balance equipment on the gasoline storage tank;

(3) ensures that all hoses in the vapor balance system are properly connected;

(4) ensures that the adapters or couplers that attach the vapor line to the vapor port on the gasoline storage tank have closures that seal upon disconnect;

(5) ensures that all vapor return hoses, couplers, and adapters used to transfer the gasoline vapor are vapor-tight;

(6) ensures that all hatches on the tank truck are closed and securely fastened;

(7) ensures that the filling of gasoline storage tanks is limited to unloading from vapor-tight gasoline cargo tanks which meet the requirements in 230.6(a)(1) and (2); and

(8) disconnects the gasoline delivery hose before disconnecting the Stage I vapor recovery hose after tank loading.

(c) Vapor leaks from the gasoline transport vehicle or vapor recovery system may not equal or

exceed the lower explosive limit (LEL measured as propane) when measured at a distance of 1 inch from the source with a combustible gas detector. The combustible gas detector used for determining compliance with this standard must be properly calibrated and have a minimum range of 0-100 percent of the LEL as propane, have a probe with an external diameter of one quarter inch (0.635 cm), and a response time less than 30 seconds with sampling line and probe attached.

(d) Dome covers on a gasoline transport vehicle must not be open while the vehicle is in motion or while gasoline is being transferred into the vehicle, except where gasoline transport vehicles are hatch-loaded in conformance with Subparagraph 229.3(c)(3)(ii) or 229.3(d)(2)(i) of this Title.

#### § 230.7 Gasoline transport vehicles - recordkeeping and reporting

(a) The owner of any gasoline transport vehicle subject to the leak testing requirements outlined in section 230.6(a) of this Part shall keep:

(1) leak testing records with information as prescribed by 49 CFR 180.417(b)(1) and (2) (see Table 1, Section 200.9 of this Title) for 5 years; and

(2) a copy of the most recent leak testing results with the gasoline transport vehicle.

#### § 230.8 Variances

Where it can be shown to the satisfaction of the department that a gasoline dispensing site or gasoline transport vehicle cannot comply with the requirements of this Part for reasons of technological or

economic feasibility, the commissioner may, upon submission of satisfactory evidence, grant to the source owner or operator a variance from the requirements of this Part and accept a lesser degree of control or an alternate compliance schedule.

#### § 230.9 Severability

Each provision of this Part shall be deemed severable, and in the event that any provision of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

Revised Express Terms  
Part 200 General Provisions

Section 200.9, Table 1 is amended to read as follows:

Table 1

Regulation	Referenced Material	Availability
<u>230.2(b)(2)</u>	<u>California Health and Safety Code, Section 39003 (1975)</u>	** —
<u>230.3(c)(6)(iii)(b)</u>	<u>California Air Resources Board TP-201.3 (Amended July 26, 2012)</u>	††
<u>230.3(c)(6)(iii)(a)</u>	<u>California Air Resources Board TP-201.1E (Amended October 8, 2003)</u>	††
<u>230.3(d)(1)(ix)</u>	<u>California Air Resources Board TP-201.3 (Amended July 26, 2012)</u>	††
[230.4(b)	40 CFR Part 60, Appendix A (July 1989) Method 27, pages 945-947	*]
<u>230.6(a)(1)</u>	<u>49 CFR 180.407(h) (October 1, 2019)</u>	* —
<u>230.6(a)(2)</u>	<u>49 CFR 180.415 (October 1, 2019)</u>	* —
<u>230.7(a)(1)</u>	<u>49 CFR 180.417(b)(1) and (2) (October 1, 2019)</u>	* —

## Regulatory Impact Statement Summary

### 6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles

### 6 NYCRR Part 200 General Provisions

The New York State Department of Environmental Conservation (Department) proposes to repeal and replace 6 NYCRR Part 230 to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. As part of this rulemaking, the Department also proposes to revise 6 NYCRR Part 200 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions which are required by new Part 230. The emission reductions resulting from the proposed replacement of Part 230 and the revision to Part 200 are necessary to help the state demonstrate attainment of both the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). The attainment demonstrations for both the 2008 and 2015 ozone NAAQS must be documented in State Implementation Plans (SIPs) that must be submitted to the Environmental Protection Agency prior to the end of 2020 and 2021, respectively.

According to the Environmental Conservation Law (ECL), the Department has the authority to develop and enforce regulations for the protection of New York State's natural resources and the environment. ECL sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0303 establish the authority of the Department to regulate air pollution and air contamination sources. ECL section 19-0305 authorizes the Department to enforce the codes, rules and regulations of the Department, and ECL sections 71-2103 and 71-2105 set forth the applicable civil and criminal penalty structures. Together, these sections of the ECL set out the overall state policy goal of reducing air pollution and providing clean, healthy air for the citizens of New York and provides the Department with the general

authority to adopt and enforce measures to do so.

#### Replacement of 6 NYCRR Part 230

The Department is proposing to adopt a new Part 230, “Gasoline Dispensing Sites and Transport Vehicles,” to further reduce VOC source emissions from gasoline dispensing sites and transport vehicles. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) greater than 250 gallons. Emissions of VOCs from the transfer of gasoline at GDFs can be significant. Over 6 billion gallons of gasoline are distributed to about 7,540 retail sites in New York State each year.

Vapor recovery measures at GDFs help reduce VOC emissions into the atmosphere. Stage I and Stage II vapor recovery systems collect and control these emissions. Stage I systems are used to control the emissions from gasoline storage tanks whereas outdated Stage II systems control the emissions from vehicle fuel tanks during refueling. Additional control measures can include submerged filling for gasoline storage tanks and dual-point vapor balancing systems that have an entry port for a gasoline fill pipe and a separate exit port for better vapor collection. Proposed Part 230 will require some or all these control measures depending on site location and the annual gasoline throughput of a gasoline dispensing site or GDF.

The Department proposes to adopt the federal requirements of 40 CFR Part 63 Subpart CCCCCC (Subpart 6C) for “enhanced” Stage I vapor recovery control, submerged filling, dual-point vapor control systems, new performance testing and best management practices in new Part 230. Incorporation of these measures into new Part 230 will make the state regulation consistent with

federal requirements. The Department also proposes to extend these same federal requirements to medium-sized GDFs not covered by the federal rule to achieve further reductions in NYMA emissions. Additionally, new Part 230 proposes to increase the frequency of performance testing and decommission all remaining Stage II vapor recovery systems.

Federal “enhanced” Stage I systems achieve greater emission reductions than the Stage I systems currently allowed under the existing Part 230 state regulation. Under the federal rule, Stage I vapor recovery systems are only required at large GDFs with annual throughputs of 1,200,000 gallons or greater. The Department proposes to extend these same federal requirements to medium-sized GDFs located in the New York City Metropolitan Area (NYMA) with annual throughputs between 800,000 and 1,200,000 gallons to achieve greater VOC emission reductions in the ozone nonattainment area.

New submerged filling requirements are being proposed in Part 230 for all GDF’s with gasoline storage tanks that have capacities greater than 250 gallons. Submerged filling is already required by the New York State Fire Code for all top-loaded gasoline storage tanks with capacities greater than 60 gallons. Inclusion of this requirement in Part 230 will make the regulation consistent with the State Fire Code for the larger gasoline storage tanks. Submerged filling reduces vapor emissions where gasoline is dispensed through a fill pipe that extends to within 6 inches of the bottom of a tank.

Proposed Part 230 incorporates the federal requirement to equip new or reconstructed gasoline storage tanks with a dual-point vapor control system that has both an entry port for a gasoline fill pipe and a separate exit port for a vapor connection. Coaxial pipes, with only one port for both gasoline filling and vapor extraction, don’t always maintain a proper seal when the vapor line is

disconnected. As with the federal Stage I vapor recovery requirements, the Department proposes to extend this requirement to medium-sized GDFs in the NYMA to achieve greater reductions in VOC emissions.

The Department proposes to replace the current Part 230 performance test requirements with the federal requirements for testing vapor recovery systems to ensure better vapor capture and control. These improved performance test methods will ensure that vapor recovery systems are functioning properly and meet the federal control requirements. Requiring these tests to be conducted once every three years, rather than every five years, will help improve yearly compliance. This rulemaking proposal also extends the federal testing requirements to medium-sized GDFs in the NYMA.

Other proposed, new provisions include the federal requirement for best management practices to minimize spills and the amount of VOC released from uncovered gasoline storage containers. Proposed best management practices include requirements to keep all gasoline containers covered, minimize spills, and to clean-up spills as expeditiously as possible. These measures will apply to all GDFs with annual throughputs of 120,000 gallons or greater.

The required removal of Stage II vapor recovery systems is being proposed due to equipment incompatibility with onboard refueling vapor recovery systems (ORVR). As ORVR becomes more widespread, the counter productivity of Stage II increases. Modeling has shown that the percentage of vehicles equipped with ORVR in New York State is high and that excess emissions are starting to increase because of the incompatibility problem with Stage II systems. Removal of the Stage II systems from GDFs will help New York State attain the ozone standard.



The “phase-in” requirements for installation of Stage I and Stage II vapor recovery systems are being removed because they are no longer applicable. Existing Part 230 phased in Stage I and Stage II requirements over time depending on tank size, annual throughput and location of the GDF. All the compliance dates have since passed making these requirements obsolete.

The Department proposes to exempt auto dismantling facilities from the requirements of Stage I because there are no cargo trucks in which to return captured vapors. These facilities fill storage tanks with gasoline collected from drained and dismantled vehicles. There are approximately 800 of these facilities located throughout New York which handle a small volume of gasoline per year.

Companies doing performance tests will also be required to provide certification of testing experience. Approximately 3,545 GDFs will be required to comply with the proposed testing requirements. New self-certification requirements will also help enforcement staff verify that tests are being conducted properly.

The Department also proposes to remove the registration schedules in existing Part 230.7 because the compliance dates have passed. All GDFs operating in New York State must currently be registered with the Department.

The proposal to replace the pressure-vacuum cargo tank testing and marking provisions with current Federal Department of Transportation (DOT) requirements will make these requirements consistent on the state and federal level.

The proposal to revise the recordkeeping retention requirements for gasoline transport vehicles from two to five years matches federal Subpart 6C requirements.

Potential costs to regulated parties due to the proposed repeal and replacement of Part 230 will include costs to medium-sized GDFs located in the NYMA with annual throughputs between 800,000 and 1,200,000 gallons per year for the upgrade to federal “enhanced” Stage I and the requirement to perform more frequent vapor-tightness testing. The cost for this upgrade is approximately \$1,150 for an average site. In addition, these GDFs would incur a cost of \$500 once every three years instead of once every five years for increased vapor-tightness testing. These additional costs would affect approximately 851 GDFs in the NYMA.

The costs associated with the removal of Stage II vapor recovery systems will be offset by eliminating the annual costs for maintaining these systems.

No new costs are associated with the installation of dual-point collection systems, removal of the “phase-in” requirements, self-certification requirements for testers, federal DOT tank test and marking requirements for cargo tank owners or for compliance with gasoline transport vehicle recordkeeping requirements.

Costs to state and local governments like those described above will be required for several of the larger cities, counties, or local municipalities across the state operating GDFs. The majority will not be affected by many of the costs associated with the proposed rule changes. Since the regulatory amendments will apply equally to all entities, the compliance obligations of local governments will be no different than those of other subject entities.

There should be no increase in administrative costs to the Department since the Department does not anticipate a need to increase or expand the resources currently devoted to the regulation of GDFs.

Minor additional paperwork will be imposed on owners and/or operators of GDFs and companies overseeing the required performance tests due to this rulemaking. GDF owners and/or operators will need to submit additional information regarding site location and throughput when submitting required test reports and provide documentation to the Department upon completion of decommissioning procedures for Stage II vapor recovery systems. Test companies will need to submit self-certification forms to the Department prior to conducting performance tests.

Proposed Part 230 will not conflict with any other state or federal requirements. It is the intent of New York State to bring its GDF regulation in sync with the current federal GDF regulation by adopting the provisions of Subpart 6C. All relevant federal obligations will be satisfied by the revised new state regulation.

New Part 230 will incorporate all the minimum standards of federal Subpart 6C and its amendments. In addition, new Part 230 will impose additional requirements, beyond what the federal rule requires, for the federal Stage I and performance test requirements for medium-sized GDFs in the NYMA.

The revisions to Table 1 of Part 200.9 are being made to incorporate by reference the applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions.

Revised Regulatory Impact Statement  
6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles  
6 NYCRR Part 200 General Provisions

INTRODUCTION

The New York State Department of Environmental Conservation (Department) proposes to repeal and replace 6 NYCRR Part 230 to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. As part of this rulemaking, the Department also proposes to revise 6 NYCRR Part 200 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions which are required by new Part 230. The emission reductions resulting from the proposed replacement of Part 230 and the revision to Part 200 are necessary to help the state attain both the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). The attainment demonstrations for both the 2008 and 2015 ozone NAAQS must be documented in State Implementation Plans (SIPs) that must be submitted to the Environmental Protection Agency prior to the end of 2020 and 2021, respectively.

Replacement of 6 NYCRR Part 230

Proposed Part 230 regulates VOC emissions from gasoline dispensing sites and transport vehicles. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) that have capacities greater than 250 gallons. Gasoline vapor emissions being released into the atmosphere leads to the formation of ground level ozone, an air pollutant that triggers a variety of health problems including aggravated asthma, reduced lung capacity, and

increased susceptibility to respiratory illnesses like pneumonia and bronchitis. Emissions of VOCs from the transfer of gasoline can be significant. Over 6 billion gallons of gasoline are distributed to about 7,540 retail sites throughout New York State each year. Significant vapor losses may occur during the loading of gasoline storage tanks and refueling of vehicles. In New York State, these losses could amount to approximately 69,600 tons of VOCs being released into the atmosphere annually, if left uncontrolled.

#### Revision to 6 NYCRR Part 200

The Department is proposing to revise Table 1 of Part 200.9 to incorporate applicable federal and CARB test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention requirements.

#### STATUTORY AUTHORITY

Environmental Conservation Law (ECL) section 1-0101 declares it to be the policy of New York State to conserve, improve and protect its natural resources and environment and control air pollution in order to enhance the health, safety and welfare of the people of New York State and their overall economic and social well-being. Section 1-0101 further expresses, among other things, that it is the policy of New York State to coordinate the state's environmental plans, functions, powers and programs with those of the federal government and other regions and manage air resources to the end that the state may fulfill its responsibility as trustee of the environment for present and future generations. This section also provides that it is the policy of New York State to foster, promote, create and maintain conditions by which man and nature can thrive in harmony by providing that care is taken for air resources that are shared with other states.



ECL section 3-0301 provides that it shall be the responsibility of the Department to carry out the environmental policy of the state. In furtherance of that mandate, Section 3-0301(1)(a) gives the Commissioner authority to “[c]oordinate and develop policies, planning and programs related to the environment of the state and regions thereof...” Section 3-0301(1)(b) directs the Commissioner to promote and coordinate management of, among other things, air resources “to assure their protection, enhancement, provision, allocation and balanced utilization consistent with the environmental policy of the state and take into account the cumulative impact upon all of such resources in making any determination in connection with any license, order, permit, certification or other similar action or promulgating any rule or regulation, standard or criterion.” Pursuant to ECL Section 3-0301(1)(i), the Commissioner is charged with promoting and protecting the air resources of New York including providing for the prevention and abatement of air pollution. Section 3-0301(2)(a) permits the Commissioner to adopt rules and regulations to carry out the purposes and provisions of the ECL. Section 3-0301(2)(m) gives the Commissioner authority to “adopt such rules, regulations, and procedures as may be necessary, convenient or desirable to effectuate the purposes of this chapter.”

ECL section 19-0103 declares that it is the policy of New York State to maintain the purity of air resources and to require the use of all available practical and reasonable methods to prevent and control air pollution in the state.

ECL section 19-0105 declares that it is the purpose of Article 19 of the ECL to safeguard the air resources of New York State under a program which is consistent with the policy expressed in section 19-0103 and in accordance with other provisions of Article 19.



ECL section 19-0301 declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution and shall include in such regulation provisions prescribing the degree of air pollution that may be emitted to the air by any source in any area of the state.

ECL section 19-0303 provides that the terms of any air pollution control regulation promulgated by the Department may differentiate between particular types and conditions of air pollution and air contamination sources.

ECL section 19-0305 authorizes the Department to enforce the codes, rules and regulations established in accordance with Article 19.

ECL sections 71-2103 and 71-2105 set forth the civil and criminal penalty structures for violations of Article 19.

## LEGISLATIVE OBJECTIVES

Articles 1 and 3 of the ECL set out the overall policy goal of reducing air pollution and providing clean, healthy air for the citizens of New York. These Articles also provide the general authority for the Department to adopt and enforce measures to carry out this policy.

In addition to the general powers and duties of the Department and Commissioner to prevent and control air pollution found in Articles 1 and 3 of the ECL, Article 19 of the ECL was specifically adopted for the purpose of safeguarding the air resources of New York from pollution. To facilitate

this purpose, the Legislature bestowed specific powers and duties on the Department, including the power to formulate, adopt, promulgate, amend, repeal and enforce regulations for preventing, controlling and prohibiting air pollution. This authority also specifically allows for the promulgation of rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the state as shall or may be affected by air pollution, and provisions establishing areas of the state and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, and (2) the extent to which air contaminants may be emitted to the air by any air contamination source. In addition, this authority also includes the preparation of a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the state. Based on the above, the Commissioner has very broad authority to regulate air pollution.

#### Replacement of 6 NYCRR Part 230 and the Revision to Part 200

A new Part 230 is being proposed by New York State to control emissions of one of the precursors of ground level ozone pollution, VOCs, to help New York State attain the 2008 and 2015 NAAQS for ozone under Title I of the Clean Air Act (CAA).

#### NEEDS AND BENEFITS

There are two types of ozone, stratospheric and ground level ozone. Ozone in the stratosphere is naturally occurring and is desirable because it shields the earth from harmful ultraviolet rays from the sun which may cause skin cancer. In contrast, ground level ozone or smog, which results from the mixing of VOCs and NO<sub>x</sub> on hot sunny summer days, can harm humans and plants. The ozone NAAQS was established by EPA at a level where attainment and maintenance is

considered to be protective of public health and welfare. In the northeastern United States, the ozone nonattainment problem is pervasive as concentrations of ozone often exceed the level of the NAAQS by mid-afternoon on a summer day. The contiguous metropolitan areas of Washington, D.C., Baltimore, Philadelphia, New York City, and Hartford are designated ozone nonattainment areas.

On October 1, 2015, EPA strengthened the NAAQS for ground-level ozone to 0.070 parts per million (ppm), based on extensive scientific evidence about ozone's effects on public health and welfare. The previous standard, set in 2008, was 0.075 ppm. The updated standard will improve public health protection, particularly for at-risk groups including children, older adults, people with lung diseases such as asthma and people who are active outdoors, especially outdoor workers. It will also improve the health of trees, plants and ecosystems.

The New York City metropolitan area (NYMA) is currently designated "serious" nonattainment for the 2008 ozone NAAQS and "moderate" nonattainment for the 2015 ozone NAAQS. The Department submitted a SIP for the 2008 ozone standard on November 10, 2017 but the plan was not able to demonstrate attainment of that standard by the July 20, 2018 attainment date. As a result, an attainment demonstration for the 2008 ozone NAAQS is due in August 2020 while the attainment demonstration for the 2015 ozone NAAQS is due in August 2021.

Implementation of proposed Part 230 and the revisions to Part 200 will reduce levels of VOC emissions in New York State. New York State, as part of its SIP, must seek reductions in VOC emissions from all sources in order to attain the mandated ozone air quality standards.

Vapor recovery measures at GDFs help to reduce the amount of VOC emitted into the atmosphere. Stage I and Stage II controls are currently required for applicable GDFs throughout New York State.

Stage I vapor recovery requires the collection of vapors when gasoline storage tanks are being filled. Gasoline vapors are transferred from the storage tank being filled to the tanker truck that is being emptied of gasoline. The recovered vapors are returned to the terminal where they can be recovered as gasoline. Most of the approximately 7,540 GDFs located throughout New York State are required to have Stage I controls in place by existing Part 230.

Stage II vapor recovery systems collect vapors during the refueling of a vehicle. Special nozzles and dispensing equipment allow displaced vapors from the vehicle tank to be recovered at the pump when the vehicle tank is being filled. Displaced vapors are then returned to the station's gasoline storage tank. Currently, there are approximately 3,387 GDFs that are required to have Stage II controls in place.

The EPA adopted federal requirements in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C), effective January 2011, for all GDFs. This regulation contains source specific requirements for GDFs based upon the size of the facility, which may include "enhanced" Stage I vapor recovery systems, submerged fill, dual-point vapor control systems, new performance test requirements, increased test frequencies and best management practices. The proposed new Part 230 will make the state's regulation consistent with these federal requirements. The most significant vapor recovery measures imposed by Subpart 6C affect only the largest GDFs with annual gasoline throughputs of 1,200,000 gallons or greater per year. In new Part 230, the Department proposes to extend these "enhanced"

requirements to include medium-sized GDFs located in the NYMA with annual gasoline throughputs of between 800,000 and 1,200,000 gallons per year to achieve greater, necessary VOC emission reductions. Although no new VOC emission reductions can be credited to this rulemaking for the control of the largest GDFs already covered by the federal regulation, the proposal will create new additional reductions in VOC emissions for the medium-sized GDFs that are located in the NYMA, which as mentioned above is currently in nonattainment of the 2008 and 2015 ozone NAAQS.

Under existing Part 230, the state's Stage I requirements apply to approximately 7,276 stations with annual gasoline throughputs of 120,000 gallons or more. These state Stage I requirements mandate the collection of vapors displaced from gasoline storage tanks without the same equipment and vapor-tightness testing requirements specified in the federal "enhanced" version of Stage I systems. Additionally, New York's current version of Stage I has a capture efficiency of approximately 90 percent, while the federal "enhanced" version has a higher capture efficiency of 95 percent. As a result, adoption of the federal "enhanced" requirements for Stage I systems in new Part 230 will create additional VOC emission reductions of approximately 151 tons per year at about 851 medium-sized GDFs in the NYMA.

New submerged filling requirements are included in proposed Part 230 for all gasoline storage tanks at GDFs to address current New York State Fire Code requirements. The current fire code requires all top-loaded gasoline storage tanks with capacities greater than 60 gallons to be equipped with a metallic fill pipe designed and installed to minimize the generation of static electricity by terminating the pipe within 6 inches of the bottom of the tank. Although the fire code provision applies to all gasoline storage tanks greater than 60 gallons, Part 230 only regulates tanks greater than 250

gallons at GDFs. The submerged filling requirement in Part 230 is designed to minimize the generation of gasoline vapors caused by splash loading.

The federal requirement to equip applicable new or reconstructed gasoline storage tanks with a dual-point “vapor balancing” system that includes both an entry port for a gasoline fill pipe and a separate exit port to collect displaced gasoline vapors is also proposed in new Part 230. Coaxial fittings, which are allowed under the existing Part 230 regulation, use a single port for both filling gasoline and extracting vapors. Past experience has shown that these coaxial fittings don’t always maintain a proper seal when the vapor line is disconnected. Under the federal regulation, all GDFs with a throughput of 1,200,000 gallons per year or greater must operate with a dual-point system. New Part 230 proposes to adopt this same federal requirement for the largest GDFs as well as for new or reconstructed gasoline storage tanks at medium-sized GDFs located in the NYMA.

The Department also proposes to adopt the federal performance test requirements for vapor recovery systems in proposed Part 230 to achieve consistency with federal Subpart 6C. This includes replacing the state’s current vapor tightness test requirements with the new federal requirements outlined in Subpart 6C. It also includes increasing the testing frequency from once every five years to once every three years. The federal performance tests are designed to ensure that vapor recovery systems are functioning properly and achieve a 95 percent reduction in VOC emissions. In accordance with the Department’s proposal, these tests will be required for all GDFs that are required to install and operate a federal “enhanced” Stage I vapor recovery system. This is more stringent than federal requirements as it applies to medium-sized GDFs in the NYMA as well as the largest GDFs covered under both the federal and state regulations. As a result of this extended requirement, approximately 851 additional medium-sized GDFs will now be required to conduct

performance tests on “enhanced” Stage I vapor recovery systems to demonstrate compliance and minimize vapor losses. This testing requirement should ensure that credited annual VOC emission reductions are achieved.

New best management practice requirements are also being proposed for all GDFs to minimize gasoline spills and VOC emissions from uncovered gasoline storage containers. Adoption of these federal requirements in proposed new Part 230 will help achieve parity with Subpart 6C. Best management practice measures include keeping all gasoline containers covered, minimizing spills, and the requirement to clean up spills as expeditiously as possible. These measures will reduce VOC emissions across the state.

The removal of the requirements for Stage II vapor recovery systems in new Part 230 is being proposed due to equipment incompatibility with Onboard Refueling Vapor Recovery (ORVR) systems. ORVR systems are vehicle emission control systems required by the CAA that capture fuel vapors from the vehicle gas tank during refueling. ORVR systems, which are installed in approximately 97 percent of vehicles in New York State, eliminate the need to have GDFs equipped with the special nozzles and vapor return lines that are required by Stage II vapor recovery systems. Further, modeling has shown that yearly emissions are increasing due to the incompatibility of Stage II and ORVR systems. Removal of these systems will help New York State attain the ozone standards.

The “phase-in” requirements for gasoline dispensing facilities to install and maintain Stage I and Stage II systems are being removed because they are no longer applicable. Existing Part 230 phased in Stage I and Stage II requirements over time depending on tank size, annual throughput

and location of the GDF. All these compliance dates have since passed making these requirements obsolete.

Auto dismantling facilities are proposed to be exempted from the Stage I requirements because gasoline is not delivered to these facilities from cargo trucks equipped with Stage I systems that can collect the displaced vapors from storage tank filling operations. These facilities fill storage tanks with gasoline collected from drained and dismantled vehicles. There are approximately 800 dismantling facilities located throughout the state and each of these facilities recovers approximately 2,500 gallons from salvaged vehicles each year. Potential uncontrolled VOC losses from these facilities total approximately 14 tons per year and none of the losses can be recovered with Stage I control systems.

In addition to changes to the testing requirements and frequency, new Part 230 proposes to require all companies that are performing these tests to provide prior written certification to the Department affirming that all compliance testing will be conducted by properly trained staff and in accordance with established procedures and protocols. Currently, there are approximately 20 test companies that perform all the vapor recovery system tests throughout New York State. With the newly proposed testing requirements, approximately 3,545 GDFs would be subject to testing requirements. The new certification requirement will help enforcement staff verify that tests are being conducted properly.

The Department also proposes to remove the registration schedules in existing Part 230.7 because the compliance dates have passed. All GDFs operating in New York State must now have a current Air Facility Registration under the provisions of 6 NYCRR Part 201 unless they have a



Petroleum Bulk Storage Registration under 6 NYCRR Part 613. At present, all GDFs that have a combined storage capacity greater than 1,100 gallons must have a Petroleum Bulk Storage Registration under the provisions of Part 613.

The proposal to replace the pressure-vacuum cargo tank testing and tank test marking requirements to coincide with the Federal Department of Transportation (DOT) requirements for cargo tanks will make these requirements consistent on the federal and state level.

The proposed change to the recordkeeping retention requirements from two to five years for gasoline transport vehicles is being proposed to meet the federal requirements of Subpart 6C.

## COSTS

### Costs to Regulated Parties

Potential additional costs due to the proposed rulemaking will include costs to upgrade Stage I equipment to meet federal requirements and perform vapor-tightness testing for medium-sized GDFs located in the NYMA with annual throughputs between 800,000 – 1,200,000 gallons. The requirement for these medium-sized GDF owners to install and operate an “enhanced” Stage I vapor recovery system that meets the latest federal requirements in Subpart 6C will require some owners to install vapor lines with vapor-tight connectors, vapor-tight fill caps, pressure/vacuum (P/V) vent valves as well as swivel vapor and product adaptors. Most medium-sized GDFs already operate Stage I vapor recovery systems that meet the “enhanced” system requirements. However, others will be required to install vapor and product adapters and P/V vent valves. P/V vent valve costs range from \$50 to \$250, while swivel adaptors are approximately \$250 each. Most medium-sized GDFs, without

an “enhanced” Stage I system, will be required to install one P/V vent valve, one vapor adaptor and three product adaptors. This totals about \$1,150 in new costs for those medium-sized GDFs requiring new system components. Other costs associated with the installation of federal “enhanced” Stage I vapor control systems may include costs associated with periodic equipment replacement. Replacement of equipment may be necessary to achieve vapor-tight line connections on tanks that seal upon disconnect, properly sealed fill caps, properly operated P/V vent valves and vapor/product adapters that maintain vapor-tight integrity. All medium-sized GDFs located in the NYMA will be subject to these periodic maintenance costs. Additional costs associated with adopting the federal “enhanced” Stage I requirements for medium-sized GDF’s located in the NYMA will affect approximately 851 GDFs.

No new costs are associated with the requirement to install and operate federal Stage I vapor recovery systems at GDFs with annual throughputs of 1,200,000 gallons or greater since these systems are already required by federal regulation.

No new costs to GDFs are associated with the requirement to install a dual-point collection system on new or reconstructed gasoline storage tanks because these systems are already required by existing federal regulation.

A new cost associated with New York’s proposal for performance testing would be imposed upon GDFs in the NYMA with annual throughputs between 800,000 and 1,200,000 gallons. This new cost affects approximately 851 GDFs in the state. These sites will now be required to conduct vapor-tightness testing once every three years instead of once every five years at a cost of \$500. No new

costs will be incurred for those GDFs with annual throughputs of 1,200,000 gallons or greater as Stage I performance testing is already required for these facilities by federal regulation.

No new costs are associated with the submerged filling requirement as all GDFs are currently required to fill gasoline storage tanks with submerged filling under the current New York State Fire Code.

No new costs are associated with the proposed requirements for best management practices as these are already required by federal regulation.

New costs are associated with the required removal of Stage II vapor recovery systems. This will require the disconnection and capping of the Stage II vapor recovery line, removal or disconnection of any vacuum pump, and the replacement of hanging hardware. These costs have been estimated at \$2,400 for a typical station. Aside from the costs for GDFs to decommission Stage II, there are cost saving benefits associated with Stage II removal as well. Typical GDFs spend an average of \$2,000 annually to conduct required performance tests and maintain these systems. Cost analysis has shown, that over time, most stations will save money by decommissioning the outdated equipment.

No new costs are associated with the self-certification requirement for testers since the companies already supply self-certification training to their employees.

No new costs are associated with the proposal to adopt the current Federal DOT testing, marking and recordkeeping requirements for gasoline transport vehicles as it is an existing federal requirement.

#### Costs to State and Local Governments

Some larger cities, counties, or local municipalities in the NYMA operating GDFs with annual throughputs between 800,000 – 1,200,000 gallons will be subject to new Part 230 proposed requirements. The associated costs are described above.

#### Costs to the Regulating Agency

There will be no increase in administrative costs to the Department. The Department does not expect that it will need to increase or expand the resources that it currently devotes to the regulation of VOC emissions from GDFs under new Part 230.

### LOCAL GOVERNMENT MANDATES

The proposed replacement of Part 230 and the revision to Part 200 will not impose any specific mandates on local governments. The compliance obligations of local governments will be no different than those of other subject entities. The new VOC reductions that can be credited to the proposed new Part 230 requirements will apply throughout the state and are necessary to meet mandated federal air quality standards. As described above, there are a few larger cities, counties, or local municipalities downstate which operate GDFs that may be subject to some of the proposed requirements due to large annual throughputs. However, the majority of municipalities will not be affected by the proposed rule changes.



## PAPERWORK

The proposed replacement of Part 230 and revision to Part 200 will impose minor additional paperwork requirements on owners and/or operators of GDFs and companies overseeing relevant performance tests. GDF owners and/or operators will need to submit additional information regarding site location and throughput when submitting required test reports and provide documentation to the Department upon completion of decommissioning procedures for Stage II vapor recovery systems. Test companies will need to submit self-certification forms to the Department prior to conducting performance testing.

## DUPLICATION

The proposed replacement of Part 230 and the revision to Part 200 will not duplicate or conflict with any other state or federal requirements. It is the intent of New York State to bring its GDF regulation in sync with the federal GDF regulation by adopting the provisions of Subpart 6C. All federal obligations will be satisfied by the proposed Part 230 requirements.

## ALTERNATIVES

The following alternatives have been evaluated for effectiveness in meeting the goals outlined above:

1. Do nothing - This alternative would leave New York State's regulation with outdated/obsolete information, unaddressed issues in terms of the latest vapor recovery developments – some of

which are causing New York to “back slide” on the reduction of VOC emissions and rules that are out of sync with what is currently required of GDFs by federal regulation. The current Part 230 regulation contains requirements that are no longer applicable like “phase-in” dates for the installation of vapor recovery systems that have already expired as well as compliance deadlines that have already passed. In addition to the need for updating, the current Part 230 regulation does not adequately address the incompatibility of Stage II systems with ORVR systems, current vapor recovery inefficiencies, inadequate submerged filling, etc. Finally, if Part 230 is not replaced, the regulated community would be left with a mix of overlapping and contradictory requirements.

2. Remove Outdated Information/Match Federal Standards/Decommission Stage II – This alternative would update the current regulations, add what is already required by federal regulation and remove the outdated Stage II vapor control system that is obsolete and counterproductive. Equipment installation dates and compliance deadlines that have expired need to be removed from the current regulation to bring it up to date. Adopting the federal requirements of Subpart 6C which includes federal Stage I vapor recovery equipment, submerged filling, dual-point vapor control systems, improved performance test requirements, increased testing frequencies and best management practices would sync the state’s regulations with existing federal requirements. Mandating the removal of Stage II vapor recovery systems which have been shown to be incompatible with ORVR systems in 2000 or later model vehicles is necessary to achieve further necessary reductions in VOC emissions. This option would bring New York’s regulations in sync with the more stringent federal vapor recovery requirements for GDFs with annual throughputs of 1,200,000 gallons or greater but fails to provide more effective vapor recovery for approximately 851 GDFs in the NYMA that

have annual throughputs between 800,000 - 1,200,000 gallons. GDFs dispensing 1,200,000 gallons of gasoline or greater per year are already subject to the federal rules and adopting these regulations for those facilities alone will not provide the additional VOC reductions necessary for progress towards attainment of the 2008 and 2015 ozone NAAQS in the NYMA nonattainment area. Upgrading the Department's regulations to incorporate the federal Stage I regulation for GDFs with annual throughputs of 800,000 gallons per year or greater will create an additional VOC emission reduction of 151 tons per year at a cost of \$960,000. Although these GDFs have throughputs lower than the threshold for GDFs regulated under the federal rule, these are sites located in ozone nonattainment areas in New York State with annual throughputs of gasoline large enough to be a significant source of VOC emissions. The CAA requires Reasonably Available Control Technology (RACT) on existing sources of air pollution in areas that do not meet the ozone NAAQS. "RACT" is the "lowest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility." Economic feasibility is determined by comparing the cost per ton of VOC emission reductions to the established cost threshold for RACT. This inflation-adjusted cost threshold for VOC sources in the NYMA is \$8,788 per ton. For the medium-sized GDFs located in the NYMA, the Department expects the cost per ton for VOC emission reductions to be \$6,357 per ton.

## FEDERAL STANDARDS

On January 10, 2008, EPA issued a final rule "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities." Subsequent amendments were issued on March 7,



2008; June 25, 2008; and January 24, 2011. The proposed replacement of Part 230 and revision to Part 200 will incorporate all of the minimum standards of this rule and its amendments. In addition, the proposed replacement of Part 230 will also impose additional federal Stage I requirements on a broader number of GDFs based on annual throughput and facility location.

## COMPLIANCE SCHEDULE

The effective date of the regulation is anticipated to be around January 2021. GDFs located in the NYMA with annual throughputs greater than or equal to 800,000 gallons but less than 1,200,000 gallons must come into compliance with all applicable requirements within six months after the effective date of the rule. GDF that becomes subject to any Stage I vapor recovery requirement due to an increase in monthly throughput must come into compliance with any applicable regulations within 6 months of any such increase. For those GDFs required to remove Stage II vapor recovery systems, the compliance date is within 12 months after the effective date of the rule.

## Job Impact Statement

### 6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles

#### 6 NYCRR Part 200 General Provisions

1. Nature of impact: The Department of Environmental Conservation (Department) proposes to repeal and replace 6 NYCRR Part 230 to reduce volatile organic compound (VOC) emissions from gasoline dispensing sites and transport vehicles in New York State. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) greater than 250 gallons. Part 200 will be revised to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions.

The Department proposes to adopt EPA's federal requirements for GDFs outlined in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C). These requirements include the mandated use of federal "enhanced" Stage I vapor recovery systems at large GDFs with annual gasoline throughputs of 1,200,000 gallons or more, submerged filling, dual-point vapor control systems, improved performance testing and best management practices. Incorporation of these federal requirements into state regulation will bring consistency to the regulated community. Beyond what Subpart 6C requires, federal Stage I vapor recovery system requirements are also proposed for medium-sized GDFs located in the New York City Metropolitan Area (NYMA) with annual gasoline throughputs between 800,000 and 1,200,000 gallons per year. The NYMA is designated as a "serious" nonattainment area under the 2008 ozone National Ambient Air Quality Standard (NAAQS) and as "moderate" nonattainment for the 2015 ozone NAAQS. The required decommissioning of all Stage II vapor recovery systems is being proposed due to equipment incompatibility with On-board Refueling

Vapor Recovery (ORVR) systems found on most vehicles. More frequent performance testing is also being proposed to ensure vapor-tight recovery systems.

This rulemaking is not expected to have any adverse impacts on jobs or employment opportunities in New York State. Adoption of the federal standards for high throughput GDFs along with removal of Stage II vapor recovery systems and an increased testing frequency will require owners and/or operators to purchase, install and maintain gasoline dispensing site equipment as well as perform more frequent performance tests. This will require the manufacturing of additional equipment components and the hiring of contractors to perform the necessary upgrades. It will also provide increased job opportunities to accommodate the need for more frequent testing at a larger number of GDFs throughout the State.

2. Categories and numbers affected: This rulemaking will affect approximately 7,277 GDFs to varying degrees, all of which may need services from gasoline dispensing equipment manufacturers, contractors or testers. The greatest impact will be on the 851 medium-sized GDFs located in the NYMA. These medium-sized facilities will be subject to the federal Stage I vapor recovery, dual-point vapor control systems, and improved performance testing requirements under the proposed provisions of new Part 230. Additionally, many GDFs may be minimally affected by the federal best management practice requirements of the Subpart 6C regulation that are proposed to be incorporated in new Part 230. The new submerged filling requirements should not impact any facilities as the current New York State Fire Code requires all gasoline storage tanks with capacities greater than 60 gallons to meet the proposed Part 230 requirements. The requirements for Stage II decommissioning will affect approximately 3,387 GDFs and an estimated 20 companies contracted to do performance

tests. In terms of job creation, the proposed rule changes will have a positive impact based on the great number of GDFs affected and the services anticipated.

3. Regions of adverse impact: The Department does not expect that employment will be adversely impacted in any region of the state due to this proposed rulemaking. Most GDFs already must comply with much of the proposed rulemaking due to existing federal requirements. The need for services from manufacturers, contractors and testers involved in the gasoline dispensing equipment industry will increase in all areas of New York State.

4. Minimizing adverse impact: Specific compliance periods have been factored into this proposed rulemaking to minimize the impacts associated with the need for increased services from manufacturers, testers, and contractors involved in the gasoline dispensing equipment industry. The Department is providing a 6- month compliance period for GDFs that become subject to the federal vapor recovery requirements as a result of the proposed rule changes. Discussions with manufacturers, contractors and testers have determined this compliance period to be sufficient. Several gasoline dispensing equipment manufacturers already manufacture the necessary equipment and many contractors are already familiar with the installation requirements. Additionally, many of the major performance test companies are also familiar with the new test requirements. The Department, therefore, does not anticipate any adverse impacts on those employed in the manufacturing, installation or testing of gasoline dispensing equipment as a result from the adoption of these proposed rule changes. The Department believes that this rule will have a positive economic impact on all GDFs due to better containment of vapors and reduced product loss. Although GDF owners will have to pay for the removal of Stage II equipment, most of the 3,387 applicable GDFs should save approximately \$2,000 annually by eliminating their yearly maintenance costs.

5. Self-employment opportunities: The proposed regulation will provide opportunities for new employment for individuals or companies that decide to install, repair, or test gasoline dispensing equipment. The need for increased services by contractors and testers will benefit employment in New York State. Many of these services will be provided by self-employed individuals.

6. Initial review of the rule: The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

## Revised Rural Area Flexibility Analysis

### 6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles

### 6 NYCRR Part 200 General Provisions

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health problem, New York has enacted a series of regulations designed to control ozone and its chemical precursors which include volatile organic compounds (VOCs). To lower emissions that affect ozone formation, New York State is proposing to repeal and replace 6 NYCRR Part 230 to limit VOC emissions from gasoline dispensing sites and transport vehicles. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) greater than 250 gallons. As part of this rulemaking, changes are also being proposed to Table 1 of Part 200.9 to incorporate by reference applicable federal and California Air Resources Board (CARB) test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions.

The New York State Department of Environmental Conservation (Department) is revising the State Implementation Plan (SIP) to demonstrate how New York State will attain the 8-hour ozone National Ambient Air Quality Standards (NAAQS). The emission reductions resulting from proposed Part 230 are necessary to help attain the 2008 and 2015 ozone NAAQS. SIP revisions will include the establishment of new and/or revised control requirements for emissions of the precursors of ground level ozone pollution – Nitrogen Oxides and VOCs. This rulemaking proposal is aimed at achieving some of the VOC emission reductions necessary to achieve the ozone NAAQS.

The Department proposes to adopt EPA's federal regulation for GDFs outlined in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C). This includes the federal requirements for the use of "enhanced" Stage I vapor recovery systems at large GDFs with annual gasoline throughputs of 1,200,000 gallons or more, submerged filling, dual-point vapor control systems, new performance test methods and best management practices. Incorporation of these federal requirements into state regulation will bring consistency to the regulated community. In addition, to achieve greater VOC emission reductions, the Department proposes to extend the same federal requirements to medium-sized GDFs located in the New York City Metropolitan Area (NYMA) with annual gasoline throughputs between 800,000 and 1,200,000 gallons per year. The NYMA is designated as a moderate ozone nonattainment area and further reductions in VOC emissions will help achieve the NAAQS for ground level ozone. The required decommissioning of Stage II vapor recovery systems at all GDFs is also being proposed due to equipment incompatibility with On-board Refueling Vapor Recovery (ORVR) systems. All proposed changes are necessary to help achieve attainment of the 2008 and 2015 8-hour ozone NAAQS throughout New York State.

1. Types and estimated number of rural areas: Rural areas are found in much of upstate New York. In addition to the statewide requirements for large and medium-sized GDFs, this proposed rulemaking will impose minor new requirements on rural area GDFs with annual gasoline throughputs of 120,000 gallons or greater. Most notably, all GDFs must comply with the requirement for submerged filling equipment and best management practices. Submerged filling is an existing requirement of the New York State Fire Code for all stationary top-loaded gasoline storage tanks with a capacity greater than 60 gallons and best management practices is a federal requirement. Rural area GDFs will not be unfairly or adversely affected by the revisions to Part 230. This proposal will apply on a statewide basis.

2. Reporting, record keeping and other compliance requirements; and professional services:

The regulatory changes to Part 230 and Part 200 will apply on a statewide basis. Rural area GDFs are not expected to be unfairly or adversely affected by these revisions. The proposed rulemaking will impose minor reporting and recordkeeping requirements on most GDF owners and/or operators as well as testers of gasoline dispensing equipment. This requirement applies to all sources and not just those in rural locations. GDF owners and/or operators will need to submit additional information regarding site location and throughput when submitting required test reports. Documentation must also be provided to the Department upon completion of decommissioning procedures for Stage II vapor recovery systems. Test companies will need to submit self-certification forms to the Department prior to conducting performance testing. All GDF owners and/or operators, not just rural area GDF owners and/or operators, will require professional services from time to time from GDF equipment contractors and testers.

3. Costs: Rural areas are not expected to be unfairly or adversely affected by these changes.

Since most of the costs are due to equipment upgrades, the cost to GDF owners associated with the proposed regulations will vary depending on site condition and will likely be lower for smaller GDFs often located in rural areas.

4. Minimizing adverse impact: The proposal is not anticipated to have an unfair or adverse

effect on rural areas. The rulemaking is intended to create air quality benefits for the entire state, including rural areas, through the reduction of ozone forming pollutants. The regulation ensures a fair and level playing field for all GDF owners and/or operators as well as for all manufacturers, contractors and testers of gasoline dispensing equipment.



5. Rural area participation: Rural areas will not be adversely affected by the proposed changes. The changes proposed apply to GDF owners and/or operators throughout the entire state. The Department held public meetings for industry stakeholders to present a draft of the proposed regulatory changes at various locations throughout the state. These locations were convenient for persons from rural areas to participate. Comments received during this period were taken into consideration when drafting the final rule. Additionally, further stakeholder input was received, considered, and implemented where appropriate during the formal State Administrative Procedures Act comment period.

## Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments

### 6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles

#### 6 NYCRR Part 200 General Provisions

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health problem, New York has enacted a series of regulations designed to control ozone and its chemical precursors which include volatile organic compounds (VOCs). To lower emissions that affect ozone formation, New York State is proposing to repeal and replace 6 NYCRR Part 230 to limit VOC emissions from gasoline dispensing sites and transport vehicles. A gasoline dispensing site is a federally regulated Gasoline Dispensing Facility (GDF) with gasoline storage tank(s) greater than 250 gallons. Revisions to Table 1 of 6 NYCRR Part 200.9 are also being proposed to incorporate by reference applicable federal and California Air Resources Board test methods; inspection procedures; and gasoline tanker truck marking, reporting and record retention provisions.

The New York State Department of Environmental Conservation (Department) is revising the State Implementation Plan (SIP) to demonstrate how New York State will attain the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). The SIP revisions will include the establishment of new and/or revised control requirements for emissions of the precursors causing ground level ozone pollution including VOCs. This rulemaking proposal is aimed at achieving some of the VOC emission reductions necessary to achieve the ozone standards.

The Department proposes to adopt the United States Environmental Protection Agency's (EPA) federal regulation for GDFs outlined in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C). This

includes the required use of federal “enhanced” Stage I vapor recovery systems at large GDFs with annual gasoline throughputs of 1,200,000 gallons or more, submerged filling, dual-point vapor control systems, new performance test methods and best management practices. Incorporation of these federal requirements into state regulation will bring consistency to the regulated community. These same federal Stage I vapor recovery systems requirements are also being proposed for medium-sized GDFs in the New York City Metropolitan Area (NYMA) with annual gasoline throughputs of between 800,000 and 1,200,000 gallons per year. The NYMA is currently designated as a serious ozone nonattainment area and further reductions in VOC emissions are necessary to achieve the NAAQS for ground level ozone. The required decommissioning of all Stage II vapor recovery systems at all GDFs is also being proposed due to equipment incompatibility with On-board Refueling Vapor Recovery (ORVR) systems. All proposed changes are necessary to promote attainment of the 2008 and 2015 8-hour ozone NAAQS.

1. Effects on Small Businesses and Local Governments. Costs to local governments for several of the larger cities, counties, or local municipalities across the state will be the same as those for all GDFs. However, the majority will not be affected by many of the costs associated with the proposed rule changes due to low annual throughputs. The same applies to small businesses. GDFs with low annual throughputs will be exempt from many of the proposed requirements. Since the regulatory amendments will apply equally to all subject entities, the proposed changes will not impose any mandate specific to small businesses or local governments.

2. Compliance Requirements. Local governments and small businesses are required to comply with the same requirements as all GDFs throughout the state.

3. Professional Services. Small businesses and local governments are required to comply with the same requirements as all GDFs throughout the state. Some professional services like those from gasoline dispensing equipment contractors and testers will be required. The same is true for all GDFs throughout the state.

4. Compliance Costs. There are no additional compliance costs for small businesses and local governments as a result of this rulemaking. Local governments and small businesses are required to comply with the same requirements as all GDFs throughout the state.

5. Economic and Technological Feasibility. These changes are not expected to have unfair or adverse impacts on small businesses or local governments since the same requirements will apply statewide.

6. Minimizing Adverse Impact. The proposed rulemaking is intended to create air quality benefits for the entire state through the reduction of ozone forming pollutants. These changes are not expected to have unfair or adverse impacts on small businesses or local governments since the same requirements will apply statewide. The proposed regulation ensures a fair and level playing field for all GDF owners.

7. Small Business and Local Government Participation. Small businesses and local governments are not specifically adversely affected by the proposed revisions. The proposed rulemaking changes apply to GDF owners and/or operators throughout the entire state in varying degrees depending upon the annual throughput of the GDF. The Department held public meetings in which industry stakeholders, including small businesses and local governments, were presented with

a draft of the proposed regulatory changes. Comments received during this period were taken into consideration when drafting the final rule. Additionally, further stakeholder input was received, considered, and implemented where appropriate during the formal State Administrative Procedures Act comment period.

## Assessment of Public Comments Summary

### 6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles

### 6 NYCRR Part 200, General Provisions

Comments received from February 12, 2020 through 5:00 P.M., May 21, 2020

Seven commenters commented on the proposed new Part 230 and Part 200. This document summarizes those comments and the Department's responses.

#### General

Three commenters expressed appreciation for the opportunity to comment. The Department thanks those commenters for their participation in the rulemaking process.

#### Timing

Two commenters expressed concern that the Department is forging ahead with new regulations during a pandemic, imposing new costs and compliance mandates at a time when retail sales are low, and many are unemployed. The Department emphasized that most of the gasoline dispensing facilities (GDFs) and gasoline transport vehicles in the State already must comply with the requirements in the proposal due to federal regulations and State Fire Codes already in place. The new Part 230 will only impose new minimal requirements on medium-sized GDFs located in an area of the state not meeting the National Ambient Air Quality Standards (NAAQS) required under the Clean Air Act (CAA).

### Opportunity for Public Participation

Three commenters felt that the cancellation of the scheduled public hearings by government order prevented an important public participation opportunity to comment on the proposed new rule. The Department explained that the original public comment period was extended by 30 days to accommodate this and that, along with the stake holder meetings held early in the process, was enough time to allow meaningful input. This is especially true, given that written comments are given the same consideration as oral comments provided in public hearings.

One commenter was concerned about not receiving a response to an information request in time to review and comment on the proposal before the close of the comment period. The Department confirmed that a response to an information request filed on the closing day of the public comment period did not allow enough time for the Department to provide a response by the closing day of the comment period.

### Regulatory Clarification

One commenter asked for an explanation of the proposed changes. The Department referenced the express terms and supporting documents that fully outline the proposal.

One commenter was confused by use of the term “phase-in” requirements used in the current Part 230 to reference the registration of GDFs as it was once used by EPA to refer to the increased use of on-board refueling vapor recovery (ORVR)-equipped vehicles. The Department clarified its meaning as it pertains to the supporting documents.

One commenter asked for clarification on the required certification for those performing vapor tightness testing. The Department explained that the self-employed would also be required to self-certify if contracted to perform these tests.

One commenter asked for clarification on the varying number of GDFs referenced throughout the supporting documents. The Department made clear that the number of GDFs affected by a specific requirement differs due to varying applicability.

One commenter pointed out the misuse of the term “moderate” versus “serious” to describe nonattainment areas of the state in two places within the supporting documents. The Department corrected the status in those documents.

One commenter asked for clarification on the compliance dates specified in the proposed new Part 230. The Department verified a compliance date of 6 months for those GDFs that become subject to federal Stage I vapor recovery requirements and a compliance date of 12 months after the effective date of the rule for the removal of Stage II vapor recovery systems.

#### Justification for Regulatory Changes

One commenter suggested that the opportunity for job growth as a result of the proposal for those servicing GDFs may be a driving force for the rule changes. The Department explained that the goal of the rulemaking was to reduce emissions of volatile organic compounds (VOCs) in New York State



and that job growth in this sector is merely a consequence of a proposed regulation designed to protect the environment.

### Beyond the Federal Rule

One commenter requested justification for the proposal exceeding the federal GDF standards. The Department defended its position to require medium-sized GDFs in an ozone nonattainment area of the state to comply with federal Stage I vapor recovery requirements to help the state meet the NAAQS and reasonably available control technology (RACT) requirements established under the CAA.

### Emissions

Three commenters expressed that the estimated emission reductions for this proposal are low and would have a very small impact on air quality. The commenters also pointed out that current air quality in New York State is improved as a result of the stay home orders due to the pandemic. Based on the preceding, commenters concluded that new regulations to control air pollutant emissions are unnecessary. The Department conveyed that the state faces a significant health challenge from the effects of ground-level ozone caused, in part, by emissions of gasoline vapors and the importance of reducing any amount of pollutant emissions as necessary. The commenters were also reminded that the CAA requires RACT for VOC sources in areas that do not meet the NAAQS and that New York is required to include permanent enforceable and verifiable emission reductions in the State Implementation Plan (SIP) and we cannot assume that temporary changes in emissions due to the pandemic will become permanent.

### Compliance Costs

Two commenters were concerned that the costs imposed by the regulatory changes were underestimated and that some were unjustified. The Department explained that cost estimates were obtained from various GDF service providers currently doing business in New York State and costs can vary from vendor to vendor. It was emphasized that costs are associated with the requirement for medium-sized GDFs in the New York Metropolitan area (NYMA) to comply with the federal Stage I vapor recovery standards but that no new costs are being imposed as a result of any other requirements in the proposed new Part 230.

One commenter suggested high cost for continuous monitoring controls was a regulatory burden. The Department clarified that continuous monitoring of the vapor space was not part of the proposed new Part 230.

Two commenters expressed concerns that submerged fill pipes and dual-point collection systems on all gasoline storage tanks would be overly burdensome on industry. The Department clarified that these vapor control requirements are already mandated for all GDFs in the state by the New York State Fire Code and the federal regulations in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C).

One commenter argued that the removal of Stage II vapor recovery systems was unnecessary. The Department countered that the removal of these systems is being proposed due to equipment incompatibility with ORVR systems installed on approximately 96% of vehicles in the state. Leaving them in place is causing excess emissions of VOC into the atmosphere and the decommissioning of these systems will help New York State attain the ozone standard.

### Cost/Benefit Analysis

Three commenters recommended that the Department redo the cost/benefit analysis that was performed as part of the proposal citing lower emissions from GDFs due to less gas being pumped as result of the pandemic. The Department stressed that the NYMA is still in nonattainment for the ozone NAAQS and emission sources of VOC are required to implement RACT to reduce those emissions under the CAA. The Department further emphasized that New York State is required to include permanent enforceable and verifiable emission reductions in the SIP and cannot base controls on temporary changes in emissions.

### Impact on Small Businesses

Two commenters conveyed that most GDFs are small business being unfairly targeted and adversely affected by the proposed regulation. The Department stated that the proposal is not expected to have unfair or adverse impacts on small businesses since the requirements will apply statewide, in varying degrees, to all GDFs and that the regulation was intended to create air quality benefits for the entire state.

One commenter challenged the estimation of cost savings from the proposal and asserted that any benefits would be in the form of jobs for GDF service providers. The Department explained the cost savings realized by eliminating the need to maintain costly Stage II vapor recovery systems and by reducing lost gasoline product due to the incompatibility of these systems.

One commenter expressed concern that the proposed regulatory changes would impose significant and costly burdens on upstate GDF owners and operators. The Department confirmed there would

be no new costs or compliance burdens for any GDFs outside the NYMA as a result of this proposal since these facilities are already subject to these requirements under the New York State Fire Code and the federal GDF regulation.

### Suggested Alternatives to Proposal

Three commenters expressed that the Department should rescind the current proposal and merely adopt the federal regulation in Subpart 6C. The Department pointed out that a major part of the proposal is adoption of the federal requirements and that not adopting current federal requirements would leave the regulated community with overlapping and contradictory requirements. The regulation goes beyond federal requirements in regards to medium sized GDFs in the NYMA in order to provide necessary emissions reductions in an area of the state that is in nonattainment.

### Requests for Additional Information

One commenter requested information on the modeling that was used to demonstrate when the New York State vehicle fleet would be in “widespread use” – meaning when Stage II was determined to be no longer useful in reducing emissions of VOCs. The Department referenced the analysis performed in 2011 which included modeling of the fleet and explained that the results of that analysis were forwarded to EPA for approval to allow removal of Stage II vapor recovery systems.

### Outside Scope of Rulemaking

Several comments were received that were outside the scope of this rulemaking.

## Assessment of Public Comments

### 6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles

### 6 NYCRR Part 200, General Provisions

Comments received from February 12, 2020 through 5:00 P.M., May 21, 2020

The New York State Department of Environmental Conservation (Department) is proposing a new 6 NYCRR Part 230, “Gasoline Dispensing Sites and Transport Vehicles” (Part 230) and making related changes to Part 200, “General Provisions.” These changes are necessary to update an outdated regulation, adopt the federal Stage I vapor recovery requirements and require the removal of Stage II vapor recovery systems. Many of the comments received focused on timing and the lack of opportunity to comment due to the restrictions put in place over the concerns of COVID-19. Others requested either a full recap or just specific clarifications of the proposed regulatory changes with some concerned about the reasons behind the proposal and those requirements that go beyond the federal rule. Commenters also questioned compliance cost calculations, estimated emission reductions and the impacts on small businesses. Some suggested alternatives to the proposal and asked for additional information. Due to the Governor’s Executive Order directing non-essential meetings/gatherings be suspended or cancelled, no public hearings took place and the public comment period was extended by 30 days. In total, the Department received written comments from seven (7) commenters during the comment period of February 12, 2020 through 5:00 pm on May 21, 2020.

#### General

Comment 1: Commenters thanked the Department for considering their comments. Commenters 5, 6, 7

Response to Comment 1: The Department thanks the commenters for their participation in the rulemaking process.

### Timing

Comment 2: The Department is forging ahead with a non-emergency rulemaking in the midst of the unprecedented COVID-19 pandemic that imposes substantial new costs and compliance burdens on motor fuel retailers whose attention is consumed by the financial, operational, and human impacts of the public health emergency. Many are unemployed yet; the Department of Environmental Conservation is proceeding as if this is the ideal time to pull the trigger on new regulations it has been considering for more than four years. While of little fault of the Department, the rule making now seems very poorly timed. Commenters 4, 6

Response to Comment 2: Part 230 is being revised to update an outdated gasoline vapor recovery rule, incorporate federal requirements to help achieve parity with federal regulations and eliminate the use of obsolete and largely counter-productive vapor recovery equipment for vehicle fuel tanks. Most gasoline dispensing facilities (GDFs) and the owners of gasoline transport vehicles already must comply with the federal requirements incorporated into the proposed new Part 230. Submerged fill pipes are required by the New York State Fire Code for all top-loaded gasoline tanks with capacities greater than 60 gallons. Requirements like “enhanced” Stage I vapor recovery systems, dual-point vapor control systems, new performance test requirements, increased test frequencies and best

management practices are required by the federal regulation for most GDFs as outlined in 40 CFR Part 63 Subpart CCCCCC (Subpart 6C) which has been in effect since January 2008. Likewise for gasoline transport vehicles, the proposal to require cargo tank test marking consistent with the federal Department of Transportation (DOT) requirements are already required for all gasoline transport vehicles under the DOT regulation and the proposed change to the recordkeeping retention requirements for testing of these vehicles is currently also part of the federal requirements in Subpart 6C.

At a time when we are faced with a pandemic that adversely affects the lungs, it has never been more important to have clean air to breathe. Attainment of the National Ambient Air Quality Standards (NAAQS) is required by Title I of the Clean Air Act (CAA) and minimizing emissions of volatile organic compounds (VOCs), one of the precursors of ground level ozone pollution, helps New York State to attain those ambient air standards.

#### Opportunity for Public Participation

Comment 3: The Department planned to hold public hearings at various locations throughout the state convenient for persons from small businesses and local governments to participate. The decision by the Department to cancel the public hearings for the proposed new Part 230, which enables input from stakeholders, prevented an important public participation opportunity for the regulated community to fully access and respond to the impacts of the rule. A vast majority of gas station and convenience stores owners have otherwise been preoccupied by the pandemic which has disrupted the industry and need more time for a thorough review of the regulation. To provide a fair

rulemaking process, we recommend the Department extend the comment period and delay the effective date of the rule. Commenters 4, 5, 6

Response to Comment 3: The rulemaking process involves several mechanisms that provide an opportunity for public comment on proposed regulatory changes. The proposed new Part 230 was made available for public comment on February 12, 2020 when it was published in the New York State Register and made accessible through the DEC website. Another opportunity to provide comments on the rule would have been during public hearings that were scheduled to take place in April 2020. The cancellation of these hearings was a result of the PAUSE Order, Executive Order 202 and subsequent additions, issued by Governor Cuomo directing non-essential meetings/gatherings to be suspended or cancelled. To promote fair public input by providing further opportunity to comment, the Department subsequently extended the public notice period for 30 additional days. The Department believes this was a sufficient amount of time to allow meaningful input in addition to the initial opportunity for participation provided during the stakeholder meetings held on October 16<sup>th</sup>, 18<sup>th</sup>, and 20<sup>th</sup> in 2017 to discuss the likely elements of the proposed new Part 230 and to obtain feedback. The comments received from these stakeholder meetings, as well as additional input received during the entire stakeholder outreach process, were also considered in developing this proposal. Additionally, written comments are given the same consideration as oral comments that are provided in a public hearing setting. Based on the above, the Department does not believe that anyone was deprived of their opportunity to participate in this rulemaking effort.

Comment 4: The New York State Association of Service Stations & Repair Shops (NYSASSRS) filed a Freedom Of Information Law (FOIL) request on May 21, 2020 for testing data and analysis of Stage I vapor recovery systems in the State of New York for the period from January 1, 2019 to May 21,



2020 and expressed concern that they would not receive a response prior to the close of the public comment period which ended on May 21, 2020. Commenter 5

Response to Comment 4: Filing a request for information through the FOIL on the closing day of the comment period would not allow enough time for the Stage I vapor recovery test information requested to be made available by the end of the comment period. A response to the request was provided on August 3, 2020.

#### Regulatory Clarification

Comment 5: Clarify the proposal and its intent. Include changes the service stations need to make, the cost of the changes, and whether an economic study has been done to verify the necessity of these changes. Commenter 1

Response to Comment 5: The proposed new Part 230 and all the supporting documents were filed with the Department of State (DOS) on February 12, 2020 and subsequently published in the New York State Register. The package was also posted to the DEC website, published in newspapers around the State and published in the Environmental News Bulletin (ENB) on that date. These documents provide the changes made to Part 230 as well as the rationale for the proposed requirements. In addition, meetings with stakeholders were held on October 16, 18, and 20, 2017 to discuss the proposal, answer questions and listen to feedback from those in attendance. The Department responded to various email inquiries following those meetings. The express terms and supporting documents clearly outline the changes to the Part 230 regulation, the reasons for those changes, and the associated costs and benefits provided by the anticipated emission reductions as a result of the changes to the rule.

Comment 6: It is confusing to use the term “phase-in” requirements are no longer applicable. It appears this is referring to the original phasing in of Stage I and Stage II requirements in New York State, not phasing out the onboard refueling vapor recovery (ORVR) equipped vehicles due to widespread use (the focus of this Proposed Rule). The *EPA Guidance on Removing Stage II Gasoline Refueling Vapor Recovery Programs from State Implementation Plans, August 7, 2012* (the EPA Guidance) uses the term “phase in” to refer to the gradual increase in the number of ORVR-equipped vehicles on the road, and the term “phase out” refers to assessing the period of time when it’s safe to decommission the Stage II vapor recovery system. Commenter 2

Response to Comment 6: The commenter is correct that the term “phase-in” requirements is the term used in the current Part 230 regulation to reference the registration of gasoline dispensing sites pursuant to 6 NYCRR Part 201 as required by 6 NYCRR Part 230.7, “Registration Schedules.” This term is not referring to the status of ORVR-equipped vehicles.

Comment 7: It is unclear if the self-employed will be required to have certification, and, if so, the type of certification. Commenter 2

Response to Comment 7: Proposed new Part 230 requires all companies that are performing vapor recovery tests to provide written certification to the Department affirming that all compliance testing will be conducted by properly trained staff and in accordance with established procedures and protocols. This will include self-employed testers.

Comment 8: Please check the GDF figures that are referenced throughout the Proposed Rule. These figures appear to be contradictory, such as, 7,540 (retail stores) and 7,277 (GDF) and 3,387 (GDF) and 3,545 (GDF). Commenter 2

Response to Comment 8: The number of GDFs affected by varying regulatory requirements are specific to the facts of each section. For instance, not all GDFs may be subject to the federal “enhanced” Stage I vapor recovery requirements. Only those located in the New York Metropolitan Area (NYMA) with annual throughputs of 800,000 gallons or more and those located outside the NYMA with annual throughputs of 1,200,000 gallons or more would be included in the number of sites subject to the “enhanced” Stage I requirements. Similarly, different amounts of GDFs are subject to submerged fill requirements, best management practices, non-federal Stage I requirements, dual-point vapor recovery systems requirements, performance testing requirements, and decommissioning requirements.

Comment 9: Please check the Proposed Rule regarding the references for “moderate” and “serious” ozone nonattainment areas. In two places the NYMA is generically referenced as being “moderate”. On August 23, 2019 the EPA reclassified the NYMA to “serious,”

<https://www.federalregister.gov/documents/2019/08/23/2019-17796/determinations-of-attainment-by-the-attainment-date-extensions-of-the-attainment-date-and>.

Under the section called Job Impact Statement, the NYMA is correctly referred to as “serious” for 2008 and “moderate” for 2015.

Commenter 2

Response to Comment 9: The commenter is correct that page 2 of the Rural Area Flexibility Analysis (RAFA) states that “The NYMA is designated as a moderate ozone nonattainment area and further reductions in VOC emissions will help achieve the NAAQS for ground level ozone.” Likewise, page 2 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG) reads, “The NYMA is designated as a moderate ozone nonattainment area and further reductions in VOC emissions are necessary to achieve the NAAQS for ground level ozone.” (emphasis added). The attainment status will be corrected to read “serious,” in these documents.

Comment 10: Please make it clear what the compliance date is for the actions in this Proposed Rule. Is it 6-month or 12-month compliance period? Is the compliance period the same for large and medium GDF, for rural areas or for the NYMA? Commenter 2

Response to Comment 10: Proposed Part 230 requires those GDFs located in the NYMA with annual throughputs greater than or equal to 800,000 gallons but less than 1,200,000 gallons to come into compliance with all applicable requirements within six months after the effective date of the rule. It also requires any GDF, as defined in Part 230.2(b)(5), that becomes subject to any Stage I vapor recovery requirement due to an increase in monthly throughput to come into compliance with any applicable regulations within 6 months of any such increase. For those GDFs required to remove Stage II vapor recovery systems, the compliance date is within 12 months after the effective date of the rule.

#### Justification for Regulatory Changes

Comment 11: The Notice of Proposed Rulemaking glowingly predicts job growth for those who install, repair, or test gasoline dispensing equipment, prompting some gas station owners to wonder the extent to which those trades are driving this policy initiative. Commenter 4

Response to Comment 11: The Department's proposal to revise Part 230 was intended to advance progress towards attaining the ozone NAAQS in New York State by further reducing VOC emissions from the operations of GDFs and gasoline transport vehicles. VOC emissions that occur during the transfer of gasoline can be significant. Opportunities for vapor loss at GDFs occur during the loading of gasoline storage tanks, refueling of vehicles, and periods of inactivity. Vapor recovery measures at GDFs help to reduce VOC emissions into the atmosphere. Additional job opportunities for those who provide products or services to owners and operators of GDFs and gasoline transport vehicles is a consequence of many regulations that are designed to protect the environment.

#### Beyond the Federal Rule

Comment 12: The proposed regulation exceeds EPA standards. The justification for exceeding these federal standards is illusory, particularly in view of evidence that atmospheric environmental emissions are at historic lows. While this phenomenon is undoubtedly at least partially related to the COVID-19 reduction in travel there should be additional data gathering and analysis to establish an appropriate baseline before burdening the economy with additional regulatory compliance and expense. Commenter 5

Response to Comment 12: New York State, as part of its State Implementation Plan (SIP), must seek reductions of VOC emissions from all sources in order to attain the mandated ozone air quality

standards. Extending the federal “enhanced” Stage I vapor recovery requirements to include medium-sized GDFs located in the NYMA with annual gasoline throughputs of between 800,000 and 1,200,000 gallons is necessary to achieve these VOC emission reductions in a critical nonattainment area. Vapor recovery measures at GDFs help to reduce the amount of VOC emitted into the atmosphere. The requirement for these medium-sized GDF owners to install and operate an “enhanced” Stage I vapor recovery system that meet the latest federal requirements in Subpart 6C will require some owners to install vapor-tight fill caps, pressure/vacuum (P/V) vent valves as well as swivel vapor and product adaptors. Most medium-sized GDFs in the NYMA already operate Stage I vapor recovery systems that meet the “enhanced” system requirements. However, others will be required to install vapor and product adaptors and P/V vent valves. P/V vent valve costs range from \$50 to \$250, while swivel adaptors are approximately \$250 each. Most medium-sized GDFs, without an “enhanced” Stage I system, will be required to install one P/V vent valve, one vapor adaptor and three product adaptors. This totals about \$1,150 in new costs for those medium-sized GDFs requiring new system components. Add to this a cost of approximately \$500 every 3 years instead of \$500 every 5 years to account for the increased frequency in testing. With emission reductions of approximately 151 tons per year, the Department has calculated the cost per ton for VOC emission reductions to be \$6,357 per ton. This is well within the \$8,788 per ton Reasonably Available Control Technology (RACT) threshold for VOC sources in the NYMA required by the CAA on existing sources of air pollution in areas that do not meet the ozone NAAQS.

### Emissions

Comment 13: The rulemaking states that the federal enhanced Stage I systems “achieve greater emission reductions than the Stage I systems currently allowed under the existing Part 230 state

regulation.” We don’t doubt that. The point is that the Department has not contextualized the emission reduction objectives. How many tons of VOCs are emitted in the NYMA from all sources annually? Would the 151 tons of VOCs represent a five percent reduction? Ten percent? One one-thousandth of one percent? The bottom line is, how materially would this policy, if adopted, impact NYMA air quality? Respectfully, we question whether the Department has made a convincing case, particularly considering changes in environmental conditions attributable to the lockdown. Commenter 4

Comment 14: Questions such as the frequency of inspections, the amount of vapor captured, and the environmental significance of any non-recaptured vapor should also be determined in order to set reasonable, necessary and responsible regulatory standards. The public hearing schedule, which is now on hold due to COVID-19, should also be indefinitely postponed or cancelled until the condition’s precedent, as outlined above, can be achieved, and made publicly available. Commenter 5

Comment 15: The Department’s justifications for the rulemaking need to be reevaluated based on current events. As you are undoubtedly aware, an unanticipated impact of COVID-19 is the generally positive affect that the government lock down response has had on air quality. With many industries shut down and restrictions on the movement of workers, the 80%-90% collapse of air travel, and extensive decreases in the number of vehicle miles driven especially in the metropolitan area, the impact on air quality is measurably improved. This outcome reduces the need, at least for the immediate future, to implement these new burdensome regulations. Commenter 6

Response to Comments 13-15: Adoption of the federal “enhanced” requirements for Stage I systems in the proposed new Part 230 for GDFs in the NYMA with annual throughputs between 800,000 and

1,200,000 gallons will create additional VOC emission reductions of approximately 151 tons per year. All types of regulations in New York State contribute to the effort of reducing emissions of VOCs to help in attaining the mandated ozone air quality standard and 151 tons per year is not an insignificant amount of emissions. New York State faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death.

The CAA requires RACT on existing sources of air pollution in areas like the NYMA that do not meet the ozone NAAQS. "RACT" is the "lowest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility." Economic feasibility is determined by comparing the cost per ton of VOC emission reductions to the established cost threshold for RACT. This inflation-adjusted cost threshold for VOC sources in the NYMA is \$8,788 per ton. For the medium-sized GDFs located in the NYMA, the Department expects the cost per ton for VOC emission reductions to be \$6,357 per ton. This is within the confines of the RACT requirement set by the CAA.

New York State is also required to include permanent enforceable and verifiable emissions reductions in the SIP and cannot base controls on temporary changes in emissions due to the pandemic. The commenters are correct that air quality has undoubtedly been affected by the response to the pandemic, but it is not expected that the effects of the COVID-19 pandemic on air quality in recent months will be lasting. It is the Department's responsibility to make certain that current and proposed regulations work to maintain and improve air quality.

### Compliance Costs



Comment 16: The New York Association of Convenience Stores (NYACS) urges the Department to revisit the underlying justification for the cost mandates this rulemaking would impose upon gas station and convenience store owners. The Long Island Gasoline Retailer's Association (LIGRA) points out the Department estimates that requiring most medium-sized GDFs without an "enhanced" Stage I system to install one P/V vent valve, one vapor recovery adaptor and three product adaptors would cost \$1,150. On the contrary, estimates we have received related to those same costs are in the range of 4 to 5 times that amount. Commenters 4, 6

Comment 17: We are curious about the source, and skeptical about the accuracy, of the \$1,150 cost estimate per location. We believe the cost would be two to three times higher. However, if the Department is confident in this estimate, perhaps the rulemaking could be amended to provide that no contractor may charge more than that amount for those services at any retail location.

Commenter 4

Comment 18: The Department's Regulatory Impact Statement and Jobs Impact Statement severely underestimate the costs. For example, the Department proposes to adopt the federal requirements of Subpart 6C for "enhanced" Stage I vapor recovery control, submerged filling, dual-point vapor control systems, new performance testing and best management practices in new Part 230. Such new testing requirements are proposed to be extended to medium-sized GDFs not covered by the federal rule. Additionally, new Part 230 proposes to increase the frequency of performance testing and decommission all remaining Stage II vapor recovery systems. Commenter 6

Response to Comments 16-18: Any new costs associated with New York's proposed new Part 230 would be imposed upon GDFs in the NYMA with annual throughputs between 800,000 and 1,200,000 gallons. The requirement for these medium-sized GDF owners to install and operate an "enhanced" Stage I vapor recovery system that meets the latest federal requirements adopted as part of the new Part 230 will require vapor connections equipped with closures that seal upon disconnect, vapor-tight fill caps, pressure/vacuum (P/V) vent valves, and swivel vapor and product adaptors. The rationale for the rule assumes a typical facility in which all the gasoline storage tanks are manifolded together and are equipped with a vapor port fitted with a "vapor poppit" that closes when the vapor hose is disconnected. Based on this, GDFs in the NYMA that fall into this throughput range would only need to install one P/V vent valve, one vapor adaptor and three product adaptors. Estimates were obtained from several GDF service providers, resulting in P/V vent valve costs ranging from \$50 to \$250 each and swivel adaptors were projected to cost approximately \$250 each. This totals about \$1,150 in new costs for those medium-sized GDFs requiring these new system components. Add to this a cost of approximately \$500 every 3 years instead of \$500 every 5 years to account for the increased frequency in testing. Cost of equipment varies from vendor to vendor and the Department has no control over these costs.

No new costs are associated with the requirement to install and operate federal Stage I vapor recovery systems at GDFs with annual throughputs of 1,200,000 gallons or greater, anywhere in the state, since these systems are already required by federal regulation.

No new costs to GDFs are associated with the requirement to install a dual-point collection system on new or reconstructed gasoline storage tanks because these systems are already required by existing federal regulation.

No new costs are associated with the submerged filling requirement as all GDFs are currently required to fill gasoline storage tanks greater than 60 gallons using submerged fill pipes under the current New York State Fire Code.

No new costs are associated with the proposed requirements for best management practices as these are already required by federal regulation.

Costs associated with the required removal of Stage II vapor recovery systems will be offset by the costs GDF owners subject to these requirements currently spend annually on maintenance and performance testing of these systems as well as the cost of lost product due to the incompatibility of these systems with ORVR. The removal of these systems will require the disconnection and capping of the Stage II vapor recovery line, removal or disconnection of any vacuum pump, and the replacement of hanging hardware. Costs have been estimated at \$2,400 for a typical station. The combined savings of the average \$2000 GDFs spend annually to maintain these systems and conduct the required Stage II performance tests with the cost savings of gasoline due to less vapor losses results in no net cost for the facility to decommission.

Comment 19: The economic costs of installation of monitoring and vapor recovery equipment can be up to \$20,000 per station. Without a statistically fact-based cost benefit analysis the imposition of additional regulatory burdens is arbitrary. Commenter 5

Response to Comment 19: The proposed new Part 230 does not include monitoring of the vapor space inside the storage tanks. The cost benefit analysis for requirements in the proposed new Part 230 are discussed in the Regulatory Impact Statement (RIS).

Comment 20: What little review our Association has been able to do up till now raises several concerns. New proposed submerged filling requirements for all gasoline storage tanks at GDFs that go beyond federal requirements and adding enhanced performance test requirements for vapor recovery systems have the potential to be overly burdensome. Neither action now seem justified as the volume of gasoline being pumped on Long Island has fallen by 70%-75%, by our estimate.

Commenter 6

Comment 21: Specifically we are concerned with the mandate requiring that all fuel tanks with capacities exceeding 250 gallons be capable of submerged fill, meaning equipped with a metallic pipe that terminates within 6 inches of the bottom of the tank which is designed to minimize vapor emissions and the generation of static electricity. The Business Council is not submitting comments to debate that discouraging 'splash' fill does in fact reduce emissions, but rather to highlight the significant compliance burdens that will be imposed on the owners of smaller, older tanks, namely the costs associated with retrofitting or replacing existing equipment. We raise similar concerns

regarding the extensive and costly undertaking required to retrofit existing co-axial systems to 'dual-point' Stage I vapor recovery.

These regulations could also impose administrative difficulties for DEC which would require to, on a case-by-case basis, verify the size of a given tank and determine if it has been retrofitted with a submerged fill which terminates within 6 inches of the bottom.

The Business Council suggests that it could be less burdensome for this rule to be applied prospectively, capturing only those tanks installed after the effective date which incorporate submerged fill into their design. DEC could provide flexibility by granting exemptions for those tanks determined to be functional and safe, thus allowing them to be removed from service through natural attrition. Commenter 7

Response to Comments 20-21: All gasoline storage tanks with capacities of at least 60 gallons are required to be equipped with submerged fill pipes that terminate within 6 inches from the bottom of the tank in accordance with the New York State Fire Code (See Chapter 2 and 57). GDFs are defined as "[a] site where gasoline is dispensed into motor vehicle fuel tanks or into portable containers from a stationary gasoline storage tank larger than 250 gallons." Since storage tanks located at all GDFs have capacities that are greater than 60 gallons, submerged fill is already required. Similarly, dual-point collection systems on new or reconstructed gasoline storage tanks are already required by existing federal regulation for GDFs.

The federal Stage I performance test requirements adopted into the proposed new Part 230 already apply to all GDFs with annual throughputs of 1,200,000 gallons or greater in all areas of New York State. While GDFs in the NYMA with annual throughputs between 800,000-1,200,000 gallons will now be subject to the federal performance test requirements, vapor balance testing is not a new requirement for these facilities. Similar performance testing is currently and has been required under Part 230 for all GDFs in the NYMA regardless of throughput. What is new is that the frequency for vapor balance testing of the system has increased from once every 5 years to once every 3 years to match the federal requirement for vapor tightness testing.

Comment 22: The mandated removal of Stage II equipment is arguably unnecessary. The action now seems unjustified as the volume of gasoline being pumped on Long Island has fallen by 70%-75%, by our estimate. Commenter 6

Response to Comment 22: The requirement for the removal of Stage II vapor recovery systems in new Part 230 is being proposed due to equipment incompatibility with ORVR systems. ORVR systems are vehicle emission control systems required by the CAA that capture fuel vapors from the vehicle gas tank during refueling. ORVR systems, which are installed in approximately 97 percent of vehicles in New York State, eliminate the need to have GDFs equipped with the special nozzles and vapor return lines that are required by Stage II vapor recovery systems. Modeling has shown that yearly emissions are increasing due to the incompatibility of Stage II and ORVR systems. Removal of these systems will help New York State attain the ozone standard.

## Cost/Benefit Analysis

Comment 23: In November of 2107 we were discussing changes to Stage I Vapor Recovery on service stations. There were several proposals that would have cost the service station dealers for new equipment, and there were no studies to show that the new technology was necessary or worked, or was any economic study done to indicate the expense that the service stations would incur. Commenter 1

Comment 24: With businesses, schools, and daily life coming to a virtual halt amid the pandemic, New York has experienced a plunge in retail gasoline demand. This has not only eroded the ability of affected businesses to afford the new cost mandates being proposed but has wreaked havoc with the Department's underlying emission reduction assumptions and cost-benefit analysis. How have air quality conditions in the New York Metropolitan Area changed in the past 10 weeks? With 50 percent less gasoline being pumped into vehicles, are the 851 medium-sized NYMA gas stations currently emitting the equivalent of 151 tons of VOCs per year as estimated in the rulemaking? Based on the current emissions level, is the \$6,357-per-ton cost of VOC emission reductions still valid? Does it still fall below the RACT threshold? Commenter 4

Comment 25: The economic impact analysis accompanying the regulatory proposal is likewise suspect. Gasoline sales and convenience store revenues for our members continue to plunge – some 40%-45% since the economic shutdown was implemented. Thus, compliance cost impacts to station owners and operators as estimated in the proposal are likely not a reflection of the current reality. This further adds to the argument that the regulatory action's cost-to-benefit claims need time to be scrutinized and very likely recalculated. Commenter 6

Response to Comments 23-25: At this time, the NYMA is still in nonattainment for the ozone NAAQS. Emission sources of VOC located within designated ozone nonattainment areas in New York State must implement RACT to reduce those emissions. RACT is based on economic feasibility which is determined by comparing the cost per ton of VOC emission reductions to the established cost threshold for RACT. The Department has performed a RACT analysis of the costs associated with the proposed new Part 230. In addition, New York State is required to include permanent enforceable and verifiable emissions reductions in the SIP and cannot base controls on temporary changes in emissions due to the pandemic.

#### Impact on Small Businesses

Comment 26: The proposed rule, published in the February 12 State Register, stated that “small businesses...are not specifically adversely affected by the proposed revisions.” NYACS and LIGRA both conveyed that most of their members are small, family owned businesses, who are the targets of the regulation, and that it is they who will be negatively affected. Commenters 5, 6

Response to Comment 26: The proposed rulemaking is intended to create air quality benefits for the entire state through the reduction of ozone forming pollutants. These changes are not expected to have unfair or adverse impacts on small businesses since the same requirements will apply statewide in varying degrees depending upon annual throughput of the GDF.

Comment 27: The Job Impact Statement estimates that our members should save \$2,000 annually because the proposal eliminates yearly maintenance costs. We challenge this assumption that there



will be cost savings realized by many of our stations from this proposal. In fact, according to the Department's analysis, essentially all job benefits are attributed to additional work that contractors, manufacturers and suppliers will have from servicing and selling equipment to stations because of the new mandates. It is the smaller, independent gas station businesses already crippled by the financial downturn and loss of business that will suffer. Commenter 6

Response to Comment 27: The Department received annual cost estimates for the maintenance, repair and testing of Stage II vapor recovery systems as required by the Part 230 regulation from various GDF contractors in New York State. These cost estimates averaged \$2,000 annually. Removal of these systems would eliminate these costs. In addition, Stage II vapor recovery systems were determined to be incompatible with vehicle ORVR systems by EPA and found to be adding to vapor losses which equates to lost gasoline. Hence, a cost savings is realized by eliminating the need to maintain, repair and test these systems and by eliminating the loss of product. Together, these savings will offset the expense of removal of Stage II vapor recovery systems. The Department believes that this rule will have a positive economic impact on all GDFs due to better containment of vapors and reduced product loss.

New costs as a result of the proposed new Part 230 will not be imposed on GDFs with annual throughputs less than 800,000 gallons. It is the medium-sized GDFs in the NYMA with throughputs between 800,000-1,200,000 gallons per year that may incur additional cost based on the new requirements. All others are already subject to the new requirements because of Subpart 6C, federal DOT regulation, and the New York State Fire Code and should bear no additional costs as a result of this regulation.

Comment 28: The Business Council serves as an advocate for employers in the State working for a robust business climate, economic growth, and jobs. Upon information and belief, the regulatory changes the DEC would pose significant and costly burdens on upstate companies. Commenter 7

Response to Comment 28: There are no new costs associated with GDFs outside of the NYMA as a result of the new Part 230. Federal “enhanced” Stage I requirements for GDFs with annual throughputs of 1,200,000 gallons or more, which includes dual-point vapor recovery systems for gasoline storage tanks and performance testing, have been required under EPA regulation since January 10, 2008. Submerged filling for gasoline storage tanks over 60 gallons is already required by the New York State Fire Code.

#### Suggested Alternatives to Proposal

Comment 29: It is our opinion that very little is needed to accommodate EPA regulations and that the most that should be done is that inspections need to be done every three years. We demand that the efforts to update the Stage I Regulation(s) be dropped forever or at the very least, adopt the current EPA Regulation on the subject. Commenters 1, 3

Comment 30: Of course, the only way the rulemaking can significantly create jobs in the pump-and-tank industry is forcing retailers to pay them significantly more money to perform additional services. The filing says the 851 medium-sized GDFs located in the Metro area will spend an average \$1,150 for the upgrade to federal enhanced Stage I and to perform more frequent vapor-tightness testing.

That's a total of \$978,650 that the affected gas station owners could use to create or retain jobs *in their own businesses* if DEC opted to merely conform to the EPA requirements. Commenter 4

Response to Comments 29-30: A major part of the changes to proposed new Part 230 includes the adoption of the federal requirements in Subpart 6C to bring the State regulations in line with the requirements of the federal rule. Adopting the federal requirements of Subpart 6C which includes federal Stage I vapor recovery equipment, submerged filling, dual-point vapor control systems, improved performance test requirements, increased testing frequencies and best management practices would sync the state's regulations with existing federal requirements. Not adopting the federal regulations would leave the regulated community with a mix of overlapping and contradictory requirements as outlined in the RIS.

To go beyond the federal rule by requiring GDFs in the NYMA with annual throughputs between 800,000 and 1,200,000 gallons to install more effective Stage I vapor recovery controls provides the necessary emission reductions in an area of the State in nonattainment for the ozone NAAQS. Ground-level ozone poses a significant public health challenge causing health effects ranging from respiratory disease to death. Regulating VOC emissions at as many sources as possible is necessary. Reduction of harmful pollutants will provide better air quality to all citizens of New York State.

[Requests for Additional Information](#)

Comment 31: “The required removal of Stage II vapor recovery systems is being proposed due to equipment incompatibility with ORVR. As ORVR becomes more widespread, the counterproductiveness of Stage II increases. Modeling has shown that the percentage of vehicles equipped with ORVR in New York State is high and that excess emissions are starting to increase because of incompatibility problem with Stage II systems.” An explanation of what modeling was used to demonstrate the high number of ORVR-equipped vehicles, and what is meant by a “high” measure, and when was that measure achieved, would be helpful. When this Proposed Rule is submitted to the EPA for approval, it would be helpful to include these modeling results. Commenter 2

Response to Comment 31: The Department utilized MOBILE 6 modeling in 2011 to project the number of vehicles in the New York State fleet equipped with ORVR for various years and the emissions resulting from the use of both Stage II vapor recovery and ORVR controls. In 2011, the model showed that 78% of vehicles in New York State were found to be equipped with ORVR which was considered “high” since, at the time, 86% of motor vehicles with ORVR in a fleet was considered by EPA to be “wide-spread use” – the point when the emissions from using Stage II vapor recovery control plus ORVR controls would exceed emissions from just having ORVR alone. The modeling also showed that, by 2013, 88% of vehicles in the fleet would be equipped with ORVR and the New York State fleet would be in “wide-spread use”. The results of the modeling were then used in an analysis demonstration for “wide-spread use” of ORVR as prescribed by “EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures”, EPA-457/B-12-001, August 7, 2012. The results of the modeling and the analysis were forwarded to EPA for approval to allow removal of Stage II vapor recovery systems.

### Outside Scope of Rulemaking

Several comments were received that were outside the scope of this rulemaking.

### Commenter List:

1. New York State Association of Service Stations & Repair Shops, Albany, NY
2. United States Environmental Protection Agency
3. New York State Association of Service Stations & Repair Shops, Albany, NY
4. New York Association of Convenience Stores, Albany, NY
5. New York State Association of Service Stations & Repair Shops, Albany, NY
6. Long Island Gasoline Retailers Association, Melville, NY
7. New York State Business Council