



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building  
P.O. Box 8468  
Harrisburg, PA 17105-8468  
July 2, 2002

Draft: 2227

**Bureau of Air Quality**

717-787-9495

Independent Regulatory Review  
Commission  
14<sup>th</sup> Floor, Harrisstown #2  
333 Market Street  
Harrisburg, PA 17120

Re: Portable Fuel Containers

Dear Independent Regulatory Review Commission:

The final rulemaking referenced above was sent to the Environmental Quality Board (EQB) today for consideration at its July 16 meeting. If the EQB approves the rulemaking, it will be forwarded to the Independent Regulatory Review Commission (IRRC) and the Senate and House Environmental Resources and Energy Committees for action.

Enclosed are copies of the final regulation and the Comment and Response Document, which address 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  
Chief

Regulation and Policy Development Section  
Division of ARM

Enclosures

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NEW YORK

**FINAL RULEMAKING  
PORTABLE FUEL CONTAINERS**

**ENVIRONMENTAL QUALITY BOARD MEETING**

**JULY 16, 2002**



## Executive Summary

### Final Rulemaking Portable Fuel Containers

The final rulemaking adopts permeation standards for new portable fuel containers and establishes requirements for no-spill fill spouts on new portable fuel containers. The final requirements will minimize permeation of gasoline vapors through the container walls and will reduce or eliminate gasoline spillage during filling of equipment fuel tanks. The requirements are based on the Ozone Transport Commission model rule and the California Air Resources Board regulations. The regulation is a part of the Commonwealth's efforts to reduce ozone precursor emissions to attain and maintain the ozone national ambient air quality standard.

The final regulation will result in additional reductions from the covered products of approximately 15%, equivalent to approximately 5,700 tons per year statewide. In addition to reducing VOC emissions, the regulation will result in reduced emissions of hazardous air pollutants such as benzene. Reduction in gasoline spillage will also result in reduced ground and water pollution.

Based on information in the report, "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules," prepared by the consulting firm, E.H. Pechan, it is estimated that the total gross cost to consumers in the Commonwealth who purchase new containers will be approximately \$3.3 million per year. The net cost to Pennsylvania consumers, considering the value of the gasoline saved, will be approximately \$500,000 per year.

The Department conducted three public hearings during a 67-day public comment period. Comments were received from four individuals and organizations. One commentator suggested revision of the regulation to accommodate its unique fill spout design. Another commentator suggested revision of the fill level requirements to accommodate its existing design. Revisions were not made in response to these suggestions. If the designs provide reductions equivalent to minimum regulatory requirements, the producer may apply for an equivalency determination.

The final regulation was discussed with the Small Business Compliance Advisory Committee on April 24, 2002. The Committee had no issues other than seeking assurance that the requirements are consistent with Fire Marshal requirements. This issue was addressed prior to proposed rulemaking by the inclusion of a cross-reference to the Combustible and Flammable Liquids Act. In addition, the Air Quality Technical Advisory Committee reviewed the final regulation on May 2, 2002. AQTAC concurred with the Department's recommendation that the rulemaking be submitted to the EQB for final rulemaking.

# Air Quality Technical Advisory Committee

to the Pennsylvania Department of Environmental Protection

P.O. Pox 8468

Harrisburg, PA 17105-8468

May 2, 2002

David E. Hess  
Secretary  
Department of Environmental Protection  
Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063

Dear Secretary Hess:

On May 2, 2002, the Air Quality Technical Advisory Committee discussed final amendments to 25 Pa. Code Chapter 130 which establish permeability standards and fill spout requirements for portable fuel containers.

The Committee recommends that the Environmental Quality Board approve the amendments as final rulemaking.

The Committee believes that the requirements for portable fuel containers are most cost-effective when undertaken on a national level. The Committee, therefore, recommends that the Department continue its aggressive efforts with other states to support uniform federal standards for portable fuel containers.

Sincerely,



E. Joseph Duckett, Ph.D.  
Chair

# NOTICE OF FINAL RULEMAKING

[25 PA. CODE CH. 130]

## Portable Fuel Containers

### Order

The Environmental Quality Board (Board) by this order establishes Chapter 130 (relating to standards for products) to read as set forth in Annex A.

Subchapter A (relating to portable fuel containers) applies to persons who sell, supply, offer for sale or manufacture for sale in this Commonwealth portable fuel containers or spouts or both and portable fuel containers and spouts, for use in this Commonwealth. Subchapter A also adds definitions for terms used in the substantive provisions of the chapter.

This notice is given under Board order at its meeting of July 16, 2002.

#### A. *Effective Date*

This final rulemaking is effective upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

#### B. *Contact Persons*

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663; or Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

#### C. *Statutory Authority*

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

#### D. *Background*

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The United States Environmental Protection Agency (EPA) has concluded that there is an association between ambient

ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. 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 these symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of this final rulemaking is to reduce the volatile organic compounds (VOCs) emitted from portable fuel containers. This final rulemaking is part of the Commonwealth's specific action plan to achieve and maintain the ozone National Ambient Air Quality Standard in this Commonwealth.

A number of northeastern states have also committed to developing regulations designed to reduce the amount of VOCs emitted into the environment from portable fuel containers. It is anticipated that once these states, together with California, have adopted these regulations, they will have the effect of being a "de facto" National rule.

In addition to reducing VOC emissions, the final rulemaking will also reduce public exposure to hazardous constituents present in gasoline such as benzene. Benzene is a toxic air contaminant and a known human carcinogen. Although the risk reductions have not been quantified, it is assumed that the spill-proof features and permeation requirement would significantly reduce benzene emissions.

This final rulemaking would also improve water quality in aquifers, lakes and rivers. It would greatly reduce the amount of gasoline spilled onto the ground while refueling lawn, garden and small construction equipment and other machines with small gasoline engines. Many marine pleasure craft, especially personal watercraft, are refueled using portable containers, and the threat of fuel spillage during onwater refueling is always present. The spill-proof systems would allow users of pleasure craft to refuel their engines without fuel spillage; this would eliminate the potential discharge of fuel into the aquatic environment from these activities.

This final rulemaking applies to all portable fuel containers or spouts, or both, except: 1) containers with capacity of less than or equal to 1 quart; 2) rapid refueling devices with capacities equal to or greater than 4 gallons, provided they are designed for use in officially sanctioned off-road motorcycle competitions; and 3) safety cans and portable marine fuel tanks that operate in conjunction with outboard motors.

Portable fuel containers or spouts, or both, must be equipped with an automatic shut-off device that stops fuel flow before the fuel tank overflows and an automatic device that closes and seals when it is removed from the fuel tank. There are also other required design specifications, all of which are intended to significantly lessen the possibility of gasoline spillage and reduce emissions.

Compliance with the performance standards are designed to maximize VOC emission reductions. It is estimated that VOCs would be reduced by approximately 75% of total uncontrolled emissions from this sector once the rule is finalized.

The major implementation issues are consumer acceptance and the long life of these containers. These containers will look and operate somewhat differently than those currently on the market. However, based on experiences to date, manufacturers have indicated that consumers prefer the new product after becoming familiar with it. The Commonwealth, through the Ozone Transport Commission (OTC), has worked with manufacturers of these containers, and manufacturers have indicated that they would be able to provide the products to the market by 2003.

The Department of Environmental Protection (Department) worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this final rulemaking. At its May 2, 2002 meeting, AQTAC recommended adoption of the final rulemaking. AQTAC also recommended that the Department continue aggressive efforts with other states to support National standards for these products. The Small Business Compliance Advisory Committee questioned whether or not the provisions are consistent with State Fire Marshal requirements. Prior to proposed rulemaking a cross-reference was inserted in Section 130.101 to Fire Marshal requirements.

#### *E. Summary of Comments and Responses on the Proposed Rulemaking*

The Board received four sets of comments on the regulatory proposal. Following is a summary of the major issues and the Board's responses.

One commentator supports the proposed rulemaking because it will reduce emissions of VOCs and carcinogenic compounds such as benzene. The Board appreciates the support of this commentator. In addition to reducing emissions of VOCs and carcinogenic compounds into the air, the regulation will also reduce potential soil, groundwater and surface water contamination by reducing gasoline spillage during fueling.

One commentator recommends that the Board modify the regulation to specify a spill range between 1.75 inches and 1.25 inches below the top of the target tank opening. The Board disagrees. Changing the requirement as proposed by the commentator may lead to an increase in refueling events caused by under-filled equipment fuel tanks. This may lead to consumer dissatisfaction with the new portable fuel containers that could result in product tampering.

One commentator expressed concern about the exemptions contained in § 130.104(d) and (e) of the proposed rulemaking. The provisions in § 130.104(d) apply to rapid refueling devices used in sanctioned off-highway motorcycle competitions, and the provisions in § 130.104(e) exempt portable fuel tanks used for outdoor motors on watercraft. The commentator believes that these exemptions should be eliminated if they would result in significant improvements in public health. The Board disagrees. The Board does not believe that the exemptions contained in the regulations will result in

significant emissions above the level that would be achieved if the tanks were not exempted.

One commentator believes pre-2003 containers should be labeled to advise consumers that the containers do not meet current requirements for future portable fuel containers. The Board does not agree. The labeling would add an additional level of regulation that would provide limited benefits. Informed consumers will be able to make the choice based upon the documentation associated with the new containers.

One commentator indicates that the innovative product exemption should be met through averaging rather than through the highest emitting product. The Board disagrees. Requiring an innovative product to achieve a higher level of control than that required for a complying product would stifle ingenuity and would discourage manufacturers from finding alternative compliance methods.

One commentator indicates that § 130.103(a)(2) should be revised to allow the use of spouts that “automatically close and remain completely closed when not dispensing fuel.” The commentator indicates that allowing this alternative will minimize tampering to make complying spouts easier to use. The Board disagrees. Fill spouts that do not automatically stop the flow of fuel and seal when removed from the tank will not reduce spillage and overflowing, which are two of the major sources of emissions the regulation addresses.

One commentator recommends that certain changes be made to the California test methods, which are incorporated by reference in the rule. The Board disagrees. Because the test methods and the standards are closely related, changes to the test method could significantly impact the standard and the emission reduction that will be achieved.

One commentator recommends that § 130.103(a)(3) be revised to require that a portable fuel container have only one opening for both pouring and venting with a second opening for filling. The Board disagrees. Allowing multiple openings in the container may result in significant evaporative loss of fuel from the containers. If a manufacturer can demonstrate that a different design or container configuration is suitable, the manufacturer may request an innovative product exemption under § 130.105.

Another commentator suggests the addition of terms and definitions in § 130.102 for clarity to make the rulemaking consistent with CARB. The terms suggested are “consumer,” “distributor,” “retailer,” “retail outlet,” “manufacturer” and “VOC.” The Board agrees that certain definitions are required. Definitions for all terms except “fuel” and “VOC” have been added to § 130.102. “VOC” is already defined in § 121.1 (relating to definitions), and a clarification has been added to the applicability section as to the relevant fuel types under this regulation.

One commentator points out that § 130.105 requires an applicant for innovative product exemption to apply in writing. However, the regulation does not include a time frame

under which the Department will review and act upon the application. The Board agrees and has included a 90-day deadline in the regulation.

#### *F. Summary of Regulatory Requirements*

The final addition of Chapter 130 includes definitions of terms and substantive provisions as well. The definitions in § 130.102 (relating to definitions) include "ASTM," "nominal capacity," "outboard engine," "permeation," "portable fuel container," "product category," "spill-proof spout," "spill-proof system," "spout" and "target fuel tank." Additional definitions added at final rulemaking include "consumer," "distributor," "manufacturer," "retailer" and "retail outlet."

The substantive provisions of Chapter 130 include under § 103.101 (relating to applicability) requirements and a cross reference to Department of Labor and Industry requirements related to portable fuel containers. Moreover, a clarification was made at final rulemaking that the subpart applies to liquid flammable and combustible fuels having a flash point below 200°F. Section 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts) includes, among other things, automatic shut-off spouts that stop fuel flow before the tank overflows. Section 130.104 (relating to exemptions) provides exemptions for portable fuel containers and spouts manufactured for sale and use outside of this Commonwealth. Innovative products exemptions are provided for in § 130.105 (relating to innovative products) to encourage the design and manufacture of products that will result in cumulative VOC emissions below those types of containers currently in the market. Additionally, new language was added at final rulemaking that under this section, the Department will render a decision on an exemption application within 90 days of receipt of application. Section 130.106 (relating to administrative requirements) provides for recordkeeping and labeling. Under § 130.107 (relating to variances), a person or manufacturer that cannot comply with Chapter 130 due to extraordinary circumstances beyond that person's reasonable control may request a variance. Test procedures to determine if performance standards for portable fuel containers and spouts have been met are specified in § 130.108 (relating to test procedures). Revisions in § 130.108 indicate a September 13, 2000 administrative amendment to the CCR correcting section numbers for the test methods.

In addition to the Department's statutory authority to regulate portable fuel containers as an air contamination source under the APCA, the Department of Labor and Industry (L & I) has concurrent authority to regulate portable fuel containers used for storage of flammable or combustible liquids under the Combustible and Flammable Liquids Act (35 P.S. 1241 *et seq.*). The Department has consulted with L & I regarding this rulemaking, and both departments concluded that the final regulation does not conflict with L & I's statutory authority or promulgated regulations.

These regulatory provisions will be submitted to the Environmental Protection Agency (EPA) as an amendment to the State Implementation Plan (SIP).

## *G. Benefits and Costs*

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

### *Benefits*

Overall, the citizens of this Commonwealth will benefit from these required changes because they will result in improved air quality by reducing ozone precursor emissions and encourage new technologies and practices, which reduce emissions. Moreover, it is also anticipated that adoption of this rulemaking will save consumers money because it will result in reduced evaporative loss from gasoline.

### *Compliance Costs*

Manufacturers indicate that the requirements may add an additional \$6 to \$10 to the cost of containers. The cost to residents of this Commonwealth is estimated to be approximately \$3.3 million annually with an estimated VOC emission reduction to be approximately 5,700 tons per year. If the value of the emission reductions of gasoline saved is factored in, the net cost to citizens of this Commonwealth will be reduced to be approximately \$500,000.

### *Compliance Assistance Plan*

The Department will continue to work with the other states in the Northeast, with the OTC and with the National product manufacturers to ensure their understanding of the requirements. In addition, the Department is exploring opportunities for partnering with organizations to facilitate the transition to the new products.

### *Paperwork Requirements*

The regulatory revisions will not increase the paperwork that is already generated during the normal course of business operations.

## *H. Sunset Review*

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

## *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 26, 2001, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a

detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

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.

This final-form regulation was approved by the House Environmental Resources and Energy Committee on \_\_\_\_\_ and was approved by the Senate Environmental Resources and Energy Committee on \_\_\_\_\_. The Commission met on \_\_\_\_\_ and approved the regulation in accordance with Section 5(c) 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 at 1 *Pennsylvania Code* §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 31 *Pennsylvania Bulletin* 6185 (November 10, 2001).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.
- (5) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards.

*K. Order of the Board*

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

- (a) The regulations of the Department of Environmental Protection, 25 *Pennsylvania Code* are amended by adding Chapter 130, Subchapter A, 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 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.**

**(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.**

**(e) This order shall take effect immediately.**

**DAVID E. HESS,  
Chairperson**

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE III. AIR RESOURCES**

**CHAPTER 130. STANDARDS FOR PRODUCTS**

**Subchapter A. PORTABLE FUEL CONTAINERS**

Sec.

130.101. Applicability.

130.102. Definitions.

130.103. Performance standards for portable fuel containers and spill-proof spouts.

130.104. Exemptions.

130.105. Innovative products.

130.106. Administrative requirements.

130.107. Variances.

130.108. Test procedures.

**§ 130.101. Applicability.**

Except as provided in § 130.104 (relating to exemptions), this article applies to a person who sells, supplies, offers for sale, or manufactures for sale in this Commonwealth portable fuel containers or spouts or both portable fuel containers and spouts for use in this Commonwealth. **THIS SUBPART APPLIES TO LIQUID FLAMMABLE AND COMBUSTIBLE FUELS HAVING A FLASH POINT BELOW 200°F.** For additional requirements, see section 7 of the Combustible and Flammable Liquids Act (35 P. S. § 1247(c)) and 37 Pa. Code § 11.7 (relating to container construction).

**§ 130.102. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*ASTM*--The American Society for Testing and Materials.

**CONSUMER**-- A PERSON WHO PURCHASES OR OTHERWISE ACQUIRES A NEW PORTABLE FUEL CONTAINER OR SPOUT OR BOTH PORTABLE FUEL CONTAINER AND SPOUT FOR PERSONAL, FAMILY, HOUSEHOLD, OR INSTITUTIONAL USE. A PERSON ACQUIRING A PORTABLE FUEL CONTAINER OR SPOUT OR BOTH PORTABLE FUEL CONTAINER AND SPOUT FOR RESALE IS NOT A CONSUMER FOR THAT PRODUCT.

**DISTRIBUTOR**--A PERSON TO WHOM A PORTABLE FUEL CONTAINER OR SPOUT OR BOTH PORTABLE FUEL CONTAINER AND SPOUT IS SOLD OR SUPPLIED FOR THE PURPOSE OF RESALE OR DISTRIBUTION IN COMMERCE. THIS TERM DOES NOT INCLUDE MANUFACTURERS, RETAILERS, AND CONSUMERS.

**MANUFACTURER**--A PERSON WHO IMPORTS, MANUFACTURES, ASSEMBLES, PRODUCES, PACKAGES, REPACKAGES, OR RE-LABELS A PORTABLE FUEL CONTAINER OR SPOUT OR BOTH PORTABLE FUEL CONTAINER AND SPOUT.

*Nominal capacity*--The volume indicated by the manufacturer that represents the maximum recommended filling level.

*Outboard engine*--A spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

*Permeation*--The process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

*Portable fuel container*--A container or vessel with a nominal capacity of 10 gallons or less intended for reuse that is designed or used primarily for receiving, transporting, storing and dispensing fuel.

*Product category*--The applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate and permeation rate, as applicable, as determined by the Commonwealth.

**RETAILER**--A PERSON WHO OWNS, LEASES, OPERATES, CONTROLS, OR SUPERVISES A RETAIL OUTLET.

**RETAIL OUTLET**--AN ESTABLISHMENT AT WHICH PORTABLE FUEL CONTAINERS OR SPOUTS OR BOTH PORTABLE FUEL CONTAINERS AND SPOUTS ARE SOLD, SUPPLIED, OR OFFERED FOR SALE.

*Spill-proof spout*--A spout that complies with the performance standards specified in § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts).

*Spill-proof system*--A configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in § 130.103(a).

*Spout*--A device that can be firmly attached to a portable fuel container for conducting pouring through which the contents of a portable fuel container can be dispensed.

*Target fuel tank*--A receptacle that receives fuel from a portable fuel container.

### **§ 130.103. Performance standards for portable fuel containers and spill-proof spouts.**

(a) Except as provided in § 130.104 (relating to exemptions), a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a portable fuel container or spout, or a portable fuel container and spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof systems:

(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

(3) Has only one opening for both filling and pouring.

(4) Provides a fuel flow rate and fill level of one of the following:

(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of:

(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.

(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on an accompanying package.

(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.

(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

(5) Does not exceed a permeation rate of 0.4 grams per gallon per day.

(6) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.

(b) Except as provided in § 130.104, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof spouts:

(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

(3) Provides a fuel flow rate and fill level of one of the following:

(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of one of the following:

(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.

(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on an accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.

(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

(4) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.

(c) The test procedures for determining compliance with the performance standards in this section are set forth in § 130.108 (relating to test procedures). The manufacturer of portable fuel containers or spouts or both portable fuel containers and spouts shall perform the tests for determining compliance as set forth in § 130.108 to show that its product meets the performance standards of this section prior to allowing the product to be offered for sale in this Commonwealth. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale in this Commonwealth and make those test results available to the Department within 60 days of request.

(d) Notwithstanding subsections (a) and (b), a portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003, may be sold, supplied or offered for sale until January 1, 2004, if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

#### **§ 130.104. Exemptions.**

(a) This subchapter does not apply to a portable fuel container or spout or both portable fuel container and spout manufactured in this Commonwealth for shipment, sale and use outside of this Commonwealth.

(b) This subchapter does not apply to a manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards specified in § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts), if the manufacturer or distributor can demonstrate the following:

(1) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of this Commonwealth.

(2) The manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed in this Commonwealth.

(c) This subchapter does not apply to portable fuel containers with a nominal capacity less than or equal to 1 quart.

(d) This subchapter does not apply to rapid refueling devices, with nominal capacities greater than or equal to 4 gallons, provided the devices are designed for use in officially sanctioned off-highway motorcycle competitions, or either create

a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

(e) This subchapter does not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

### **§ 130.105. Innovative products.**

The Department may exempt a portable fuel container or spout or both portable fuel container and spout from one or more of the requirements of § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts) if a manufacturer demonstrates to the satisfaction of the Department that, due to the product's design, delivery system or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category as determined from applicable testing.

(1) An applicant shall apply in writing to the Commonwealth for an innovative product exemption claimed under this section. The application shall include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test methods used to generate the data. In addition, the applicant shall provide information necessary to enable the Department to establish enforceable conditions for granting the exemption.

(2) For a portable fuel container or spout or both portable fuel container and spout for which an innovative product exemption has been granted under this section, the applicant shall notify the Department in writing at least 30 days before the applicant changes a product's design, delivery system or other factors that may effect the VOC emissions during recommended usage. The applicant shall also notify the Department within 30 days after the applicant learns of information that would alter the emissions estimates submitted to the Department in support of the exemption application.

(3) If the performance standards specified in § 130.103 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in this section, have no force and effect as of the effective date of the amended performance standards.

(4) If the Department believes that a portable fuel container or spout or both portable fuel container and spout for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may revoke or modify the exemption.

**(5) THE DEPARTMENT WILL ADVISE THE APPLICANT IN WRITING OF THE DEPARTMENT'S DECISION ON THE**

**APPLICATION FOR AN INNOVATIVE PRODUCT EXEMPTION  
WITHIN 90 DAYS OF RECEIPT OF A COMPLETE APPLICATION.**

**§ 130.106. Administrative requirements.**

(a) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103(a) (relating to performance standards for portable fuel containers and spill-proof spouts) shall clearly display the following on each spill-proof system:

(1) The phrase "Spill-Proof System."

(2) A date of manufacture or representative date.

(3) A representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with § 130.103(a).

(b) Each manufacturer of a spout subject to and complying with § 130.103(b) shall clearly display the following on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

(1) The phrase "Spill-Proof Spout."

(2) A date of manufacture or representative date.

(3) A representative code identifying the spout as subject to and complying with § 130.103(b).

(c) Each manufacturer subject to subsection (a) or (b) shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on an accompanying package.

(d) Each manufacturer of a spout subject to subsection (b) shall clearly display the make, model number and size of only those portable fuel containers the spout is designed to accommodate and can demonstrate compliance with § 130.103(a) on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label affixed thereto.

(e) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103 that, due to its design or other features cannot be used to refuel one or more on-road motor vehicles, shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater.

### **§ 130.107. Variances.**

(a) A person or manufacturer who cannot comply with § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts), due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall include the following:

- (1) The specific grounds upon which the variance is sought.
- (2) The proposed dates by which compliance with § 130.103 will be achieved.
- (3) A compliance report detailing the methods by which compliance will be achieved.

(b) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with a term or condition of the variance.

(c) Upon the application of a person, the Department may review and modify or revoke a variance from § 130.103.

### **§ 130.108. Test procedures.**

(a) Testing to determine compliance with § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts) shall be performed by using the following test procedures:

(1) *"Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems and Spill-Proof Spouts,"* adopted by CARB on July 6, 2000 (**SECTION NUMBERS CORRECTED SEPTEMBER 13, 2000**), which is incorporated herein by reference.

(2) *"Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts,"* adopted by CARB on July 6, 2000 (**SECTION NUMBERS CORRECTED SEPTEMBER 13, 2000**), which is incorporated herein by reference.

(3) *"Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems and Spill-Proof Spouts,"* adopted by CARB on July 6, 2000 (**SECTION NUMBERS CORRECTED SEPTEMBER 13, 2000**), which is incorporated herein by reference.

(b) Testing to determine compliance with § 130.103(a) shall be performed by using all test procedures in subsection (a) and *"Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems,"* adopted by CARB on July 6, 2000

**(SECTION NUMBERS CORRECTED SEPTEMBER 13, 2000)**, which is incorporated herein by reference.



**Portable Fuel Containers  
Comment and Response Document**

**May 14, 2002**

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

The Environmental Quality Board (Board) published notice of the public comment period and public hearings for the Portable Fuel Containers proposed rulemaking in the *Pennsylvania Bulletin* on November 10, 2001 (29 Pa. B. 6185). The Board held three public hearings on the proposal at the following locations:

December 11, 2001

DEP Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA

December 13, 2001

DEP Southeast Regional Office  
Suite 601 Lee Park  
555 North Lane  
Conshohocken, PA

December 17, 2001

DEP Southcentral Regional Office  
Susquehanna River Conference Room  
909 Elmerton Ave.  
Harrisburg, PA

The public comment period for the Portable Fuel Container proposed rulemaking closed on January 16, 2002. Written comments received during the public comment period are summarized in this comment and response document. No testimony was presented at the public hearings. The identity of each commentator is indicated by the assigned number(s) in parentheses after each comment.

This is a list of corporations, organizations and interested individuals from whom the Environmental Quality Board has received comments regarding the above referenced regulation.

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
1	Mr. Dan St. Martin Environmental Engineer Corporate Environmental Compliance Department Briggs and Stratton Corporation P.O. Box 702 Milwaukee, WI	53201-0702			
2	Mr. Mark Pierce President No-Spill Research, Inc. 5104 NE 62 <sup>nd</sup> Street Kansas City, MO	64119	X		
3	Mr. Eric Cheung, Esq. Staff Attorney Clean Air Council 135 South 19 <sup>th</sup> Street, Suite 300 Philadelphia, PA	19103			
4	Independent Regulatory Review Commission 14 <sup>th</sup> Floor, Harristown #2 333 Market Street Harrisburg, PA	17120			

1. **Comment:** The commentator recommends that the Department modify the regulation to specify a fill range of between 1.75 inches (minimum fill level) and 1.25 inches (maximum fill level) below the top of the target tank opening to preserve operator safety, protect the environment, and maintain consumer acceptance. (1)

**Response:** The Department disagrees. The proposal specifies a prescribed “fill-level” of less than or equal to one inch or 1.25 inches below the top of the target fuel tank opening, depending on the size of the container. These fill levels are to ensure that the new products fill the equipment fuel tank to the maximum extent and will avoid an increase in the incidence of refueling events caused by under-filling. Changing the requirement as proposed by the commentator may lead to an increase in refueling events caused by under-filled equipment fuel tanks. This may lead to consumer dissatisfaction with the new portable fuel containers that could result in product tampering. Product tampering could result in reduced effectiveness of the products and increased emissions. The requirements have not been changed in the final rulemaking.

2. **Comment:** The commentator supports the proposed rulemaking because it will reduce emissions of volatile organic compounds (VOC) and carcinogenic compounds such as benzene. (3)

**Response:** The Department appreciates this support. In addition to reducing emissions of VOC and compounds into the air, the regulation will reduce potential soil, groundwater and surface water contamination by reducing gasoline spillage during fueling.

3. **Comment:** The commentator expressed concern about exemptions contained in Section 130.104(d) and (e) of the proposed rulemaking. The provisions in §130.104(d) apply to rapid refueling devices used in sanctioned off-highway motorcycle competitions, and §130.104 (e) exempts portable fuel tanks used for outboard motors on watercraft. The commentator indicates that if it becomes apparent, over time, that the elimination of the exemption under §130.104 (d) would result in significant improvement in public health, it should be eliminated. The commentator believes that the exemption for pre-filled outboard motor fuel tanks is acceptable provided emissions from filling of the tanks is no greater than it would be if the devices were subject to the requirements in the proposed regulation. (3)

**Response:** The Department does not believe that the exceptions contained in the regulations for rapid refueling devices for sanctioned off-road motorcycle racing and for portable fuel tanks for outboard (O/B) motors will result in significant emissions above the levels that would be achieved if the tanks were not exempted. Because of the small number of racing events in Pennsylvania, they are not a significant source of VOC emissions. O/B motor fuel tanks are typically fueled from service station pumps and connected to the O/B motor

through a dedicated fuel line. These tanks are designed to minimize spillage and emissions. The requirements have not been changed in the final rulemaking.

4. **Comment:** The commentator does not object to the “sell-through” provisions that allow a retailer to sell the inventory of containers manufactured prior to the January 2003 effective date for manufacture of complying containers. However, the commentator suggests that these containers should be labeled to advise consumers that the containers do not meet current requirements for portable fuel containers. (3)

**Response:** The Department does not agree that pre-2003 containers sold during the “sell-through” period should be labeled in such a manner. The labeling would add an additional level of regulation that would provide limited benefits. Informed consumers will be able to make the choice based on the documentation associated with the “no-spill” containers. The requirements have not been changed in the final rulemaking.

5. **Comment:** The commentator indicates that for a manufacturer to obtain an “innovative product” exemption the manufacturer should be required to demonstrate that the innovative product meet the level of control achieved by the “average” complying product rather than the level achieved by the “highest emitting” product. (3)

**Response:** The Department disagrees. Requiring an innovative product to achieve a higher level of control than that required for a complying product will stifle ingenuity and will discourage manufacturers from finding alternative compliance methods. The requirements have not been changed in the final rulemaking.

6. **Comment:** The commentator indicates that §130.103(a)(2) should be revised to allow the use of spouts that “automatically close and remain completely closed when not dispensing fuel.” The proposed §130.103(a)(2) requires that the spout automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel. The commentator indicates that allowing this alternative will minimize tampering to make complying spouts easier to use. (2)

**Response:** The Department disagrees. Fill spouts that do not automatically stop the flow of fuel and seal when removed from the tank will not reduce spillage and overfilling, which are two of the major sources of emissions the regulation addresses. The requirements have not been changed in the final rulemaking.

7. **Comment:** The commentator recommends that the phrase “per manufacturer’s instructions” be inserted into the California Test Method 511. (2)

**Response:** The Department disagrees. This test method was developed by the California Air Resources Board (CARB). The Department cannot change the test

method. Changes to Method 511 or other CARB test methods can be made only by CARB. The requirements have not been changed in the final rulemaking.

8. **Comment:** The commentator recommends that §130.103(a)(3) be revised to require that a portable fuel container have only one opening for both pouring and venting. This would allow the container to have a second opening for filling of the container. (2)

**Response:** The proposed rulemaking requires that containers have only one opening for both filling and pouring. This minimizes the likelihood that the container will be left open when it is not in use. Allowing multiple openings in the container may result in significant evaporative loss of fuel from open containers. To minimize the possibility that containers will be left open, the regulation allows only one opening. If a manufacturer can demonstrate that a different design or container configuration results in suitable emission reductions, the manufacturer may request an innovative product exemption under §130.105 of the final rulemaking.

The requirements have not been changed in the final rulemaking.

9. **Comment:** The commentator suggests the addition of terms and definitions in §130.102 for clarity and to make the rulemaking consistent with the CARB rules upon which the regulation is based. The terms suggested are: “consumer,” “distributor,” “fuel,” “retailer,” “retail outlet,” “manufacturer,” and “VOC”. (4)

**Response:** The Department agrees that certain definitions are required. Definitions for all of the terms, except VOC, have been added to §130.102. The term “VOC” is defined in Section 121.1 and that definition is applicable to the provisions of this subchapter. Definitions of the terms “retailer” and “retail outlet” are added to the final rulemaking. These definitions differ from the general definitions of those terms as contained in Section 121.1. “Fuel” is not defined in the final rulemaking, but language has been added in the applicability section in §130.101 to clarify that the rule applies to liquid flammable and combustible fuels having a flash point below 200° F.

10. **Comment:** Section 130.105 requires an applicant for an innovative product exemption to apply to the Department in writing. However, the regulation does not include a time frame under which the Department will review and act upon the application. The final regulation should include a time frame for Department review of applications for innovative product exemptions. (4)

**Response:** The Department agrees. The Department has included a 90-day time frame to act on a completed exemption application.

11. **Comment:** The commentator suggests that the final rulemaking should specifically reference the Environmental Hearing Board appeal procedures applicable to a final

decision by the Department under §§130.105 (f) and 130.107(c)(4), relating to innovative product exemptions and variances, respectively. (4)

**Response:** The Department disagrees. Pursuant to Section 10.2 of the Air Pollution Control Act, any person may appeal a final action of the Department to the Environmental Hearing Board. Therefore, reiteration of the appealable actions provision in this final-form regulation is unnecessary. *See*, 35 P.S. § 4010.2.

**12. Comment:** The commentator suggested that the Department should include the notation that the CARB test methods referenced in §130.108 were updated on September 13, 2000. (4)

**Response:** The Department agrees. The test methods in §130.108 in the final rulemaking reference the September 13, 2000, revision.