

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 129]

Control of VOCs from Gasoline Dispensing Facilities (Stage II)

The Environmental Quality Board (Board) proposes to amend § 129.82 (relating to control of VOCs from gasoline dispensing facilities (Stage II)) to read as set forth in Annex A. The proposed revisions clarify the existing Stage II requirements and make them consistent with the provisions of the Air Pollution Control Act (act) (35 P. S. §§ 4001—4015).

This proposal also seeks comment on the recommendation of the Southwestern Pennsylvania Ozone Stakeholder (Stakeholders) Working Group relating to Stage II.

If approved, the amendment will be submitted to the Environmental Protection Agency (EPA) as an amendment to the State Implementation Plan (SIP).

This notice is given under Board order at its meeting of March 18, 1997.

A. Effective Date

This proposed amendment will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663; or M. Dukes Pepper, Jr., Assistant Director, Bureau of Regulatory Counsel, Office of the Chief Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department's) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

This action is being taken under the authority of section 5 of the Air Pollution Control Act (act) (35 P. S. § 4005) which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. Background of the Proposed Amendment

This proposed rulemaking establishes controls of VOCs from gasoline dispensing facilities (Stage II) in the Pittsburgh-Beaver Valley Area as part of the Commonwealth's demonstration of attainment of the health-based ozone standard. Based on 1991 through 1994 monitoring data, on July 19, 1995, the EPA determined that measured air quality in the area met the ozone National Ambient Air Quality Standard (NAAQS) and that the statutory requirement for an attainment demonstration (and other related requirements) was no longer applicable. However, there were a number of ozone exceed-

ances in 1995 that resulted in a violation of the ozone NAAQS. In response to this violation, the Governor formed the Stakeholders to review the ozone problem and recommend additional emission control programs.

In response to the 1995 ozone NAAQS violation, EPA, on June 4, 1996, published a finding in the *Federal Register* (61 FR 28061 et seq.) that the area was no longer attaining the ozone standard and reinstated the applicability of the attainment demonstration and related requirements. These requirements are those established by Part D of Title I of the Clean Air Act, sections 182(b) and 172(c)(9) (42 U.S.C.A. §§ 7511a(b) and 7502(c)(9)). The EPA recognized the work of the Stakeholders when it published the schedule for completion of the attainment demonstration for the Pittsburgh-Beaver Valley Ozone Nonattainment Area. The schedule was a result of a letter submitted by the Commonwealth. Under the schedule, by December 31, 1997, the Commonwealth must submit to the EPA, as a SIP revision, final regulations establishing the emission controls contained in Annex A. In the event the Commonwealth fails to meet this schedule, the sanctions established by the Clean Air Act will go into effect in early January of 1998. These sanctions include 2 to 1 emission offsets and (after 6 months) the loss of Federal highway funds in the area.

This proposal is one of four core emission reduction strategies recommended by the Stakeholders necessary for the demonstration of attainment of the ozone standard. The four strategies are:

1. Minor changes to the proposed low enhanced motor vehicle emission inspection and maintenance program.
2. The second phase (55% reduction) of the Ozone Transport Commission NO_x Memorandum of Understanding.
3. Clean gasoline proposal (Federal Reformulated Gasoline (RFG) or 7.8 Reid vapor pressure (RVP) gasoline).
4. Stage II vapor control requirements.

These four core strategies were recognized by the Stakeholders as necessary to achieve the ozone standard in the Pittsburgh-Beaver Valley Ozone Nonattainment Area. The Stakeholders specifically recommended the following schedule and throughput cutoff sizes for the implementation of the Stage II requirements:

1. As of April 1, 1997, Stage II should be required to be installed and operational by all newly constructed gasoline dispensing facilities pumping an average of 10,000 gallons or more of gasoline per month.
2. As of April 1, 1997, Stage II should be required to be installed and operational at the reopening of any gasoline dispensing facility pumping an average of 10,000 gallons or more of gasoline per month which has been rebuilt or renovated, where tanks and associated piping have been substantially disturbed in the rebuilding or renovation process.
3. By the end of the year 1998, Stage II should be put in place by all stations pumping an average of 120,000 gallons of gasoline per month (based on 1995/1996 sales).
4. By the end of the year 2000, Stage II should be put in place by all stations pumping an average of 90,000

gallons of gasoline per month (based upon 1995/1996 sales).

5. Stage II will no longer be required as of the year 2010 provided the Federal program to have vapor collection canisters on board each new vehicle is fully implemented.

The Stakeholders' recommendation is contingent upon all safety-related questions surrounding Stage II and on-board vapor recovery devices being addressed satisfactorily.

The Department is specifically requesting comments on the Stakeholders' recommendation as part of this rulemaking.

The statutory authority to establish Stage II throughputs and time frames as recommended by the Stakeholders by regulation is limited by section 6.7 of the act (35 P. S. § 4006.7). The Department intends to seek a repeal of section 6.7 of the act to allow implementation of the Stakeholders' recommendation by regulation.

As an alternative to repeal of section 6.7 of the act and for newly constructed or substantially modified gasoline dispensing facilities, as a supplement to section 6.7 of the act to implement the existing regulations in § 129.82, the Department will begin to implement the requirements of section 6.7 of the act and § 129.82 on the following schedule:

1. As of April 1, 1997, Stage II will be required to be installed and operational by all newly constructed gasoline dispensing facilities pumping an average of 10,000 gallons of gasoline per month.

2. As of April 1, 1997, Stage II will be required to be installed and operational at the reopening of any gasoline dispensing facility pumping an average of 10,000 gallons or more of gasoline per month which has been rebuilt or renovated, where tanks and associated pumping have been substantially disturbed in the rebuilding or renovation process.

3. By the end of the year 1998, Stage II will be required to be installed and operational by all stations pumping an average of 120,000 gallons of gasoline per month (based on 1995/1996 sales).

4. By the end of the year 2000, Stage II will be required to be installed and operational by all stations pumping an average of 90,000 gallons of gasoline per month (based upon 1995/1996 sales).

5. After the year 2000, Stage II will be required to be installed and operational by all gasoline dispensing facilities regulated under section 6.7 of the act and § 129.82. Prior to beginning to enforce this provision, the Department will determine whether these additional reductions are necessary to achieve or maintain the NAAQS for ozone.

The Department discussed the regulatory revisions, Stakeholders' recommendations and implementation schedule with the Air and Water Quality Technical Advisory Committee (AWQTAC). At its January 10, 1997, meeting, the Air Subcommittee of the AWQTAC, acting on behalf of the full AWQTAC, recommended adoption of the proposed amendment and specifically requested that the Department solicit public comment on the Stakeholders' recommendation and describe the Commonwealth's enforcement strategy.

E. *Summary of the Regulatory Revision*

The proposed amendment clarifies the existing Stage II regulatory requirements and makes these provisions consistent with section 6.7 of the act. The amendment to § 129.82 incorporates the compliance dates established by the act into the existing regulations. Finally, subsection (d) establishes the functional testing and certification requirements consistent with the EPA's regulations.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendment.

Benefits

The approximately 2.8 to 3 million people living in the seven counties affected by this amendment will benefit from the reduced ozone levels which will result from implementation of the proposed amendment.

Compliance Costs

Information developed by the Stakeholders indicates that the cost of gasoline may increase approximately 2 to 2.6¢ per gallon. Estimated annual gasoline sales in the southwest Pennsylvania area are slightly less than 1 billion gallons. Total cost to affected facilities is estimated to be approximately \$25 million for implementation of the Stage II requirements.

Compliance Assistance Plan

The Department plans to educate and assist the public and the regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

Paperwork Requirements

Affected facilities will be required to maintain records of compliance testing and maintenance activities. Facilities claiming to be unaffected because of the low throughput volumes will be required to maintain records to demonstrate that they are unaffected.

G. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for the Department, the Governor and the

General Assembly to review these objections before final publication of the regulation.

I. Public Comment and Board Public Hearing

Public Hearing

The Board will hold one public hearing for the purpose of accepting comments on the proposed amendment. The hearing will be held on June 3, 1997, at 1 p.m., at the following location:

Department of Environmental Protection, Southwest Regional Office, 500 Waterfront Drive, Pittsburgh, PA

Persons wishing to present testimony at the hearing must contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodations in order to participate, should contact Nancy Roush at (717) 787-4526 or through the Pennsylvania AT&T relay service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Written Comments

In lieu of, or in addition to, presenting oral testimony at the hearing, interested persons may submit written comments, suggestions or objections regarding the proposed amendment to the Board, 15th Floor, Rachel Carson State Office Building, P. O. Box 8477, Harrisburg, PA 17105-8477. Comments received by facsimile will not be accepted. Comments must be received by July 3, 1997. In addition to the written comments, interested persons may also submit a summary of their comments to the Board. This summary may not exceed one page in length and must be received by July 3, 1997. The summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulation will be considered.

The Department is expressly seeking comment on the recommendations (discussed in Section D of this Preamble—Background of the Proposal) of the Stakeholders relating to Stage II. The Department will be seeking an amendment to the act to authorize development of a final regulation to implement the Stakeholders' recommendations.

Electronic Comments

Comments may be submitted electronically to the Board at Regcomments@a1.dep.state.pa.us. A subject heading the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by July 3, 1997.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-320. No fiscal impact; (8) recommends adoption. This proposed amendment may result in increased costs to various Commonwealth agencies to purchase gasoline for Commonwealth vehicles. The total increased costs will depend on the type and amount of fuel purchased, and market conditions. The total increased cost can not be estimated at this time, but it is not expected to be significant.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**Subpart C. PROTECTION OF NATURAL
RESOURCES**

ARTICLE III. AIR RESOURCES

CHAPTER 129. STANDARDS FOR SOURCES

MOBILE SOURCES

§ 129.82. Control of VOCs from gasoline dispensing facilities (Stage II).

(a) After the date specified in paragraph (1) or (2), an owner or operator of a gasoline dispensing facility subject to this section may not transfer or allow the transfer of gasoline into a motor vehicle fuel tank unless the dispensing facility is equipped with a Department approved and properly operating Stage II vapor recovery or vapor collection system. Unless a higher percent reduction is required by the EPA under section 182 of the Clean Air Act (42 U.S.C.A. § 7511a) approval by the Department of a Stage II vapor collection system will be based on a determination that the system will collect at least 90% by weight, of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling and the captured vapors are returned to a vapor tight holding system or vapor control system.

(1) This paragraph applies to gasoline dispensing facilities located in areas classified as moderate, serious or severe ozone nonattainment areas under section 181 of the Clean Air Act (42 U.S.C.A. § 7511) including the counties of Allegheny, Armstrong, Beaver, Berks, Bucks, Butler, Chester, Delaware, Fayette, Montgomery, Philadelphia, Washington and Westmoreland with monthly throughputs greater than 10,000 gallons (37,850 liters). In the case of independent small business marketers of gasoline as defined in section 325 of the Clean Air Act (42 U.S.C.A. § 7625a), this section will not apply if the monthly throughput is less than 50,000 gallons (189,250 liters).

(i) Facilities for which construction was commenced after November 15, 1990, shall achieve compliance by **[August 8, 1992] May 15, 1993**.

(ii) Facilities which dispense greater than 100,000 gallons (378,500 liters) of gasoline per month, based on average monthly sales for the 2-year period immediately preceding **[February 8, 1992] November 15, 1992**, shall achieve compliance by **[February 8, 1993] November 15, 1993**.

(iii) All other affected facilities shall achieve compliance by **[February 8, 1994] November 15, 1994**.

(2) Gasoline dispensing facilities with annual throughputs greater than 10,000 gallons in the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia shall be subject to the requirements of this section immediately upon the addition or replacement of one or more underground gasoline storage tanks for which construction was commenced after **[February 8, 1992] November 15, 1992**.

(3) For purposes of this section, the term "construction" includes, but is not limited to, the addition or replacement of one or more underground **gasoline** storage tanks.

(b) Owners or operators, or both, of gasoline dispensing facilities subject to [the requirements of] this section shall:

* * * * *

(5) Maintain records of **system test results**, monthly throughput, type and duration of any failures of the system and maintenance and repair records **on the premises of the affected gasoline dispensing facility**. The records shall be kept for at least 2 years and shall be made available for inspection, **upon request**, by the Department.

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(d) The owners or operators, or both, of gasoline dispensing facilities shall comply with the functional testing and certification requirements specified in the EPA's Stage II enforcement and technical guidance documents developed under section 182 of the Clean Air Act to meet the Clean Air Act requirements for areas classified as moderate, serious, severe or extreme ozone nonattainment.

(1) Upon installation of a Department approved Stage II system the functional testing and certification requirements shall include:

(i) A dynamic backpressure test upon installation and every 5 years thereafter.

(ii) A leak or pressure decay test upon installation and every 5 years thereafter for vapor balance systems and upon installation and once in every 12 month period thereafter for vacuum assist systems.

(iii) A liquid blockage test upon installation and every 5 years thereafter.

(iv) An air to liquid ratio test upon installation and every 5 years thereafter for vacuum assist systems to which the test is applicable.

(2) Owners or operators, or both, of gasoline dispensing facilities subject to this section shall provide at least 48 hours advance notice of when the testing will occur and what party will conduct the testing.

(3) The system shall be retested upon major system replacement or modification.

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