



November 19, 2024

## **EVR UPGRADE NOTICE**

### **"PRACTICAL" ACO END-DATE**

#### **IS NOVEMBER 26TH**

Dear NJGCA Member,

Over the last two years, we have dedicated numerous communications and detailed updates regarding the mandated Enhanced Vapor Recovery (EVR) upgrade.

The lawful deadline to have the work completed is December 23, 2024.

You can read two of our recent *Road Warrior* e-newsletters outlining this important information by clicking <https://www.voterve.com/BroadcastLinks/ipBG-ulLvjqpMJv4qIWUmw> and <https://www.voterve.com/BroadcastLinks/MN6SIbhTbKXLC8vHkANegg>

In last week's message, we reported that NJ Department of Environmental Protection (DEP) has informed our staff that there is a now "*revised deadline*" for any station owners who will not make the December 23, 2024 upgrade deadline, but is seeking a preemptive Administrative Consent Order (ACO) to avoid excessive fines.

In doing so, DEP has stated that **the new "effective" ACO end date has been moved up to December 1, 2024.**

Moving the date forward by three weeks is upsetting, but there is a real logistical reason behind it. That is, it serves an administrative purpose, as DEP staffers do not believe they can receive an ACO request, draft legal documents, have them reviewed, and everything signed n' executed before the December 23rd deadline.

The above noted, we thought to add a twist to the timeline by pointing out that **December 1st is a Sunday** and lands at the end of the **Thanksgiving holiday weekend.**

That means, if you really want to ask DEP for an ACO, you realistically and feasibly need to put in a **request by November 26th (or 27th, at the latest) so it can be memorialized ahead of the long Thanksgiving weekend and the December 1st cut off date.**

That also means, if an owner wants to be up front and seek an ACO with a very-reduced penalty, you have **one week from today** to make a decision and contact DEP with a request.

If you know you will not make the December 23rd deadline and wish to speak with a DEP official about the possibility of an ACO, here is their contact information **AND reach out before November 26th** to get the process started:

**Kevin Marlowe**

***Responsible for the Northern Region (Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Sussex, Warren)***

Email: [Kevin.Marlowe@dep.nj.gov](mailto:Kevin.Marlowe@dep.nj.gov)

Phone: (609) 439-9589

**Kristy LeNoir**

***Responsible for the Southern Region (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Middlesex, Mercer, Monmouth, Ocean, Salem, Somerset, Union)***

Email: [Kristina.LeNoir@dep.nj.gov](mailto:Kristina.LeNoir@dep.nj.gov)

Phone: (609) 221-3306

**Jenna DiNuzzo**

***Responsible for any station owner/operator that has multiple stations***

Email: [Jenna.DiNuzzo@dep.nj.gov](mailto:Jenna.DiNuzzo@dep.nj.gov)

Phone: (609) 672-1309

While some members are still “crunching the numbers” to determine if an ACO is the right move and are vacillating on their next steps, please consider the following:

**1 -- Recommendations:**

Some members have reached out asking if we "*recommend*" getting an ACO and/or how we would handle their current EVR upgrade situation (knowing that they will **not** meet the December 23rd deadline).

Typically, we do not offer operational advice to members, especially as the circumstances of each member and their businesses are unique.

However, if you know you will not meet the deadline, we **strongly recommend** you speak to DEP officials about an ACO rather than face the real possibility of being fined on a per-device/per-day basis (which could amount to thousands of dollars in fines).

Some may cringe at the idea of "*admitting to a violation*" or "*officially conceding on the record to wrongdoing*"; and we understand your hesitation.

Still, at this point, it is far better to accept a smaller, predictable fine than expose your business to greater liability and future scrutiny.

**2 -- "In Between" Upgrade Timing:**

If you are planning to have the EVR update done between December 1st and the December 23rd deadline, it is strongly suggested that you speak with DEP and consider an ACO -- even if you believe the work will be done on time.

Why?

Because we have already heard about completion delays, material availability shortages, and related logistical complications from other members. While no one wants to believe something will go wrong with their own circumstances, installer issues, calendar backlogs, and other unforeseen obstacles **do happen** regularly.

Is it worth inviting a sizable fine or the ire of DEP inspectors for a scheduling snafu that could have been planned around?

Better to reach out to DEP, explain your situation, and explore a solution now than invite a fine due later because your contractors' previous EVR job ran behind schedule or parts were unavailable to finish on time.

### **3 -- No Mercy After December 23rd:**

In speaking to DEP staffers, we know that a preemptive ACO is the only "*act of leniency*" station owners will receive before the deadline.

True, there are no guarantees that your station will be visited in January and a fine/violation issued.

However, as explained in last week's *Road Warrior* communication, **it would not take much for DEP to extrapolate who is currently in compliance from who is likely out of compliance and operating past the EVR deadline** -- and then pay those locations a visit.

Knowing this, DEP has bluntly stated that any station that has not met the mandated EVR upgrades by December 23rd **will not** receive any kind of indulgence or forgiveness.

Why? Because the deadline has been public knowledge **for seven years**.

Meaning, DEP will not only pursue full charges against any violator, but will not agree to any consent orders that reduce an owner's liability.

An ACO is your one, last, and only chance to avoid hefty fines.

The above in mind, please remember to review our two recent ***Road Warrior*** e-newsletters outlining specific information and other important details.

You can find related details in the following two links, including a list of available contractors, by clicking <https://www.voterveice.net/BroadcastLinks/ipBG-ulLvjqpMJv4qIWUmw> and <https://www.voterveice.net/BroadcastLinks/MN6SIbhTbKXLC8vHkANegg>

If you have any questions, please contact Nick at [nick@njgca.org](mailto:nick@njgca.org) or a 732-256-9646.