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Division of Publications**

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Sequence Number: 04-11-16
Rule ID(s): 6180
File Date: 4/15/16
Effective Date: 7/14/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Travis Blake
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-03-18	Volatile Organic Compounds
Rule Number	Rule Title
1200-03-18-.24	Gasoline Dispensing Facilities – Stage I and Stage II Vapor Recovery

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1200-03-18
Volatile Organic Compounds

Amendment

The Table of Contents for Chapter 1200-03-18 Volatile Organic Compounds is amended by changing the title of Rule 1200-03-18-.24 from "Gasoline Dispensing Facilities - Stage I and Stage II Vapor Recovery" to "Gasoline Dispensing Facilities."

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Rule 1200-03-18-.24 Gasoline Dispensing Facilities - Stage I and Stage II Vapor Recovery is amended by deleting it in its entirety and substituting instead the following:

1200-03-18-.24 Gasoline Dispensing Facilities

- (1) The provisions of 40 CFR 63 Subpart CCCCCC (National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities) are hereby adopted by reference as published in the July 1, 2014 edition of the Code of Federal Regulations (CFR), except as provided in subparagraphs (a) through (d) of this paragraph.
 - (a) Any reference contained in 40 CFR 63 Subpart CCCCCC to the:
 1. Administrator shall instead be a reference to the Technical Secretary;
 2. Applicable EPA regional office for the State of Tennessee shall instead be a reference to the EPA Region IV office; and
 3. Delegated State authority shall instead be a reference to the Technical Secretary.
 - (b) If your gasoline dispensing facility (GDF) has a monthly throughput of less than 10,000 gallons of gasoline, and is located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson Counties, you must also comply with the requirements in 40 CFR § 63.11117(b) and (c).
 - (c) If your GDF has a monthly throughput of 10,000 gallons of gasoline or more and is located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson Counties, you must comply with the requirements in 40 CFR § 63.11118.
 - (d) For any GDF otherwise exempt from subparagraph (c) of this paragraph based on monthly throughput, if the GDF exceeds the applicability threshold specified in subparagraph (c) of this paragraph, it shall be subject to the requirements of subparagraph (c) of this paragraph even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance.
- (2) Stage II vapor recovery requirements for GDF in Davidson, Rutherford, Sumner, Williamson, and Wilson counties.
 - (a) This paragraph applies only to GDF located in Davidson, Rutherford, Sumner, Williamson, and Wilson counties.
 - (b) Any GDF with an existing Stage II vapor recovery system shall decommission and remove the system no later than three years after the effective date of this rule and no GDF shall install a

Stage II vapor recovery system on or after such date.

- (c) On and after the effective date of this rule, no GDF shall be required to install a Stage II vapor recovery system and a GDF may decommission and remove the GDF's existing Stage II vapor recovery system.
- (d) Any GDF that decommissions and removes a Stage II vapor recovery system shall conduct the decommissioning and removal in accordance with Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09" for removal, notification, and certification.
- (e) Any GDF that has a Stage II vapor recovery system must comply with all applicable provisions of subparagraph (f) of this paragraph until the system is decommissioned and removed.
- (f) Stage II vapor recovery.

1. Definitions.

- (i) "Vacuum assist system" means the gasoline vapor recovery system that employs a vacuum generating device to effect transfer of gasoline vapor displaced in fueling a vehicle tank to a gasoline storage tank, vapor storage tank, or vapor processing unit.
- (ii) "Motor vehicle" means any self-propelled vehicle used to carry people or property on a street or highway.
- (iii) "Stage II vapor recovery system" means a system to recover gasoline vapors displaced during dispensing to motor vehicle fuel tanks.
- (iv) "Storage tank or storage vessel" means any stationary tank, reservoir or container used for the storage of a volatile organic liquid.
- (v) "Volatile organic liquid" means any substance which is liquid at storage conditions and which contains volatile organic compounds.

2. The owner or operator of each GDF subject to this subparagraph shall comply with the following requirements:

- (i) The Stage II vapor recovery system must be approved by the Technical Secretary; certified by the California Air Resources Board; designed, installed, operated, and maintained to recover gasoline vapors displaced during dispensing to motor vehicle fuel tanks; and accessible for inspection and testing.
- (ii) The Stage II vapor recovery system shall include for any dispenser and system the following:
 - (I) Vapor-tight coaxial hose to conduct vapors captured during dispensing, except on new vehicle fueling lines at motor vehicle assembly plants where vapor-tight dual hose on vacuum assist systems may be employed in lieu of vapor-tight coaxial hose;
 - (II) For balance systems:
 - I. Installation of piping between the dispenser and the vapor collection tank which precludes liquid blockage in the piping; and
 - II. No device which inhibits immediate testing for dynamic backpressure;
 - (III) For vacuum assist systems, sufficient vacuum to prevent escape of

gasoline vapors during dispensing;

- (IV) Vapor-tight piping, fittings, caps, couplers, and adapters; and
 - (V) Maintenance of vapor tightness throughout the vapor recovery system, except during facility storage tank loading, gauging, and sampling and during maintenance and testing necessitating disruption in the integrity of the system.
- (iii) Use of any aftermarket or rebuilt parts is restricted to parts approved by the California Air Resources Board.
 - (iv) Gasoline shall not be dispensed from a dispensing unit served by or permitted to be served by a component which does not satisfy the following:
 - (I) Each component required for operation of the system is in place and, to the extent it can be confirmed by sensory inspection, is unimpaired and operational;
 - (II) Each nozzle boot is not torn in either of the following manners:
 - I. Triangular - shaped or similar tear 1/2 inch or more to a side, or hole 1/2 inch or more in length; or
 - II. Slit 1 inch or more in length.
 - (III) Each faceplate or flexible cone is not damaged in the following manner:
 - I. For balance nozzles and nozzles for aspirator and eductor assist type systems, damage such that the capability to achieve a seal with a fillpipe interface is diminished for an accumulated total of 1/4 of the circumference of the faceplate; or
 - II. For nozzles for vacuum assist systems, more than 1/4 of the flexible cone is missing;
 - (IV) Each nozzle shutoff mechanism is operational;
 - (V) Each vacuum producing unit is operational;
 - (VI) Each vapor processing unit is operational;
 - (VII) Each fitting, cap, coupler, and adapter is vapor-tight; and
 - (VIII) Each pressure/vacuum relief valve, vapor check valve, and dry break is operational.
 - (v) The owner or operator shall conspicuously display fueling instructions and information in the gasoline dispensing area. These instructions and this information shall describe to customers clearly the proper procedure to be used for fueling vehicles from the dispenser. These instructions and this information shall include instruction about the proper method of reporting system defects first to facility management, and, then if defects are not corrected, to the Technical Secretary. The notice of the method of reporting to the Technical Secretary shall be displayed no earlier than 3 months after and no later than 6 months after the display of the other instructions and information listed above.

3. Test methods as follow apply:

- (i) The test methods found in Appendix J, Technical Guidance - Stage II Vapor

Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, EPA - 450/3-91-022b (November 1991), to determine compliance with applicable requirements specified in part (2)(f)2 of this rule; or

- (ii) Other methods necessary for demonstration of compliance approved by the Technical Secretary and the EPA.
4. Notification requirements – Each owner or operator of any facility containing sources subject to this subparagraph shall provide the Technical Secretary written notice of any compliance demonstration testing. This notice shall be provided to the Technical Secretary such that the Technical Secretary is informed of the proposed testing at least 14 days before the proposed date of testing, thereby providing the Technical Secretary opportunity to observe the testing.
 5. Recordkeeping requirements -- Each owner or operator of any facility containing sources subject to this subparagraph shall, except as provided otherwise in this chapter, maintain required permits and required logs of maintenance at the facility for which the permits are issued and the logs created for a minimum of 3 years. Such records shall be made available to the Technical Secretary upon request.
 6. Excess Emissions Report - The owner or operator of any facility containing sources subject to this subparagraph shall comply with the requirements in paragraph (2) of Rule 1200-03-18-.04.
 7. Compliance Demonstration Testing - The owner or operator of any facility containing sources subject to the provisions of this subparagraph shall:
 - (i) Within 30 days following the occurrence of an incident which could reasonably be expected to have adversely affected the performance of the system, such as excavation near system piping or following replacement of the system, perform applicable testing to demonstrate compliance is maintained; and
 - (ii) Within 5 years following any compliance demonstration for the complete system, demonstrate the system maintains compliance.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control	X				
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Amy Spann Registered Professional Engineer	X				
David Owenby Commissioner's Designee, Dept. of Environment and Conservation	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/12/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/02/15

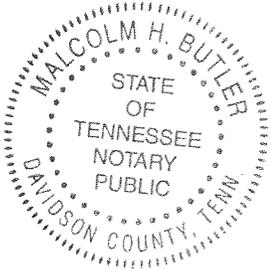
Rulemaking Hearing(s) Conducted on: (add more dates). 08/31/15

Date: 11-16-2015

Signature: *Barry R. Stephens*

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 11-16-2015

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: 1-11-2017

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

4/11/2016
Date

Department of State Use Only

Filed with the Department of State on: 4/15/16

Effective on: 7/14/16

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: A commenter was concerned about the proposed compliance period beginning January 1, 2016 and the unlikelihood of the amendment become effective on or before that date.

Response: The Board agrees with the concerns of the commenter and has removed the specific date to begin the three year compliance period and replaced it with the phrase "on the effective date of the rule."

Comment: A commenter asked if the amendment will subject any new locations to Stage I requirements.

Response: This amendment will not subject any new counties or locations to Stage I vapor recovery requirements. Currently, gasoline dispensing facilities (GDF) located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson Counties with a monthly throughput of 10,000 gallons or more are required to comply with Tennessee's Stage I vapor recovery requirements. GDF located in these counties will remain subject to the federal equivalent of Stage I vapor recovery (40 CFR §63.11118) if their monthly throughput is 10,000 gallons or more. The lower applicability in these counties is necessary to comply with the anti-backsliding requirements of § 110(l) of the Clean Air Act. However, the lower threshold does not affect any facilities that were not already subject to the existing State requirement.

For all other counties in Tennessee, 40 CFR 63 Subpart CCCCCC subjects GDF to the requirements of 40 CFR §63.11118 at a monthly throughput of 100,000 gallons or more. This applicability will not change.

Comment: As a part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be any permitting or fees associated with decommissioning of Stage II vapor recovery.

Response: There will be no permitting or fees associated with decommissioning of Stage II systems.

Comment: In regards to subparagraph (1)(b) of Rule 1200-03-18-.24, a commenter asked if there is a current requirement in the Tennessee rule for length of submerged fill. Does the department have an estimate of number of older stations that will not meet the new requirements and will it require new submerged fill? Does the department have a cost estimate for new submerged fill, including all installation costs?

Response: The current version of Tennessee's Stage I vapor recovery requirements, including submerged fill, were adopted in 2006, and gasoline dispensing facilities were required to comply with federal submerged fill requirements (40 CFR 63 Subpart CCCCCC) in 2011. Because all facilities in Tennessee have been subject to state or federal requirements for at least five years, there should be no facilities that do not meet the requirements of this rule.

Comment: In regards to subparagraph (1)(c) of Rule 1200-03-18-.24, a commenters asked what the current requirement is for stations with a monthly throughput of 10,000 or more. Does the department have an estimate of how many stations do not meet the proposed standard and what the cost per station upgrade will be?

Response: Stations located in the listed counties (see footnote 1) with a monthly throughput of 10,000 gallons or more are required to comply with Tennessee's Stage I vapor recovery requirements.

The department does not expect any stations located in the listed counties to need upgrades if they are already in compliance with the existing Stage I vapor recovery requirements.

Comment: Regarding Stage II, a commenter asked if the state will allow partial decommissioning, such as allowing certain parts such as existing hoses, nozzles, breakaway valves and swivels (hanging hardware) and vapor pumps to be left in place.

Response: GDFs would be required to decommission and remove the Stage II vapor recovery system in accordance with Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09" for removal, notification, and certification. In general, the PEI guidance allows piping to be abandoned in place but requires replacement of hanging hardware. Compliance with the PEI guidance will assure that decommissioning is performed by competent personnel, follows all safety procedures, and removes all components in a manner that prevents the release of gasoline vapors to the atmosphere.

Comment: As part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be a permit process involved which will be established later by the Technical Secretary.

Response: There will not be a permit process for upgrading/decommissioning of equipment.

Comment: As part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be any fees associated or anticipated.

Response: There will not be any fees associated with upgrading/decommissioning of equipment.

Comment: A commenter asked to be provided with a chart of differences between this proposed rule and the rules of the counties that have their own programs, i.e., Davidson, Hamilton, Knox and Shelby.

Response: A copy of Tennessee's "110(l)" demonstration was provided to the commenter as requested. The Department is required to submit the "110(l)" demonstration to EPA to show that the revised state requirements are at least as stringent as the federal requirements. The "110(l)" demonstration includes a comparison of state and federal requirements.

Knox and Shelby Counties have directly adopted the state regulation, and there is no difference between those two counties and the existing state requirements. Davidson County has some requirements for GDFs that are more stringent. Hamilton County's rules are worded differently, and a direct comparison is more difficult.

Comment: A commenter was concerned about the cost to businesses.

Response: An estimated cost to businesses has been prepared. Over time, the cost of decommissioning an existing Stage II system (varies, but up to \$10,000) is offset by reduced maintenance and testing costs (~\$3,000 per year).

**Stage II Vapor Recovery Decommissioning Cost Estimates
April 24, 2015**

Activity	Estimated Cost	Source
Estimated decommissioning cost for one single-hose dispenser	~\$800	TDEC estimate based on Wisconsin vendor pricing (January 2013)
Estimated decommissioning cost for one multi-hose dispenser (3 hoses)	~\$1,300	TDEC estimate based on Wisconsin vendor pricing (January 2013)
Estimated decommissioning cost for a facility with six multi-hose dispensers (3 hoses each)	~\$5,500	TDEC estimate based on Wisconsin vendor pricing (January 2013)

Stage II Vapor Recovery Decommissioning Cost Estimates
April 24, 2015

Activity	Estimated Cost	Source
Decommissioning cost estimated by Georgia EPD	\$1,500 - \$2,500	Georgia EPD
Decommissioning cost for example site with 6 single-hose, multiproduct dispensers with vacuum assist system and four tanks: 2 manifolded regular unleaded, 1 premium, and 1 diesel	\$4,600 (\$1,132 labor, \$468 testing, \$3,000 new hardware)	Georgia Tank and Environmental Contractors Association
Estimated decommissioning cost for one single-hose dispenser	~\$600	TN Fuel and Convenience Store Association, Tri-Star Energy
Estimated decommissioning cost for one multi-hose dispenser	~\$1,650	TN Fuel and Convenience Store Association, Tri-Star Energy
Estimated decommissioning cost for a facility with six multi-hose dispensers	~\$10,000	TN Fuel and Convenience Store Association, Tri-Star Energy

Range of decommissioning costs:

One single-hose dispenser: \$600 - \$800

One multi-hose dispenser: \$1,300 - \$1,650

Six multi-hose dispensers: \$4,600 - \$10,000

**Cost Estimates for Retaining Stage II Vapor Recovery
April 24, 2015**

Activity	Estimated Cost	Source
Cost of installing Stage II vapor recovery equipment at new GDFs (includes USTs, associated piping, pumps and ancillary equipment)	\$20,000 to \$60,000	EPA ¹
Cost of installing Stage II vapor recovery equipment at new GDFs (includes USTs, associated piping, pumps and ancillary equipment)	\$25,000	Georgia EPD ²
Annual cost to maintain existing Stage II systems (average size GDF)	\$3,000 per year	EPA
Maintenance and testing of Stage II systems	~\$3,000 Annually	Georgia EPD stakeholder meeting, April 2013
Cost of additional Stage II dispensers at an existing facility	~\$3,200	Georgia EPD stakeholder meeting, April 2013
Cost Stage II systems at a new facility	~\$32,000	Georgia EPD stakeholder meeting, April 2013

1 U. S. EPA, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*. August 7, 2012.

2 Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, *Draft Revision to the Georgia State Implementation Plan for the Removal of Georgia Rule 391-3-1-.02(zz) Gasoline Dispensing Facilities – Stage II*. September 25, 2014.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The small businesses that would be affected by the proposed rule are primarily gasoline distributors and convenience store owners. Other types include auto dealerships, contractors, farms, hospitals, and truck/transportation businesses. The approximate number of small businesses that are affected by the changes to Stage II rules and potentially subject to decommissioning is 310. The approximate number of all businesses subject to the Stage II rules and potentially subject to decommissioning is 555. Facilities subject to Stage I rules that should already be in compliance are as follows: 2384 small businesses and 3223 total businesses (does not include government entities).

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

In regards to Stage I, facilities required to have Stage I vapor controls should already be in compliance and there should be no additional costs to businesses.

In regards to Stage II, the projected reporting, recordkeeping, and administrative costs required for compliance with Stage II decommissioning would be minimal and a one-time cost. Potential costs could be associated with notification of decommissioning prior to decommissioning and submission of certification of decommissioning. The submission of certification of decommissioning may require the signature or copy of the decommissioning report by the professional that completes the decommissioning according to the Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09". These costs would be equivalent to notification and reporting of performance tests, a routine type of report for businesses required to conduct performance testing.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The probable effect on impacted small businesses and consumers is some downtime as the decommissioning process is conducted. The decommissioning process is not expected to be a lengthy procedure except in the event of a large number of dispensers needing to be decommissioned. Downtime is likely to be measured in hours or a few days at most. There would be an up-front cost to impacted businesses to conduct the decommissioning that would be offset by deferred maintenance costs to maintain the Stage II system. Facilities subject to only Stage I should already be in compliance and there should be no further impact.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Not requiring GDFs with an existing Stage II vapor recovery system to decommission and remove the system would be less burdensome relative to the upfront costs and the necessary downtime while the decommissioning process is conducted. However, the upfront costs would be offset by deferred costs to maintain the Stage II system. Additionally, the decommissioning process is not expected to be a lengthy procedure except in the event of a large number of dispensers needing to be decommissioned.

Relative to the technique for decommissioning Stage II systems, there are no known less burdensome, less intrusive, or less costly alternative methods. This is the accepted method for decommissioning Stage II systems as indicated by EPA and PEI guidance.

- (5) A comparison of the proposed rule with any federal or state counterparts.

The changes proposed will incorporate by reference applicable federal rule but will retain the lower applicability threshold in specified counties.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

No exemptions are proposed for small businesses from Stage II decommissioning. A time line of 3 years to achieve compliance is given and the cost savings to businesses in deferred maintenance once Stage II is decommissioned will offset the up-front costs to decommission Stage II systems.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department believes that proposed amendments will have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rulemaking is promulgated under the authority of Tenn. Code Ann. § 68-201-101 et seq. The proposed rule amendment would require gasoline dispensing facilities in Davidson, Rutherford, Sumner, Williamson and Wilson Counties to remove Stage II Vapor Recovery Systems (VRS). Specifically, the proposed rule amendment requires the removal of all Stage II VRS no later than three (3) years following the effective date of this rule amendment. The amended rule also updates Tennessee's Stage I vapor recovery requirements by adopting the equivalent Federal regulations by reference.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

No Federal or State law mandates either change (Stage I or Stage II). Tennessee's Stage I vapor recovery requirements are being removed from the regulations because the U. S. EPA has adopted an equivalent set of regulations. Tennessee is adopting the federal requirements to reduce the administrative burden to the regulated community.

In regards to Stage II, it has been determined that if Stage II controls are not removed, emissions of volatile organic compounds would increase over time. The determination was prompted by a 2012 Federal Register notice (77 FR 28772), in which the U.S. EPA determined that onboard vapor recovery (ORVR) technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. Widespread use of ORVR renders Stage II controls obsolete, because the pollutants that were controlled by Stage II vapor recovery can be captured inside the motor vehicle. Furthermore, the use of both Stage II and ORVR together reduces the effect of both technologies. Therefore, if Stage II controls are not removed, emissions of volatile organic compounds would increase over time.

This rulemaking is being adopted under the authority of T.C.A. §§ 68-201-101 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This amendment affects gasoline dispensing facilities in Tennessee.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No change in state and local government revenues and expenditures is expected to result from this amendment.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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Division of Air Pollution Control
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- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Emily Urban
Assistant General Counsel
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Tennessee Air Pollution Control Board is not aware of any requests.

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Travis Blake
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-03-18	Volatile Organic Compounds
Rule Number	Rule Title
1200-03-18-.24	Gasoline Dispensing Facilities – Stage I and Stage II Vapor Recovery

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1200-03-18
Volatile Organic Compounds

Amendment

1200-03-18-.24 Gasoline Dispensing Facilities - Stage I and Stage II Vapor Recovery

(1) ~~Applicability and exemptions~~ The provisions of 40 CFR 63 Subpart CCCCCC (National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities) are hereby adopted by reference as published in the July 1, 2014 edition of the Code of Federal Regulations (CFR), except as provided in subparagraphs (a) through (d) of this paragraph.

(a) ~~Applicability of this rule is as follows:~~ Any reference contained in 40 CFR 63 Subpart CCCCCC to the:

- ~~1. Administrator shall instead be a reference to the Technical Secretary;~~
- ~~2. Applicable EPA regional office for the State of Tennessee shall instead be a reference to the EPA Region IV office; and~~
- ~~3. Delegated State authority shall instead be a reference to the Technical Secretary.~~

~~1.(b) This rule applies to any of the following~~ If your gasoline dispensing facility (GDF) has a monthly throughput of less than 10,000 gallons of gasoline, and is located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson County: Counties, you must also comply with the requirements in 40 CFR § 63.11117(b) and (c).

~~(i) To any gasoline dispensing facility and the appurtenant equipment necessary to the gasoline dispensing facility; and~~

~~(ii) To any gasoline tank truck that transfers gasoline to storage vessels at such facilities.~~

~~2. Any gasoline dispensing facility located in one of the counties specified in Part (1)(a)1 of this rule that exceeds the applicability threshold specified in Parts (1)(b)2 or (1)(b)3 of this rule shall be subject to all of the respective provisions of this rule for facilities exceeding the applicability threshold and shall remain subject to these provisions even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance, as specified in Part (5)(a)3 of this rule.~~

~~(b) Exemptions from this rule are as follows:~~

~~1. With respect to requirements concerning transfers from gasoline tank trucks to gasoline storage vessels at gasoline dispensing facilities, the following are subject only to Part (3)(a)1 of this rule:~~

~~(i) Any transfer made to a gasoline dispensing facility storage tank that is equipped with a floating roof or an approved equivalent, this approval being a revision to the State Implementation Plan;~~

~~(ii) Any stationary gasoline storage container with a capacity that is less than 2,080 liters (L) (550 gallons [gal]) that is used exclusively for the fueling of implements of husbandry;~~

- ~~(iii) Any stationary storage tank with a capacity of less than 7,600 L (2,000 gal) that was constructed prior to January 1, 1979; and~~
 - ~~(iv) Any stationary storage tank with a capacity of less than 950 L (250 gal) that was constructed after December 31, 1978.~~
 - ~~2. Any gasoline dispensing facility which dispenses less than 10,000 gallons of gasoline per month is subject only to the provisions of Parts (3)(a)1 and (5)(b)2 of this rule.~~
 - ~~3. The requirements of Subparagraph (3)(c) of this rule do not apply to any gasoline dispensing facility which satisfies any of the following:
 - ~~(i) Is in a county other than Davidson, Rutherford, Sumner, Williamson, or Wilson County;~~
 - ~~(ii) Dispenses less than 10,000 gallons of gasoline per month;~~
 - ~~(iii) Dispenses less than 50,000 gallons of gasoline per month and is owned by an independent small business marketer of gasoline; or~~
 - ~~(iv) Dispenses gasoline for only fueling aircraft, marine vessels, or, at an automobile or light duty truck assembly plant, motor vehicles that are fitted with an onboard vapor recovery system.~~~~
 - ~~4. The requirements of this rule do not apply to any storage tank and associated equipment used solely for the storage and dispensing of E-85.~~
 - ~~(c) If your GDF has a monthly throughput of 10,000 gallons of gasoline or more and is located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson Counties, you must comply with the requirements in 40 CFR § 63.11118.~~
 - ~~(d) For any GDF otherwise exempt from subparagraph (c) of this paragraph based on monthly throughput, if the GDF exceeds the applicability threshold specified in subparagraph (c) of this paragraph, it shall be subject to the requirements of subparagraph (c) of this paragraph even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance.~~
- (2) ~~For the purpose of this rule, the following definitions apply: Stage II vapor recovery requirements for GDF in Davidson, Rutherford, Sumner, Williamson, and Wilson counties.~~
- ~~(a) "Independent small business marketer of gasoline" means a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment, unless such person satisfies either of the following:
 - ~~1. With respect to refining:
 - ~~(i) Is a refiner; or~~
 - ~~(ii) Controls, is controlled by, or is under common control with, a refiner; or~~
 - ~~(iii) Is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person); or~~~~
 - ~~2. Receives less than 50 percent of his annual income from refining or marketing of gasoline.~~~~

~~For the purpose of this definition, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this definition, "control" of a corporation means ownership of more than 50 percent of its stock. Verification of satisfaction of criteria specified in this definition shall be by notarized certification to the Technical Secretary, unless additional verification is requested by the Technical Secretary, in which case this additional verification shall be furnished to the Technical Secretary immediately. This paragraph applies only to GDF located in Davidson, Rutherford, Sumner, Williamson, and Wilson counties~~

- ~~(b) Any GDF with an existing Stage II vapor recovery system shall decommission and remove the system no later than three years after the effective date of this rule and no GDF shall install a Stage II vapor recovery system on or after such date.~~
- ~~(c) On and after the effective date of this rule, no GDF shall be required to install a Stage II vapor recovery system and a GDF may decommission and remove the GDF's existing Stage II vapor recovery system.~~
- ~~(d) Any GDF that decommissions and removes a Stage II vapor recovery system shall conduct the decommissioning and removal in accordance with Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09" for removal, notification, and certification.~~
- ~~(e) Any GDF that has a Stage II vapor recovery system must comply with all applicable provisions of subparagraph (f) of this paragraph until the system is decommissioned and removed.~~
- ~~(f) Stage II vapor recovery.~~

~~1. Definitions.~~

- ~~(b)(i) "Vacuum assist system" means the gasoline vapor recovery system that employs a vacuum generating device to effect transfer of gasoline vapor displaced in fueling a vehicle tank to a gasoline storage tank, vapor storage tank, or vapor processing unit.~~
- ~~(e)(ii) "Motor vehicle" means any self-propelled vehicle used to carry people or property on a street or highway.~~
- ~~(d)(iii) "Storage tank or storage vessel" means any stationary tank, reservoir or container used for the storage of a volatile organic liquid.~~
- ~~(e)(iv) "Volatile organic liquid" means any substance which is liquid at storage conditions and which contains volatile organic compounds.~~

~~(3) Standards as follow apply:~~

- ~~(a) Standards (Stage I Vapor Recovery) for Gasoline Storage Vessels The owner or operator of each gasoline dispensing facility subject to this rule shall comply with the following requirements:~~
 - ~~1. All gasoline storage vessels at gasoline dispensing facilities shall be loaded by submerged fill;~~
 - ~~2. All vapor lines on the storage vessel shall be equipped with closures that automatically seal upon disconnect;~~
 - ~~3. All gasoline storage vessels at gasoline dispensing facilities shall be served by a vapor recovery system approved by the Technical Secretary, or of a type certified by the California Air Resources Board, and designed, installed, and maintained to recover gasoline vapors displaced during transfer of gasoline from a tank truck to a storage tank;~~

~~Stage I gasoline vapor recovery systems used for this purpose shall be properly certified under the CARB enhanced vapor recovery (EVR) certification procedures effective on or after April 1, 2001, or shall be listed under the following pre-EVR CARB Executive Orders; mixing of components certified under separate CARB certification procedures will not be allowed.~~

Number	(Pre EVR) Vapor Recovery Certification Phase I (Stage I) Executive Orders Description	Date
G-70-97-A	Stage I Vapor Recovery Systems for Underground Gasoline Tanks at Service Stations	12/9/85
G-70-102-A	Certification of a Phase I Vapor Recovery System for Aboveground Storage Tanks with less than 40,000 Gallons Capacity for Gasoline or Gasoline/Methanol Blended Fuels	5/25/93

~~4. If a gauging well separate from the fill tube is used for manual measurement, it shall be provided with a submerged drop tube that extends to within 150 mm (5.9 in) of the gasoline storage vessel bottom; and~~

~~5. Liquid fill connections for all systems shall be equipped with vapor tight caps.~~

~~(b) Standards (Stage I Vapor Recovery) for Gasoline Transfers from Tank Trucks to Storage Vessels – The owner or operator of a gasoline tank truck shall not unload gasoline to a gasoline storage vessel subject to vapor tightness requirements during unloading unless the following conditions are met:~~

- ~~1. All hoses, adaptors, and couplers in the vapor balance system are properly connected;~~
- ~~2. All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight;~~
- ~~3. All vapor return equipment is compatible with the vapor balance equipment installed on the gasoline dispensing facility storage vessel;~~
- ~~4. All hatches on the gasoline tank truck are kept closed and securely fastened; and~~
- ~~5. The filling of storage vessels at gasoline dispensing facilities is limited to unloading by vapor-tight gasoline tank trucks.~~

~~(c)2. Standards (Stage II Vapor Recovery) for Gasoline Storage Vessels and Dispensing Equipment – The owner or operator of each gasoline dispensing facility GDF subject to this rule subparagraph shall comply with the following requirements:~~

- ~~1.(i) All gasoline dispensing shall be by equipment served by a The Stage II vapor recovery system must be approved by the Technical Secretary; certified by the California Air Resources Board, and designed, installed, operated, and maintained to recover gasoline vapors displaced during dispensing to motor vehicle fuel tanks, and accessible for inspection and testing;~~
- ~~2.(ii) The Stage II vapor recovery system shall include for any dispenser and system the following:~~
 - ~~(i)(1) Vapor-tight coaxial hose to conduct vapors captured during dispensing, except on new vehicle fueling lines at motor vehicle assembly plants where vapor-tight dual hose on vacuum assist systems may be employed in lieu of vapor-tight coaxial hose;~~

- ~~(ii)~~(II) For balance systems:
 - ~~(i)~~ I. Installation of piping between the dispenser and the vapor collection tank which precludes liquid blockage in the piping; and
 - ~~(ii)~~ II. No device which inhibits immediate testing for dynamic backpressure;
 - ~~(iii)~~(III) For vacuum assist systems, sufficient vacuum to prevent escape of gasoline vapors during dispensing;
 - ~~(iv)~~(IV) Vapor-tight piping, fittings, caps, couplers, and adapters; and
 - ~~(v)~~(V) Maintenance of vapor tightness throughout the vapor recovery system, except during facility storage tank loading, gauging, and sampling and during maintenance and testing necessitating disruption in the integrity of the system.
- 3.~~(iii)~~ Use of any aftermarket or rebuilt parts is restricted to parts approved by the California Air Resources Board.
- 4.~~(iv)~~ Gasoline shall not be dispensed from a dispensing unit served by or permitted to be served by a component which does not satisfy the following:
- ~~(i)~~(I) Each component required for operation of the system is in place and, to the extent it can be confirmed by sensory inspection, is unimpaired and operational;
 - ~~(ii)~~(II) Each nozzle boot is not torn in either of the following manners:
 - ~~(i)~~ I. Triangular - shaped or similar tear 1/2 inch or more to a side, or hole 1/2 inch or more in length; or
 - ~~(ii)~~ II. Slit 1 inch or more in length.
 - ~~(iii)~~(III) Each faceplate or flexible cone is not damaged in the following manner:
 - ~~(i)~~ I. For balance nozzles and nozzles for aspirator and eductor assist type systems, damage such that the capability to achieve a seal with a fillpipe interface is diminished for an accumulated total of 1/4 of the circumference of the faceplate; or
 - ~~(ii)~~ II. For nozzles for vacuum assist systems, more than 1/4 of the flexible cone is missing;
 - ~~(iv)~~(IV) Each nozzle shutoff mechanism is operational;
 - ~~(v)~~(V) Each vacuum producing unit is operational;
 - ~~(vi)~~(VI) Each vapor processing unit is operational;
 - ~~(vii)~~(VII) Each fitting, cap, coupler, and adapter is vapor-tight; and
 - ~~(viii)~~(VIII) Each pressure/vacuum relief valve, vapor check valve, and dry break is operational.
- 5.~~(v)~~ The owner or operator shall conspicuously display fueling instructions and information in the gasoline dispensing area. These instructions and this information shall describe to customers clearly the proper procedure to be used

for fueling vehicles from the dispenser. These instructions and this information shall include instruction about the proper method of reporting system defects first to facility management, and, then if defects are not corrected, to the Technical Secretary. The notice of the method of reporting to the Technical Secretary shall be displayed no earlier than 3 months after and no later than 6 months after the display of the other instructions and information listed above.

~~(4)~~3. Test methods as follow apply:

~~(a)~~ Unless otherwise specified in this rule, the test method found in Rule 85 of this chapter to determine compliance with the vapor-tight requirements of Paragraph ~~(3)~~ of this rule for lines, piping, caps, couplers, adapters, and fittings;

~~(b)~~(i) The test methods found in Appendix J, Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, EPA - 450/3-91-022b (November 1991), to determine compliance with applicable requirements specified in ~~Subparagraph (3)(c)~~ part (2)(f)2 of this rule; and/or

~~(c)~~(ii) Other methods necessary for demonstration of compliance approved by the Technical Secretary and the EPA.

~~(5)~~ Notification, Recordkeeping and Reporting requirements

~~(a)~~4. Notification requirements - Each apply as follows: 1. ~~Initial Compliance Certifications~~ - The owner or operator of any facility containing sources subject to this rule shall comply with the requirements in Paragraph 1200-03-18-.04(1) of this chapter, except that for gasoline dispensing facilities in Anderson, Blount, Carter, Cheatham, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Sevier, Shelby, Sullivan, Tipton, Unicoi, Union, and Washington Counties that are existing sources on December 29, 2004, the initial compliance certifications shall be submitted by May 1, 2006, instead of the date specified in Paragraph 1200-03-18-.04(1). subparagraph 2. Testing Notification - The owner or operator of any facility containing sources subject to this rule shall provide the Technical Secretary written notice of any compliance demonstration testing. This notice shall be provided to the Technical Secretary such that the Technical Secretary is informed of the proposed testing at least 14 days before the proposed date of testing, thereby providing the Technical Secretary opportunity to observe the testing.

~~3.~~ Threshold exceedance notification

~~(i)~~ The owner or operator of any gasoline dispensing facility that, for the first time dispenses 10,000 gallons of gasoline or more in any calendar month and is no longer subject only to the provisions of Parts ~~(3)(a)1~~ and ~~(5)(b)2~~ of this rule, shall inform the Technical Secretary within 30 days.

~~(ii)~~ The owner or operator of any gasoline dispensing facility that, for the first time dispenses 50,000 gallons of gasoline or more in any calendar month and is no longer exempt from the requirements of Subparagraph ~~(3)(c)~~ of this rule, shall inform the Technical Secretary within 30 days.

~~(b)~~5. Recordkeeping requirements - apply as follows: 1. Each owner or operator of any facility containing sources subject to provisions of this rule subparagraph shall, comply with the recordkeeping requirements of this rule. ~~Except~~ except as otherwise specified in this chapter, these records will be maintained for a minimum of 3 years and shall be made available to the Technical Secretary upon request. 2. ~~If any exemption based upon the quantity of gasoline dispensed is claimed for a facility subject to this rule, the owner or operator of the facility shall maintain records showing the quantity of gasoline dispensed each month at the facility.~~ 3. Required ~~required~~ permits and required logs of maintenance shall be kept at the facility for which the permits are issued and the logs

created for a minimum of 3 years. Such records shall be made available to the Technical Secretary upon request.

~~(c)~~ Reporting requirements apply as follows:

~~4.6.~~ Excess Emissions Report - The owner or operator of any facility containing sources subject to this rule subparagraph shall comply with the requirements in Paragraph paragraph (2) of Rule 1200-03-18-.04(2) of this chapter.

~~(6)7.~~ Compliance Demonstration Testing - The owner or operator of any facility containing sources subject to the provisions of Subparagraph (3)(c) of this rule subparagraph shall:

~~(a)~~ No later than the applicable date specified in Paragraph (7) of this rule, demonstrate compliance (for the complete system) with the provisions of Subparagraph (3)(c) of this rule, according to the applicable test methods specified in Paragraph (4) of this rule;

~~(b)(i)~~ Within 30 days following the occurrence of an incident which could reasonably be expected to have adversely affected the performance of the system, such as excavation near system piping or following replacement of the system, perform applicable testing to demonstrate compliance is maintained; and

~~(c)(ii)~~ Within 5 years following any compliance demonstration for the complete system, demonstrate the system maintains compliance.

~~(7)~~ Initial Compliance Dates

~~(a)~~ For facilities subject to Subparagraph 1200-03-18-.24(3)(c) of this rule, and owned by an independent small business marketer of gasoline:

~~1.~~ No less than one-third of these facilities shall have achieved compliance by June 21, 1994;

~~2.~~ No less than two-thirds of these facilities shall have achieved compliance by June 21, 1995;

~~3.~~ All facilities shall have achieved compliance by June 21, 1996; and

~~4.~~ By June 21, 1994, the independent small business marketer shall designate in writing to the Technical Secretary which facilities will achieve compliance by the respective dates of Parts 1, 2, and 3 of this subparagraph.

~~(b)~~ For facilities subject to Subparagraph 1200-03-18-.24(3)(c) of this rule, and not owned by an independent small business marketer of gasoline:

~~1.~~ For which construction commenced after November 15, 1990, compliance shall be achieved by December 21, 1993;

~~2.~~ Which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before June 21, 1993, and for which construction commenced before November 15, 1990, compliance shall be achieved by June 21, 1994, and

~~3.~~ Not accounted for in Parts 1 and 2 of this subparagraph, compliance shall be achieved by June 21, 1995.

~~(c)~~ Gasoline dispensing facilities in Anderson, Blount, Carter, Cheatham, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Sevier, Sullivan, Tipton, Unicoi, Union, and Washington Counties that are existing sources on December 29, 2004 shall have achieved compliance by May 1, 2006.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control	X				
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Amy Spann Registered Professional Engineer	X				
David Owenby Commissioner's Designee, Dept. of Environment and Conservation	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/12/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/02/15

Rulemaking Hearing(s) Conducted on: (add more dates). 08/31/15

Date: November 16, 2015

Signature: _____

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: A commenter was concerned about the proposed compliance period beginning January 1, 2016 and the unlikelihood of the amendment become effective on or before that date.

Response: The Board agrees with the concerns of the commenter and has removed the specific date to begin the three year compliance period and replaced it with the phrase "on the effective date of the rule."

Comment: A commenter asked if the amendment will subject any new locations to Stage I requirements.

Response: This amendment will not subject any new counties or locations to Stage I vapor recovery requirements. Currently, gasoline dispensing facilities (GDF) located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson Counties with a monthly throughput of 10,000 gallons or more are required to comply with Tennessee's Stage I vapor recovery requirements. GDF located in these counties will remain subject to the federal equivalent of Stage I vapor recovery (40 CFR §63.11118) if their monthly throughput is 10,000 gallons or more. The lower applicability in these counties is necessary to comply with the anti-backsliding requirements of § 110(l) of the Clean Air Act. However, the lower threshold does not affect any facilities that were not already subject to the existing State requirement.

For all other counties in Tennessee, 40 CFR 63 Subpart CCCCCC subjects GDF to the requirements of 40 CFR §63.11118 at a monthly throughput of 100,000 gallons or more. This applicability will not change.

Comment: As a part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be any permitting or fees associated with decommissioning of Stage II vapor recovery.

Response: There will be no permitting or fees associated with decommissioning of Stage II systems.

Comment: In regards to subparagraph (1)(b) of Rule 1200-03-18-.24, a commenter asked if there is a current requirement in the Tennessee rule for length of submerged fill. Does the department have an estimate of number of older stations that will not meet the new requirements and will it require new submerged fill? Does the department have a cost estimate for new submerged fill, including all installation costs?

Response: The current version of Tennessee's Stage I vapor recovery requirements, including submerged fill, were adopted in 2006, and gasoline dispensing facilities were required to comply with federal submerged fill requirements (40 CFR 63 Subpart CCCCCC) in 2011. Because all facilities in Tennessee have been subject to state or federal requirements for at least five years, there should be no facilities that do not meet the requirements of this rule.

Comment: In regards to subparagraph (1)(c) of Rule 1200-03-18-.24, a commenters asked what the current requirement is for stations with a monthly throughput of 10,000 or more. Does the department have an estimate of how many stations do not meet the proposed standard and what the cost per station upgrade will be?

Response: Stations located in the listed counties (see footnote 1) with a monthly throughput of 10,000 gallons or more are required to comply with Tennessee's Stage I vapor recovery requirements.

The department does not expect any stations located in the listed counties to need upgrades if they are already in compliance with the existing Stage I vapor recovery requirements.

Comment: Regarding Stage II, a commenter asked if the state will allow partial decommissioning, such as allowing certain parts such as existing hoses, nozzles, breakaway valves and swivels (hanging hardware) and vapor pumps to be left in place.

Response: GDFs would be required to decommission and remove the Stage II vapor recovery system in accordance with Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09" for removal, notification, and certification. In general, the PEI guidance allows piping to be abandoned in place but requires replacement of hanging hardware. Compliance with the PEI guidance will assure that decommissioning is performed by competent personnel, follows all safety procedures, and removes all components in a manner that prevents the release of gasoline vapors to the atmosphere.

Comment: As part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be a permit process involved which will be established later by the Technical Secretary.

Response: There will not be a permit process for upgrading/decommissioning of equipment.

Comment: As part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be any fees associated or anticipated.

Response: There will not be any fees associated with upgrading/decommissioning of equipment.

Comment: A commenter asked to be provided with a chart of differences between this proposed rule and the rules of the counties that have their own programs, i.e., Davidson, Hamilton, Knox and Shelby.

Response: A copy of Tennessee's "110(I)" demonstration was provided to the commenter as requested. The Department is required to submit the "110(I)" demonstration to EPA to show that the revised state requirements are at least as stringent as the federal requirements. The "110(I)" demonstration includes a comparison of state and federal requirements.

Knox and Shelby Counties have directly adopted the state regulation, and there is no difference between those two counties and the existing state requirements. Davidson County has some requirements for GDFs that are more stringent. Hamilton County's rules are worded differently, and a direct comparison is more difficult.

Comment: A commenter was concerned about the cost to businesses.

Response: An estimated cost to businesses has been prepared. Over time, the cost of decommissioning an existing Stage II system (varies, but up to \$10,000) is offset by reduced maintenance and testing costs (~\$3,000 per year).

Stage II Vapor Recovery Decommissioning Cost Estimates
April 24, 2015

Activity	Estimated Cost	Source
Estimated decommissioning cost for one single-hose dispenser	~\$800	TDEC estimate based on Wisconsin vendor pricing (January 2013)
Estimated decommissioning cost for one multi-hose dispenser (3 hoses)	~\$1,300	TDEC estimate based on Wisconsin vendor pricing (January 2013)
Estimated decommissioning cost for a facility with six multi-hose dispensers (3 hoses each)	~\$5,500	TDEC estimate based on Wisconsin vendor pricing (January 2013)

Stage II Vapor Recovery Decommissioning Cost Estimates
April 24, 2015

Activity	Estimated Cost	Source
Decommissioning cost estimated by Georgia EPD	\$1,500 - \$2,500	Georgia EPD
Decommissioning cost for example site with 6 single-hose, multiproduct dispensers with vacuum assist system and four tanks: 2 manifolded regular unleaded, 1 premium, and 1 diesel	\$4,600 (\$1,132 labor, \$468 testing, \$3,000 new hardware)	Georgia Tank and Environmental Contractors Association
Estimated decommissioning cost for one single-hose dispenser	~\$600	TN Fuel and Convenience Store Association, Tri-Star Energy
Estimated decommissioning cost for one multi-hose dispenser	~\$1,650	TN Fuel and Convenience Store Association, Tri-Star Energy
Estimated decommissioning cost for a facility with six multi-hose dispensers	~\$10,000	TN Fuel and Convenience Store Association, Tri-Star Energy

Range of decommissioning costs:

One single-hose dispenser: \$600 - \$800

One multi-hose dispenser: \$1,300 - \$1,650

Six multi-hose dispensers: \$4,600 - \$10,000

**Cost Estimates for Retaining Stage II Vapor Recovery
April 24, 2015**

Activity	Estimated Cost	Source
Cost of installing Stage II vapor recovery equipment at new GDFs (includes USTs, associated piping, pumps and ancillary equipment)	\$20,000 to \$60,000	EPA ¹
Cost of installing Stage II vapor recovery equipment at new GDFs (includes USTs, associated piping, pumps and ancillary equipment)	\$25,000	Georgia EPD ²
Annual cost to maintain existing Stage II systems (average size GDF)	\$3,000 per year	EPA
Maintenance and testing of Stage II systems	~\$3,000 Annually	Georgia EPD stakeholder meeting, April 2013
Cost of additional Stage II dispensers at an existing facility	~\$3,200	Georgia EPD stakeholder meeting, April 2013
Cost Stage II systems at a new facility	~\$32,000	Georgia EPD stakeholder meeting, April 2013

¹ U. S. EPA, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*. August 7, 2012.

² Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, *Draft Revision to the Georgia State Implementation Plan for the Removal of Georgia Rule 391-3-1-.02(zz) Gasoline Dispensing Facilities – Stage II*. September 25, 2014.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The small businesses that would be affected by the proposed rule are primarily gasoline distributors and convenience store owners. Other types include auto dealerships, contractors, farms, hospitals, and truck/transportation businesses. The approximate number of small businesses that are affected by the changes to Stage II rules and potentially subject to decommissioning is 310. The approximate number of all businesses subject to the Stage II rules and potentially subject to decommissioning is 555. Facilities subject to Stage I rules that should already be in compliance are as follows: 2384 small businesses and 3223 total businesses (does not include government entities).

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

In regards to Stage I, facilities required to have Stage I vapor controls should already be in compliance and there should be no additional costs to businesses.

In regards to Stage II, the projected reporting, recordkeeping, and administrative costs required for compliance with Stage II decommissioning would be minimal and a one-time cost. Potential costs could be associated with notification of decommissioning prior to decommissioning and submission of certification of decommissioning. The submission of certification of decommissioning may require the signature or copy of the decommissioning report by the professional that completes the decommissioning according to the Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09". These costs would be equivalent to notification and reporting of performance tests, a routine type of report for businesses required to conduct performance testing.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The probable effect on impacted small businesses and consumers is some downtime as the decommissioning process is conducted. The decommissioning process is not expected to be a lengthy procedure except in the event of a large number of dispensers needing to be decommissioned. Downtime is likely to be measured in hours or a few days at most. There would be an up-front cost to impacted businesses to conduct the decommissioning that would be offset by deferred maintenance costs to maintain the Stage II system. Facilities subject to only Stage I should already be in compliance and there should be no further impact.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Not requiring GDFs with an existing Stage II vapor recovery system to decommission and remove the system would be less burdensome relative to the upfront costs and the necessary downtime while the decommissioning process is conducted. However, the upfront costs would be offset by deferred costs to maintain the Stage II system. Additionally, the decommissioning process is not expected to be a lengthy procedure except in the event of a large number of dispensers needing to be decommissioned.

Relative to the technique for decommissioning Stage II systems, there are no known less burdensome, less intrusive, or less costly alternative methods. This is the accepted method for decommissioning Stage II systems as indicated by EPA and PEI guidance.

- (5) A comparison of the proposed rule with any federal or state counterparts.

The changes proposed will incorporate by reference applicable federal rule but will retain the lower applicability threshold in specified counties.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

No exemptions are proposed for small businesses from Stage II decommissioning. A time line of 3 years to achieve compliance is given and the cost savings to businesses in deferred maintenance once Stage II is decommissioned will offset the up-front costs to decommission Stage II systems.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department believes that proposed amendments will have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rulemaking is promulgated under the authority of Tenn. Code Ann. § 68-201-101 et seq. The proposed rule amendment would require gasoline dispensing facilities in Davidson, Rutherford, Sumner, Williamson and Wilson Counties to remove Stage II Vapor Recovery Systems (VRS). Specifically, the proposed rule amendment requires the removal of all Stage II VRS no later than three (3) years following the effective date of this rule amendment. The amended rule also updates Tennessee's Stage I vapor recovery requirements by adopting the equivalent Federal regulations by reference.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

No Federal or State law mandates either change (Stage I or Stage II). Tennessee's Stage I vapor recovery requirements are being removed from the regulations because the U. S. EPA has adopted an equivalent set of regulations. Tennessee is adopting the federal requirements to reduce the administrative burden to the regulated community.

In regards to Stage II, it has been determined that if Stage II controls are not removed, emissions of volatile organic compounds would increase over time. The determination was prompted by a 2012 Federal Register notice (77 FR 28772), in which the U.S. EPA determined that onboard vapor recovery (ORVR) technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. Widespread use of ORVR renders Stage II controls obsolete, because the pollutants that were controlled by Stage II vapor recovery can be captured inside the motor vehicle. Furthermore, the use of both Stage II and ORVR together reduces the effect of both technologies. Therefore, if Stage II controls are not removed, emissions of volatile organic compounds would increase over time.

This rulemaking is being adopted under the authority of T.C.A. §§ 68-201-101 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This amendment affects gasoline dispensing facilities in Tennessee.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No change in state and local government revenues and expenditures is expected to result from this amendment.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Emily Urban
Assistant General Counsel
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Tennessee Air Pollution Control Board is not aware of any requests.