Date of Hearing: April 4, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION
Laura Friedman, Chair
AB 2563 (Quirk) – As Introduced February 17, 2022

SUBJECT: Air pollution: permits: mobile fueling on-demand tank vehicles

SUMMARY: Requires air pollution control and air quality management districts to establish a mobile fueling on-demand tank vehicle uniform permit program for operations located in its jurisdiction. Specifically, **this bill**:

1) Defines a mobile fueling on-demand tank vehicle as a tank truck or trailer that is equipped with an onboard cargo tank system designed to load, transport, and transfer gasoline directly from the onboard cargo tank into a motor vehicle fuel tank and emits less than 10 tons per year of any single pollutant and less than 20 tons per year of all pollutants.

2) Requires the permit to require operations to adhere to the strictest emission control standards established by the state for the loading, storage, and transfer of gasoline from those vehicles.

3) Requires the permit program to consist of:

    a. A consolidated process for a source requiring more than one permit that provides that the operation will be permitted on a single-facility or project-basis as a single-volume source, provides a single point of contact for the permit applicant, and allows an operation to be reviewed and permitted on a single, consolidated schedule.

    b. An expedited permit review and fee schedule, based upon the types and amount of pollution emitted from operations. Requires a district to classify operations within its jurisdiction as minor, moderate, and major sources of air pollution and establish a permit action schedule that sets forth specific deadlines based on each classification for an air pollution control officer to notify a permit applicant in writing of the decision of a permit application.

    c. Uniform applicability determination standards for new source review.

    d. Uniform definitions of modification, major modification, routine maintenance or repair, and replacement.

    e. Uniform calculation methodology, thresholds, and other procedures of new source review applied pursuant to the toxic air contaminant limitations established in the district.

    f. Uniform definitions and requirements applied under new source review regulations.

    g. Uniform requirements to obtain new source review or other permits to construct or operate prior to commencement of construction or operation.

    h. Uniform requirements for best available control technology (BACT).

    i. Uniform requirements for air quality impact analysis.

j. Uniform requirements for recordkeeping monitoring, and reporting in a manner that would not make these tasks less representative, enforceable, or publicly accessible; and,

k. A uniform fee schedule based upon reasonable costs necessary to administer enforcement for the total throughput of operations in the district.

4) Requires a district to distinguish between retail and nonretail mobile fueling on-demand vehicle operations in adopting rules and regulations.

5) Exempts rules and regulations adopted from applying to mobile fueling on-demand tank vehicles that are used primarily for the fueling of implements of agriculture or husbandry.

6) Exempts districts that have already instituted, by regulation, a permitting process for retail mobile fueling on-demand tank vehicle operations located in its jurisdiction.

7) Exempts a district that has explicitly exempted retail mobile fueling on-demand tank vehicle operations, including mobile refueling or any other vehicle refueling, from applicable rules or regulations of the district.

EXISTING LAW:

1) Declares that local and regional authorities have the primary responsibility for control of air pollution from all sources, other than emissions from motor vehicles.

2) Defines non-vehicular sources as all sources of air contaminants, including the loading of fuels into vehicles, except vehicular sources.

3) Authorizes air districts to establish, by regulation, a permit system that requires that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, the person obtain a permit to do so from the air pollution control officer of the district.

4) Requires every air district to establish, by regulation, a program to provide for the expedited review of permits in order to reduce unnecessary delay in the issuance of those permits and to protect the public health and the environment.

5) Prohibits a person from installing or maintaining a stationary gasoline tank larger than 250 gallons that is not equipped for loading in one of several different ways that limit vapor release, with certain exceptions, or unless the tank is equipped with equally efficient apparatus which has been approved by the local air district.

6) Within the South Coast Air District in general, and in specific sensitive zones within the district, provides for additional requirements to be met for the operation of any stationary source, including requiring the district board to make a finding and determination that the impacts of the stationary source will be mitigated so as to result in a net improvement in ambient air quality within the basin, and those sensitive zones.

7) Authorizes the Bay Area Air Quality Management District to establish zones where special regulations are warranted. Requires the district board, in establishing these zones, to consider the degree of concentration of population; the number, nature, and dispersal of the stationary

sources of air pollution; whether the area is a rural agricultural area; and the presence or absence of industry.

8) Requires the California Air Resources Board (CARB) to adopt test procedures to determine the compliance of vapor recovery systems of cargo tanks on tank vehicles used to transport gasoline. Requires CARB to certify the cargo tank vapor recovery system upon a determination that the system meets requirements and charge a reasonable fee for certification (deposited in the Motor Vehicle Account). Authorizes CARB to test the vapor recovery system of a cargo tank vehicle used to transport gasoline.

9) Requires CARB to adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations, including storage and transfer operations, with performance standards that are reasonable and necessary to achieve or maintain any applicable ambient air quality standard. Prohibits an air district from implementing any stricter procedures or performance standards until at least two systems meeting the stricter performance standards have been certified by CARB.

10) Requires every service station, with certain exceptions, to provide, upon request, refueling service to a disabled driver of a vehicle that displays a disabled person's plate or placard, or a disabled veteran's plate, issued by the Department of Motor Vehicles.

FISCAL EFFECT: Unknown

COMMENTS:

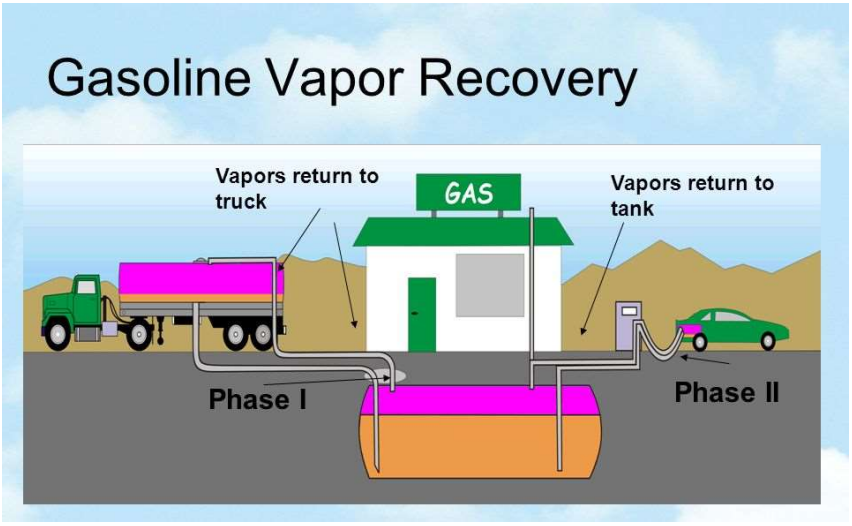
California's 35 local air districts are responsible for regional air quality planning, monitoring, and stationary source and facility permitting. The districts administer air quality improvement grant programs and partner with CARB in efforts to ensure that California meets state and federal air quality goals.

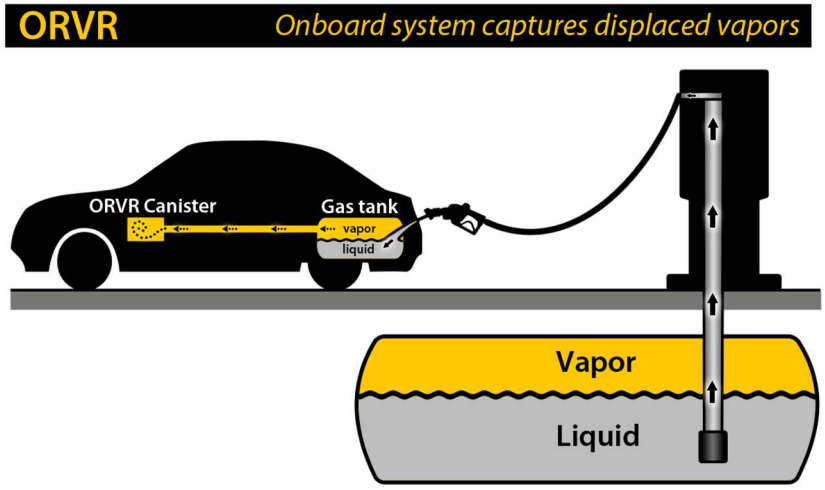
Mobile fueling uses a vehicle equipped with a gasoline cargo tank that dispense gasolines at various locations. Gasoline is loaded into the mobile fueler at either the bulk terminal or at a stationary gasoline dispensing facility. Mobile fueling has existed for decades and been more commonly used for large fleets that accept bulk deliveries of thousands of gallons of diesel fuel.

More recently companies have been making this option available for individual deliveries to personal vehicles at a person's home or place of employment. A 2019 article states, "Booster has emerged as the market leader. The four-year-old company delivers millions of gallons per month in 20 cities, using its purple-branded trucks to fill up tanks on corporate campuses. Fortune 500 giants such as eBay, HPE, and Cisco use Booster to provide a fueling perk for employees. Health clubs and retail centers are also customers." Since mobile fuelers can move to various locations, mobile fueling operations present unique challenges that are different than stationary gasoline dispensing facilities, including knowing the location of dispensing activities and verifying compliance.

Under current law, air districts inspect gasoline dispensing facilities, or gas stations. Gasoline contains volatile organic compounds (VOCs) and hazardous air pollutants such as benzene, toluene, ethylbenzene, and xylene. VOCs, along with oxides of nitrogen (NO_x) emitted from the combustion of fuels, react in the atmosphere to form ground-level ozone, which is a federal and state regulated pollutant. Breathing ozone can trigger a variety of health problems, particularly

for children, the elderly, and people of all ages who have lung diseases such as asthma. Ground level ozone can also have harmful effects on sensitive vegetation and crops. To combat these harmful effects, gas stations utilize Phase II vapor recovery systems; nozzles which reduce refueling-related emissions even in the absence of onboard refueling vapor recovery (ORVR) technology on the vehicle itself. ORVR is standard technology for vehicles that are model year 2000 and newer.





South Coast Air Quality Management District (SCAQMD) permitting of mobile fueling on demand operations illustrates the complexity of the situation. In 2018, Booster Fuels, Inc approached SCAQMD and applied for a research and development permit for five retail mobile fuelers. These Model 2 mobile fueling units were unable to be permitted under existing local rules because they are not equipped with a CARB certified Phase II vapor recovery system. On February 19, 2021, Booster Fuels received final certification of their model with CARB Executive Order (EO) VR-601-A14. This certification does not include Phase II vapor recovery equipment and limits operation to only fueling into ORVR motor vehicles.

Onboard refueling vapor recovery may not be enough. CARB recently raised concerns about ORVR not being adequate to eliminate the need for additional regulation by air districts. In its transmittal letter for the EO certifying Booster Fuels Mobile Fueling On-Demand Tank Vehicle Gasoline Dispensing System for ORVR Vehicles, CARB states, "Unlike gas stations where potential health risks can be more readily ascertained due to their nature as stationary sources, Booster's mobile operation would require submission of additional information where requested by the district to ascertain potential risks. Therefore, it is important for the District to know the location of each operating mobile fueling on-demand tank vehicle. Booster Fuels may be asked to facilitate and accommodate CARB and District's inspections of Booster's operations at any location where Booster operates, to ensure compliance with CARB's EO and District requirements."

Mobile fueling poses compliance challenges. Gasoline dispensing is a well regulated industry. Inspectors visit gasoline dispensing facilities to verify compliance with air district rules and permit conditions to ensure that the dispensing equipment is in good operating condition, operators are adhering to throughput limits in permit, and the recordkeeping, monitoring, and testing requirements are implemented pursuant to air district rule. Mobile fueling presents unique challenges relative to stationary gasoline dispensing facilities because the fueling location is not fixed and there is no specific day and time that fueling is occurring at each location. Adding to the complexity of regulating mobile fueling is the need for verification that motor vehicles fueled must be equipped with ORVR for mobile fuelers that are dispensing with a CARB certified non-vapor recovery components. In the past, SCAQMD staff has expended significant resources verifying ORVR status, determining the amount of fuel transferred into a mobile fueler is representative of the amount of the fuel dispensed, and surveilling to insure that mobile fuelers are not splash loading.

Committee comments. This bill requires air districts to issue permits, but bases the requirements for those permits on standards established by the state. This bill calls for the "strictest emission control standards established by the state for the loading, storage, and transfer of gasoline from those vehicles," which may not be as stringent as, nor in line with, air districts additional considerations and precautions related to gasoline stations. This bill may undermine the air districts' control of stationary sources.

The state has a 2035 goal for 100% zero-emission passenger vehicle sales. Requiring air districts to issue permits for an activity that perpetuates the use of fossil fuels may not be the desired path toward that goal. A recent Scientific American article quotes Ethan Elkind, the director of the climate program at the University of California, Berkeley's School of Law, as saying the idea of delivering gasoline to motorists "sends a bad message. Gasoline should be stigmatized to a certain extent as a heavily polluting, environmentally impactful resource. We should not be making it easier to fuel up with fossil fuels at this point."

Booster's website claims that "Booster offers delivery of gas, diesel, biodiesel, renewable and synthetic gas, as well as electric vehicle charging." However, the charging operations appear to be nascent, if at all existent, with no timeline for ramping down delivery of fossil fuels.

According to the author, "Mobile fueling is a service that delivers fuel directly to vehicles onsite instead of at a conventional gas station. While the concept has been used for many decades for construction and agricultural equipment, this model of vehicle refueling has extended in recent

years to provide retail services to drivers, often at requests submitted through cellphone applications.

"Current regulations on the transport and transfer of vehicle fuel were originally designed for traditional retail gas stations and could not have predicted the unique characteristics of the retail mobile fueling industry as it is today. Because mobile fueling involves the transport and transfer of emissive and flammable fuel, it is important that air quality districts oversee mobile fueling providers to ensure the industry's compliance with ambient air quality standards. AB 2563 will establish local permitting programs for the new mobile fueling industry in order to reduce community exposure to fuel vapors and attain ambient air quality standards. It will also accommodate for the mobile nature of the emerging industry by initiating uniform fees, vehicle maintenance requirements, and formulas that are used to calculate air quality attainment by each air district."

In support the National Multiple Sclerosis Society writes, "Access remains an important issue for much of the disabled community, including people living with multiple sclerosis (MS), and access to gas stations often proves impossible. Our members support the mobile fueling on-demand technology because it eases the burdensome aspects of filling up. Recently, mobile fueling has also begun offering a contactless solution during the COVID-19 crisis, a significant benefit to many people living with MS.

In opposition, the California Air Pollution Control Officers Association, representing the 35 local air quality districts throughout the state, writes, "California is a diverse state with unique geography, populations, and air quality needs. This bill ignores that diversity and would require air districts to establish a one-size-fits-all approach to permitting mobile refuelers that cannot take into consideration local air quality and community needs, which reduces the effectiveness of current public health and environmental protections Additionally, the bills requirements to make New Source Review (NSR) rules the same in air districts is counter to California and Federal Clean Air Act mandates to implement permitting and NSR rules that take into account local and regional air quality needs and requirements."

Double referral: This bill will sent to the Assembly Committee on Natural Resources should it pass out of this committee. The Natural Resources Committee's primary jurisdiction includes air quality issues.

Previous legislation: AB 905 (Quirk), of 2021 would have required CARB to regulate mobile fueling on-demand tank vehicles as a mobile source. AB 905 was held in this committee.

AB 2792 (Quirk), of 2020 would have classified a mobile fueling on-demand tank vehicle, as defined, as a mobile source and would have required that it be regulated by CARB. AB 2792 was held in this committee due to COVID-19 related bill limitations.

REGISTERED SUPPORT / OPPOSITION:

Support

Booster Fuels (sponsor)
California Fire Chiefs Association

California Foundation for Independent Living Centers
Fire Districts Association of California
National Multiple Sclerosis Society
United Spinal Association

Opposition

Bay Area Air Quality Management District
California Air Pollution Control Officers Association
Sierra Club

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