



**Rachel Carson State Office Building**  
**P.O. Box 8468**  
**Harrisburg, PA 17105-8468**  
July 7, 1999

**Bureau of Air Quality**

Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

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INDEPENDENT REGULATORY REVIEW COMMISSION

RE: Final Rulemaking – Gasoline Volatility Requirements

Dear Mr. Nyce:

The final rulemaking referenced above was sent to the Environmental Quality Board (EQB) today for consideration at its July 20, 1999, meeting. If the EQB approves the rulemaking, it will be forwarded to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees for action.

Enclosed are a copy of the final regulation and a Comment and Response document which responds to comments submitted to the EQB during the public comment period.

Thank you for your comments. Your interest in this rulemaking is appreciated.

Sincerely,

Terry L. Black

Enclosure

**FINAL RULEMAKING**  
**GASOLINE VOLATILITY REQUIREMENTS**

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REVIEW COMMISSION

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**ENVIRONMENTAL QUALITY BOARD**

**JULY 20, 1999**

## **EXECUTIVE SUMMARY**

### **Amendments to 25 Pa. Code Chapters 121, 126 and 139 Gasoline Volatility Requirements**

The Department of Environmental Protection recommends amendments to 25 Pa. Code Chapter 121 (relating to general provisions), Chapter 126 (relating to standards for motor fuels) and Chapter 139 (relating to sampling and testing).

#### **Summary of Proposal**

The final regulation will eliminate the use of federal reformulated gasoline (RFG) as a compliant fuel for the Pittsburgh-Beaver Valley Area during the ozone season.

#### **Purpose of the Proposal**

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) for ozone.

#### **Affected Parties**

Any Commonwealth agency, political subdivision, local government or private sector facility using gasoline will be affected by these regulations. All refiners, importers, distributors, resellers, carriers, wholesalers, purchasers, consumers, and retailers of gasoline will be required to comply with the regulatory provisions. There are approximately 1250 retail outlets in the seven-county Pittsburgh-Beaver Valley Area.

#### **Advisory Groups**

The Department discussed these regulations with the Small Business Assistance Program Compliance Advisory Committee, and it supports the changes. The Department also discussed these regulations with the Air Quality Technical Advisory Committee (AQTAC) and it supports these changes as well.

## **Public Comment and EQB Public Hearing**

A public comment period of sixty (60) days was held. The Air Pollution Control Act requires public hearings to be held in the areas of the state affected by air resource regulations. The Department held a public hearing in the Pittsburgh area for the purpose of accepting comments on the proposed amendments. No one presented oral testimony at the public meeting. Four sets of written comments were submitted.

**Air Quality Technical Advisory Committee**  
**March 25, 1999**  
**Minutes**

The March 25 1999 meeting of AQTAC was called to order by Joe Duckett in Room 105 of the Rachel Carson State Office Building. In attendance were the following AQTAC members: Joe Duckett, Nancy Parks, Vince Brisini, Harold Elkin, Jill Welch, Drew Hadley, Gary Morrow, Paul Hess, Don Walukas, Roger Westman, and Buddy Beach.

The minutes of the meeting of January 22, 1999 were approved on a motion from Buddy, seconded by Harold after minor revisions. Jill abstained from voting because she was not in attendance at the meeting. The revisions were the deletion of Jill's name from the list of attendees and the addition of the clarifier "*solely*" in the revised sentence defining the purpose of the December meeting, i.e. "...the meeting was *solely* to discuss the specifics of the regulation prepared by the Department and to offer comments on it.

**Action Items**

**Gasoline Volatility**

Terry presented information concerning the draft final rulemaking related to gasoline volatility in the Southwest Pennsylvania area. The revisions are to eliminate federal RFG as a compliant fuel for the area.

Bo Reiley discussed some minor wording changes that were made between proposed and final rulemaking. These included:

1. Allowing retail facilities to maintain only the current season's records on site. Earlier seasons' records may be kept off site. This change was made to address concerns about the availability of record storage space at the stations.
2. The single compliant fuel requirements will start in the 2000 ozone season.

On a motion from Roger, seconded by Vince, the committee concurred with the Department's recommendation to take this regulation to the EQB for final rulemaking at the EQB's June, 1999, meeting.

**Malodors**

Francine Carilini presented information concerning the draft final rulemaking related to malodors. She discussed changes that were made in response to public comments. The revisions included:

1. Removal of the word "frequency" from the definition of "Odor investigation". This was done to avoid potential for the interpretation that

more than one incidence of the odor might be necessary for a Department action to go forward.

2. Replacement of the word "residual" with "any remaining odors for 5 years" because of apparent confusion about the meaning of "residual."
3. Language was added to require that BAT determinations are to be made based on plan approval applications and operating permits submitted by source operators. Defining BAT through the permit process will provide for public input and involvement.
4. Language was added specifying conditions to which the BAT determination does not apply, including malodors that result from process changes or from certain types of waste disposal facilities.
5. Finally, changes were made in the list of exemptions. The list of exempt operations now includes only agricultural activities, private residences, and restaurants.

Committee members indicated concerns that the entire regulation is subjective. In addition, concern was expressed that a single member of the public and a single member of the Department can determine an odor to be objectionable.

Joe questioned if the Department plans to use test methods such as certain ASTM protocols for odor evaluation. Francine indicated that the subjectivity of the malodor determination has not been an issue in litigation.

Nancy expressed concern that the proposed revisions might allow the Department to not respond to citizen complaints as quickly as is current practice. She also indicated that the Department may invest its resources in such activities as inspections rather than investigate complaints. Francine indicated that the Department's goal will be to continue to respond as quickly as possible to malodor complaints. Francine also clarified that the Department will not initiate a malodor investigation without a citizen complaint.

Nancy also expressed concern about the deletion of the word "frequency" from the definition of malodor. She is concerned that the change may allow the Department to not deal with a single event. Francine indicated that the Department would investigate these single event complaints, but that, in general, BAT would not be imposed for these types of events. Terry stressed that the Department will not unilaterally impose BAT in any event. The selection of the BAT option is a decision that is made by the source operator. Terry also pointed out that resolution of malodor situations may be possible through the implementation of lesser controls than BAT.

Harold suggested that recent changes in the Commonwealth's rules of evidence may allow certain uses of hearsay evidence and that these changes may help the Department address temporal concerns related to odor investigations. Bo responded that if the Department were to use the representations of a citizen in a legal proceeding, the citizen would be required to testify.

Michael Fiorentino of the Clean Air Council expressed concern that the revised definition of malodor and questioned what constitutes and objectionable odor as opposed to one which causes annoyance or discomfort. Francine indicated that some have determined the "annoyance and discomfort" language to mean that someone must be sickened by the malodor.

David Patti of the Chemical Industry Council (PCIC) indicated that the Department should utilize a procedure such as the ASTM method utilizing a relative rating system for malodors. Methods of this type are in use in California. Francine indicated that the Department is evaluation training for staff and that the Department may utilize such an approach as part of its complaint handling process, but prefers to not have such procedures in the regulation.

Steven Rhoades indicated that the Department's response to his comments regarding the relationship between legal use of mineral rights and related case law and the malodor regulations did not satisfy the concerns raised in the Pennsylvania Oil and Gas Associations' comments. Bo indicated that he would review the issue.

Drew suggested that the Department define guidance on complaint handling and enforcement and include this as part of the EQB package. Terry indicated that the preparation of guidance related to complaint handling will not be completed by the time the final regulation goes to the EQB.

The Committee tabled discussion and additional action on the regulation until it has received clarified guidance on the matter. The Department will review and revise the malodor complaint handling process to address concerns voiced by the committee.

The malodor regulation will be scheduled for discussion/action at the next AQTAC meeting.

### **Informational Items**

#### **Federal Motor Vehicle Control Program**

Wick Havens provided a brief update on activities at the federal level to cause further reductions from the motor vehicle fleet. The major thrust of the federal activities is to reduce NOx emissions. A major change in the program involves making vehicles with GVW above 3,500 pounds subject to more restrictive tailpipe standards. This class of vehicles includes vans and SUVs. The new requirements will force the automobile manufacturers to reduce tailpipe NOx levels from these vehicles to grams per mile.

#### **Sulfur in Gasoline**

Megan Eves provided information concerning federal activities regarding lowering the sulfur content of gasoline to enhance catalytic converter life and performance. The

package (tier II and fuel sulfur) was sent to OMB on February 19, 1999. EPA worked extensively with OMB throughout the rule development to try to ensure smooth sailing of the rule through the final approval process. Despite that, there have been hang-ups at OMB, and EPA is now anticipating that the package will be published sometime in April.

The leaks about the gasoline sulfur program are as follows:

1. The regulation will set a national program with a 30 ppm sulfur average and a 80 ppm sulfur cap, in place by 2004.
2. An early reduction program, to start in 2001, would be a corporation-wide program, whereby reductions generated at one facility could be exchanged for delays in implementation at other facilities, but no compliance date will be pushed beyond 2006. In addition, there will be a corporate-wide average of around 120 ppm from 2004-06.
3. A separate program will be proposed for the 19 small Rocky Mountain refineries with an initial cap of 200-250 ppm sulfur at some point, with additional time to phase down a lower level.

A factoid being used is that reductions will be equivalent to removing 54 million cars from the road.

New Jersey pulled its state fuel sulfur proposal on February 19 in anticipation of a national program. Texas is proceeding with its state fuel program rulemaking, but would most likely have their regulation "sunset" if a more stringent national program is implemented.

### **Source Testing Manual**

Rick Zekeres provided an update on the status of the revisions of the Source Testing Manual. Comments were received from approximately source testers, consultants, and facility operators. The Department considered these comments in preparation of the draft final revisions to the manual. The Committee continues to be concerned about issues of "discovered" noncompliance because of changes in testing methodologies, especially in the area of VOCs. These could include under reporting of emissions, underpayment of emission fees, incorrect ERCs, and regulatory and permit noncompliance. The Department will address these on a case-by-case basis. The final draft of the manual has been prepared and submitted for management approval and publication.

### **Report of the Ad Hoc Monitoring Committee**

Nancy gave a short report on the meeting of the ad hoc monitoring committee discussions. The ad hoc Committee has defined a number of issues which the members believe complicates the transition between the NO<sub>x</sub> MOU program and the 110 SIP call regulations. These issues appear to complicate the transition. Joe suggested that the issues that the ad hoc Committee defined should be put into the form of

recommendations. In addition, it was suggested that the Department discuss with the OTC states the differences between the two programs. It is the Department's understanding that the other OTC states are not far enough along in their rule development processes to have defined these areas as concerns.

Two of the issues that the ad hoc Committee defined were suggested for additional discussion at the next AQTAC meeting.

1. Should there be an exemption for diesel generators used for system stabilization to allow for some limited number of hours of operation?
2. Sources want the ability to petition for alternative methods for emissions monitoring and reporting. The process for seeking such approval is not clear. It is unclear who will have the final approval authority for alternative monitoring and reporting protocols.

At the April 23, 1999 meeting the Department will provide additional information concerning allocation options for repowered facilities and information on calculation of NOx allowances under the SIP call.

In addition, the Committee will consider formulation of comments regarding the NOx SIP call regulation.

**Air Quality Technical Advisory Committee**

**March 25, 1999**

**Meeting Attendees**

<b>Name</b>	<b>Organization</b>	<b>Telephone</b>
Harold Elkin	AQTAC	610 664-6070
Vince Brisini	AQTAC	814 533-8811
Roger Westman	AQAAC	412 578-8103
Buddy Beach	AQTAC	412 831-4530
Paul Hess	AQTAC	717 533-6195
Nancy Parks	AQTAC	814 349-5151
Joe Duckett	AQTAC	412 365-3707
Don Walukas	AQTAC	814 634-0668
Drew Hadley	AQTAC	717 833-3307
Jill Welch	AQTAC	610 892-9440
Gary Morrow	AQTAC	814 870-6782
Dukes Pepper	PADEP	717 787-7060
Terry Black	PA DEP	717 787-4310
Wick Havens	PADEP	717 787-4310
James Stoner	PADEP	717 787-4310
Jonathan Brightbill	DEP - Policy	717 783-1303
Tom Keller	PP&L	
Michael Fiorentino	Clean Air Council	
Jeffrey Clukey	CAC	
Francine Carlini	DEP - SERO	
Bruce Alexander	PECO Energy	
Steve Rhoads	Pennsylvania Env. Reporter	
Bo Reiley	DEP	
Megan Eves	DEP	
Tom Miorelli	Merck and Company	
Kevin Hickey	UAI Group	
Jeanine Hammer	Allegheny Power	
Carol McCabe	Manko, Gold & Katcher	
Bart Cassidy	Manko, Gold & Katcher for ARIPPA	
Rolland Thomas	Merck & Company	
Chuck Marshall	Philip Services	
Bob Orchowski	Duquesne Light	

**Notice of Final Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**25 Pa. Code Chapters 121, 126 and 139**  
**Gasoline Volatility Requirements**

**Order**

The Environmental Quality Board (Board) amends Chapters 121, 126 and 139 to read as set forth in Annex A. The amendments eliminate the use of federal reformulated gasoline (RFG) as a compliant fuel in the Pittsburgh-Beaver Valley area during the ozone season. The amendments also provide that compliance records shall be kept onsite for all points in the distribution network except at retail facilities. In addition, the amendments make a technical language correction relating to sampling procedures. The Board approved the final amendments at its June 15, 1999 meeting.

**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 R. A. Reiley, Assistant Counsel, 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 final rule is available electronically through the Department of Environmental Protection 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 of the Amendments**

These amendments eliminate the use of RFG as a compliant fuel in the Pittsburgh-Beaver Valley Area during the ozone season. Because of concerns with implementation of the existing regulation as it relates to RFG, the Department is eliminating the RFG provisions. Since refiners and marketers have been supplying low Reid vapor pressure (RVP) gasoline during the ozone season, these amendments will have minimal practical consequences. While this low RVP gasoline is more stringent than the federal requirement, it is necessary because it is part of a comprehensive plan for the Pittsburgh area to attain and maintain the national health-based standard for ground level ozone. These amendments also require that compliance records be kept onsite for all points in the distribution network except at retail facilities. Finally, these amendments also correct the technical language relating to sampling procedures.

These amendments were submitted to and approved by the Air Quality Technical Advisory Committee (AQTAC) and the Small Business Assistance Program Compliance Advisory Committee.

**E. Summary of Comments**

There were four commentators to the proposed rulemaking.

One commentator supports the move to require all gasoline sold in the Pittsburgh area to comply with the RVP standard of 7.8 pounds per square inch (psi).

The Board appreciates the support for this rule change.

All of the commentators believe that requiring facilities to keep records onsite for a period of two (2) years imposes additional and unnecessary recordkeeping on the regulated community. The commentators request that the regulation be changed to allow records for retail facilities to be stored elsewhere and that the records could be provided when requested within a short lead time. Another commentator proposes that the regulation be amended to require that records be

kept onsite only during the current ozone season and that records be retained after that at a designated location for the remainder of the two (2) year retention period.

While the Board understands that there may be space limitations at some facilities, the requirement to maintain records onsite at points in the distribution chain is essential for enforcement of the program. A lapse in time between an inspection and the receipt of pertinent records would seriously hinder the effectiveness of the program, especially when a violation of the volatility standard is discovered. Therefore, to retain the ability to conduct effective inspections, the Board will not make the suggested change. The Board does not agree that the onsite recordkeeping requirement places unnecessary burdens on every point in the distribution network; however, the Board does believe that the requirement to keep records onsite for a period of two (2) years could place unnecessary burdens on retail facilities that have limited space onsite. Therefore, the rule will be amended to require retail stations to keep the records onsite only during the current compliance period (June 1<sup>st</sup> through September 15<sup>th</sup>) and move them to a designated centralized location for the remainder of the two (2) year retention period.

One commentator believes it is unnecessary to require terminals to be held to a compliance date of May 1<sup>st</sup> for low RVP fuel. The commentator recommends the terminal compliance date be changed to May 15<sup>th</sup> which will provide adequate time to ensure that all retail stations are turned over to 7.8 psi RVP by June 1<sup>st</sup>. The program start and end dates are not proposed to be changed because the Board believes that May 1<sup>st</sup> is the appropriate starting date.

When the proposed clean fuels program for the Pittsburgh area was originally published on May 3, 1997, the Board received eight (8) separate comments detailing the importance of setting the compliance dates to be consistent with the dates in the federal summertime volatility program (May 1<sup>st</sup> start date at the terminal level, June 1<sup>st</sup> start date at the retail stations, and September 15<sup>th</sup> as the end date). The Board agreed with the need for consistency with the federal volatility program and the rule was revised accordingly. The Board does not believe it appropriate to change any of these dates in light of the number of comments received in response to the May 3, 1997 proposal. Furthermore, it is likely that members of the public and the regulated community did not comment again on this issue because the program start and end dates were not proposed to be changed.

One commentator states that the requirement to have gasoline with an RVP of 7.8 psi at the terminal level by May 1<sup>st</sup> contradicts the federal requirement to have 9.0 psi RVP gasoline at terminals by the same date. The commentator believes that Pennsylvania has not demonstrated in its State Implementation Plan the need for an RVP level in May that is more stringent than the federal standard in order to achieve the National Ambient Air Quality Standard (NAAQS) for ozone.

In addition, the commentator believes that unusual supply disruptions may occur if Pennsylvania's program dates are not in line with the federal program.

The program start and end dates were not proposed to be changed because the Board believes that the proposed dates are the appropriate dates. Under Section 211(c)(4)(A) of the federal Clean Air Act, states are preempted from prescribing a control regarding a fuel characteristic that is not identical to the federal requirement. However, under Section 211(c)(4)(C), the U.S. Environmental Protection Agency is authorized to grant a state a waiver of this preemption if the state control is necessary to achieve the NAAQS.

Pennsylvania requested the necessary waiver, and on June 8, 1998, EPA published a direct final rule in the *Federal Register* proposing to grant Pennsylvania that waiver under the Clean Air Act. No negative comments were received, and a waiver was granted to Pennsylvania effective on July 23, 1998. This waiver allows the use of fuel with a RVP standard more stringent than the federal requirement in the Pittsburgh ozone nonattainment area. This same EPA action finalized approval of the Pennsylvania low RVP program distribution schedule that requires terminals to be fully converted to 7.8 psi RVP fuel by May 1<sup>st</sup> and retail and wholesale purchaser-consumer facilities to be converted to 7.8 psi RVP fuel by June 1<sup>st</sup>. Consequently, this approved SIP revision is now federal law. Since this SIP revision was approved by EPA, it is not subject to review at the state level as the commentator suggests.

The comment that unusual supply disruptions may occur if the suggested change is not made is unwarranted. Low RVP fuel was required in the Pittsburgh ozone nonattainment area at the terminal level beginning on May 1, 1998 and at retail stations by June 1, 1998 and no unusual supply or price disruptions were reported. The program ran smoothly by all accounts and the compliance rate was extremely high.

#### **F. Summary of the Regulatory Revisions**

The Board deletes the definition for the term "Federal Reformulated Gasoline or RFG" and eliminates RFG from the term "compliant fuel." The Board also eliminates references to RFG in Sections 126.301-126.303. In addition, the Board clarifies the record retention requirements in Section 126.302 (relating to recordkeeping reporting) that records shall be kept onsite for all points in the distribution network except at retail facilities. Retail facilities are required to retain compliance records onsite for the current ozone season only. Finally, the Board corrects technical language in Section 139.4(18) (relating to references).

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

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

### ***Compliance Costs***

There are no increased costs to the regulated community as a result of this amendment. Since low RVP gasoline is already required in the area, there will be no additional cost to the public or to local or state governments. Low RVP gasoline on average is 2¢ per gallon less than RFG gasoline. In addition, the vast majority of stations already use low RVP gasoline in place of RFG gasoline.

### ***Compliance Assistance Plan***

The Board plans to educate and assist the public and 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***

There are no additional recordkeeping and reporting costs for an entity that sells or transfers gasoline intended for use in the seven (7) county Pittsburgh-Beaver Valley Area during the ozone season.

## **H. Sunset Review**

These final form regulations will be reviewed in accordance with the Sunset Review schedule published by the Board to determine whether the regulations effectively fulfill the goals for which they were intended.

## **I. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §745.5(a)), the Department submitted a copy of the proposed rulemaking on September 8, 1998, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with Section 5(c) 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. 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 \_\_\_\_\_ (blank) and was (deemed) approved by the Senate Environmental Resources and Energy Committee on \_\_\_\_\_ (blank). The Commission met on \_\_\_\_\_ (blank) and (deemed) approved the regulation in accordance with Section 5.1(e) of the Act.

#### **J. 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 in 1 *Pa. Code* §§7.1 and 7.2.

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

(3) These final form regulations do not enlarge the purpose of the proposal published at 28 *Pa. B.* 4792 (September 26, 1998).

(4) These final form regulations are necessary and appropriate for administration and enforcement of authorizing acts defined in Section C of this Preamble and are reasonably necessary to achieve and maintain the NAAQS for ozone.

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

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

(a) The regulations of the Department, 25 *Pa. Code* Chapters 121, 126, and 139 are amended by amending Section 121.1, 126.301-303, 139.4 and by adding Section 126.301(d) to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

(b) 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.

**(c) The Chairman of the Board shall submit this Order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.**

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

**BY:**

**James M. Seif  
Chairman  
Environmental Quality Board**

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Subpart C. PROTECTION OF NATURAL RESOURCES  
ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in Section 3 of the act (35 P.S. §4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Compliant fuel - Low RVP gasoline [or RFG].*

\* \* \* \* \*

*[RFG—Federal Reformulated Gasoline - Gasoline that meets the requirements for RFG as specified in 40 CFR Part 80 Subpart D (relating to reformulated gasoline).]*

\* \* \* \* \*

## CHAPTER 126. STANDARDS FOR MOTOR FUELS

### SUBCHAPTER C. GASOLINE VOLATILITY REQUIREMENTS

Sec.

- 126.301. Compliant fuel requirement.
- 126.302. Recordkeeping and reporting.
- 126.303. Compliance and test methods.

#### § 126.301. Compliant Fuel Requirement.

(a) This subchapter applies to gasoline which is sold or transferred into or within the Pittsburgh-Beaver Valley Area during the period May 1 through September 15, 1998, and continuing every year thereafter.

(b) A refiner, importer, distributor, reseller, terminal owner and operator or carrier, may not:

(1) Sell, exchange or supply gasoline that is not a compliant fuel during the period described in subsection (a).

(2) Blend, mix, store or transport or allow blending, mixing, storing or transporting of compliant fuel with noncompliant fuel during the period described in subsection (a).

(c) A retailer or wholesale purchaser-consumer may not sell, exchange or supply gasoline that is not a compliant fuel during the period June 1 through September 15, 1998, and continuing every year thereafter.

[(d) If RFG is required by operation of Federal law to be sold in the Pittsburgh-Beaver Valley, this subchapter no longer applies after the date that RFG is required to be sold.]

#### § 126.302. Recordkeeping and reporting.

(a) Beginning with the terminal owner or operator who sells or transfers gasoline intended for use in the Pittsburgh-Beaver Valley Area during the period described in §126.301(a) (relating to compliant fuel requirements), each time the physical custody of or title to a shipment of gasoline changes hands, other than when gasoline is sold or transferred for use in motor vehicles at a retail outlet or

wholesale purchaser-consumer's facility, the transferor shall provide to the transferee a copy of the record described in this subsection. This record shall legibly and conspicuously contain, at a minimum, the following information:

- (1) The date of the sale or transfer.
- (2) The name and address of the transferor.
- (3) The name and address of the transferee.
- (4) The location of the gasoline at the time of transfer.
- (5) The volume of gasoline which is being sold or transferred.

(6) A statement or grade code certifying that the gasoline has an RVP of 7.8 pounds per square inch or less per gallon [or certified as RFG. If the gasoline is certified as RFG, each invoice, loading statement, bill of lading, delivery ticket, and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact.].

(b) A person who transports, stores or sells compliant fuel that is intended for use in the Pittsburgh-Beaver Valley Area during the period described in §126.301(a), shall segregate the compliant fuel from noncompliant fuel and the documentation described in subsection (a) shall accompany the compliant fuel at all times.

(c) Each person in the gasoline distribution network shall maintain records containing the compliance information listed in subsection (a). These records shall be retained for at least 2 years from the date of the sale or transfer of compliant fuel[, **AND SHALL BE KEPT ONSITE AT EACH POINT IN THE DISTRIBUTION NETWORK**].

**(d) THE RECORDS CONTAINING THE COMPLIANCE INFORMATION IN SUBSECTION (a) FOR THE PERIOD DESCRIBED IN SUBSECTION (c) SHALL BE KEPT ONSITE AT EACH POINT IN THE DISTRIBUTION NETWORK EXCEPT FOR RETAIL OUTLETS. RETAIL OUTLETS SHALL RETAIN THESE RECORDS FOR THE PERIOD DESCRIBED IN SUBSECTION (c) AND ONLY THOSE RECORDS FOR THE CURRENT PERIOD DESCRIBED UNDER SECTION 301(c) SHALL BE KEPT ONSITE. AT THE END OF EACH PERIOD DESCRIBED UNDER SECTION 301(c) THESE RECORDS MAY BE TRANSFERRED TO AN ALTERNATE LOCATION FOR THE REMAINDER OF THE PERIOD DESCRIBED UNDER SUBSECTION (c) AND BE MADE AVAILABLE TO THE DEPARTMENT UPON REQUEST.**

§ 126.303. Compliance and test methods.

[(a)] Compliance with the 7.8 pounds per square inch RVP standard shall be determined by use of the sampling and testing methods specified in this section. Sampling or testing of gasoline required by this chapter shall be accomplished as follows:

(1) Sampling of gasoline for the purpose of determining compliance with this subchapter shall be conducted in accordance with 40 CFR Part 80, Appendix D (relating to sampling procedures for fuel volatility).

(2) Testing of gasoline for purposes of determining compliance with this rule shall be conducted in accordance with 40 CFR Part 80, Appendix E (relating to test for determining Reid Vapor Pressure (RVP) of gasoline and gasoline-oxygenate blend).

[(b)] RFG shall be certified and tested in accordance with the requirements listed in 40 CFR Part 80 Subpart D (relating to reformulated gasoline.)]

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

GENERAL

§ 139.4. References.

The references referred to in this subchapter are as follows:

\* \* \* \* \*

(18) "Sampling procedures for fuel volatility," 40 CFR Part 80, Appendix D (relating to [reformulated gasoline] SAMPLING PROCEDURES FOR FUEL VOLATILITY).

**Gasoline Volatility Requirements  
Comment and Response Document**

**April 9, 1999  
Bureau of Air Quality**

**Comment/Response on Pittsburgh Fuels Rule as Revised,  
Proposed September 26, 1998  
Public Comment Period Closed December 2, 1998**

**List of Commentators**

**Requested Final Rulemaking**

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| 1. Eugene M. Barr<br>Executive Director<br>Associated Petroleum Industries of Pennsylvania (APIP)<br>240 N. Third Street<br>P.O. Box 925<br>Harrisburg, PA 17108 |   |
| 2. Robert J. Schaefer<br>Amoco Petroleum Products<br>Mail Code 1701<br>200 E. Randolph Drive<br>Chicago, IL 60601-7125   | X |
| 3. F. M. Anderson<br>Exxon Co. U.S.A.<br>P.O. Box 2180<br>Suite 2659D<br>Houston, TX 77252-2180  |   |
| 4. Robert E. Nyce<br>Executive Director<br>Independent Regulatory Review Commission (IRRC)<br>333 Market Street, 14 <sup>th</sup> Floor<br>Harrisburg, PA 17101  |   |

Numbers in parentheses after each comment refer to the commentator as listed above.

**Comment 1:**

APIP supports the move to require all gasoline sold in the Pittsburgh area to comply with a Reid vapor pressure (RVP) standard of 7.8 pounds per square inch (psi). *(Commentator 1)*

**Response:**

The Department appreciates the support of the petroleum industry for this rule change.

**Comment 2:**

The commentators believe that requiring facilities to keep records on-site for a period of two years (as proposed in Section 126.302(c)) would impose additional and unnecessary recordkeeping costs on the regulated industry. Commentators 1, 2, and 3 request that Section 126.302(c) be changed to allow records for retail facilities to be stored elsewhere (e.g., a district office). These records could be provided when requested with a short lead-time. Commentator 3 suggests a 24-hour lead-time.

Commentator 4 proposes that the regulation be amended to require that records be kept on-site only during the current ozone season, and that records be retained after that at a designated centralized location for the remainder of the two-year retention period. *(Commentators 1, 2, 3, and 4)*

**Response:**

While the Department understands that there may be space limitations at some facilities, the requirement to maintain records on-site at all points in the distribution chain is essential for enforcement of the program. When an inspector is conducting an assessment of compliance at any facility subject to this rule, all information necessary to make that evaluation must be available at the time of the inspection. A lapse in time between an inspection and the receipt of pertinent records would seriously hinder the effectiveness of the program, especially when a violation of the volatility standard is discovered.

In addition, conducting unannounced inspections of regulated facilities is essential to the integrity of the program. Providing facilities with advance notice of an inspection would clearly undermine this capability. Therefore, to retain the ability to conduct effective inspections, the Department has not made the suggested change of Commentators 1, 2, and 3 to Section 126.302(c).

However, the Department agrees with Commentator 4 that the requirement to keep records on-site for a period of two years, as proposed in Section 126.302(c), could place unnecessary burdens on retail facilities that have limited space. The Department does not agree, however, that the on-site recordkeeping requirement places unnecessary burdens on every point in the distribution network. The Department, therefore, amends Section 126.302 to allow retail stations only to keep the required records on-site during the current compliance period (June 1 through September 15 each year) and move them to a designated centralized location for the remainder of the two-year retention period. All other entities in the distribution network shall keep the records on-site for the specified two-year period.

**Comment 3:**

APIP believes it is unnecessary to require terminals to be held to a compliance date of May 1 for low RVP fuel. This early date results in additional cost without real benefit. APIP recommends the terminal compliance date be changed to May 15. This will provide more than adequate time to ensure all retail stations are “turned over” to 7.8 psi RVP rule by June 1. (*Commentator 1*)

**Response:**

The program start and end dates were not proposed to be changed because the Board believes that the proposed dates are appropriate.

When a proposed clean fuels program for the Pittsburgh area was originally published on May 3, 1997, the program was set to begin on May 1 at the terminal level and June 1 at the retail level, and run through September 30. The Department received eight separate comments (including from Commentator 1) detailing the importance of setting the compliance dates so as to be consistent with the dates in the federal summertime volatility program – May 1 start date at the terminal level, June 1 start date at retail stations; running through September 15. The Department agreed with the need for consistency with the federal volatility program, and the rule was revised accordingly. The Department does not believe it is appropriate to change the terminal compliance date to May 15 in light of the number of comments received in response to the May 3, 1997 proposal urging consistency with dates of the federal program; furthermore, it is likely that members of the public and the regulated community did not comment again on this issue since the program start and end dates were not proposed to be changed.

In addition, the May 1 terminal compliance date does have real benefit because it ensures that all gasoline outlets have sufficient lead-time to dispense compliant fuel.

**Comment 4:**

Although no changes to the start and end dates in Section 126.301 were proposed, Exxon believes that there is a possibility the May 1 compliance date for terminals may be changed to May 31. Exxon would not support such a change. State fuel rules in Maryland, New Jersey, and Allegheny County in Pennsylvania all require terminals to be in compliance by May 1. The only date change Exxon would support for terminal compliance would be May 15. (*Commentator 3*)

**Response:**

The program start and end dates were not proposed to be changed because the Department believes that the proposed dates are appropriate. As stated in the response to Comment 3, the Department has not changed the compliance date for terminals. It remains May 1.

**Comment 5:**

The requirement to have gasoline with an RVP of 7.8 psi at the terminal level by May 1 contradicts the federal requirement (detailed in 55 *Fed. Reg.* 23658) to have 9.0 psi RVP gasoline at terminals by the same date. The federal summertime fuel volatility rule states that the entire country is to receive 9.0 psi RVP gasoline during May. Pennsylvania has not demonstrated in its State Implementation Plan the need for an RVP level in May that is more stringent than the federal standard in order to achieve the national ambient air quality standard for ozone. Unusual supply disruptions may occur if Pennsylvania's program dates are not brought in line with the federal program. Amoco recommends that Pennsylvania change its rule so that terminals are required to have 9.0 psi gasoline on May 1 as required by federal law, as opposed to the 7.8 psi requirement that is proposed. This change will not affect the requirement to have gasoline meeting the 7.8 psi specification at retail stations by June 1. (*Commentator 2*)

**Response:**

The program start and end dates were not proposed to be changed because the Board believes that the proposed dates are appropriate.

Under Section 211(c)(4)(A) of the Clean Air Act, states are preempted from prescribing a control regarding a fuel characteristic that is not identical to the federal requirement. However, under Section 211(c)(4)(C), the Environment Protection Agency is authorized to grant a state a waiver of this preemption if the state control is necessary to achieve a National Ambient Air Quality Standard (NAAQS).

On December 3, 1997, the Commonwealth submitted to EPA a formal revision to its state implementation plan (SIP) for ozone. This SIP contained a clean fuels program for the Pittsburgh ozone nonattainment area that was published as a final rule in the *Pennsylvania Bulletin* on November 1, 1997. On April 17, 1998, the Commonwealth sent a letter to EPA outlining proposed revisions to the December 3, 1997 SIP submission by deleting the provisions related to the use of reformulated gasoline. The April 1998 SIP revision imposes a RVP limit of 7.8 psi on all gasoline marketed in the Pittsburgh ozone nonattainment area and applies to the sale of gasoline between May 1 and September 15 at the terminal level and between June 1 and September 15 at the retail level.

On June 8, 1998 EPA published a direct final rule in the *Federal Register* proposing to grant Pennsylvania the necessary waiver under the Clean Air Act. No negative comments were received, and a Section 211(c)(4)(C) waiver was granted to Pennsylvania effective on July 23, 1998. This waiver allows the use of a fuel with an RVP standard more stringent than the federal requirement in the Pittsburgh ozone nonattainment area. EPA granted this waiver because, "Pennsylvania has submitted to EPA data and analysis to support a finding under Section 211(c)(4)(C) that its low RVP requirement is necessary for the Pittsburgh nonattainment area to achieve the ozone NAAQS."

This same EPA action finalized approval of the Pennsylvania low RVP program distribution schedule that requires terminals to be fully converted to 7.8 RVP fuel by May 1 and retail and wholesale-purchaser consumer facilities to be fully converted to 7.8 RVP fuel by June 1. The direct final rule states "because the state has satisfied all the program description elements, EPA has determined the Commonwealth's low RVP program for the Pittsburgh area meets all applicable federal requirements for approval as a SIP revision." Consequently, this approved SIP revision is now a federal law. Since this SIP revision was approved by EPA, it is not subject to review at the state level as the commentator suggests.

It is not necessary to justify the need for a more stringent requirement on a month-by-month basis, as the commentator suggests. Rather, the need for a particular program is justified from the perspective of an entire ozone season.

The comment that unusual supply disruptions may occur if this suggested change is not made is unwarranted. Low RVP fuel was required in the Pittsburgh ozone nonattainment area at the terminal level beginning on May 1, 1998 and at retail stations by June 1, 1998 and no unusual supply or price disruptions were reported. The program ran smoothly by all accounts, and the compliance rate was extremely high. Altering the requirement for terminal compliance may force EPA to reconsider both the waiver and the program approvals which could place the entire program, and the entire attainment plan for the Pittsburgh nonattainment area in jeopardy. The lack of incident or reported difficulty achieving compliance with the requirement to have gasoline with a vapor pressure of 7.8 psi at terminals by May 1 indicates that there is no justification for taking that risk.

If, as a result of the more stringent volatility requirement in May, gasoline with an RVP of 7.8 psi reaches retail stations prior to June 1, then more protection from exceedances of the health-based ozone standard will be afforded to the citizens of southwestern Pennsylvania. As this is a positive environmental and health benefit, the Department will not revise the terminal compliance requirement as suggested.