



E. SCOTT PRUITT  
ADMINISTRATOR

August 25, 2017

The Honorable Greg Abbott  
Governor  
State of Texas  
P.O. Box 12428  
Austin, Texas 78711-2428

Re: Texas Fuel Waiver Request

Dear Governor Abbott:

This letter is in response to the August 25, 2017, request for a waiver under the Clean Air Act (CAA) made on your behalf by Richard A. Hyde, Executive Director of the Texas Commission on Environmental Quality (TCEQ), to address a fuel supply emergency caused by refinery shutdowns and evacuations associated with Hurricane Harvey. The letter requests that the U.S. Environmental Protection Agency waive the requirements for reformulated gasoline (RFG), Reid vapor pressure (RVP) and Texas Low Emission Diesel (TxLED) that apply in some of the counties covered by the Governor's Disaster Proclamation.<sup>1</sup>

The EPA and the U.S. Department of Energy have been actively monitoring the supply of fuel to Texas. In addition, we have been coordinating with Texas officials throughout this period. The refinery shutdowns and evacuations associated with Hurricane Harvey, together with the projected path of the hurricane to remain in the landfall area over the next several days, has and will result in a significant curtailment of gasoline supplied to area covered by the Governor's Disaster Proclamation. The EPA has concluded, with DOE's concurrence, that it is necessary to take action to minimize or prevent disruption of an adequate supply of gasoline and TxLED to this area.

I have determined that an "extreme and unusual fuel [ ] supply circumstance" exists that will prevent the distribution of an adequate supply of gasoline and TxLED fuel to consumers in

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<sup>1</sup> The counties covered by the disaster proclamation are: Aransas, Austin, Bee, Calhoun, Chambers, Colorado, Brazoria, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton and Wilson counties. See [https://gov.texas.gov/uploads/files/press/Governor\\_Abbott\\_Declares\\_State\\_of\\_Disaster\\_For\\_30\\_Texas\\_Counties.pdf](https://gov.texas.gov/uploads/files/press/Governor_Abbott_Declares_State_of_Disaster_For_30_Texas_Counties.pdf).

the affected counties covered by the Governor's Disaster Proclamation. CAA § 211(c)(4)(C)(ii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(I). This extreme and unusual fuel circumstance is the result of shutdowns and evacuations associated with Hurricane Harvey, an event that could not reasonably be foreseen or prevented, and is not attributable to a lack of prudent planning on the part of suppliers of the fuel to these areas. CAA § 211(c)(4)(C)(ii)(II), 42 U.S.C. § 7545(c)(4)(C)(ii)(II). Further, I have determined that it is in the public interest to grant this waiver and that this waiver applies to the smallest geographic area necessary to address the fuel supply circumstances. CAA § 211(c)(4)(C)(ii)(III) and (iii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(III) and (iii)(I).

#### RFG Waiver

I am issuing this waiver of the RFG requirements in the Houston-Galveston-Brazoria areas (the "RFG Covered Areas")<sup>2</sup> to minimize or prevent problems with the supply of gasoline to these areas. This waiver is effective immediately and will continue through September 15, 2017. Under this temporary waiver, regulated parties may sell or distribute conventional gasoline with a maximum RVP of 9.0 pounds per square inch (psi) (10.0 psi if the gasoline contains between 9% and 10% ethanol) in the RFG Covered Areas.<sup>3</sup>

Gasoline that does not meet the RFG requirements may not be introduced into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in the RFG Covered Areas after September 15, 2017. Any gasoline meeting the 9.0 psi RVP standard (10.0 psi if the gasoline contains between 9% and 10% ethanol) that is stored in terminal storage tanks for distribution to retail outlets and wholesale purchaser-consumers in these areas on September 15, 2017, may be distributed and sold in the RFG Covered Areas until the supply is depleted. Likewise, retailers and wholesale purchaser-consumers in these areas may continue selling or dispensing 9.0 psi RVP gasoline (10.0 psi if the gasoline contains between 9% and 10% ethanol) after September 15, 2017, until their supplies are depleted. This waiver applies only to the applicable federal requirements cited above.

#### RVP Waiver

TCEQ requested a waiver of the 7.8 psi RVP standards that apply in the counties covered by the Governor's Disaster Proclamation. There are two separate RVP programs in the counties covered by the Proclamation. The low-volatility gasoline program in the federally-enforceable State Implementation Plan (SIP) requires gasoline to be sold in certain counties to have a maximum RVP of 7.8 psi during the summer "high ozone" season, which starts June 1 and ends on October 1, 2016. These federal requirements are codified as part of the federally-approved Texas SIP. 66 Fed. Reg. 20,927 (April 26, 2001). The following 20 counties are subject to these requirements, and also covered by the Governor's Disaster Proclamation: Arkansas, Austin, Bee, Caldwell, Colorado, DeWitt, Fayette, Goliad, Gonzalez, Jackson, Karnes, Lavaca, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Wharton, and Wilson.

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<sup>2</sup> The Houston-Galveston-Brazoria RFG area consists of the counties of Brazoria, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller and Chambers.

<sup>3</sup> This waiver for the RFG covered areas includes a waiver of the provisions at 40 C.F.R. § 80.78(a)(7) that prohibit any person from combining any reformulated gasoline blendstock for oxygenate blending with any other gasoline, blendstock, or oxygenate, unless certain conditions are met.

I am issuing this waiver of the 7.8 RVP SIP requirements in the counties identified above to minimize or prevent problems with the supply of gasoline to these areas.

The federal fuels regulations at 40 C.F.R. § 80.27 set an RVP standard of 7.8 psi in Jefferson, Orange and Hardin Counties. See <https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure#table>. Although TCEQ's waiver request only asks the EPA to waive the federal RVP requirements at 40 C.F.R. § 80.27 for Jefferson County, I am issuing this waiver of the 7.8 RVP requirements for Jefferson, Orange and Hardin Counties to minimize or prevent problems with the supply of gasoline to these areas.

Gasoline that does not meet these RVP requirements may not be introduced into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in the counties covered by the Governor's Disaster Proclamation after September 15, 2017. Any gasoline meeting the 9.0 psi RVP standard (10.0 psi if the gasoline contains between 9% and 10% ethanol) that is stored in terminal storage tanks for distribution to retail outlets and wholesale purchaser-consumers in these areas on September 15, 2017, may be distributed and sold in the counties covered by the Governor's Disaster Proclamation until the supply is depleted. Likewise, retailers and wholesale purchaser-consumers in these areas may continue selling or dispensing 9.0 psi RVP gasoline (10.0 psi if the gasoline contains between 9% and 10% ethanol) after September 15, 2017, until their supplies are depleted.

#### Texas Low Emission Diesel Waiver

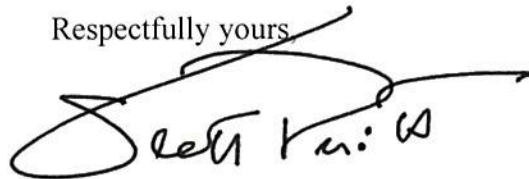
TCEQ requested a waiver of Texas' federally-approved SIP that requires TxLED to be sold in certain counties covered by the Governor's Disaster Proclamation. See 70 Fed. Reg. 17,321 (April 6, 2005). TxLED is a Texas-specific diesel fuel that is required only in certain counties in Texas, and nowhere else in the country. The following 29 counties are subject to the TxLED requirements, and also covered by the Governor's Disaster Proclamation: Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzalez, Harris, Jackson, Jefferson, Karnes, Lavaca, Liberty, Live Oak, Matagorda, Montgomery, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson.

I am issuing a waiver of the TxLED requirements in the counties identified above to minimize or prevent problems with the supply of TxLED. Under this waiver, the EPA will allow regulated parties to use federally-compliant 15 parts per million Ultra Low Sulfur Diesel (ULSD) in the counties identified above. This waiver is effective immediately and will continue through September 15, 2017. Retail outlets and wholesale purchaser-consumers that receive TxLED under this waiver may continue selling or dispensing this fuel after September 15, 2017, until their supplies are depleted.

This waiver only authorizes the distribution and sale of ULSD in the counties covered by the Governor's Disaster Proclamation. This waiver does not authorize the use of undyed highway diesel fuel nor dyed non-road diesel fuel meeting the 500 parts per million sulfur standard found at 40 C.F.R. Part 80, Subpart I.

This waiver applies only to the applicable federal requirements cited above. Other state or local requirements or restrictions related to this matter may need to be addressed by the appropriate authorities. Should conditions warrant, this waiver may be modified, terminated or extended as warranted. If you have questions you may call me, or your staff may call Phillip A. Brooks at (202) 564-0652.

Respectfully yours

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", written over the typed name below.

E. Scott Pruitt

cc: The Honorable Rick Perry, Secretary of Energy  
Richard Hyde, P.E., Executive Director, Texas Commission on Environmental Quality