



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division for Air Quality

4 (Amendment)

5 401 KAR 59:174. Stage II controls at gasoline dispensing facilities.

6 RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42
7 U.S.C. 7511a(b)(1)(A), 40 C.F.R. 51.126

8 STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7409, 7410, 7511a(b)(3),
9 7521(a)(5), 7624, 7625

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the
11 Energy and Environment Cabinet to promulgate~~prescribe~~ administrative regulations for the
12 prevention, abatement, and control of air pollution. This administrative regulation provides for the
13 control of emissions from gasoline dispensing facilities and the decommissioning of existing
14 controls at gasoline dispensing facilities that are no longer environmentally beneficial.

15 Section 1. Definitions. Terms not defined in this section shall have the meaning given them
16 in 401 KAR 59:001.

17 (1) "Average monthly throughput" means~~(a) For an existing facility,~~ the total gallons of
18 gasoline dispensed during the months of operation in the previous twelve (12) months, divided by
19 the number of months of operation during those twelve (12) months~~; or~~

1 ~~(b) For a facility which commenced construction on or after the effective date of this~~
2 ~~administrative regulation, an estimate provided by the owner or operator and approved by the~~
3 ~~cabinet, of the total gallons of gasoline that will be dispensed during the first twelve (12) months of~~
4 ~~operation divided by twelve (12)].~~

5 (2) "Balance system" means a Stage II vapor recovery system which uses direct
6 displacement to force vapor out of the receiving container and back into the space of the container
7 from where the liquid product was withdrawn.

8 (3) "Boot" means an accordion-like tubular cover used over the spout of a gasoline nozzle
9 to provide a return-path for gasoline vapors displaced during refueling.

10 (4) "CARB" means the California Air Resources Board.

11 (5) "CARB certification" means a document such as an executive order or approval letter
12 provided by CARB or by an equivalent authority which certifies that a vapor recovery system or
13 system components achieve at least a ninety-five (95) percent reduction in the VOC emissions
14 during refueling, and which identifies the performance standards required for the system or system
15 components. An executive order may also identify the range of permissible components,
16 permissible construction configurations, and the required tests for compliance.

17 (6) "Coaxial hose" means a hose-within-a-hose which provides separate passages for the
18 flow of gasoline and vapor return.~~["Classification date" means the date on which this~~
19 ~~administrative regulation becomes applicable in a county or portion of a county.]~~

20 (7) "Decommission" means to render inoperable a stage II vapor recovery system.~~["Coaxial~~
21 ~~hose" means a hose within a hose which provides separate passages for the flow of gasoline and~~
22 ~~vapor return.]~~

1 (8) "Dry break" means a spring-loaded valve that prevents vapor from escaping through the
2 vapor recovery riser pipe opening of a storage tank.

3 (9) "Equivalent authority" means an authority recognized by the cabinet and by the U.S.
4 EPA as having a program for certification of vapor recovery systems equivalent to that of CARB.

5 (10) "Existing gasoline dispensing facility" means a facility that commenced dispensing
6 gasoline prior to January 1, 2016.

7 (11)[10] "Faceplate" means a soft, donut-shaped device attached to the boot of a balance
8 nozzle which forms a tight seal with the vehicle fill pipe during refueling.

9 (12)[11]"Facility" or "gasoline dispensing facility" means a site, except a farm not
10 engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a
11 motor vehicle fuel tank.

12 (13)[12] "Facility representative" means a facility employee who has been trained to
13 serve at that facility as prescribed in Section 5 of this administrative regulation.

14 (14)[13] "Flexible cone" means a cone-shaped device attached to the boot of a vacuum-
15 assist nozzle that prevents too low a vacuum from forming in the vehicle fuel tank.

16 (15)[14]"Leak" means liquid or vapor loss from the gasoline dispensing system or vapor
17 recovery system as determined by visual inspection or operation of the equipment.

18 (16)[15]"Modification" or "modify" means:

19 (a) The repair, replacement, or upgrade of a facility's Stage II equipment at a cost equal to
20 seventy-five (75) percent or more of the cost of a total system replacement at the time of
21 modification; or

22 (b) A change, such as the removal of a CARB certified component and the addition or
23 removal of piping or fittings, which may cause the vapor recovery system to be incapable of

1 maintaining an overall control efficiency of at least a ninety-five (95) percent reduction in the VOC
2 emissions.

3 (17)~~(16)~~ "Month" means calendar month.

4 (18)~~(17)~~ "Month of operation" means a month during which a facility is not closed for the
5 purpose of dispensing gasoline for more than four (4) consecutive days.

6 (19)~~(18)~~ "Motor vehicle" means a vehicle, machine, or mechanical contrivance propelled
7 by an internal combustion engine and licensed for operation and operated upon the public
8 highways.

9 (20) "New gasoline dispensing facility" means a facility that commenced dispensing
10 gasoline on or after January 1, 2016.

11 (21)~~(19)~~ "Stage I vapor recovery system" means a vapor recovery system certified by
12 CARB or by an equivalent authority to reduce the emissions of VOCs by ninety-five (95) percent
13 or more during the transfer of gasoline to a stationary storage tank at a facility.

14 (22)~~(20)~~ "Stage II vapor recovery system" means a vapor recovery system certified by
15 CARB or by an equivalent authority to reduce the emissions of VOCs during the refueling of a
16 motor vehicle at a facility by ninety-five (95) percent or more.

17 (23)~~(21)~~ "Storage tank" means a tank at a gasoline dispensing facility which is used for
18 the storage of gasoline.

19 (24)~~(22)~~ "Vacuum assist system" means a Stage II vapor recovery system which uses a
20 vacuum inducing device to collect vapor from the receiving container and direct it back into the
21 space of the container from where the liquid product was withdrawn.

22 Section 2. Applicability. (1) This administrative regulation shall apply to the owner or
23 operator of a gasoline dispensing facility located in a county in which the entire county, as of

1 January 12, 1998~~[the effective date of this administrative regulation]~~, was~~[is]~~ designated severe,
2 serious, or moderate nonattainment for ozone pursuant to 401 KAR 51:010, Attainment status
3 designations, except as exempted in Section 9 of this administrative regulation.

4 (2) Subject to the compliance timetable~~[After the date]~~ specified in Section 8 of this
5 administrative regulation, an owner or operator of an existing gasoline dispensing facility shall not
6 transfer or allow the transfer of gasoline from a storage tank at that facility into a motor vehicle
7 fuel tank unless the displaced vapors are collected by a Stage II vapor recovery system and the
8 requirements of this administrative regulation are met.

9 (3) A new gasoline dispensing facility and an existing gasoline dispensing facility after
10 decommissioning has been completed shall not be subject to the requirements of Sections 3
11 through 10 of this regulation.

12 Section 3. Registration and Notification Requirements. The owner or operator shall submit
13 registration and notification forms to the Division for Air Quality as specified in this section. These
14 forms are incorporated by reference in Section 11~~[10]~~ of this administrative regulation.

15 (1) Registration of facilities. DEP 7105, Gasoline Dispensing Facility Registration Form,
16 shall be submitted at least thirty (30) days prior to installing or modifying a Stage II vapor recovery
17 system.

18 (2) Compliance test notification. DEP 7105A, Compliance Test Notification Form, shall be
19 submitted at least thirty (30) days prior to the performance of the compliance tests required in
20 Section 6 of this administrative regulation.

21 (3) Stage II post inspection report. DEP 7105B, Stage II Post Inspection Form, shall be
22 submitted within ten (10) work days after the applicable compliance tests have been performed.

1 (4) Notice of Intent to Decommission Stage II Controls and Decommission Plan Form. A
2 completed DEP 7105C, Notice of Intent to Decommission Stage II Controls and Decommission
3 Plan Form shall be filed at least thirty (30) calendar days prior to commencing any
4 decommissioning activity. If a change occurs to the submitted plan, a revision shall be filed at
5 least ten (10) calendar days prior to commencing any decommissioning activities.

6 (5) Notice of Status of Decommissioning of Stage II Control Form. A completed DEP
7 7105D, Notice of Status of Decommissioning of Stage II Controls Form, shall be filed within ten
8 (10) days after commencing decommissioning. If decommissioning is not completed within ten
9 (10) days after commencing, an additional DEP 7105D form shall be submitted.

10 Section 4. Control Measures and Operating Requirements. (1) The Stage II vapor recovery
11 system shall:

12 (a) Be designed and operated to be at least ninety-five (95) percent effective in recovering
13 displaced vapors;

14 (b) Be certified by CARB or an equivalent authority;

15 (c) Employ only coaxial hoses at the dispensers;

16 (d) Contain no components that would impede the performance of the functional or
17 compliance tests of the system;

18 (e) Be integrated with a Stage I vapor recovery system; and

19 (f) Meet the testing requirements contained in Section 6 of this administrative regulation.

20 (2) The owner or operator shall comply with the following operational restrictions for the
21 Stage II vapor recovery system:

22 (a) The system shall be installed, operated, and maintained in accordance with the
23 manufacturer's specifications and the applicable certification granted by CARB.

1 (b) The system shall be free of defects listed in this subsection. The facility representative
2 shall inspect the equipment daily for these defects. If a defect is discovered, through this inspection
3 or otherwise, an "Out of Order" sign shall be posted and the defective equipment shall be rendered
4 inoperable. Defects include:

5 1. The absence or disconnection of any component that is part of the Stage II vapor
6 recovery system;

7 2. The use of equipment not in accord with the system certification;

8 3. A vapor hose that is crimped or flattened so that:

9 a. The vapor passage is completely blocked; or

10 b. The pressure drop through the vapor hose is greater than two (2) times the certification
11 requirements;

12 4. A boot that is torn in one (1) or more of the following ways:

13 a. A triangular shaped or similar tear more than one-half (1/2) inch on a side;[øø]

14 b. A hole more than one-half (1/2) inch in diameter; or

15 c. A slit more than one (1) inch in length;

16 5. A faceplate or flexible cone on a boot that is damaged so that the ability to achieve a
17 seal with a fill pipe interface is impaired for at least one-quarter (1/4) of the total circumference of
18 the faceplate or flexible cone;

19 6. A malfunctioning nozzle shutoff mechanism;

20 7. Vapor return lines, including components such as swivels, antirecirculation valves, and
21 underground piping, that malfunction or are blocked, or are restricted so that the pressure drop
22 through the line is greater than two (2) times the certification requirement;

23 8. An inoperative vapor processing unit;

- 1 9. An inoperative vacuum producing device;
- 2 10. An inoperative pressure/vacuum relief valve, vapor check valve, or dry break;
- 3 11. Leaks; and
- 4 12. An equipment defect which substantially impairs the control efficiency of the system.

5 (c) A defect in a component of the Stage II vapor recovery system which is not listed in
6 paragraph (b) of this section shall not prevent operation but shall be repaired or replaced within
7 fifteen (15) days after being identified as defective.

8 (d) If the cabinet identifies a defect specified in paragraph (b) of this subsection, the cabinet
9 shall affix a tag to the defective equipment stating that the equipment is out of order. The tag shall
10 not be removed until the cabinet has been notified that the defect has been corrected, and the
11 tagged equipment has been approved for use by the cabinet.

12 (3) The owner or operator shall ensure that safe access to the system components and
13 monitoring equipment is maintained for inspection and compliance determination by the cabinet.

14 (4) The owner or operator shall display instructions for dispensing gasoline on or near each
15 dispenser, in a print type and size that is easily readable, which include at a minimum:

- 16 (a) A description of how to use the equipment;
- 17 (b) A warning not to dispense fuel after automatic shutoff; and
- 18 (c) A telephone number established by the cabinet to report problems with equipment.

19 (5) At least one (1) person at the facility shall be trained pursuant to Section 5 of this
20 administrative regulation.

21 Section 5. Training of Facility Representative. (1) The owner or operator shall ensure that
22 at least one (1) person at the facility is trained to operate the vapor recovery system. The facility
23 representative shall not be required to be present at the facility at all times, but shall perform or

1 oversee the daily inspection of vapor recovery equipment for the defects listed in Section 4(1)(b) of
2 this administrative regulation.

3 (2) Training may be provided by the vapor recovery equipment manufacturer or distributor,
4 by the person constructing or modifying the Stage II vapor recovery system, by a trained facility
5 representative, or by training manuals provided by the manufacturer, distributor, or the person
6 constructing or modifying the Stage II vapor recovery system. If training manuals are used, they
7 shall be kept at the facility and made available to the cabinet upon request.

8 (3) Training shall include the following topics:

9 (a) Purposes of the Stage II vapor recovery program;

10 (b) Operation of the vapor recovery system at that facility;

11 (c) Daily equipment inspections;

12 (d) How to repair or replace faulty equipment without voiding the equipment warranties;

13 (e) Procedures for posting and removing "Out of Service" signs;

14 (f) The executive orders of CARB (or the equivalent authority certifying the system), the
15 range of components certified for use in the system, and the requirements placed on the owner or
16 operator;

17 (g) Maintenance schedules and requirements for the system and its components; and

18 (h) Equipment warranties.

19 (4) The training shall include a practical demonstration on how to operate and inspect the
20 equipment and how to perform a start-up and shut-down of the facility. This demonstration may be
21 performed at another facility with a similar vapor recovery system. The cabinet may require that
22 this demonstration be witnessed by the cabinet as a condition for compliance.

1 (5) The owner or operator shall maintain a record for each facility representative which
2 includes the following:

3 (a) The name of the facility representative and the date training was received;

4 (b) Proof of attendance and successful completion of training; and

5 (c) If applicable, the date the facility representative left the employ of the owner or
6 operator.

7 (6) The owner or operator shall not operate the facility for more than thirty (30)
8 consecutive days without a facility representative.

9 Section 6. Compliance Demonstration Test. (1) Within sixty (60) days after the installation
10 or modification of a Stage II vapor recovery system, the owner or operator shall comply with the
11 applicable test procedures specified in this subsection. The methods by which the tests specified in
12 this subsection are to be conducted are set forth in “Stationary Source Test Methods, Volume 2,
13 Certification and Test Procedures for Vapor Recovery Systems”, April 12, 1996, [These tests are]
14 incorporated by reference in Section 11[40] of this administrative regulation.

15 (a) A leak test shall be performed in accordance with the applicable procedure specified in
16 this paragraph. The vapor recovery system shall comply with the leak rate criteria specified in the
17 applicable test procedure.

18 1. Vapor Recovery Test Procedure TP-201.3, Determination of Two (2) Inch (WC) Static
19 Pressure Performance of Vapor Recovery Systems of Dispensing Facilities;

20 2. Vapor Recovery Test Procedure TP-201.3A, Determination of Five (5) Inch (WC) Static
21 Pressure Performance of Vapor Recovery Systems of Dispensing Facilities; or

1 3. Vapor Recovery Test Procedure TP-201.3B, Determination of Static Pressure
2 Performance of Vapor Recovery Systems of Dispensing Facilities with Above-ground Storage
3 Tanks.

4 (b) A dynamic back pressure test shall be performed in accordance with Vapor Recovery
5 Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery
6 Systems of Dispensing Facilities.

7 1. The cabinet may require that this test be conducted simultaneously on all the nozzles of a
8 dispenser for which gasoline can be dispensed simultaneously.

9 2. The vapor recovery system shall comply with the maximum allowable average dynamic
10 pressures given in the test procedure.

11 (c) Vapor Recovery Test procedure TP-201.5, Determination (by Volume Meter) of Air to
12 Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, shall be performed for
13 a system if required by the applicable CARB certification. The vapor recovery system shall comply
14 with the criteria specified in the test procedure.

15 (d) Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase
16 II Vapor Recovery Systems of Dispensing Facilities, shall be performed for a system if required by
17 the applicable CARB certification. The vapor recovery system shall comply with the criteria
18 specified in the test procedure.

19 (2) At intervals not to exceed five (5) years, the owner or operator shall demonstrate
20 compliance with the requirements of the applicable test procedure specified in subsection (1)(a) of
21 this section. The notification requirements of Section 3(2) of this administrative regulation shall
22 apply for these tests.

1 (3) The cabinet may require the owner or operator to perform other tests if necessary to
2 demonstrate the adequacy of a vapor recovery system.

3 Section 7. Recordkeeping Requirements. (1) The owner or operator shall maintain the
4 following documents:

5 (a) Current CARB certification for the Stage II vapor recovery system installed at the
6 facility;

7 (b) Proof of training for the current facility representative; and

8 (c) Test results which verify that the vapor recovery system meets or exceeds the
9 requirements of the compliance tests required in Section 6 of this administrative regulation.

10 (2) The following records shall be maintained for a period not less than three (3) years:

11 (a) A log of the quantity of gasoline delivered to the facility during each month;

12 (b) A log of maintenance records including any repaired or replacement parts and
13 description of the problem;

14 (c) Inspection reports issued by the cabinet, kept in chronological order;

15 (d) Compliance records including warnings or notices of violation issued by the cabinet,
16 kept in chronological order; and

17 (e) The facility representative record specified in Section 5(3) of this administrative
18 regulation.

19 (3) Records shall be kept current and made available to the cabinet upon request.

20 Section 8. Compliance Timetable. The owner or operator of an existing gasoline dispensing
21 facility that is not exempt from this regulation pursuant to Section 9 below shall comply with this
22 administrative regulation in the following manner: (1) The owner or operator shall commence

1 decommissioning of the facility's Stage II vapor recovery system pursuant to Section 10 herein on
2 or after January 1, 2016.

3 (2) The owner or operator shall complete decommissioning of the facility's Stage II vapor
4 recovery system on or before December 31, 2018.

5 (3) The owner or operator shall comply with all sections of this administrative regulation
6 unless and until the decommissioning of the facility's Stage II vapor recovery system is
7 complete.~~[Facilities with an average monthly throughput of 100,000 gallons or more, which~~
8 ~~commenced construction on or before the classification date, shall comply within one (1) year of~~
9 ~~the classification date.~~

10 ~~(2) Facilities with an average monthly throughput between 25,000 and 100,000 gallons,~~
11 ~~which commenced construction on or before the classification date, shall comply within two (2)~~
12 ~~years of the classification date.~~

13 ~~(3) Facilities commencing construction after the effective date shall comply before~~
14 ~~beginning to dispense gasoline.]~~

15 Section 9. Exemptions. (1) The fuels and facilities specified in this subsection shall be
16 exempt from this administrative regulation.

17 (a) Diesel fuel and kerosene. These fuels shall not be used in calculating the average
18 monthly throughput to determine the applicability of this administrative regulation.

19 (b) A facility with an average monthly throughput of 25,000 gallons or less. This
20 exemption shall cease to apply if the average monthly throughput exceeds 25,000 gallons prior to
21 January 1, 2016, at which time facilities that were exempt before January 1, 2016, based on their
22 average monthly throughput will continue to be exempt from this regulation, and the throughput
23 limitation shall no longer apply.

1 (c) A facility located in an air quality control region which has implemented a Stage II
2 program that has been approved by the U.S. EPA.

3 (2) Recordkeeping for exempted facilities. An exempted facility shall maintain records for
4 a period not less than two (2) years which demonstrate that the facility's average monthly
5 throughput has not exceeded the applicable throughput limit until January 1, 2016, after which time
6 exempted facilities shall no longer be required to maintain records which demonstrate that the
7 facility's average monthly throughput has not exceeded the applicable throughput limit.

8 ~~[(3) Loss of exemption status. If a monthly record documents an average monthly~~
9 ~~throughput equal to or greater than the applicable throughput limit, the owner or operator shall~~
10 ~~notify the division by phone or fax within thirty (30) days. If the exemption ceases to apply, the~~
11 ~~owner or operator shall comply with this administrative regulation within one (1) year of~~
12 ~~notification by the cabinet.]~~

13 Section 10. Decommissioning. (1) The decommissioning procedure for a Stage II vapor
14 recovery system shall be consistent with the procedure as described in Chapter 14 of the
15 Petroleum Equipment Institutes Recommended Practices for Installation and Testing of Vapor
16 Recovery Systems at Vehicle Refueling Sites, PEI/RP300-09, which is incorporated by reference
17 in Section 11 of this administrative regulation.

18 (2) The decommissioning procedure shall include the following:

19 (a) Initiating safety procedures;

20 (b) Relieving pressure in the tank ullage;

21 (c) Draining all liquid collection points;

22 (d) Protecting against electrical hazards by disconnecting all Stage II electrical
23 components;

1 (e) Reprogramming the electronics in the dispenser to indicate that Stage II vapor
2 recovery is not in service;

3 (f) Sealing off vapor piping located below grade and below the level of the dispenser base
4 in a secure manner;

5 (g) Sealing off vapor piping located below grade at the tank end, if reasonably accessible,
6 in a secure manner;

7 (h) Sealing of vapor piping located inside the dispenser cabinet in a secure manner;

8 (i) Replacing Stage II vapor recovery-type hanging hardware with conventional-type
9 hanging hardware;

10 (j) Installing pressure and vacuum vent valves as appropriate;

11 (k) Removing all Stage II instructions from all dispenser cabinets;

12 (l) Conducting appropriate testing, including pressure decay and tie-tank tests;

13 (m) Verifying that all visible storage system components will not release any vapors or
14 liquids; and

15 (n) Restoring the gasoline dispensing facility back to operational status.

16 (2) Decommissioning, including all required testing, shall be completed within sixty (60)
17 days of commencement of decommissioning.

18 (a) If decommissioning, including all required testing, is not completed within sixty (60)
19 days of commencing decommissioning, lock-outs and "Out of Service" tags shall be installed on
20 all gasoline dispensers that have not been decommissioned until decommissioning is completed.

21 Section 11[40]. Incorporation[Material Incorporated] by Reference. (1) The following
22 material is[forms are] incorporated by reference:

23 (a) "DEP 7105, Gasoline Dispensing Facility Registration", August 1997["];

- 1 (b) "DEP 7105A, Compliance Demonstration Notification", August 1997["];~~and~~
- 2 (c) "DEP 7105B, Stage II Post Inspection Form", August 1997["];
- 3 (d) "DEP 7105C, Notice of Intent to Decommission Stage II Controls and Decommission
- 4 Plan Form", May 2015;
- 5 (e) "DEP 7105D, Notice of Status of Decommissioning of Stage II Controls Form", May
- 6 2015;
- 7 (f) "Petroleum Equipment Institute's Recommended Practices for Installation and Testing
- 8 of Vapor Recovery Systems at Vehicle Refueling Sites, PEI/RP300-09", 2009;
- 9 (g)~~[(2) The test methods specified in this subsection, as published by California~~
- 10 ~~Environmental Protection Agency, Air Resources Board, in the] "Stationary Source Test Methods,~~
- 11 ~~Volume 2, Certification and Test Procedures for Vapor Recovery Systems", April 12, 1996["; is~~
- 12 ~~incorporated by reference]. This document is also available from the California Air Resources~~
- 13 ~~Board, P.O. Box 2815, 2020 L St., Sacramento, California 95812, Phone: (916) 322-2990.~~
- 14 ~~[(a) Vapor Recovery Test Procedure TP 201.3, Determination of Two (2) Inch (WC) Static~~
- 15 ~~Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.~~
- 16 ~~(b) Vapor Recovery Test Procedure TP 201.3A, Determination of Five (5) Inch (WC)~~
- 17 ~~Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.~~
- 18 ~~(c) Vapor Recovery Test Procedure TP 201.3B, Determination of Static Pressure~~
- 19 ~~Performance of Vapor Recovery Systems of Dispensing Facilities with Above-ground Storage~~
- 20 ~~Tanks.~~
- 21 ~~(d) Vapor Recovery Test Procedure TP 201.4, Determination of Dynamic Pressure~~
- 22 ~~Performance of Vapor Recovery Systems of Dispensing Facilities.~~

1 ~~(e) Vapor Recovery Test Procedure TP 201.5, Determination (by Volume Meter) of Air to~~
2 ~~Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities.~~

3 ~~(f) Vapor Recovery Test Procedure TP 201.6, Determination of Liquid Removal of Phase~~
4 ~~II Vapor Recovery Systems of Dispensing Facilities.]~~

5 ~~(2)[(3)] This[The] material[incorporated by reference] may be[obtained,] inspected,[or]~~
6 ~~copied, or obtained, subject to applicable copyright law, at the[following offices of the] Division~~
7 ~~for Air Quality, 200 Fair Oaks Lane, First Floor, Frankfort, Kentucky 40601, Monday through~~
8 ~~Friday, 8 a.m. to 4:30 p.m.[;]~~

9 ~~(a) Division for Air Quality, 200 Fair Oaks Lane, First Floor, Frankfort, Kentucky 40601,~~
10 ~~(502) 564 3999;~~

11 ~~(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-~~
12 ~~8942, (606) 929 5285;~~

13 ~~(c) Bowling Green Regional Office, 1508 Western Avenue, Bowling Green, Kentucky~~
14 ~~42104, (270) 746 7475;~~

15 ~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence,~~
16 ~~Kentucky 41042, (859) 525 4923;~~

17 ~~(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-~~
18 ~~6022;~~

19 ~~(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-~~
20 ~~2080;~~

21 ~~(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro,~~
22 ~~Kentucky 42303, (270) 687 7304; and~~

1 ~~(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-~~
2 8468.]

401 KAR 59:174 approved for filing.

9/14/15
Date



Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND COMMENT PERIOD:

A public hearing on this administrative regulation will be held on October 22, 2015, at 10:00 a.m. (Eastern Time) in Conference Room 201B of the Division for Air Quality at 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 2015, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at <http://air.ky.gov/pages/publicnoticesandhearings.aspx>. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, November 2, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON:

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 401 KAR 59:174

Contact person: William Gooch

(1) **Provide a brief summary of:**

(a) **What this administrative regulation does:**

This regulation provides for the control of emissions from gasoline dispensing facilities by requiring the use of Stage II vapor recovery technology to capture gasoline vapor emitted during the refueling of motor vehicles in the nonattainment areas of Boone, Campbell, and Kenton counties. The original effective date of the regulation was January 12, 1998. This amendment removes the requirement that Stage II vapor recovery technology be installed in new gasoline dispensing facilities beginning on January 1, 2016; authorizes existing gasoline dispensing facilities to begin decommissioning their Stage II controls on January 1, 2016; requires applicable gasoline dispensing facilities to complete decommissioning of Stage II controls by December 31, 2018; and sets forth notice and procedural requirements for the decommissioning process.

(b) **The necessity of this administrative regulation:**

This administrative regulation is necessary to protect the public health and environment of the Commonwealth of Kentucky by reducing emissions of volatile organic compounds (VOCs) in the affected areas associated with the refueling of motor vehicles at gasoline dispensing facilities.

(c) **How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100(5) requires the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation assists the prevention, abatement, and control of air pollution in the affected areas.

(d) **How the amendment of this administrative regulation currently assists or will assist in the effective administration of the statutes:** The number of new motor vehicles entering the fleet in Kentucky equipped with onboard refueling vapor recovery (ORVR) technology will gradually increase to the point that use of Stage II vapor recovery technology will become unnecessarily redundant. This would eventually lead to an actual increase in emissions if the use of Stage II controls were to continue. The amendment of this administrative regulation will assist in the effective administration of the statutes by eliminating the redundancy of the two

technologies and avoid an increase in VOC emissions associated with the continued use of Stage II controls.

(2) **If this is an amendment to an existing administrative regulation, provide a brief summary of:**

(a) **How the amendment will change this existing administrative regulation:** The amendment will change the existing regulation in two ways. First, the amendment eliminates the requirement for new gasoline dispensing facilities to install Stage II vapor recovery systems effective January 1, 2016. Second, the amendment establishes notice and technical procedural requirements for the decommissioning of Stage II vapor recovery systems from existing gasoline dispensing facilities.

(b) **The necessity of the amendment to this administrative regulation:** The amendment of this administrative regulation is necessary because onboard refueling vapor recovery (ORVR) systems are in widespread use in the affected area within the Commonwealth of Kentucky. ORVR technology is not compatible with Stage II vapor recovery systems presently in use in the affected area. If the amendment is not enacted, an increase in emissions of volatile organic compounds associated with the refueling of motor vehicles at gasoline dispensing facilities will occur.

(c) **How the amendment conforms to the content of the authorizing statutes:** KRS 224.100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. By implementing and enforcing the proposed amendment to this administrative regulation, VOC emissions will be reduced.

(d) **How the amendment will assist in the effective administration of statutes:** This amendment assists the cabinet in fulfilling its statutory obligation to prevent, abate, and control air pollution as required by the NAAQS and results in a reduction in VOCs.

(3) **List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** The amendment to this regulation will affect the owners and operators of 160 existing gasoline dispensing facilities in the affected area, consisting of Boone, Campbell, and Kenton Counties. Of the existing gasoline dispensing facilities, 140 have an average monthly throughput of over 25,000 gallons and are therefore presently required by the regulation to have Stage II controls. The other 20 gasoline dispensing facilities, which are presently exempt from the Stage II controls requirement to because their average monthly throughput is 25,000 gallons or less, will no longer be required to maintain records of their throughput capacity to maintain their exemptions. The amendment will also affect the owners or operators of an unknown number of new gasoline dispensing facilities constructed in the affected area in the future. Finally, the amendment will reduce the regulatory burden on the

Commonwealth.

- (4) **Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**
- (a) **List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Each owner or operator of an existing gasoline dispensing facility with an average monthly throughput of over 25,000 gallons will have to decommission his Stage II controls by December 31, 2018. Existing facilities will provide notice of intent to decommission Stage II controls and a decommissioning plan. Each owner or operator of an existing gasoline dispensing facility with an average monthly throughput of 25,000 gallons or less will no longer be required to maintain records of average monthly throughput to maintain an exemption from compliance with this regulation. Owner or operators of new gasoline dispensing facilities in the affected area will not have to take any action and will not have to install Stage II controls in his gasoline dispensing facility.
- (b) **In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** The only entities that will incur a cost are the owners or operators of the 140 existing gasoline dispensing facilities with an average monthly throughput of over 25,000 gallons. The affected entities will have to incur the cost of decommissioning their Stage II vapor recovery systems by December 31, 2018. In a final regulatory support document issued by the EPA on May 8, 2012, the one-time cost of decommissioning for a gasoline dispensing facility with five multi-product dispensers, including labor, hardware/parts, administrative tasks, and lost revenue, is estimated to be \$1,980.
- (c) **As a result of compliance, what benefits will accrue to the entities identified in question (3):** The owners of new gasoline dispensing facilities will accrue the benefit of not having to incur the cost of installing or maintaining Stage II vapor recovery systems. The owners of existing gasoline dispensing facilities with a monthly average throughput of over 25,000 gallons will accrue the benefit of not having to incur the cost of maintaining their Stage II vapor recovery systems after completion of decommissioning. In the same regulatory support document referenced above issued by the EPA on May 8, 2012, there is an actual cost savings for the model gasoline dispensing facility during the initial year of decommissioning of \$997 and a recurring cost savings of \$2,977 in subsequent years. The reduced operating costs will result in an economic advantage to gasoline dispensing facilities in the affected area that they would not otherwise realize without the amendment.

(5) **Provide an estimate of how much it will cost to implement this administrative regulation:**

(a) **Initially:** The Division already implements a program for the control of emissions from gasoline dispensing facilities, including the inspection of Stage II controls at gasoline dispensing facilities. Pursuant to the proposed amendment, effective January 1, 2016, Stage II controls will no longer be required to be installed in new gasoline dispensing facilities, and the decommissioning of Stage II controls in existing gasoline facilities may begin. The resources that are presently being directed to the inspection of the installation and maintenance of Stage II controls at gasoline dispensing facilities will be able to be redirected to the inspection of the decommissioning of Stage II controls. Consequently, it is anticipated that there will not be any additional costs incurred associated with initial implementation of this amendment.

(b) **On a continuing basis:** For the reasons stated above, it is anticipated that there also will not be any additional costs incurred on a continuing basis associated the implementation of this amendment. Once all Stage II controls have been decommissioned, which is required by the proposed amendment to occur by December 31, 2018, it will no longer be necessary to inspect the decommissioning of Stage II controls. Consequently, once all Stage II controls have been decommissioned, there is the possibility of a slight cost savings being realized on a continuing basis associated with a reduction in the regulatory burden.

(6) **What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** The Division's current operating budget will continue to be used for the implementation and enforcement of this administrative regulation.

(7) **Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** No increase in fees or funding will be necessary to implement this amendment.

(8) **State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:** This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) **TIERING: Is tiering applied? (Explain why tiering was or was not used.)**
Yes. Tiering is applied to the extent that, until the decommissioning of Stage II controls has been completed, the owners and operators of all gasoline dispensing facilities in the affected area that will be subject to different requirements depending on whether the gasoline dispensing facility is a new facility or an existing facility and depending on whether the gasoline dispensing facility has a monthly throughput capacity in excess of 25,000 gallons. Tiering is used is because the owners or operators of new gasoline

dispensing facilities will not be required or allowed to install Stage II controls and therefore will not be subject to the same requirements as the owners or operators of existing gasoline dispensing facilities with respect to the maintenance and decommissioning of Stage II controls.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 401 KAR 59:174

Contact person: William Gooch

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this regulation is contained in 42 U.S.C. 7511a(b)(3), 7521(a)(5), 7624, and 7625 and in 40 C.F.R. 51.126.

2. State compliance standards. KRS 224.10-100 requires the Energy and Environment Cabinet to provide for the prevention, abatement, and control of all air pollution.

3. Minimum or uniform standards contained in the federal mandate. While the federal mandate for this regulation was promulgated pursuant to 42 U.S.C. 7511a(b)(3), 7521(a), 7624, and 7625, in 40 C.F.R. 51.126 the Administrator of the EPA has determined that, effective May 16, 2012, onboard vapor recovery (ORVR) systems are in widespread use in the motor vehicle fleet within the United States and waives the requirement of Clean Air Act section 182(b)(3) for Stage II vapor recovery systems in ozone nonattainment areas regardless of classification; however, states must submit and receive EPA approval of a revision to their approved State Implementation Plans before removing Stage II requirements that are contained therein.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed amendment to this administrative regulation does not impose requirements beyond those specified in federal guidance.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable, because stricter standards or additional or different responsibilities or requirements are not imposed.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

Administrative Regulation: 401 KAR 59:174

Contact person: William Gooch

Phone number: (502) 564-3999

1. **What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

Division for Air Quality.

2. **Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.**

KRS 224.01-010, 42 U.S.C. 7511a(b)(3), 7521(a)(5), 7624, 7625, and 40 C.F.R. 51.126.

3. **Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.**

- (a) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?**

The proposed administrative regulation will not generate new revenue.

- (b) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?**

The proposed administrative regulation will not generate new revenue.

- (c) **How much will it cost to administer this program for the first year?**

The Division already implements a program for the control of emissions from gasoline dispensing facilities, including the inspection of Stage II controls at gasoline dispensing facilities. Pursuant to the proposed amendment, effective January 1, 2016, Stage II controls will no longer be required to be installed in new gasoline dispensing facilities, and the decommissioning of Stage II controls in existing gasoline facilities may begin. The resources that are presently being directed to the inspection of the installation and maintenance of Stage II controls at gasoline dispensing facilities will be able to be redirected to the inspection of the decommissioning of Stage II controls. Consequently, the cost to administer this program for the first year is accounted for in the Division's current operating budget.

- (d) **How much will it cost to administer this program for subsequent years?**

For the reasons stated above, it is anticipated that there also will not be any additional costs incurred to administer this program for subsequent years. Once

all Stage II controls have been decommissioned, which is required by the proposed amendment to occur by December 31, 2018, it will no longer be necessary to inspect the decommissioning of Stage II controls. Consequently, once all Stage II controls have been decommissioned, there is the possibility of a slight cost savings being realized on a continuing basis in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	The Division has not identified a gasoline dispensing facility operated by a local government with an average monthly throughput capacity that is currently subject to this regulation or that will become subject to this amendment.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE**

401 KAR 59:174

I. This administrative regulation incorporates by reference the “Notice of Intent to Decommission Stage II Controls and Decommission Plan Form”, DEP 7105C, (May 2015). The owner or operator of a gasoline dispensing facility is required to submit this form to the Division for Air Quality at least thirty (30) days prior to decommissioning of Stage II controls pursuant to the proposed amendment to 401 KAR 59:174.

This document consists of one (1) page.

II. This administrative regulation incorporates by reference the “Notice of Status of Decommissioning of Stage II Controls Form”, DEP 7105D, (May 2015). The owner or operator of a gasoline dispensing facility is required to submit this form to the Division for Air Quality at least ten (10) days after commencing decommissioning of Stage II controls and within ten (10) days of completing decommissioning pursuant to the proposed amendment to 401 KAR 59:174.

This document consists of one (1) page.

III. This administrative regulation incorporates by reference the “Petroleum Equipment Institute’s Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Refueling Sites, PEI/RP300-09”, (April 12, 1996). This document is a field manual that addresses generally accepted industry standards for installing and decommissioning Stage II controls, specifically including a set of detailed, step-by-step instructions contained in four (4) pages of chapter fourteen (14) that address the decommissioning procedure set forth in the proposed amendment to 401 KAR 59:174, which is also referenced by the Environmental Protection Agency in the Final Rule regarding the decommissioning of Stage II controls at 77 FR 28773.

This document consists of fifty-four (54) pages.