

<b>Regulatory Analysis Form</b>		This space for use by IRRC RECEIVED 99 FEB -9 AM 9: 59 RECEIVED ENVIRONMENTAL REVIEW COMMISSION <b>Harbison</b> IRRC Number: <b>1836</b>
(1) Agency Environmental Protection		
(2) I.D. Number (Governor's Office Use) 7-320		
(3) Short Title Control of VOCs from gasoline dispensing facilities (Stage II)		
(4) PA Code Cite 25 PA Code Section 129.82	(5) Agency Contacts & Telephone Numbers Primary Contact: Sharon Freeman, 717-783-1303 Secondary Contact: Barbara A. Sexton, 717-783-1303	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  The revisions implement the recommendations of the Southwest Pennsylvania Stakeholder Working Group relating to Stage II. The Stakeholder Group recommendation is that existing gasoline dispensing facilities with monthly throughputs greater than 120,000 gallons per month, based on 1995 and 1996 data, install and operate Stage II controls no later than December 31, 1998. In addition, existing gasoline dispensing facilities with monthly throughputs greater than 90,000 gallons but less than 120,000 gallons per month are to implement Stage II gasoline vapor control programs in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties by December 31, 2000. All new and substantially modified facilities starting operation after April 1, 1997 would be required to have Stage II installed at start-up. The Stage II requirement would be eliminated in 2010 if the federal program to have vapor collection canisters on-board each new vehicle is implemented.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  This action is being taken under the authority of Section 5 of the Air Pollution Control Act (35 P.S. §4005).		

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Commonwealth is required to implement control strategies to demonstrate that the Pittsburgh-Beaver Valley Area will achieve the National Ambient Air Quality Standard (NAAQS). (61 FR 28061, 28064).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Pittsburgh-Beaver Valley Area continues to exceed the health-based standard for ground-level ozone. In April of 1996, Southwestern Pennsylvania Ozone Stakeholder Working Group was formed to address the problem and make recommendations to the Secretary regarding the implementation of measures necessary to attain and maintain the health-based standard. One of the recommendations made was to require Stage II gasoline refueling controls in the non-attainment area in order to reduce emissions of ozone precursors. This regulation will help move the area toward attainment of the health-based standard for ozone, which is in the best interest of the public.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

When ground-level ozone is present in concentrations in excess of the federal health-based standard, public health is adversely affected. The federal Environmental Protection Agency has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Further, although children, the elderly, and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activity that involves physical exertion. Though such symptoms are often temporary, repeated exposure could result in permanent lung damage.

The implementation of additional measures to address the ozone air quality nonattainment in Southwest Pennsylvania is necessary to protect the public health. Stage II gasoline vapor recovery is a part of the ozone reduction strategy developed by the Southwest Pennsylvania Ozone Stakeholder Working Group.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The revisions will benefit the general public by reducing ozone precursor emissions. The reduction in ozone precursor emissions will result in improved ozone air quality in the area. It is estimated that the Stage II controls will reduce VOC emissions by slightly less than 10 tons per day. Total VOC emissions in the Pittsburgh-Beaver Valley Area, based on 1996 data, are estimated to be approximately 340 tons per day. All citizens of the Commonwealth will benefit from the reduced ozone levels which will result from the implementation of the proposed revisions. In addition, the citizens will benefit from reduced emission of hazardous air pollutants which will occur from the implementation of the proposed regulation.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The proposed regulation may have adverse impact on retail gasoline dispensing facilities if the facilities can not pass the Stage II system costs on to gasoline purchasers. This may occur in a limited number of facilities located on the borders of the Pittsburgh-Beaver Valley ozone nonattainment area. These facilities may not be able to pass the cost to consumers if nearby facilities outside of the Stage II area maintain lower gasoline prices.

The number of potentially affected facilities is not known.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

It is estimated that there are approximately 1250 retail gasoline dispensing facilities in the Southwest Pennsylvania area. In addition, there are smaller private dispensing facilities which may be affected if the retail or private facility is rebuilt.

(16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Southwest Pennsylvania Ozone Stakeholder Working Group met for approximately 8 months deliberating ozone reduction strategies for the area. Implementation of a Stage II gasoline vapor recovery program for existing gasoline dispensing facilities with throughputs greater than 90,000 gallons per month and for new or substantially rebuilt facilities was one of the recommendations of the Stakeholders Group.

In addition, the revisions were discussed with the Air Subcommittee of the Air and Water Quality Technical Advisory Committee, the Small Business Compliance Advisory Committee, and the Agricultural Advisory Board and made available for review by the Citizens Advisory Council.

(17) Provide a specific estimate of the cost and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Information developed by the Stakeholders indicates that the cost of gasoline may increase approximately 2.0 to 2.6 cents 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 the implementation of Stage II.

The average cost for a Stage II system at an affected facility is expected to be approximately \$ 20,000. This estimate includes tank excavation, underground piping and related Stage II system component installation. The cost will vary from station to station depending on factors such as number of dispensing pumps and excavation costs.

## Regulatory Analysis Form

(18) Provide a specific estimate of the cost and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments will have to absorb the increased cost of gasoline purchased to fuel their fleets. In addition, some local governmental entities may have to bear the cost of Stage II installations if they install new gasoline dispensing facilities.

It is estimated, based on cost data developed by the Southwest Stakeholders, that the implementation of Stage II will increase the cost of gasoline by approximately 2.0 to 2.6 cents per gallon. Total costs to local government will be a function of the quantity of gasoline purchased at retail outlets.

Certain refueling sites operated by local government may be required to install Stage II if the facility is rebuilt. Costs for Stage II installation during a rebuild are estimated to be several thousand dollars.

(19) Provide a specific estimate of the cost and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

It is estimated, based on cost data developed by the Southwest Pennsylvania Ozone Stakeholder Working Group, that the implementation of Stage II will increase the cost of gasoline by approximately 2.0 to 2.6 cents per gallon. Total costs to state government will be a function of the quantity of gasoline purchased at retail outlets.

Certain refueling sites operated by state government may be required to install Stage II if the facility is rebuilt. Costs for Stage II installation during a rebuild are estimated to be several thousand dollars per facility.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Governments</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Savings</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS: Consumers</b>		25,000,000	25,000,000	25,000,000	25,000,000	25,000,000
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Governments</b>						
<b>Total Cost</b>	See Note					
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Governments</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Revenue Losses</b>	N/A	N/A	N/A	N/A	N/A	N/A

(20a) Explain how the cost estimates listed above were derived.

It is estimated, based on cost data developed by the Southwest Pennsylvania Ozone Stakeholder Working Group, that the implementation of Stage II will increase the cost of gasoline by approximately 2.6 cents per gallon. Total costs to local government will be a function of the quantity of gasoline purchased at retail outlets.

Certain refueling sites operated by state and local government may be required to install Stage II if the facility is rebuilt. Costs for Stage II installation during a rebuild are estimated to be several thousand dollars per facility.

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Air Quality	21,000,000	26,000,000	29,000,000	27,000,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and cost.

The Stage II gasoline vapor recovery requirements are a component of the Southwest Pennsylvania Ozone Stakeholder Working Group proposed strategy to meet the health-based ozone air quality National Ambient Air Quality Standard (NAAQS) in the southwest Pennsylvania area.

An area that fails to attain the standard runs the risk of sanctions which could include the loss of all federal highway funds. For the Pittsburgh area sanctions would go into effect 14 days after December 31, 1997 if Pennsylvania fails to submit a fully enforceable regulation based on EPA's final rule related to the area (61 Fed. Reg. 28061, 28064). In addition, reducing the ambient ozone levels will reduce adverse health affects and lower health-care and related costs in the area.

(22) Describe the nonregulatory alternative considered and the cost associated with those alternatives. Provide the reasons for their dismissal.

The Southwest Pennsylvania Ozone Stakeholder Working Group considered a wide variety of regulatory, nonregulatory, and episodic ozone control strategies. Stage II was selected as an appropriate emission reduction strategy to implement because it provides near-term and long-term emission reductions which are enforceable and will satisfy Clean Air Act requirements related to air quality attainment demonstrations.

A full description of the strategies discussed by the Stakeholders may be found in Appendix C of the final report to the Secretary of DEP from the Stakeholders dated January 15, 1997.

(23) Describe alternative regulatory schemes considered and the cost associated with those schemes. Provide the reasons for their dismissal.

A full description of the strategies discussed by the Stakeholders may be found in Appendix C of the final report to the Secretary of DEP from the Stakeholders dated January 15, 1997.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions which are more stringent than the federal requirements.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This revision is less stringent than the Stage II requirement in other states. However, Stage II is not required in all counties of surrounding states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

One public hearing was held in Pittsburgh at the Southwest Regional Office, 400 Waterfront Drive, Pittsburgh at 1:00 PM on June 3, 1997. The sixty-two day public comment period closed on July 3, 1997. No public meetings were held.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

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

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions are included.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will become effective on publication as final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

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

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

99 FEB -9 AM 9:59

INDUSTRIAL REGULATORY  
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality. Attorney General

\_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections  
attached.

Copy below is hereby certified to be a true and correct copy  
of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD  
\_\_\_\_\_  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-320

DATE OF ADOPTION: 12-15-98

BY: James M. Seif

TITLE: JAMES M. SEIF, CHAIRMAN  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to  
form and legality. Executive or Independent  
Agencies.

R. E. Grimaldi

1/7/99  
\_\_\_\_\_  
DATE OF APPROVAL

(Deputy General Counsel)  
(~~Chief Counsel, Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General  
approval or objection within 30  
days after submission.

ORDER ADOPTING REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

Control of VOCs from Gasoline Dispensing  
Facilities (Stage II)

25 Pa. Code, Chapter 129

**NOTICE OF FINAL RULEMAKING  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**25 Pa. Code Chapter 129  
Control of VOCs from Gasoline Dispensing Facilities  
(Stage II)**

**Order**

The Environmental Quality Board (EQB) is by this Order amending 25 Pa. Code Chapter 129 (relating to standards for sources) as set forth in Annex A. The revisions implement the recommendation of the Southwest Pennsylvania Ozone Stakeholders Working Group relating to control of volatile organic compounds (VOCs) from gasoline dispensing facilities (Stage II).

The regulation 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 December 15, 1998.

**A. Effective Date**

These amendments 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, telephone (717) 787-1663; or M. Dukes Pepper, Jr., Assistant Director, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, telephone (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This amendment is available electronically through the DEP 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, 35 P.S. §4005, which grants to the EQB the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

**D. Background and Summary**

This regulation establishes controls of VOCs from gasoline dispensing facilities (Stage II) in the Pittsburgh Beaver Valley Ozone Nonattainment Area. This proposal is one of four core emission reduction strategies recommended by the Southwest Pennsylvania Ozone Stakeholder Working Group as being necessary for 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<sub>x</sub> Memorandum of Understanding;
3. clean gasoline proposal (federal Reformulated Gasoline (RFG) or 7.8 Reid vapor pressure (RVP) gasoline); and
4. Stage II vapor control requirements.

The Stakeholders specifically recommended the following schedule and throughput cutoff sizes for the implementation of the Stage II requirements:

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

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.

This final rulemaking implements the Stakeholders recommendation, with the exception of the compliance date of December 31, 1998, for all existing stations pumping an average of 120,000 gallons per month. This date was changed to July 1, 1999, to afford facilities additional time to comply with this requirement following the Board's adoption of this regulation. The Stakeholders' recommendation was contingent upon all safety-related questions surrounding Stage II and on-board recovery devices being addressed satisfactorily. The Department's investigation has identified no safety related problems surrounding the use of Stage II with on-board recovery devices. The California Air Resources Board performed tests in June and July, 1997, to evaluate potential explosive conditions arising from use of Stage II on vehicles with Onboard Refueling Vapor Recovery (ORVR). The evaluation did not identify any significant safety concerns. A preliminary report describing the results of the testing has been drafted and is available from the Department upon request.

The Department discussed the regulatory revisions, Stakeholders' recommendations and implementation schedule with the Air Quality Technical Advisory Committee (AQTAC). At its July 21, 1997 meeting, the AQTAC recommended adoption of the final regulations.

In the preamble to the proposed rulemaking, the Department indicated that the authority and timeframes recommended by the Stakeholders could not be adopted as a regulation because of the express language of Section 6.7 of the Air Pollution Control Act (APCA) (35 P.S. §4006.7). The Department indicated that it intended to seek a repeal of Section 6.7 to allow implementation of the Stakeholders' recommendation by regulation. The Department also specifically sought comments on implementation of the Stakeholders' recommendation. Since publication of the proposed rulemaking, paragraphs (a) through (g) of Section 6.7 of APCA have been repealed. The Department now has the legal authority to implement the recommendations of the Stakeholders. This final regulation implements those recommendations, except for the compliance date described above.

The revisions modify and clarify the existing Stage II regulatory requirements. The amendments to Section 129.82 incorporate the throughput levels recommended by the Southwest Pennsylvania Ozone Stakeholder Working Group. The Department has refined the Stakeholder recommendations to exempt facilities with very small throughputs (less than 10,000 gallons per month) as well as Independent Small Business Marketers with throughputs less than 50,000 gallons per month. This refinement makes the program consistent with the Stage II requirements already in place in the Philadelphia area. Paragraph (d) provides that if the on-board canister refueling emissions control problem has been fully implemented by 2010, the Stage II systems will no longer be required. Finally, paragraph (e) establishes the functional testing and certification requirements consistent with EPA's regulations.

**E. Summary of Comments and Responses on the Proposed Regulation**

The Department received comments from 4 individuals and organizations. The commentators generally supported the proposed revisions.

One commentator indicated that the proposed implementation schedule and the throughput cutoff sizes are not consistent with the federal Clean Air Act requirements and are in conflict with the Pennsylvania Air Pollution Control Act (APCA). These inconsistencies have been addressed by a revision of the APCA.

One commentator indicated that the Department does not have the legal authority to continue its present enforcement policy with respect to Stage II. The Department's exercise of enforcement discretion is appropriate under the provisions of the APCA. In addition, this regulation will codify the enforcement policy that is presently being used to implement the Stage II requirements.

One commentator indicated that the Stakeholders did not recommend a de minimis level of 10,000 gallons per month for new or rebuilt facilities, and questioned the Department's inclusion of that limit in the proposed rule. The 10,000 gallons per month de minimis level is consistent with the threshold level that has been in use in the Philadelphia area since 1992.

One commentator suggested that the requirements should not make both the owner and operator responsible for the installation and operation of the Stage II systems. The requirements should specify that the operator is responsible for assuring employee training, system maintenance and operation and an owner should not be held responsible unless the owner is also the operator. The Department believes that both the owner and operator should be responsible for the compliance status of an affected facility. This has been a component of the SIP-approved program in place in the Philadelphia area since 1992.

One commentator indicated that the regulation should be modified to allow maintenance of records off site with the provision that the records be made available to the Department within a reasonable time. For ease and effectiveness of enforcement, the Department believes that the appropriate records demonstrating maintenance and other compliance aspects should be maintained on the site.

One commentator indicated that the proposed regulation lists compliance dates which have expired. The final regulation implements the compliance dates recommended by the Southwest Stakeholders. The expired dates simply make the regulatory language consistent with the APCA provision applicable in the Philadelphia area since 1992.

One commentator supports the implementation of Stage II throughout Pennsylvania, not only in the moderate, serious and severe ozone nonattainment areas in the Commonwealth. Statewide implementation of Stage II will help to protect the public health of citizens as they refuel their cars. Because significant areas of the Commonwealth demonstrate attainment of the health related ozone air quality standard, the Department does not believe that statewide implementation of Stage II is appropriate at this time.

One commentator believes that the Commonwealth should have required implementation of Stage II at affected facilities as is required by the existing regulation. Stage II was implemented in the Southeast Pennsylvania ozone nonattainment area in accordance with the existing regulations. Implementation of Stage II in other areas was deferred until it could be determined that the program was necessary for attainment of the ozone air quality standard. The Department will now require implementation of Stage II consistent with the recommendations of the Southwest Pennsylvania Ozone Stakeholder Working Group.

One commentator indicated that five years was too long a time period between inspections for Stage II systems. The high rate of use of the systems may cause more rapid deterioration because the five-year interval specified in the regulations relates to the completion of backpressure and leak and pressure decay tests. These tests, which are part of EPA's functional testing requirements, relate primarily to the underground piping system components which are not so prone to damage or deterioration as the nozzles, boots, and aboveground piping. The inspections of these visible components are to be more frequent, and defective equipment is to be removed from service.

One commentator indicated that the proposed provisions of Sections 129.82(d) and (d)(2) which make "owners or operators, or both" responsible for completion of testing of Stage II systems could be confusing. The commentator recommended that the EQB explain and clarify who bears the ultimate responsibility for testing of the systems. The final regulation was revised to remove these detailed testing requirements. Stage II testing requirements in the regulation are provided for in Section 6.7(h) of the APCA.

One commentator indicated that the requirements in the proposed Section 129.82(d)(1) for completion of testing "upon installation" could be confusing. The commentator suggested that the EQB clarify whether testing is to be required only on new installations or if the EQB also intended the testing requirements to apply to existing facilities. These testing requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

One commentator indicated that the requirements in the proposed Section 129.82(d)(2) specify that testing is to be conducted in accordance with the certification requirements in the EPA's Stage II enforcement and technical guidance documents. Section 129.82(d)(1)(iv) requires an "air to liquid ratio test." The EPA guidance does not include an "air to liquid ratio test". The commentator suggested that the EQB explain how a facility would comply with the testing requirement. These testing requirements have been removed from the final regulation. Stage II testing requirements contained in the regulation are provided for in Section 6.7(h) of the APCA.

One commentator indicated that although Section 129.82(d)(2) requires at least 48 hours advance notice of Stage II system testing, the proposed regulation does not specify who in the Department is to be notified. The commentator suggested that the EQB should clarify in Section 129.82(d)(2) exactly who in the Department is to be given the 48-hours advance notice of Stage II testing. These testing and notification requirements have been removed from the final

regulation. Stage II testing requirements contained in the regulation are provided for in Section 6.7(h) of the APCA.

One commentator indicated that Section 129.82(d)(3) requires Stage II system retesting upon major system replacement or modification. The commentator indicated that the regulation does not clearly specify what constitutes a major system replacement or modification and what constitutes a minor modification. The commentator requested that the EQB explain how a facility can determine what replacements or modifications would subject the facility to requirements for retesting. These testing requirements have been removed from the final regulation. Stage II testing requirements contained in the regulation are provided for in Section 6.7(h) of the APCA.

#### **F. Benefits, Costs and Compliance**

Executive Order 1996-1 requires a cost/benefit analysis of the final regulation.

##### Benefits

The approximately 2.8 to 3 million people living in the seven counties affected by this regulation will benefit from the reduced ozone levels which will result from implementation of the proposed revisions. When ground-level ozone is present in concentrations in excess of the federal health-based standard, public health is adversely affected. The federal Environmental Protection Agency has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Further, although children, the elderly, and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activity that involves physical exertion. Though such symptoms are often temporary, repeated exposure can result in permanent lung damage.

The implementation of additional measures to address the ozone air quality nonattainment in Southwest Pennsylvania is necessary to protect the public health. Stage II gasoline vapor recovery is a part of the ozone reduction strategy developed by the Southwest Pennsylvania Ozone Stakeholder Working Group.

##### Compliance Costs

Information developed by the Southwest Pennsylvania Ozone Stakeholder Working Group indicates that the cost of gasoline may increase approximately 2 to 2.6 cents per gallon. Estimated annual gasoline sales in the southwest Pennsylvania area are slightly less than one billion gallons. Total cost to affected facilities is estimated to be approximately \$25 million for implementation of the Stage II requirements. It is anticipated that the compliance costs associated with the Stage II requirements will be passed on to the consumer in increased gasoline costs.

### 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. Two workshops were held for underground storage tank installers concerning the Stage II requirements and letters have been sent to station operators concerning the implementation schedule for Stage II in the Pittsburgh-Beaver Valley area.

### 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)), the Department submitted a copy of the proposed amendment on April 21, 1997, to the Independent Regulatory Review Commission and to the Chairmen of the Senate and House Environmental Resources and Energy Committees. In compliance with Section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing this final-form regulation, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this preamble. The Committees did not provide comments on the proposed rulemaking.

This final-form regulation was (deemed) approved by the House Environmental Resources and Energy Committee on \_\_\_\_\_ and was (deemed) approved by the Senate Environmental Resources and Energy Committee on \_\_\_\_\_. The Commission met on \_\_\_\_\_ and (deemed) approved the regulation in accordance with Section 5(c) of the Act.

## **I. Findings of the Board**

The Board finds that:

(1) Public notice of proposed rulemaking was given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code*, §§7.1 and 7.2.

(2) A public comment period and public hearings were provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 27 *Pennsylvania Bulletin* 2239 (May 3, 1997).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Order and are reasonably necessary to achieve and maintain the national ambient air quality standards.

## **K. Order of the Board**

The Board, acting under the authorizing statutes, orders that:

(1) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 129, are amended by amending this chapter to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Chairman of the Board shall submit this Order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Chairman shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(4) The Chairman of the Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(5) This Order shall take effect immediately.

By:

James M. Seif  
Chairman

**ANNEX A**

**Stage II**

**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), OR (3) 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) THIS PARAGRAPH APPLIES TO GASOLINE DISPENSING FACILITIES LOCATED IN THE COUNTIES OF ALLEGHENY, ARMSTRONG, BEAVER, BUTLER, FAYETTE, 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) ALL FACILITIES FOR WHICH CONSTRUCTION WAS COMMENCED AFTER APRIL 1, 1997 SHALL ACHIEVE COMPLIANCE AT THE TIME OF OPENING OF THE GASOLINE DISPENSING FACILITY.**

**(ii) FACILITIES WHICH DISPENSE GREATER THAN OR EQUAL TO 120,000 GALLONS (378,500 LITERS) OF GASOLINE PER MONTH, BASED ON AVERAGE MONTHLY SALES DURING CALENDAR YEARS 1995 AND 1996, SHALL ACHIEVE COMPLIANCE BY JULY 1, 1999.**

**(iii) FACILITIES WHICH DISPENSE GREATER THAN 90,000 GALLONS PER MONTH BUT LESS THAN 120,000 GALLONS PER MONTH BASED ON AVERAGE MONTHLY SALES DURING CALENDAR YEARS 1995 AND 1996 SHALL ACHIEVE COMPLIANCE BY DECEMBER 31, 2000.**

([3]4) 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.

(c) If an area is reclassified from attainment or marginal nonattainment to serious, nonattainment under section 181 of the Clean Air Act, gasoline dispensing facilities located in the reclassified area will be subject to the requirements of subsection (a)(1). For purposes of establishing an effecting date for the reclassified area, the date of the Federal Register final notice of the reclassification shall serve as the date of publication of this subsection as final in the Pennsylvania Bulletin.

**[(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.]**

**(d) IF AN ON-BOARD CANISTER REFUELING EMISSIONS CONTROL PROGRAM HAS BEEN FULLY IMPLEMENTED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BY DECEMBER 31, 2010, THE OPERATION AND MAINTENANCE OF DEPARTMENT-APPROVED STAGE II SYSTEMS WILL NO LONGER BE REQUIRED IN THE COUNTIES OF ALLEGHENY, ARMSTRONG, BEAVER, BUTLER, FAYETTE, WASHINGTON, AND WESTMORELAND.**

**(e) THE OWNERS OR OPERATORS OF GASOLINE DISPENSING FACILITIES SHALL COMPLY WITH THE FUNCTIONAL TESTING AND CERTIFICATION REQUIREMENTS SPECIFIED IN 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.**

**Control of VOCs from Gasoline Dispensing  
Facilities - Stage II**

**Comment and Response Document**

**February 11, 1998**

**Bureau of Air Quality  
Department of Environmental Protection**

The Environmental Quality Board published a notice of public hearing and comment period on May 3, 1997 in the Pennsylvania Bulletin (27 PaB 2239). The public comment period closed on July 3, 1997. A single public hearing was held to receive comments on the proposed rulemaking as follows:

June 3, 1997

Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA

This document summarizes the comments received during the public comment period; there were no comments received at the public hearing. A response to each comment is provided. Please note, the number in parenthesis after each comment is the number of the commentator.

### List of Commentators

1. F. M. Anderson  
Legislative and Regulatory Affairs  
Exxon Company, U.S.A.  
P.O. Box 2180, Suite 2659D  
Houston, TX 77252-2180
  
2. Sarosh Manekshaw, Director  
Environmental Health and Safety  
Pennzoil Place  
P.O. Box 2967  
Houston, TX 77252-2967
  
3. Jason A. Rash, Esq.  
Clean Air Council  
135 South 19<sup>th</sup> Street  
Suite 300  
Philadelphia, PA 19103
  
4. Mr. Robert Nyce, Executive Director  
Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

## Comments and Responses

1. **Comment:** The commentator supports the Stakeholder recommendations and the proposed revisions to Section 129.82. (Commentator 1)

**Response:** No response required.
2. **Comment:** The commentator indicated that the proposed implementation schedule and the throughput cutoff size are not consistent with the federal Clean Air Act requirements, and are in conflict with the Pennsylvania Air Pollution Control Act (APCA). (1)

**Response:** The APCA has been amended. The final regulations are authorized by the APCA and are consistent with the Stakeholders' recommendation.
3. **Comment:** The Department does not have the legal authority to continue its present enforcement policy with respect to Stage II. (1)

**Response:** The Department is exercising enforcement discretion to implement the existing Stage II requirements in a manner consistent with the Stakeholders recommendations. The Department's exercise of enforcement discretion is appropriate under the provisions of the APCA.
4. **Comment:** The Stakeholders did not recommend a di minimis level of 10,000 gallons per month for new or rebuilt facilities, but the proposed rule contains this provision in conflict with the Stakeholder recommendations.(1)

**Response:** Although the Stakeholders did not specifically recommend a di minimis applicability level, the Department considers the 10,000 gallon per month di minimis level to be appropriate.
5. **Comment:** The commentator suggested that the requirements should not make both the owner and operator responsible for the installation and operation of the Stage II systems. The requirements should specify that the operator is responsible for assuring employee training and system maintenance and operation. An owner should not be held responsible unless the owner is also the operator. (2)

**Response:** The Department believes that both the owner and operator should be responsible for the compliance status of an affected facility.

7. **Comment:** The regulation should be modified to allow maintenance of records off site, with the provision that the records be made available to the Department within a reasonable time. (2)

**Response:** For ease and effectiveness of enforcement the Department believes that the appropriate records demonstrating maintenance and other compliance aspects should be maintained on the site.

8. **Comment:** The proposed regulation lists compliance dates which have expired. (2)

**Response:** The compliance dates are consistent with the Stakeholders' recommendation and the implementation dates of the program established in the APCA.

9. **Comment:** The commentator supports the implementation of Stage II throughout Pennsylvania, not only in the moderate, serious and severe ozone nonattainment areas in the Commonwealth. The commentator indicates that statewide implementation of Stage II will help to protect the public health of citizens as they fuel their cars. (3)

**Response:** Because significant areas of the Commonwealth demonstrate attainment of the health related ozone air quality standard, the Department does not believe that statewide implementation of Stage II is appropriate at this time.

10. **Comment:** The commentator believes that the Commonwealth should have required implementation of Stage II at affected facilities as is required by the existing regulation.(3)

**Response:** Stage II was implemented in the Southeast Pennsylvania ozone nonattainment area in accordance with the existing regulations. Implementation of Stage II in other areas was deferred until it could be determined that the program was necessary for attainment of the ozone air quality standard. The Department will now require implementation of Stage II consistent with the recommendations of the Southwest Pennsylvania Ozone Stakeholder Working Group.

11. **Comment:** The commentator indicated that five years was too long a time period between inspections for Stage II systems. The high rate of use of the systems may cause more rapid deterioration.(3)

**Response:** The five-year interval specified in the regulations relates to the completion of back pressure and leak and pressure decay tests.

These tests relate primarily to the underground piping system components which are not so prone to damage or deterioration as the nozzles, boots, and aboveground piping. The inspections of these visible components are to be more frequent, and defective equipment is to be removed from service.

12. **Comment:** The commentator indicated that the proposed provisions of Sections 129.82(d) and (d)(2) which make “owners or operators, or both” responsible for completion of testing of Stage II systems could be confusing. The commentator recommended that the EQB explain and clarify who bears the ultimate responsibility for testing of the systems. (4)

**Response:** The Department has removed the testing requirements from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

13. **Comment:** The commentator indicated that the requirements in the proposed Section 129.82(d)(1) for completion of testing “upon installation” could be confusing. The commentator suggested that the EQB clarify whether testing is to be required only on new installations or if the EQB also intended the testing requirements to apply to existing facilities. (4)

**Response:** These testing requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

14. **Comment:** The commentator indicated that the requirements in the proposed Section 129.82(d)(2) specify that testing is to be conducted in accordance with the certification requirements in the EPA’s Stage II enforcement and technical guidance documents. Section 129.82(d)(1)(iv) requires an “air to liquid ratio test.” The EPA guidance does not include an “air to liquid ratio test”. The commentator suggested that the EQB explain how a facility would comply with the testing requirement. (4)

**Response:** These testing requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

15. **Comment:** The commentator indicated that although Section 129.82(d)(2) requires at least 48 hours advance notice of Stage II system testing, the proposed regulation does not specify who in the Department is

to be notified. The commentator suggested that the EQB should clarify in Section 129.82(d)(2) exactly who in the Department is to be given the 48-hours advance notice of Stage II testing. (4)

**Response:** These testing and notification requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

16. **Comment:** The commentator indicated that the Section 129.82(d)(3) requires Stage II system retesting upon major system replacement or modification. The commentator indicated that the regulation does not clearly specify what constitutes a major system replacement or modification and what constitutes a minor modification. The commentator requested that the EQB explain how a facility can determine what replacements or modifications would subject the facility to requirements for retesting. (4)

**Response:** These testing requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

**Control of VOCs from Gasoline Dispensing  
Facilities - Stage II**

**Comment and Response Document**

**February 11, 1998**

**Bureau of Air Quality  
Department of Environmental Protection**

The Environmental Quality Board published a notice of public hearing and comment period on May 3, 1997 in the Pennsylvania Bulletin (27 PaB 2239). The public comment period closed on July 3, 1997. A single public hearing was held to receive comments on the proposed rulemaking as follows:

June 3, 1997

Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA

This document summarizes the comments received during the public comment period; there were no comments received at the public hearing. A response to each comment is provided. Please note, the number in parenthesis after each comment is the number of the commentator.

List of Commentators

1. F. M. Anderson  
Legislative and Regulatory Affairs  
Exxon Company, U.S.A.  
P.O. Box 2180, Suite 2659D  
Houston, TX 77252-2180
  
2. Sarosh Manekshaw, Director  
Environmental Health and Safety  
Pennzoil Place  
P.O. Box 2967  
Houston, TX 77252-2967
  
3. Jason A. Rash, Esq.  
Clean Air Council  
135 South 19<sup>th</sup> Street  
Suite 300  
Philadelphia, PA 19103
  
4. Mr. Robert Nyce, Executive Director  
Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

## Comments and Responses

1. **Comment:** The commentator supports the Stakeholder recommendations and the proposed revisions to Section 129.82. (Commentator 1)

**Response:** No response required.
2. **Comment:** The commentator indicated that the proposed implementation schedule and the throughput cutoff size are not consistent with the federal Clean Air Act requirements, and are in conflict with the Pennsylvania Air Pollution Control Act (APCA). (1)

**Response:** The APCA has been amended. The final regulations are authorized by the APCA and are consistent with the Stakeholders' recommendation.
3. **Comment:** The Department does not have the legal authority to continue its present enforcement policy with respect to Stage II. (1)

**Response:** The Department is exercising enforcement discretion to implement the existing Stage II requirements in a manner consistent with the Stakeholders recommendations. The Department's exercise of enforcement discretion is appropriate under the provisions of the APCA.
4. **Comment:** The Stakeholders did not recommend a di minimis level of 10,000 gallons per month for new or rebuilt facilities, but the proposed rule contains this provision in conflict with the Stakeholder recommendations.(1)

**Response:** Although the Stakeholders did not specifically recommend a di minimis applicability level, the Department considers the 10,000 gallon per month di minimis level to be appropriate.
5. **Comment:** The commentator suggested that the requirements should not make both the owner and operator responsible for the installation and operation of the Stage II systems. The requirements should specify that the operator is responsible for assuring employee training and system maintenance and operation. An owner should not be held responsible unless the owner is also the operator. (2)

**Response:** The Department believes that both the owner and operator should be responsible for the compliance status of an affected facility.

7. **Comment:** The regulation should be modified to allow maintenance of records off site, with the provision that the records be made available to the Department within a reasonable time. (2)
- Response:** For ease and effectiveness of enforcement the Department believes that the appropriate records demonstrating maintenance and other compliance aspects should be maintained on the site.
8. **Comment:** The proposed regulation lists compliance dates which have expired. (2)
- Response:** The compliance dates are consistent with the Stakeholders' recommendation and the implementation dates of the program established in the APCA.
9. **Comment:** The commentator supports the implementation of Stage II throughout Pennsylvania, not only in the moderate, serious and severe ozone nonattainment areas in the Commonwealth. The commentator indicates that statewide implementation of Stage II will help to protect the public health of citizens as they fuel their cars. (3)
- Response:** Because significant areas of the Commonwealth demonstrate attainment of the health related ozone air quality standard, the Department does not believe that statewide implementation of Stage II is appropriate at this time.
10. **Comment:** The commentator believes that the Commonwealth should have required implementation of Stage II at affected facilities as is required by the existing regulation.(3)
- Response:** Stage II was implemented in the Southeast Pennsylvania ozone nonattainment area in accordance with the existing regulations. Implementation of Stage II in other areas was deferred until it could be determined that the program was necessary for attainment of the ozone air quality standard. The Department will now require implementation of Stage II consistent with the recommendations of the Southwest Pennsylvania Ozone Stakeholder Working Group.
11. **Comment:** The commentator indicated that five years was too long a time period between inspections for Stage II systems. The high rate of use of the systems may cause more rapid deterioration.(3)
- Response:** The five-year interval specified in the regulations relates to the completion of back pressure and leak and pressure decay tests.

These tests relate primarily to the underground piping system components which are not so prone to damage or deterioration as the nozzles, boots, and aboveground piping. The inspections of these visible components are to be more frequent, and defective equipment is to be removed from service.

12. **Comment:** The commentator indicated that the proposed provisions of Sections 129.82(d) and (d)(2) which make “owners or operators, or both” responsible for completion of testing of Stage II systems could be confusing. The commentator recommended that the EQB explain and clarify who bears the ultimate responsibility for testing of the systems. (4)

**Response:** The Department has removed the testing requirements from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

13. **Comment:** The commentator indicated that the requirements in the proposed Section 129.82(d)(1) for completion of testing “upon installation” could be confusing. The commentator suggested that the EQB clarify whether testing is to be required only on new installations or if the EQB also intended the testing requirements to apply to existing facilities. (4)

**Response:** These testing requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

14. **Comment:** The commentator indicated that the requirements in the proposed Section 129.82(d)(2) specify that testing is to be conducted in accordance with the certification requirements in the EPA’s Stage II enforcement and technical guidance documents. Section 129.82(d)(1)(iv) requires an “air to liquid ratio test.” The EPA guidance does not include an “air to liquid ratio test”. The commentator suggested that the EQB explain how a facility would comply with the testing requirement. (4)

**Response:** These testing requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

15. **Comment:** The commentator indicated that although Section 129.82(d)(2) requires at least 48 hours advance notice of Stage II system testing, the proposed regulation does not specify who in the Department is

to be notified. The commentator suggested that the EQB should clarify in Section 129.82(d)(2) exactly who in the Department is to be given the 48-hours advance notice of Stage II testing. (4)

**Response:** These testing and notification requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.

16. **Comment:** The commentator indicated that the Section 129.82(d)(3) requires Stage II system retesting upon major system replacement or modification. The commentator indicated that the regulation does not clearly specify what constitutes a major system replacement or modification and what constitutes a minor modification. The commentator requested that the EQB explain how a facility can determine what replacements or modifications would subject the facility to requirements for retesting. (4)

**Response:** These testing requirements have been removed from the final regulation. Stage II testing requirements are provided for in Section 6.7 of the APCA.



Pennsylvania Department of Environmental Protection

**Rachel Carson State Office Building**

**P.O. Box 2063**

**Harrisburg, PA 17105-2063**

**February 9, 1999**

**The Secretary**

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harristown II  
Harrisburg, PA 17101

RE: Final Rulemaking – Control of VOC's from Gasoline Dispensing Facilities  
(Stage II) (#7-320)

Dear Bob:

Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a copy of a final-form regulation for review by the Commission. This rulemaking was approved by the Environmental Quality Board (EQB) for final rulemaking on December 15, 1998.

This final rulemaking revises the Stage II gasoline refueling requirements for consistency with the recommendations of the Southwest Pennsylvania Ozone Stakeholders Working Group. The amendments will change the throughput levels for determining affected facilities and will change the compliance dates for affected facilities in the seven-county Pittsburgh-Beaver Valley Ozone Nonattainment Area.

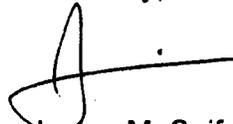
The Clean Air Act required Pennsylvania to implement control strategies by December 31, 1997, to demonstrate that the seven-county area will achieve the National Ambient Air Quality Standards (NAAQS) for ozone. The Stakeholder's specific recommendations, which were adopted at proposed rulemaking, conflicted with the provisions of Section 6.7 of the Air Pollution Control Act (APCA), and DEP agreed to seek an amendment to the APCA to allow implementation of these recommendations by regulation. In the interim, Pennsylvania submitted a SIP amendment to EPA containing an enforcement strategy to meet the December 31, 1997, deadline. This final rulemaking codifies that strategy. Following the close of the public comment period, the APCA was amended to effect the proposed rulemaking. If finalized, this rulemaking will be submitted as a modification to the SIP submission.

The proposed rulemaking was adopted by the EQB on March 18, 1997, and published May 3, 1997, with a 60-day public comment period. One public hearing was held during that time in Pittsburgh. There were four commentators to the proposal. AQTAC reviewed and supported a draft of the final rulemaking in July 1997, prior to the effective date of the APCA amendment.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this final-form regulation. Section 5.1(e) of the Act provides that the Commission shall, within ten days after the expiration of the committee review period, approve or disapprove the final-form regulation.

For additional information, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,



James M. Seif  
Secretary

Enclosure

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 7-320

99 FEB -9 AM 9:59

SUBJECT: Control of VOCs from Gasoline Dispensing Facilities (Stage II)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

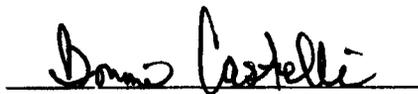
DATE

SIGNATURE

DESIGNATION



HOUSE COMMITTEE ON ENVIRONMENTAL  
RESOURCES & ENERGY



SENATE COMMITTEE ON ENVIRONMENTAL  
RESOURCES & ENERGY



INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

January 20, 1999