ILLINOIS POLLUTION CONTROL BOARD
November 15, 2012

IN THE MATTER OF:	)	
	)	
PETITION OF MIDWAY RACS, LLC FOR	)	AS 12-3
ADJUSTED STANDARD FROM 35 ILL.	)	(Adjusted Standard – Air)
ADM. CODE 218.586	)	

OPINION AND ORDER OF THE BOARD (by D. Glosser):

On July 6, 2012 Midway RACS, LLC (Midway) filed an amended petition for an adjusted standard (Am.Pet.). Midway seeks relief from the provisions at 35 Ill. Adm. Code 218.586 that require the installation of a Stage II vapor recovery system at its new gasoline dispensing facility for rental cars at Midway Airport, Chicago, Cook County. In lieu of installing a Stage II vapor recovery system at the dispensing facility, Midway's entire fleet of rental cars is equipped with onboard refueling vapor recovery (ORVR) required by federal regulations[1] for newer model cars and light duty trucks.

On August 15, 2012, the Illinois Environmental Protection Agency (IEPA) filed a "recommendation" (Rec.). The IEPA "does not object" to the requested adjusted standard with language set forth in the filing.

The Board finds Midway has provided sufficient justification for each of the factors set forth in Section 28.1 of the Act (415 ILCS 5/28.1 (2010)). Accordingly, the Board grants Midway an adjusted standard from the Stage II Vapor Recovery rules subject to conditions outlined in this order.

The Board begins with the procedural background of the case and then discusses the legal framework for an adjusted standard. Next, the Board will provide a facility description followed by a description of the rule that currently applies to Midway. The Board then delineates Midway's requested relief and the IEPA's recommendation. The Board next summarizes the arguments under the standard of review. Finally the Board will discuss its findings.

PROCEDURAL BACKGROUND

On April 11, 2012, Midway filed a petition for an adjusted standard. On May 15, 2012, Midway filed proof that notice of the adjusted standard was published in the *Sun Times* on April 18, 2012. On May 17, 2012, the Board directed Midway to file an amended petition addressing certain deficiencies in the petition. On July 6, 2012, Midway filed an amended petition (Am.Pet.).

[1] The United States Environmental Protection Agency (USEPA) first began phase-in of ORVR for 40% of model year 1998 passenger cars. For model year 2000 passenger cars, the ORVR requirement was increased to 100%. Phase-in continued on virtually all other new vehicle types (light trucks, etc.) sold since model year 2006. 76 FR 41733 (July 15, 2011).

On July 26, 2012, the Board accepted the amended petition for hearing. Notice that a hearing was scheduled, but may be cancelled if the Board did not receive a request for hearing, appeared in Chicago *Sun Times* and the Springfield *State Journal Register* on September 14, 2012. Requests for a hearing were to be received by the Board no later than October 15, 2012. The Board did not receive a request, and the hearing was canceled.

On August 15, 2012, the IEPA filed its "recommendation". The IEPA states that it "does not object" to granting the adjusted standard with language proposed by the IEPA in the recommendation.

LEGAL FRAMEWORK FOR ADJUSTED STANDARD

The Act (415 ILCS 5/1 *et seq.* (2010)) and Board rules provide that a petitioner may request, and the Board may grant, an environmental standard that is different from the generally applicable standard that would otherwise apply to the petitioner. This is called an adjusted standard. The general procedures that govern an adjusted standard proceeding are found at Section 28.1 of the Act and Section 104.Subpart D of the Board's procedural rules. 415 ILCS 5/28.1 (2010); 35 Ill. Adm. Code 104.400 *et seq*.

The Board's procedural rules specify the required contents for the adjusted standard petition. *See* 35 Ill. Adm. Code 104.406, 104.416. Once a petition for an adjusted standard is filed, the IEPA must file its recommendation with the Board. *See* 415 ILCS 5/28.1(d)(3) (2010); 35 Ill. Adm. Code 104.416. The adjusted standard proceeding is adjudicatory in nature and therefore is not subject to the rulemaking provisions of the Act or the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq*. (2010)). *See* 415 ILCS 5/28.1(a) (2010); 35 Ill. Adm. Code 101.202 (defining "adjudicatory proceeding").

Section 28.1(d)(1) of the Act (415 ILCS 5/28.1 (2010)) and Section 104.408(a) of the Board's procedural rules (35 Ill. Adm. Code 104.408(a) (quoting the Act)) require the adjusted standard petitioner to publish notice of the petition's filing by advertisement in a newspaper of general circulation in the area likely to be affected by the proposed adjusted standard. Under those provisions, publication must take place within 14 days after the petition is filed. The newspaper notice must indicate that any person may cause a public hearing to be held on the proposed adjusted standard by filing a hearing request with the Board within 21 days after publication. *See* 415 ILCS 5/28.1(d)(1) (2010); 35 Ill. Adm. Code 104.408(b).

The burden of proof in an adjusted standard proceeding is on the petitioner. *See* 415 ILCS 5/28.1(b), (c) (2010); 35 Ill. Adm. Code 104.426. Once granted, the adjusted standard, instead of the rule of general applicability, applies to the petitioner. *See* 415 ILCS 5/28.1(a) (2010); 35 Ill. Adm. Code 101.202, 104.400(a). In granting adjusted standards, the Board may impose conditions as may be necessary to accomplish the purposes of the Act. *See* 415 ILCS 5/28.1(a) (2010); 35 Ill. Adm. Code 104.428(a).

In both a general rulemaking and a site-specific rulemaking, the Board is required to take the following factors into consideration: the existing physical conditions; the character of the

area involved, including the character of the surrounding land uses; zoning classifications; the nature of the receiving body of water; and the technical feasibility and economic reasonableness of measuring or reducing a particular type of pollution. 415 ILCS 5/27(a) (2010). The general procedures that govern an adjusted standard proceeding are found at Section 28.1 of the Act (415 ILCS 5/28.1 (2010)) and the Board's procedural rules at 35 Ill. Adm. Code 104. Section 28.1 of the Act (414 ILCS 5/28.1 (2010)) also requires that the adjusted standard procedure be consistent with Section 27(a) of the Act (415 ILCS 5/27(a) (2010)).

Midway seeks an adjusted standard from rules of general applicability at 35 Ill. Adm. Code 218.586. Midway is seeking an adjusted standard from a rule of general applicability that does not include a level of justification for the adjusted standard. Therefore, in determining whether an adjusted standard should be granted from a rule of general applicability, the Board must consider, and Midway has the burden to prove, the factors at Section 28.1(c) of the Act (415 ILCS 5/28.1(c) (2010)):

1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to the petitioner;

2) the existence of those factors justifies an adjusted standard;

3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

4) the adjusted standard is consistent with any applicable federal law. 415 ILCS 5/28.1 (2010).

FACILITY DESCRIPTION

Midway is in the process of constructing a new consolidated rental car facility including a common-use fueling system. Multiple rental car companies[2] currently operate individual service facilities and rental locations near Midway Airport, and the City of Chicago determined that a consolidated facility was necessary. Am.Pet. at 1. The consolidated facility will better serve rental customers, relieve traffic congestion on the Midway Airport roadways, and enhance travel in and around the airport. *Id*. The consolidated facility includes rental offices, rental parking spaces, car washes, and common fueling system to be used by all the car rental companies. *Id*.

[2] The rental car companies are: Avis Budget Car Rental, LLC (d/b/a Avis Rent-A-Car System, Inc. and Budget Rent A Car Systems, Inc.); DTG Operations, Inc., (d/b/a Dollar Rent A Car); Enterprise Leasing Company of Chicago, LLC (d/b/a Enterprise Rent-A-Car); The Hertz Corporation; Thrifty Rent-A-Car System, Inc.; and Vanguard Car Rental USA, LLC (d/b/a National and Alamo).

The consolidated facility also includes a garage and an adjoining quick turnaround area (QTA), which is used to prepare returned vehicles for the next customer. Am.Pet. at 2. Cars are driven to one of the nine fueling islands, with 36 nozzles. Approximately 750 to 850 fueling operations will occur each month with approximately 85,000 gallons of fuel being dispensed. *Id*. While fueling takes place, other services are performed such as windshield washer filling, vacuuming and checking tire pressure. *Id*. After this service cars are driven through an automatic car wash and returned for rental. *Id*.

Construction on the facility began in October 2011, and the fueling system began construction in May 2012 with completion expected by September 2012. Am.Pet. at 3. The QTA is anticipated to open in the first half of 2013. Am. Pet. at 6.

The current design for the consolidated facility is nearly ten years old and includes a Stage II Vapor Recovery system. Am.Pet. at 3, 7. The vapor recovery system currently in the construction documents calls for a specialized gasoline-dispensing nozzle that is designed to capture displaced gasoline vapors from the motor vehicle fuel tank during fleet fueling operations and to route the captured vapors through a pipeline back to the underground fuel storage tanks. Am.Pet. at 7. Section 218.586 (35 Ill. Adm. Code 218.586) requires the installed vapor collection and control system to have a vapor recovery and removal efficiency of at least 95% by weight. *Id*. Theoretically, the Stage II vapor recovery system planned for the consolidated facility captures the required 95% of vapors coming from the vehicle's fill pipe. However, the in-use efficiency rating of such Stage II systems has been determined to be 84%. *Id*.

All of the rental car fleet is equipped with ORVR Systems that are designed to capture gasoline vapor emissions. Am.Pet. at 3. In contrast to the ratings for Stage II systems, Midway cites to USEPA finding that the in-use efficiency for ORVR vehicles is approximately 98%. Am. Pet. at 7.

RULE OF GENERAL APPLICABILITY

Midway is seeking an adjusted standard from Section 218.586 of the Board's air rules which requires installation of Stage II Vapor control for gasoline fueling operations. Specifically, Sections 218.586(b) and (c) state:

> b) The provisions of subsection (c) below shall apply to any gasoline dispensing operation which dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month. Compliance shall be demonstrated in accordance with the schedule provided in subsection (d) below.
>
> c) No owner or operator of a gasoline dispensing operation subject to the requirements of subsection (b) above shall cause or allow the dispensing of motor vehicle fuel at any time from a motor fuel dispenser unless the dispenser is equipped with and utilizes a vapor collection and control system which is properly installed and operated as provided below:

> 1) Any vapor collection and control system installed, used or maintained has been [California Air Resources Board] CARB certified.
>
> * * *

35 Ill. Adm. Code 218.586.

Section 218.586(a)(2) defines "certified" to mean "any vapor collection and control system which has been tested and approved by CARB as having a vapor recovery and removal efficiency of at least 95% (by weight) shall constitute a certified vapor collection and control system." 35 Ill. Adm. Code 218.586(a)(2).

Section 218.586 was adopted by the Board to implement provisions of the Clean Air Act (42 USC §7401 *et seq*.). *See* Stage II Gasoline Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 215, 218, and 219, R91-30 (Aug. 13, 1992). When R91-30 was adopted in 1992, the Chicago ozone nonattainment area was classified as "severe". R91-30, slip op at 3 (Aug. 13, 1992). In 2004, the Chicago area was classified as moderate nonattainment for the 1997, eight-hour ozone National Ambient Air Quality Standard (NAAQS). 40 CFR § 81.314, 76 Fed. Reg. 74015 (Nov. 30, 2011). The Chicago nonattainment area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties, as well as portions of Grundy and Kendall Counties. *Id.*

REQUESTED RELIEF

Midway seeks an adjusted standard from the provision of Section 218.586 (35 Ill. Adm. Code). Specifically, Midway asks for an adjusted standard that reads:

> The Chicago Midway Airport Consolidated Facility is not subject to the requirements of Section 218.586, effective immediately, so long as the vehicles fueled at the Chicago Midway Airport Consolidated Facility are equipped with onboard refueling vapor recovery systems (ORVR) certified by the U.S. Environmental Protection Agency to capture a minimum of 95% of the gasoline vapor displaced during fueling. Am.Pet. at 8-9.

Midway is asking to construct the consolidated facility without using a Stage II Vapor recovery system at the fueling station. Am.Pet. at 3. Midway indicates that USEPA has recognized the widespread use of ORVRs in rental fleets as of 2006. *Id*. Therefore, Midway believes the requirements of Section 218.586 can be adjusted. *Id*.

Midway explained that the in-use efficiency rating of Stage II systems and ORVR is 84% and 98%, respectively. Am. Pet. at 7. However, Midway points out information from USEPA explaining that when the two systems are used together, there is a one to ten percent decrease in control efficiency over what could be achieved by using either one system or the other alone. Am. Pet. at 7-8, citing 76 Fed. Reg. 41738-39 (July 15, 2011). Midway quotes USEPA's findings that a lack of compatibility exists between the two control systems, and that various technologies to address this incompatibility add to the expense of the control system. *Id*.

Midway cannot estimate the emissions, discharge or releases that will be generated at the consolidated facility as the facility is under construction. Am.Pet. at 7. However, because the entire fleet will be equipped with ORVR, Midway opines that the emissions will be less than if it were to meet the rule of general applicability. *Id.*

Midway notes that the rental car companies already fuel only vehicles equipped with ORVR systems at their individual facilities nationwide. Am.Pet. at 9. Midway offers that the level of effort for it to comply with the adjusted standard, if granted, is minimal, merely to continue fueling only ORVR-equipped vehicles and to delete the initially designed Stage II system from the final construction documents. Midway states that the anticipated costs for a Stage II system would include increased upfront costs associated with installing the Stage II vapor recovery system, estimated to be approximately $72,000.00 for the Stage II equipment and associated piping, as well as increased annual maintenance costs for the system over the 25-year life expectancy. *Id.*

IEPA RECOMMENDATION

IEPA "does not object" to the Board granting the requested adjusted standard, with some suggested changes to the language of the adjusted standard. Rec. at 1. IEPA notes that Section 218.586 (35 Ill. Adm. Code 218.586) requires gasoline dispensing operations located in the Chicago nonattainment area to install, operate and maintain Stage II vapor recovery systems. Rec. at 3. IEPA explains that Section 202(a)(6) of the Clean Air Act (42 USC §7521(a)(6)) required USEPA to promulgate standards for vehicle refueling emissions, more specifically requiring passenger vehicles to be equipped with ORVR systems. *Id.* USEPA thus required ORVR to be phased-in based on a percentage of each manufacture's fleet. *Id.* USEPA promulgated standards for ORVR on April 6, 1994 and all new passenger cars have been equipped with ORVR since 2000. Rec. at 3-4, citing 59 Fed. Reg. 16262 (Apr. 6, 1994).

IEPA states that Congress anticipated that Stage II vapor recovery would be eliminated once ORVR became widespread. Rec. at 4. On December 12, 2006, USEPA issued guidance to states regarding removal of Stage II vapor recovery where states demonstrated that widespread use of ORVR has occurred. *Id.* And, effective May 16, 2012, USEPA determined that widespread use of ORVR has occurred throughout the country's motor vehicle fleet and granted a general waiver. *Id.*, citing 77 Fed. Reg. 28772 (May 16, 2012). Subject to USEPA approval, states now have the option of removing the Stage II vapor recovery program from the ozone State Implementation Plan. *Id*

IEPA indicated that a vacuum-assist vapor recovery system is a commonly used control device for compliance with Stage II. IEPA described that the Stage II system uses a vacuum pump on the vapor return line to draw the gasoline vapors from the vehicle fill pipe back into an underground/aboveground storage tank. Rec. at 4. IEPA noted that the ORVR systems installed in vehicles utilize an activated carbon canister. During refueling, gasoline vapors are forced into the carbon canister and are captured by the active carbon. Ultimately, the gasoline vapors are drawn into the engine and burned as fuel when the engine is started. *Id.*

IEPA opines that while vacuum-assist Stage II and ORVR systems are effective in capturing gasoline vapors and have provided volatile organic compound emission reductions, these systems can be incompatible if operated simultaneously. Rec. at 5. IEPA states that when an ORVR-equipped vehicle is refueled at a gasoline fueling operation that is equipped with an ORVR-incompatible vacuum-assist Stage II system, the ORVR carbon canister captures gasoline vapors. Then, instead of the Stage II system routing gasoline vapors into the underground storage tank, the vacuum pump draws fresh air into the underground storage tank. *Id*. IEPA explains that fresh air ingestion in the underground storage tank destabilizes the liquid-vapor equilibrium, which causes increased evaporation of gasoline, and, in turn, increased pressure. Increased pressure in the underground storage tank causes excess gasoline vapors to be released out of the underground storage tank through its vent pipe and into the atmosphere. *Id*. IEPA reiterated Midway's reference to USEPA's finding that "this incompatibility can result in a one to ten percent decrease in control efficiency over what would be achieved by either Stage II or ORVR alone. Rec. at 5. IEPA indicates that this incompatibility does not exist with a ORVR compatibile Stage II system. *Id.*

Facility Description

IEPA states that it "does not have sufficient evidence" to confirm or refute Midway's description of the facility; however, IEPA agrees that the evidence supports that Midway's fleet will be 100% equipped with ORVR. Rec. at 5. IEPA offers comment that the fueling operation is not currently operating and is thus not subject to Section 218.586 (35 Ill. Adm. Code 218.586). Rec. at 6. IEPA notes that the Board is generally presented with requests for relief from regulations that an affected source or operation is currently required to meet. *Id*. IEPA states that Midway does not describe the current pollution control equipment in place or the emissions from the source because the consolidated facility is not completed. *Id*. However, IEPA concedes that the lack of estimates of emissions in "not detrimental to the Amended Petition" because of the higher general in-use efficiency of the ORVR. Rec. at 7.

Compliance Alternative

IEPA states that the alternative to the adjusted standard for compliance is to install and operate a Stage II vapor recovery system at the consolidated facility. Rec. at 7. IEPA notes that there are both ORVR-incompatible and ORVR-compatible vacuum -assist Stage II vapor systems and it is unclear from the amended petition which type of system Midway intends to install. *Id*. IEPA agrees that use of ORVR alone will allow for higher gasoline vapor recovery than using ORVR in combination with either type of Stage II vapor recovery system. Rec. at 8. IEPA also has "no evidence to confirm or refute" cost estimates provided by Midway. *Id*.

Proposed Adjusted Standard

IEPA asks that if the Board grants the adjusted standard that the Board amend the language as follows:

1) The Chicago Midway International Airport Consolidated Rental Car Facility (5040 W. 55th Street, Chicago, Illinois), operated by Midway

RACS, LLC, shall not be subject to the requirements of 35 Ill. Adm. Code § 218.586 so long as all of the vehicles fueled at the Chicago Midway International Airport Consolidated Rental Car Facility are equipped with onboard refueling vapor recovery systems certified by the USEPA to capture a minimum of 95% of the gasoline vapor displaced during fueling.

2) Midway RACS, LLC shall operate in full compliance with all other applicable provisions of 35 Ill. Adm. Code Part 218, including, but not limited to, Subpart Y.

3) Midway RACS, LLC shall operate in full compliance with the Clean Air Act, Illinois Environmental Protection Act, and all applicable statutes, codes, and regulations not otherwise discussed herein. Rec. at 9.

IEPA offers different language to ensure that the adjusted standard language is clear and addresses any other requirements applicable to Midway. Rec. at 9-10.

Standard of Review

IEPA agrees that Section 218.586 (35 Ill. Adm. Code 218.586) does not specify a level of justification and that the standards in Section 28.1 of the Act (415 ILCS 5/28.1 (2010)) apply. IEPA believes that "the requisite justification exits and that Midway can establish its burden." Rec. at 11.

SECTION 28.1 FACTORS

Midway and IEPA have addressed each of the factors in Section 28.1 of the Act (415 ILCS 5/28.1 (2010)). The following paragraphs will summarize the information provided by Midway and IEPA on each factor. The Board's analysis and finding will follow the summaries.

Substantially and Significantly Different Factors

Midway opines that Stage II vapor recovery and ORVR compete to control vapor during the fueling process and as a result when used together, both are less effective. Am.Pet. at 4. Midway notes that the Board adopted Stage II vapor recovery before the ORVR technology was widespread. Midway offers that Congress anticipated that as new cars were equipped with ORVR, Stage II vapor recovery would no longer be needed and allowed for USEPA to waive Stage II vapor recovery requirements as ORVR became more common. Am.Pet. at 4-5.

Midway points out that according to USEPA, Stage II vapor recovery systems at dispensing facilities are incompatible with ORVR, causing the emission reduction of the two systems used together to be less than the emission reductions achieved by either system alone. USEPA states that this incompatibility can result in a 1 to 10 percent decrease in control efficiency. Am.Pet. at 8. This occurs because the Stage II and ORVR systems compete to capture displaced gasoline vapors during the fueling process, essentially rendering each less

effective. *Id*., citing 76 FR 41735 (July 15, 2011). Specifically, Midway explains that problems arise when the ORVR canister captures the gasoline emissions from the motor vehicle fuel tank. Instead of drawing vapor-laden air from the vehicle fuel tank into the underground storage tank, the vacuum pump of the Stage II system draws fresh air into the underground storage tank. *Id*. The fresh air causes gasoline in the underground tank to evaporate inside the underground tank and thus creates an increase in pressure in the underground storage tank.

IEPA agrees that the fleet will be 100% ORVR equipped (Rec. at 5) and that ORVR alone is more effective than when used with a Stage II vapor recovery system (Rec. at 8).

Efforts To Achieve Compliance

Midway argues that because using Stage II vapor recovery and ORVR together renders both less effective, an adjusted standard is warranted. Am.Pet. at 5. Furthermore, because Stage II vapor recovery was adopted prior to ORVR being in widespread use, the Board should grant the adjusted standard. Midwest notes that ORVR is used on the entire Midway fleet and thus, the adjusted standard should be granted. *Id*.

Midway indicates that the costs for a Stage II vapor recovery system would include increased upfront costs of $72,000 and annual maintenance costs estimated at about $3,277 per year. Am.Pet. at 9

As indicated above, IEPA believes that "the requisite justification exits and that Midway can establish its burden." Rec. at 11. IEPA notes that to achieve compliance with the rule of general applicability, Midway can include Stage II vapor recovery at the consolidated facility. However, IEPA opines that the use of ORVR alone is more effective. Rec. at 7.

Adjusted Standard Will Not Result in Environmental or Health Effects Substantially and Significantly More Adverse

Midway argues that the environmental impact will be less if the adjusted standard is granted. Am.Pet. at 5. Midway opines that this is so because, when both the Stage II vapor recovery and ORVR operate together, the pollution control is not as efficient and more emissions are released into the environment. *Id*. Alone the ORVR efficiency is over 98%, while Stage II vapor recovery is only 84%. *Id*. Thus, Midway asserts the rule of general applicability is less effective than the adjusted standard at controlling air emissions. *Id*.

IEPA believes that there will be no detrimental effect on the environment if the adjusted standard is granted and that an environmental benefit is likely. Rec. at 10.

Consistent with Federal Law

Midway maintains that granting the adjusted standard is consistent with federal law. Am.Pet. at 5. Midway states that the Clean Air Act requires that vehicle manufacturers equip

new vehicles with ORVR systems. *Id*. Further, USEPA may waive Stage II vapor recovery requirements. USEPA has issued guidance to the states concerning the removal of Stage II gasoline vapor recovery systems where States demonstrate to the USEPA that "widespread" use of ORVR has occurred in specific portions of the motor vehicle fleet, including refueling of rental cars at rental car facilities. Am.Pet. at 5-6. Midway notes that many Northeastern States have begun using the USEPA criteria to define "widespread" use. Am.Pet. at 6.

IEPA agrees that the adjusted standard is consistent with federal law. Rec. at 12. IEPA reiterates that Congress allowed for eventual elimination of Stage II vapor recovery when ORVR became widespread. *Id*. IEPA will submit the adjusted standard as a revision to the State Implementation Plan. Rec. at 13.

BOARD DISCUSSION

As the rule of general applicability does not set forth a level of justification for an adjusted standard, the Board looks to the factors of Section 28.1(c) of the Act (415 ILCS 5/28/1 (2010)) to determine if an adjusted standard should be granted. The Board will analyze each of those factors below.

Substantially and Significantly Different Factors

In 1992, the Board adopted rules to implement gasoline vapor recovery provisions of the Clean Air Act. *See* Stage II Gasoline Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 215, 218, and 219, R91-30 (Aug. 13, 1992). On April 6, 1994, USEPA promulgated standards for ORVR. *See* 59 Fed. Reg. 16262 (Apr. 6, 1994). Thus, almost two years after the Board adopted Stage II vapor recovery requirements, USEPA began approval of ORVR. By the year 2000 all new cars are equipped with ORVR. Thus, the Board could not have considered the use of ORVR when adopting the requirements of Stage II vapor recovery systems.

Also, Midway claims, and IEPA agrees, that ORVR is more effective at reducing gasoline vapors than the use of Stage II vapor recovery systems. The entire fleet of rental cars will be equipped with ORVR at the consolidated facility. Therefore, a more effective vapor recovery system will be in place.

The Board finds that the factors surrounding the consolidated facility are substantially and significantly different from factors considered by the Board when adopting Section 218.586 (35 Ill. Adm. Code 218.586). Therefore, the Board finds that weighing this factor supports an adjusted standard.

Efforts To Achieve Compliance

In order to comply with the rule of general applicability, a Stage II vapor recovery system could be installed. However, as discussed above and below, the implementation of Stage II vapor recovery system along with ORVR would result in less efficiency from both systems. Also, there are costs associated with the construction of a Stage II vapor recovery system, which can be eliminated if the adjusted standard is adopted. Although IEPA states the incompatibility

does not exist where an ORVR-compatible Stage II system is used, the Board notes that Midway refers to USEPA's finding that;

> There are various technologies that address this incompatibility, such as nozzles that sense when fresh air is being drawn into the underground storage tank and stop the air flow. Another solution is the addition of processors on the underground storage tank vent pipe that capture or destroy the gasoline vapor emissions from the vent pipe. Installing this technologies adds to the expense of the control system and is in some cases a reason to remove Stage II systems. Am. Pet. at 8, quoting 76 Fed. Reg. 41735 (July 15, 2011).

Therefore, the Board finds that this factor favors the granting of an adjusted standard.

Adjusted Standard Will Not Result in Environmental or Health Effects Substantially and Significantly More Adverse

Both Midway and IEPA agree that the use of ORVR will result in fewer emissions. IEPA specifically states that the adjusted standard will have no more of an adverse effect and may in fact result in an environmental benefit. The Board is convinced that the use of ORVR will not have a more significant impact on the environment or human health than the rule of general applicability. Therefore the Board finds that his factor supports granting an adjusted standard.

Consistent with Federal Law

Midway and IEPA agree that the adjusted standard is consistent with federal law. Further, the USEPA has developed guidance for states to use when removing Stage II vapor recovery requirements after the widespread use of ORVR can be demonstrated. Thus, USEPA supports the use of ORVR and IEPA will submit the adjusted standard to USEPA as a part of the State Implementation Plan. Therefore, the Board finds that the requested adjusted standard is consistent with federal law and this factor supports awarding an adjusted standard.

Adjusted Standard

Having weighed the Section 28.1 factors, the Board finds that Midway has justified the granting of the adjusted standard. The consolidated facility will be located near Midway Airport and is planned to better serve rental customers, while reducing traffic congestion. Each of the rental car companies currently operate separate facilities where the activities that will take place at the consolidated facility occur. Therefore, the Board will grant the adjusted standard. The Board will add the language suggested by IEPA to the adjusted standard.

CONCLUSION

The Board finds that Midway provided sufficient justification for an adjusted standard from the Stage II vapor recovery system requirements at Section 218.586 (35 Ill. Adm. Code 218.586). Midway will not be subject to that rule as long as 100% of the rental car fleet is

equipped with ORVR systems certified by USEPA to capture a minimum of 95% of the gasoline vapor displaced during fueling.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1) The Chicago Midway International Airport Consolidated Rental Car Facility located at 5040 W. 55th Street, Chicago, Illinois, operated by Midway RACS, LLC, shall not be subject to the requirements of 35 Ill. Adm. Code 218.586 so long as all of the vehicles fueled at the Chicago Midway International Airport Consolidated Rental Car Facility are equipped with onboard refueling vapor recovery systems certified by the USEPA to capture a minimum of 95% of the gasoline vapor displaced during fueling.

2) Midway RACS, LLC shall operate in full compliance with all other applicable provisions of 35 Ill. Adm. Code Part 218, including, but not limited to, Subpart Y.

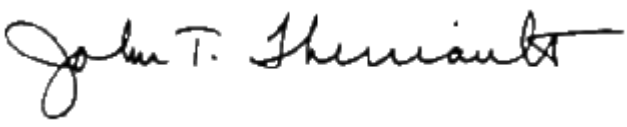
3) Midway RACS, LLC shall operate in full compliance with the Clean Air Act, Illinois Environmental Protection Act, and all applicable statutes, codes, and regulations not otherwise discussed herein.

IT IS SO ORDERED.

Chairman T.A. Holbrook abstains.
Board Member C.K. Zalewski abstains.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 6, 2012, by a vote of 3-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board