MICHIGAN DEPARTMENT OF AGRICULTURE
FOOD DIVISION
P.O. Box 30017, Lansing, Michigan 48909

MOTOR FUELS QUALITY ACT

(Act No. 44, Public Acts of 1984, as amended)

Effective November 18, 1993

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MOTOR FUELS QUALITY ACT

Act 44 of 1984

AN ACT to provide purity and quality standards for motor fuels; to regulate the transfer, sale, dispensing, or offering motor fuels for sale; to provide for an inspection and testing program; to provide for the powers and duties of certain state agencies; to provide for the licensing of certain persons engaged in the transfer, sale, dispensing, or offering of motor fuels for sale; to regulate stage I and stage II vapor-recovery systems at certain facilities; to provide for fees; and to provide remedies and prescribe penalties.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993.

The People of the State of Michigan enact:

290.642 Definitions.

Sec. 2. As used in this act:

(a) "Additive" means any substance in gasoline other than gasoline but does not include approved blending components, other than lead, sodium, and phosphate components, introduced at refineries or terminals as octane or product quality enhancers in quantities of less than 1% of volume.

(b) "American society for testing and materials" means an international nonprofit scientific and educational society devoted to the promotion of knowledge of the materials of engineering and the standardization of specification and methods of testing.

(c) "Antiknock index" or "AKI" means an index number arrived at by adding the motor octane number and the research octane number, then dividing by 2.

(d) "Blender" means a person who as an individual or through his or her agent adds an oxygenate to a gasoline.

(e) "Bulk purchaser-end user" means a person who is an ultimate consumer of gasoline and receives delivery of gasoline into a storage tank of at least 550-gallon capacity substantially under his or her control.

(f) "CARB" means the California air resources board.

(g) "Delivery vessel" means a tank truck, tank equipped trailer, or a similar vessel used for the delivery of gasoline to a dispensing facility.

(h) "Department" means the department of agriculture.

(i) "Director" means the director of the department of agriculture or his or her authorized representative.

(j) "Dispensing facility" means a site used for vehicle gasoline refueling that is located in an area of this state that has been designated as ozone nonattainment and classified as moderate, serious, severe, or extreme by the E.P.A. pursuant to 40 C.F.R. section 81.323, November 6, 1991. Dispensing facility does not include a facility used exclusively for the refueling of aircraft, watercraft, or vehicles that are designed for agricultural purposes and used exclusively in agricultural operations.

(k) "Dispensing unit" means a device designed for the delivery of gasoline in which 1 nozzle equates to 1 dispensing unit.

(*l*) "Distributor" means a person who purchases, transports, or stores or causes the transportation or storage of gasoline at any point between a gasoline refinery and a retail outlet or bulk purchaser-end user facility.

(m) "E.P.A." means the United States environmental protection agency.

(n) "Gasoline" means any fuel sold in this state that is suitable for use in spark-ignition internal combustion engines, and commonly or commercially known or sold as gasoline.

(o) "Leak" means liquid or vapor loss from the gasoline dispensing system or stage I or stage II vapor-recovery system as determined by visual inspection or functional testing.

(p) "Modification" means any change, removal, or addition, other than an identical replacement, of any component contained within a stage I or stage II vapor-recovery system. The resultant modification must constitute an approved vapor-recovery system.

(q) "Motor octane number" or "MON" means a knock characteristic of gasoline determined by use of standard procedures on a motor engine.

(r) "Operator" means a person who owns, leases, operates, manages, supervises, or controls, directly or indirectly, a gasoline-dispensing facility.

(s) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as alcohol or ether, that may be used as fuel or fuel supplement.

(t) "Person" means an individual, sole proprietorship, partnership, corporation, association, or other legal entity.

(u) "Refiner" means a person who owns, leases, operates, controls, or supervises a refinery.

(v) "Refinery" means a plant at which gasoline is produced.

(w) "Research octane number" or "RON" means a knock characteristic of gasoline determined by use of standard procedures on a research engine.

(x) "Retail dealer" means a person who owns, leases, operates, controls, or supervises a retail outlet.

(y) "Retail outlet" means an establishment at which gasoline is sold or offered for sale to the public.

(z) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(aa) "Stage I vapor-recovery system" means a vapor tight collection system that is approved by the department and is designed to capture the gasoline vapors displaced during delivery into a stationary storage tank and to return not less than 90% of the displaced vapors to the delivery vessel.

(bb) "Stage II vapor-recovery system" means a gasoline-dispensing system approved by the department that prevents 95% or more of the volatile organic compounds from being emitted during gasoline refueling.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1986, Act 127, Eff. Aug. 1, 1986;—Am. 1988, Act 84, Imd. Eff. Mar. 29, 1988;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993

290.643 Establishment of standards by rules.

Sec. 3. (1) The director shall establish standards pursuant to this act to ensure the purity and quality of gasoline sold or offered for sale in this state.

(2) The director shall establish standards for the amount and type of additives allowed to be included in gasoline.

(3) The director shall establish standards for the grading of gasoline, including, but not limited to, leaded subregular with a minimum 87 AKI, leaded regular with a minimum 89 AKI, leaded premium with a minimum 93 AKI, unleaded subregular with a minimum 85 AKI, unleaded regular with a minimum 87 AKI and a minimum 82 MON, unleaded midgrade 88 with a minimum 88 AKI and minimum 82 MON, unleaded midgrade 89 with a minimum 89 AKI and a minimum 83 MON, unleaded premium with a minimum 90 AKI, and grades for alcohol fuels. Leaded gasoline with a 94 AKI or more, and unleaded gasoline with a 91 AKI or more, may be offered for sale labeled with the minimum AKI number if the gasoline has been listed with and approved by the department. The leaded gasoline with 94 AKI or more shall be labeled as leaded premium followed by the approved AKI number, and the unleaded gasoline with 91 AKI or more shall be labeled unleaded premium followed by the approved AKI number.

(4) The director shall establish standards for Reid vapor pressure as specified by the American society for testing and materials, except as otherwise required to conform to federal or state law. The director shall establish the Reid vapor pressure as 9.0 pounds per square inch (psi) for retail outlets during the period beginning June 1 through September 15 of each year, except for dispensing facilities where the director shall establish the Reid vapor pressure as 7.8 psi in the year 1996 and thereafter. As used in this subsection and section 10d, "Reid vapor pressure" means the vapor pressure of gasoline or gasoline oxygenate blend as determined by ASTM test method D323, standard test method for vapor pressure of petroleum products (Reid method) or test method D4953, standard test method for vapor pressure of gasoline and gasoline oxygenate blends (dry method).

(5) In establishing additive and grading standards the director shall adopt the latest standards for gasoline established by the American society for testing and materials and shall adopt the latest standards for gasoline established by federal law or regulation. The standards established by the director shall not prohibit a gasoline blend that is permitted by a valid waiver granted by the United States environmental protection agency pursuant to the fuel or fuel additive waiver in section 211(f)(4) of part A of title II of the clean air act, chapter 360, 81 Stat. 502, 42 U.S.C. 7545, and the ethanol waiver of 1.0 psi in section 211(h)(4) of part A of title II of the clean air act, chapter 360, 81 Stat. 502, 42 U.S.C. 7545, if the gasoline blend meets all of the conditions set forth in the waiver.

(6) Standards established pursuant to this section shall be by rules promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1988, Act 84, Imd. Eff. Mar. 29, 1988.—Am. 1993, Act 231, Imd. Eff. Nov. 13, 1993.

290.645 Prohibitions; contents of bill, invoice, or other instrument evidencing delivery of gasoline; violation; liability; disposition of civil fine.

Sec. 5. (1) Except as provided by federal law or regulation, in the manufacture of gasoline at any refinery in this state, a refiner shall not manufacture gasoline at a refinery in this state unless the gasoline meets the requirements in section 3. Except as provided by federal law or regulation, a blender shall not blend gasoline unless the finished blend meets the requirements in section 3.

(2) Except as provided by federal law or regulation, a distributor shall not sell or transfer to any distributor, retail dealer, or bulk purchaser-end user any gasoline unless that gasoline meets the requirements in section 3.

(3) A carrier or an employee or agent of a carrier, whether operating under contract or tariff, shall not cause gasoline tendered to the carrier for shipment or transfer to another carrier, distributor, or retail dealer to fail to comply, at the time of delivery, with the requirements in section 3.

(4) A person shall not knowingly sell, dispense, or offer for sale gasoline unless that gasoline meets the requirements in section 3.

(5) A refiner or distributor shall not transfer, sell, dispense, or offer gasoline for sale in this state to a distributor unless the refiner or distributor indicates on each bill, invoice, or other instrument evidencing a delivery of gasoline, the name and wholesale distributors license number issued pursuant to Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.202 of the Michigan Compiled Laws, of the wholesale distributor who received delivery of the gasoline.

(6) A distributor or refiner shall not transfer, sell, dispense, or offer gasoline for sale in this state to a retail dealer unless the distributor indicates on each bill, invoice, or other instrument evidencing a delivery of gasoline, the name and license number issued pursuant to this act, of the retail dealer who received delivery of the gasoline.

(7) A bill, invoice, or other instrument evidencing a delivery of gasoline issued by a refiner or distributor for deliveries of gasoline to purchasers who are not required to hold a license issued pursuant to Act No. 150 of the Public Acts of 1927 or this act shall clearly indicate the name and address and other information necessary to identify the purchaser of the gasoline.

(8) A bill, invoice, or other instrument evidencing a delivery of gasoline required by subsection (5), (6), or (7) shall include a guarantee that the gasoline delivered meets the requirements in section 3 and shall indicate the concentration range of alcohol in the gasoline, except for alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol or ethanol, or both and shall indicate the possible presence, without regard to concentration range, of any alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol or ethanol, or both.

(9) A refiner, distributor, bulk purchaser-end user, or retail dealer shall not transfer, sell, dispense, or offer gasoline for sale unless that gasoline is visibly free of undissolved water, sediments, and other suspended matter and is clear and bright at an ambient temperature of 70 degrees Fahrenheit.

(10) A person who violates this section or rules promulgated under this section is liable for a civil fine not to exceed $10,000.00 for each and every day of the continuance of the violation. A civil fine ordered pursuant to this section shall be submitted to the state treasurer for deposit in the gasoline inspection and testing fund created by section 8.

History: 1984, Act 44, Eff. Mar. 29, 1985.—Am. 1986, Act 127, Eff. Aug. 1, 1986.—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993.

290.646 License required; coordination of licensing; expiration and renewal of license; license fee; disposition of fees; application for license; grounds for suspending, denying, or revoking license; applicability of section; conviction under weights and measures act; effect of suspension, revocation, or denial of license on other licenses; registering blended products.

Sec. 6. (1) Before a distributor or retail dealer engages in transferring, selling, dispensing, or the offering for sale gasoline in this state, the distributor or retail dealer shall obtain a license from the department for each retail outlet operated by that person. In

administering the licensing under this section, the department may attempt to coordinate such licensing with the licensing applicable to gasoline administered by the department of treasury pursuant to Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.202 of the Michigan Compiled Laws, and the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(2) A license expires annually on November 30 unless renewed before December 1 of each year or unless suspended, denied, or revoked by the department.

(3) The fee for a license is $15.00 for each year or portion of a year. A license shall not be issued or renewed until the fee is paid. A hearing is not required prior to the refusal to issue or review a license under this subsection. Fees collected shall be deposited in the gasoline inspection and testing fund.

(4) An application for a license shall be made to the department upon a form furnished by the department. The completed form shall contain the information requested by the department and shall be accompanied by the fee specified in subsection (3).

(5) The director may suspend, deny, or revoke a license issued pursuant to this act for failure to comply with the requirements provided for in section 3, for failure to provide notice as provided in section 4, for violating section 31 of the weights and measures act of 1964, Act No. 283 of the Public Acts of 1964, being section 290.631 of the Michigan Compiled Laws, if that violation occurs at any of the licensee's retail outlets and involves the transferring, selling, dispensing, or the offering for sale of gasoline in this state, or for otherwise failing to comply with this act or a rule promulgated under this act or an order issued under this act.

(6) This section does not apply until June 29, 1985.

(7) If a person licensed under this act is convicted of a willful violation under section 31 of the weights and measures act of 1964, Act No. 283 of the Public Acts of 1964, any license issued pursuant to this act shall be revoked for 2 years.

(8) A suspension, revocation, or denial of a license of a person who is an individual shall result in the suspension, revocation, or denial of any other license held or applied for by that individual under this act. The license of a corporation, partnership, or other association shall be suspended when a license or license application of a partner, trustee, director, or officer, member, or a person exercising control of the corporation, partnership, or other association is suspended, revoked, or denied. The suspension shall remain in force until the director determines that the disability created by the suspension, revocation, or denial has been removed.

(9) Before a blender engages in the transferring, selling, dispensing, or offering for sale blended gasoline in this state, the blender shall register the finished product with the department and provide to the department test results as the department considers necessary. If the product does not comply with the requirements of section 3, the blender shall provide the department with a written list of the business names and addresses to whom the blended product is sold.

History: 1984, Act 44, Eff Mar 29, 1985;—Am 1986, Act 127, Eff Aug 1, 1986;—Am. 1993, Act 236, Imd. Eff. Nov 13, 1993.

290.647 Gasoline inspection, investigation, and testing program; establishment; purpose; monitoring; payment of expenses; consumer hot line; violation; providing documents; authority of director; enforcement powers; transmitting information; rules; implementation of program.

Sec. 7. (1) The director shall establish a gasoline inspection, investigation, and testing program. The purpose of the inspection, investigation, and testing program is to determine whether gasoline transferred, sold, dispensed, or offered for sale in this state

meets the requirements provided in this act, to sample, to investigate allegations of fraud, to inspect and investigate violations of the weights and measures act of 1964, Act No. 283 of the Public Acts of 1964, being sections 290.601 to 290.634 of the Michigan Compiled Laws, and whether notice required by section 4 is provided. The program shall provide for a regular system of monitoring gasoline sold or offered for sale in this state. The department shall implement the inspection, investigation, and testing program as provided in subsection (8). The expenses of operating the program shall be paid from money in the gasoline inspection and testing fund created in section 8.

(2) As part of the inspection and testing program the director shall maintain a 24-hour toll free consumer hot line to receive consumer complaints regarding vapor-recovery systems and the purity and quality of gasoline sold or offered for sale in this state.

(3) If the director has reason to believe a violation of section 5 or rules promulgated under section 5 has occurred, the director may require a refiner, distributor, storage facility, blender, bulk purchaser-end user, or retail dealer to provide to the department the original documents pertaining to the receipt, transfer, delivery, storage, or sale of gasoline and to allow the original documents to remain in the possession of the department. If original documents remain in the possession of the department and the documents are necessary for conducting business, the department shall provide copies of the documents to the refiner, distributor, blender, bulk purchaser-end user, or retail dealer upon request. A refiner, distributor, bulk purchaser-end user, blender, or retail dealer shall preserve information regarding the receipt, transfer, delivery, or sale of gasoline, including loading tickets, bills of lading, drop tickets, meter tickets, invoices, and billings, for 3 years. A retail outlet shall retain on its premises the original drop tickets and invoices for 1 month before transfer to another location unless the storage location is easily accessible from the retail outlet and the original records are delivered to the retail outlet for receipt by the department within 24 hours after a written request for the records has been given to the retail outlet.

(4) The director, upon presentation of appropriate credentials, may do all of the following:

(a) Enter upon or through any retail outlet, bulk purchaser-end user facility, dispensing facility, or the premises or property of any refiner or distributor.

(b) Make inspections, take samples, and conduct tests during any hours the business is operating.

(c) Examine records during normal business hours to determine compliance with this act.

(5) In addition to the powers provided in this act, the director has all the powers to enforce this act that the director has under the weights and measures act of 1964, Act No. 283 of the Public Acts of 1964, being sections 290.601 to 290.634 of the Michigan Compiled Laws.

(6) The director may transmit any information obtained pursuant to the inspection and testing program to any other agency of this state if the information will assist the other agency to carry out any of the agency's regulatory functions or responsibilities related to the transfer, sale, dispensing, or offering of gasoline for sale in this state.

(7) The director may promulgate rules for the purpose of implementing and enforcing this act.

(8) The department shall implement the inspection and testing program provided in subsection (1) as follows:

(a) Inspection and testing for standards regarding lead, alcohol, free water, and sediments within 90 days after the effective date of this act.

(b) Inspection and testing for any other standards by March 29, 1987.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1988, Act 84, Imd. Eff. Mar. 29, 1988;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993

290.649 Civil action for damage to motor vehicle; costs; other rights to relief not restricted.

Sec. 9. (1) Any person may commence a civil action on that person's own behalf seeking relief for damage caused to that person's motor vehicle as a result of a violation of section 4a or 5 or rules promulgated pursuant to section 4a or 5 against any person alleged to be in violation of section 4a or 5 or rules promulgated pursuant to those sections.

(2) In an action brought pursuant to subsection (1), the court may award costs of litigation, including reasonable attorney and expert witness fees, if the court determines that the award is appropriate.

(3) This section shall not be construed to restrict any right that a person or class of persons has under common law or a law of this state or the United States to seek relief from a violation of section 4a or 5 or rules promulgated pursuant to those sections.

History: 1984, Act 44, Eff Mar 29, 1985.—Am. 1986, Act 127, Eff Aug. 1, 1986.

290.649a Rules.

Sec. 9a. The director shall promulgate rules as necessary to implement sections 9b to 9h and 9j.

History: Add 1993, Act 236, Imd Eff Nov 13, 1993

290.649b Dispensing facilities exempt from certain requirements; documentation to support exemption eligibility; annual report; records; notice.

Sec. 9b. (1) Except as otherwise provided for in this section, the following dispensing facilities are exempt from the requirements of sections 9a to 9f, 9i, and 9j:

(a) A dispensing facility that never dispenses 10,000 gallons (37,850 liters) or more of gasoline per month on average in any 12-month period, beginning with the 12 months preceding the effective date of this section or the period from November 15, 1990 to November 15, 1992. If the dispensing facility is inactive for any period during the 12-month averaging period, the average shall be calculated based upon the months of actual operation. The exemption described in this subdivision does not apply to a dispensing facility that dispenses 10,000 or more gallons of gasoline per month on average in any 12-month period and such a facility is subject to sections 9a to 9f, 9i, and 9j and

continues to be subject to these sections even if the facility's gasoline throughput later falls below the exemption threshold.

(b) A dispensing facility owned by an independent small business marketer of gasoline that has sales of less than 50,000 gallons per month on an average in any 12-month period, beginning with the effective date of this section, and has 7 or less dispensing units is exempt only from the requirements of this act pertaining to the stage II vapor recovery system. For the purposes of this subdivision, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who, without the exemption provided for in this subdivision, would be required to pay for procurement and installation of vapor recovery equipment under this act but does not include a person who is any of the following:

(*i*) A refiner.

(*ii*) A person who controls, is controlled by, or is under common control with, a refiner.

(*iii*) A person who is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner, unless the sole affiliation is by means of a supply contract or an agreement or contract strictly applying to the use as a trademark, trade name, service mark, or other identifying symbol or name owned by the refiner or any such person.

(*iv*) A person who receives less than 50% of his or her annual income from refining or marketing gasoline.

(2) A person who claims an exemption under subsection (1)(b) shall provide to the director articles of incorporation, leasee agreements, supply contracts, or other adequate documentation to support the person's eligibility for the exemption. For the purpose of subsection (1)(b), "refiner" does not include a refiner whose total refinery capacity, including the refinery capacity of any person who controls, is controlled by, or is under common control with the refiner, does not exceed 65,000 barrels per day. For purposes of this subsection and subsection (1)(b), "control" of a corporation means ownership of more than 50% of its stock.

(3) A dispensing facility that claims or intends to claim exempt status under subsection (1)(a) and which has 2,000 or more gallons stationary gasoline storage capacity beginning in 1994 shall submit an annual report to the department by March 1 of each year for gasoline dispensed during the preceding year. These throughput records shall contain the quantity of gasoline dispensed at the facility during each month of operation for the preceding calendar year and shall list any period of time the facility was not operational during the preceding calendar year. The director shall review and verify the accuracy of the documents before making final determination on eligibility for exemption.

(4) A gasoline dispensing facility exempt under subsection (1)(b) shall maintain records of the gasoline dispensed that will allow the gasoline throughput for each calendar month to be continuously determined. These records shall be maintained for 3 years and shall be submitted to the director within 30 days after a request.

(5) If a dispensing facility's gasoline throughput for any calendar month ever exceeds the applicability threshold, the operator shall notify the department within 30 days.

History: Add 1993, Act 236, Imd Eff Nov. 13, 1993

290.649c Stage II vapor-recovery system equipment; certification criteria; system containing substantial defect.

Sec. 9c. (1) Stage II vapor-recovery system equipment shall comply with all certification requirements. To be certified, the vapor-recovery system shall meet a minimum of 95% emission reduction efficiency by any of the following criteria:

(a) Tested and approved by carb-recognized testing methods.

(b) Tested and approved by an equivalent testing program adopted and conducted by the department, or by a third party recognized by the department and by the E.P.A.

(c) A carb-certified system pursuant to section 41954 of the California health and safety code.

(2) A stage II vapor-recovery system is considered to contain a substantial defect if any of the following exist:

(a) Absence of or disconnection of any component that is a part of the approved system.

(b) A vapor hose is crimped or flattened so that the vapor passage is blocked, or the pressure drop through the vapor hose exceeds by a factor of 2 or more the value as certified in the approved system.

(c) A nozzle boot that is torn in either or both of the following ways.

(*i*) A triangular shaped or similar tear more than ½ inch on a side, or a hole more than ½ inch in diameter.

(*ii*) A slit more than 1 inch in length.

(d) A faceplate or flexible cone on a balance nozzle or a nozzle in a vacuum assist-type system, that is damaged so that the ability to achieve a seal with a fill pipe interface is affected for at least ¼ of the circumference of the faceplate accumulated.

(e) A nozzle shutoff mechanism that malfunctions in any manner.

(f) Vapor return lines, including such components as swivels, antirecirculation valves, and underground piping, that malfunction or are blocked, or are restricted so that the pressure drop through the line exceeds by a factor of 2 or more the value as certified in the approved system.

(g) A vapor processing unit that is inoperative.

(h) A vacuum producing device that is inoperative.

(i) Pressure/vacuum relief valves, vapor check valves, or dry breaks that are inoperative.

(j) Any equipment defect that is identified by the department as substantially impairing the effectiveness of the system in reducing refueling vapor emissions.

History: Add 1993, Act 236, Imd. Eff Nov. 13, 1993.

290.649d Transfer of gasoline; installation and use of stage II vapor-recovery system required; operation, maintenance, and inspection of systems; notice; repair, modification, or tampering prohibited; recertification; training certificate.

Sec. 9d. (1) An operator shall not transfer, permit the transfer of, or provide equipment for the transfer of gasoline from a stationary storage tank at a dispensing facility into a motor vehicle fuel tank unless an approved stage II vapor-recovery system has been installed and is properly used during the transfer. The system shall use coaxial hoses at the dispensers, and shall not contain any components, such as remote vapor check valves in balance-type systems that would significantly impede the performance of the functional tests required in section 9f.

(2) The operator of a dispensing facility shall demonstrate proper stage II vapor-recovery system function by the vapor-recovery system compliance tests as required in section 9f.

(3) The operator shall maintain the stage I and stage II vapor-recovery systems in proper operating condition as specified by the manufacturer and free of defects that could impair the effectiveness of the system. Any component identified as defective, but which does not substantially impair the effectiveness of the system, may remain in operation but shall be repaired or replaced within 15 days after identification. Upon identification of any substantial defect, the operator shall immediately tag "out-of-order" all dispensing equipment for which stage II vapor recovery has been impaired. Tagged equipment shall be rendered inoperable and the tag or tags shall not be removed until the defective equipment has been repaired, replaced, or adjusted, as necessary.

(4) The stage I and stage II vapor-recovery systems and gasoline-dispensing equipment shall be maintained to have no leaks.

(5) The operator shall conduct equipment inspections at least weekly to determine if the stage II vapor-recovery system is operating in accordance with this act and rules promulgated under this act. The inspection shall include all of the following:

(a) A visual inspection of motor vehicle refueling to ensure that the flow shutoff mechanisms are working properly.

(b) An inspection of all boots, hoses, facecones, and faceplates for tears or rips.

(c) A visual inspection of all dispensing equipment for any gasoline leaks.

(d) An inspection of all gasoline delivery nozzles for tightness, bends, and crimps that may impede vapor recovery.

(6) A notice of the benefits and explanation of operation of a stage II vapor-recovery system shall be conspicuously posted in a manner specified by the department in accordance with section 9h(1)(d).

(7) A person shall not repair, modify, or permit the repair or modification of the stage I or stage II vapor-recovery system or its components so that they are different from their approved configuration; or tamper with, or permit tampering with, the system in a manner that would impair the operation or effectiveness of the system.

(8) The operator shall recertify the function of the stage II vapor-recovery system at least every 5 years or upon major system replacement or modification, whichever comes first. Recertification requires a leak test and all other functional tests required by the department.

(9) The operator shall ensure that at least 1 employee of the dispensing facility possesses a valid training certificate on the operation and maintenance of the stage II vapor-recovery system and on the vapor-recovery program and its requirements, as specified in section 9e. If the dispensing facility employee who completed the training course leaves the employment of the dispensing facility, at least 1 other employee of the dispensing facility shall successfully complete a training course within 90 days after the departure of the previously trained employee. If a dispensing facility changes the type of stage II vapor-recovery system used by the facility, new training or retraining of an employee under this subsection shall be completed before the start-up of the new vapor-recovery system.

History: Add 1993, Act 236, Imd. Eff Nov. 13, 1993

290.649e Training; subject areas.

Sec. 9e. The training required by section 9d(9) shall be conducted and certificates issued by the department or by a person accredited by the department to conduct the training and issue certificates. The training shall include all of the following subject areas:

(a) The purposes and benefits of the vapor-recovery program and systems.

(b) The operations and functions of the stage II vapor-recovery system installed at the dispensing facility.

(c) Maintenance schedules, requirements, and procedures for the equipment.

(d) Equipment warranties.

(e) Equipment manufacturer contacts for parts and services, including their names, addresses, and telephone numbers, or the name and telephone number of the dispensing facility employee who is responsible for the maintenance of the vapor-recovery system.

(f) The requirements of this act, including the operating and maintenance requirements of sections 9d and 9f.

(g) The potential penalties for violation of this act.

(h) Information regarding the department's administration of this act, including the office address and telephone number of the department.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993.

290.649f Initial compliance testing; rules; subsequent compliance testing.

Sec. 9f. (1) When a stage II vapor-recovery system is in operational condition and ready for use, initial testing to verify the proper installation and function of the entire system, both infrastructure plumbing and aboveground equipment, shall be conducted as required under section 9c. The initial compliance testing shall include all of the following:

(a) Bay area source test procedure St-30, leak test procedure; San Diego test procedure TP-91-1, pressure decay/leak test procedure; or other equivalent test procedure the director may establish by rules.

(b) Bay area source test procedure ST-27, dynamic back pressure; the San Diego test procedure TP-91-2, pressure drop vs. flow/liquid blockage test procedure; or other equivalent test procedure the director may establish by rules.

(c) Bay area test procedure ST-37, liquid removal devices; or other equivalent test procedure the director may establish by rules.

(2) Tests specified in this section shall be conducted in accordance with the attendant test procedures found in appendix J of the E.P.A. document, "technical guidance - stage II vapor-recovery systems for control of vehicle refueling emissions at gasoline dispensing facilities," vol. II (E.P.A.450/3-91-022b), November 1991.

(3) Testing may be conducted by the department or by an installation or testing company that is registered with and meets the minimum criteria established by the department for conducting such tests. When a person other than the department conducts the initial testing, both of the following apply:

(a) The test results shall be submitted to the department within 30 days of the testing.

(b) If a department inspection conducted within 30 days of the notification of the results of initial testing reveals that the stage II vapor-recovery system fails to meet the compliance testing requirements of this section, the inspection shall be considered a reinspection according to section 9i(5)(a) and a reinspection fee shall be charged. However, if the operator notifies the department at least 10 business days in advance of the scheduled date for initial testing and informs the department who is scheduled to conduct the test, then a reinspection fee will not be charged under this subdivision.

(4) The director shall promulgate rules for the voluntary registration of service personnel and service agencies involved with vapor-recovery systems and for minimum requirements to be registered to conduct certification testing as specified in this section.

(5) Subsequent compliance testing of the stage II vapor-recovery system as required under section 9d(8) shall be performed at least every 5 years or upon major system replacement or modification, whichever occurs first. Functional tests shall also be performed upon request by the department. Subsequent compliance testing shall include all functional tests that were required for the initial system during the initial compliance testing under section 9c. A major system modification is considered to be replacing, repairing, or upgrading 75% or more of a dispensing facility's vapor-recovery system.

History: Add. 1993, Act 236, Imd. Eff. Nov 13, 1993.

290.649g Records.

Sec. 9g. (1) An operator shall maintain accurate records of all of the following at the dispensing facility location:

(a) All current licenses and permits required to operate the dispensing facility.

(b) Current proof of attendance and completion of the training specified in section 9d(9).

(c) The location, including the contact person's name, address, and telephone number, of the records required under this act which are not maintained at the dispensing facility location.

(2) An operator shall maintain accurate records of both of the following for 3 years:

(a) Installation and compliance testing results required under section 9f.

(b) Maintenance records on forms approved by the department.

(3) The records required by subsection (2) shall be maintained for 1 year at the dispensing facility location. After this time these records may be maintained at another business location.

(4) Records required under this act and maintained at the dispensing facility location shall be made available to the director upon request during normal business hours. If records required under this section are not maintained at the dispensing facility location, the records shall be provided to the director within 72 hours of a request.

History: Add. 1993, Act 236, Imd. Eff. Nov 13, 1993

290.649h Duties of director to implement 290.649a to 290.649h; rejected or condemned equipment; enforcement; temporary restraining order or permanent injunction.

Sec. 9h. (1) To implement this section and sections 9a to 9g, the director shall do all of the following:

(a) Develop and conduct training for department inspectors to provide knowledge and proficiency on all vapor-recovery program requirements and procedures.

(b) Prepare information on the purposes and benefits of vapor-recovery controls and distribute this information to regulated facilities.

(c) Prepare for the general public information on the benefits and purpose of the stage II vapor-recovery program and the proper use of the equipment.

(d) The director shall design a uniform means of providing the notice required by section 9d(6). The notice shall be designed in such a manner that the consumer can readily understand the benefits and operation of a stage II vapor-recovery system.

(e) Conduct a minimum of 1 compliance inspection per year per dispensing facility, with mandatory reinspection of dispensing facilities that are found to be in violation of this act or rules promulgated under this act. A compliance inspection consists of the

inspection of the records required in section 9g, inspection of facility equipment as required in section 9c, and functional testing of the equipment.

(f) Monitor the compliance of the regulated facilities with this act through data collection, including applications and required documents.

(g) Investigate complaints and initiate and conduct other investigations on possible violations of this act.

(2) If the director finds a defect in a stage I or stage II vapor-recovery system, the director shall reject or condemn and mark the equipment as "rejected" or "condemned". Equipment that is rejected or condemned and ordered corrected or disposed of shall remain under the control of the director until suitable repair or disposition has been made under this section. The operator of the rejected or condemned equipment shall cause it to be made correct within the specified time period authorized by the director, or may dispose of the equipment in a manner specified by the director. Equipment that has been rejected or condemned and ordered corrected or disposed of may be confiscated and may be destroyed by the director if not corrected as required by, or if disposed of contrary to the requirements of, this section.

(3) If necessary for the enforcement of this act or rules promulgated under this act, the director may do all of the following:

(a) Issue stop-use orders, hold orders, or removal orders for stage I or stage II vapor-recovery and gasoline-dispensing equipment. A person shall not use, remove from the premises specified, or fail to remove from the premises specified any stage I or stage II vapor-recovery or gasoline-dispensing equipment contrary to any order issued pursuant to this section.

(b) Seize for use as evidence without formal warrant, any incorrect or unapproved stage I or stage II vapor-recovery system or dispensing equipment found to be used or exposed for use in violation of this act or rules promulgated under this act.

(4) With respect to enforcement of this act, the director has the power of a peace officer.

(5) The director may petition a court of competent jurisdiction for a temporary restraining order or permanent injunction restraining a person from violating this act or a rule promulgated under this act.

History: Add 1993, Act 236, Imd Eff Nov 13, 1993

290.649i Dispensing permit; requirements; fees.

Sec. 9i. (1) A dispensing facility constructed after November 15, 1990, shall obtain a dispensing permit from the department within 180 days of the effective date of this section. A dispensing facility dispensing 100,000 gallons or more of gasoline a month shall obtain a dispensing permit from the department within 1 year of the effective date of this section. A dispensing facility dispensing less than 100,000 gallons of gasoline a month shall obtain a dispensing permit from the department within 2 years of the effective date of this section. The fee for a dispensing permit is $25.00 for each year or portion of a year.

(2) Before a dispensing permit is issued, a dispensing facility shall install an approved stage I and stage II vapor-recovery system and, in addition to the fee for the dispensing permit, shall pay a registration fee for each dispensing unit located at the dispensing facility. A permit shall not be issued or renewed until all fees are paid. A hearing shall not be required prior to the refusal to issue or renew a permit under this subsection.

(3) A dispensing permit expires annually on November 30 unless renewed before December 1 of each year or unless suspended, denied, or revoked by the department. Application for a dispensing permit shall be made on a form furnished by the department. The completed form shall contain the information requested by the department and shall be accompanied by the fees specified.

(4) The director may suspend, deny, or revoke a dispensing permit issued pursuant to this act for failure to pay the fee required by subsection (1) or (2), or for failure to comply with the requirements of sections 9a to 10c.

(5) A fee shall be charged to the operator of stage I and stage II vapor-recovery or gasoline-dispensing equipment for its inspection if any of the following occur:

(a) The inspection is a reinspection of equipment that has already been tested and found to contain a substantial defect as defined under section 9c.

(b) The inspection is performed at the request of the operator.

(6) The department shall establish the fees and expenses for special services, including the fee for an operator requested inspection or reinspection, for registrations, for training courses, and for accreditation of a trainer, to provide that each fee is sufficient to cover the cost of an operator requested inspection, reinspection, registration, training, or trainer accreditation, respectively, and that the aggregate of all fees collected is sufficient to pay for all salaries and other expenses connected with the activity. The department shall review and adjust the fees at the end of each year and have all fees approved by the director before they are adopted. Fees collected under this section shall be deposited in the gasoline inspection and testing fund and reserved for conducting the vapor-recovery program.

History: Add 1993, Act 236, Imd. Eff Nov 13, 1993.

290.649j Stage I vapor-recovery system required; applicability of subsection (7).

Sec. 9j. (1) A person shall not deliver gasoline or permit the delivery of gasoline to a dispensing facility that lacks a stage I vapor-recovery system.

(2) Prior to delivery of gasoline to a dispensing facility, a delivery vessel shall be certified by the department of natural resources as vapor tight by meeting the requirements of R 336.1627 of the Michigan Administrative Code.

(3) A person shall not deliver gasoline or permit the delivery of gasoline to a dispensing facility unless the stage I vapor-recovery system is employed during delivery and the dispensing facility storage tank is equipped with a permanent submerged fill pipe.

(4) A stage I vapor-recovery system shall include a properly functioning interlocking system or procedure that ensures that the vapor-tight collection line is connected before any gasoline is loaded, or shall include an equivalent system approved by the department.

(5) A stage I vapor-recovery system shall have a poppetted drybreak on the vapor return or an equivalent system approved by the department.

(6) All open vent pipes for a stage I or stage II vapor-recovery system that are on stationary tanks at dispensing facilities shall be equipped with pressure-vacuum relief valves in a system approved by the department.

(7) A dispensing facility regulated under this act is not subject to R 336.1606 or R 336.1703, or both, of the Michigan Administrative Code. This subsection does not apply to a delivery vessel which shall continue to be subject to the rules listed in this subsection.

History: Add 1993, Act 236, Imd Eff Nov 13, 1993