



STATEMENT OF CONSIDERATION
Relating to 401 KAR 59:174
Energy and Environment Cabinet
Kentucky Department for Environmental Protection
Division for Air Quality

(Not Amended After Comments)

I. The public hearing on 401 KAR 59:174, scheduled for October 22, 2015, at 10:00 a.m. at the Division for Air Quality (Division) was canceled; however, written comments were received during the public comment period ending on November 2, 2015.

II. The following person submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity, Other</u>
Brian Clark, Executive Director	Kentucky Petroleum Marketers Association (KPMA)

III. The following person from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>
William Gooch, Internal Policy Analyst I

IV. Summary of Comments and Responses

(1) Subject Matter: Cost of decommissioning.

(a) Commenter: Brian Clark

Comment: The commenter expresses concerns relating to the Division's estimate of costs to change out equipment; "that replacement of just hoses would cost approximately \$2,300 versus the state's estimate of \$1,980 for a ten-hose set-up."

(b) Response: The Division acknowledges the KPMA's concerns regarding the cost of decommissioning. As stated by the Division in the Regulatory Impact Analysis and Tiering Statement (RIA), the cost estimates referenced in the RIA were obtained from a final regulatory support document issued by the EPA on May 8, 2012, and were based on decommissioning a gasoline dispensing facility with five (5) multiproduct dispensers; whereas, the KPMA's estimate is for ten (10) hoses. Additionally, the KPMA's comment appears to be referring to low permeations hoses, which are not required by the proposed amendment to the regulation and are significantly more expensive than conventional hoses. After conducting research of more recent cost estimates, the Division determines that the information provided by the commenter is accurate.

However, the RIA has been supplemented with clarifying information, but no regulatory requirement is amended as a result of this comment.

- (2) Subject Matter: Decommissioning procedure involving hose setup.
 - (a) Commenter: Brian Clark
Comment: The commenter seeks clarification whether or not the regulation assumes “a standard hose setup or low-permeation hose setup in the decommissioning process?”
 - (b) Response: The Division acknowledges the KPMA’s concerns regarding the decommissioning procedure involving hose setup. As addressed in Section 14.6.9 of the “Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09” referenced in Section 10(1) of the proposed amendment to the administrative regulation and also incorporated by reference in Section 11(1)(f), the proposed amendment to the administrative regulation clearly requires that all Stage II hanging hardware be replaced with “conventional (non-Stage II) hanging hardware” and does not specify the use of a low-permeation hose set-up. Therefore, the proposed amendment to the administrative regulation has not been amended as a result of this comment.

- (3) Subject Matter: Decommissioning procedure involving dropout in vapor line.
 - (a) Commenter: Brian Clark
Comment: The commenter seeks clarification on “the requirements if there is a dropout in the vapor line?”
 - (b) Response: The Division acknowledges the KPMA’s concerns regarding the decommissioning procedure involving a dropout in the vapor line. Assuming that the term “dropout in the vapor line” is referring to a “drain liquid-collection point”, the requirements are clearly set forth in Section 14.6.3 of the “Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09” referenced in Section 10(1) of the proposed amendment to the administrative regulation and also incorporated by reference in Section 11(1)(f). Therefore, the proposed amendment to the administrative regulation has not been amended as a result of this comment.

- (4) Subject Matter: Decommissioning procedure involving pressure decay test.
 - (a) Commenter: Brian Clark
Comment: The commenter seeks clarification as to whether there is “a requirement for a pressure decay test, following the decommissioning process?”
 - (b) Response: To clarify, there is a requirement for a pressure decay test as set forth in Section 14.6.12 of the “Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09” referenced in Section 10(1) of the proposed amendment to the administrative regulation and also incorporated by reference in Section 11(1)(f). Therefore, the proposed amendment to the administrative regulation has not been amended as a result of this comment.

V. Summary of Statement of Consideration and Action Taken by Administrative Body

The public hearing on this administrative regulation was cancelled; however, written comments were received. After consideration of comments received during the public comment period by

the Cabinet, the proposed amendment to the administrative regulation was not amended after comments.

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 that 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 (5) multi-product dispensers, including labor, hardware/parts, administrative tasks, and lost revenue, is estimated to be \$1,980.

The Kentucky Petroleum Marketers Association (KPMA) indicates that members in multiple counties in Ohio estimate the replacement cost of just hoses for a ten (10) hose set-up would cost \$2,300. The Florence Field Office of the Division for Air Quality conducted its own informal survey and found that the KPMA's estimate for a ten hose set-up is accurate if low permeable hoses are used; however, it should be noted that the proposed amendment to the regulation does not contain a requirement that low permeable hoses be used but rather specifies that "conventional (non-Stage II) hanging hardware" be used. It also should be noted that the EPA's cost estimate is for decommissioning a facility with five (5) dispensers; whereas, the KPMA's estimate is for the replacement of ten (10) hoses.

- (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.