Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

Stage II Vapor Recovery System Enforcement Discretion Directive

EFFECTIVE IMMEDIATELY

Issued: August 23, 2012

This enforcement discretion directive is in response to the United States Environmental Protection Agency's (EPA) rulemaking for 40 Code of Federal Regulations Part 51, determining that on-board refueling vapor recovery (ORVR) technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet (May 16, 2012, *Federal Register*, 77 FR 28772). EPA's rulemaking allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities (GDFs) in nonattainment areas classified as serious and above, for the ozone National Ambient Air Quality Standards (NAAQS). In recognition and support of this determination by the EPA, the Executive Director recognizes that the installation of Stage II gasoline vapor recovery systems at GDFs in nonattainment areas may no longer be appropriate or necessary.

Effective immediately, the Executive Director of the Texas Commission on Environmental Quality (TCEQ) will exercise enforcement discretion for potential violations of 30 Texas Administrative Code (TAC) Part 1, Chapter 115, Subchapter C, Division 4, which requires approved and certified Stage II vapor recovery systems at GDFs in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in the Houston-Galveston-Brazoria area; Collin, Dallas, Denton, and Tarrant Counties in the Dallas-Fort Worth area; El Paso County; and Hardin, Jefferson, and Orange Counties in the Beaumont-Port Arthur area. This enforcement discretion only applies to:

1) any new GDF that began construction of permanent gasoline dispensing equipment at this facility on or after May 16, 2012, and would otherwise be required to install Stage II equipment;
2) any new GDF that has not begun dispensing fuel and began construction before May 16, 2012, and can certify that Stage II equipment has not begun to be installed at the facility; or

3) GDFs that become subject to Stage II requirements due to an increase in throughput on or after May 16, 2012, and would otherwise be required to install Stage II equipment; and
4) transport vessels that dispense gasoline to GDFs listed in 1, 2, or 3 of this enforcement discretion directive.

GDFs currently equipped with Stage II systems must continue to comply with existing Stage II requirements in 30 TAC Part 1, Chapter 115, Subchapter C, Division 4. Also, GDFs that meet the requirements of this directive must continue to comply with the Stage I requirements in 30 TAC Part 1, Chapter 115, Subchapter C, Division 2. A violation of effective regulations may subject the violator to enforcement. The TCEQ will continue to evaluate the Stage II regulations for possible decommission of Stage II systems from all program areas.

Please be advised that any discretion exercised is not necessarily representative of any action the EPA may initiate. Please contact your local regional office for additional information regarding this enforcement discretion. Additionally, you may contact Lisa Shuvalov, Office of Air, at (512)239-4484, for general questions on Stage II, and for general investigation and Stage II program questions, contact Cari Buetow, Office of Compliance and Enforcement, at (512)239-1661.

This enforcement discretion does not convey any property rights or any rights or privileges other than those established by state law.

This enforcement discretion directive is effective retroactively, as of May 16, 2012, by signature of the TCEQ Executive Director below.

Zak Covar
Executive Director