



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

August 28, 2023

THE ADMINISTRATOR

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

Dear Governor Abbott:

This letter responds to the August 26, 2023 request for a waiver under the Clean Air Act (Act) made on your behalf by Texas Commission on Environmental Quality Interim Executive Director Kelly Keel to address a fuel supply emergency caused by unplanned outages at the Alon Big Spring and the Marathon Petroleum Corporation El Paso Refineries that supply 7.0 pounds per square inch (psi) Reid vapor pressure (RVP) gasoline to El Paso County, Texas.

The August 26, 2023 letter requests that the U.S. Environmental Protection Agency (EPA) grant a waiver of the federally-approved and -enforceable State Implementation Plan (SIP) regulation that requires 7.0 psi RVP gasoline to be sold in the El Paso area.¹ The SIP requires gasoline sold in the El Paso area to have a maximum RVP of 7.0 psi June 1 through September 16. *See* 62 Fed. Reg. 27,964 (May 22, 1997); 40 C.F.R. § 52.2270(c). Regulations promulgated under the Act and the federally-approved SIP require the use of low volatility gasoline during the summer months to limit the formation of ozone pollution. *See* 40 C.F.R. § 1090.215(a)(5), *see also* <https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure>.

The waiver request is limited to El Paso County. The fuel supply shortage caused by the unplanned outages at the Alon Big Spring and the Marathon Petroleum Corporation El Paso Refineries can be reduced by waiving the 7.0 psi RVP gasoline requirement.

The EPA and the Department of Energy (DOE) have been actively monitoring the supply of gasoline to El Paso County. The EPA has concluded, with DOE's concurrence, that it is necessary and appropriate to take action to minimize or prevent the disruption of an adequate supply of gasoline to consumers. I have determined that an "extreme and unusual fuel [] supply circumstance" exists that will prevent the distribution of an adequate supply of compliant gasoline to consumers. Section 211(c)(4)(C)(ii)(I) of the Act, 42 U.S.C. § 7545(c)(4)(C)(ii)(I).

This extreme and unusual fuel supply circumstance is the result of unplanned outages at the Alon Big Spring and the Marathon Petroleum Corporation El Paso Refineries, an event that could not reasonably have been foreseen and it is not attributable to a lack of prudent planning on the part of suppliers of fuel to El Paso County. Section 211(c)(4)(C)(ii)(II) of the Act, 42 U.S.C.

¹ *See* 30 TAC § 115.10.

§ 7545(c)(4)(C)(ii)(II). Furthermore, 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. Section 211(c)(4)(C)(ii)(III) and (iii)(I) of the Act, 42 U.S.C. § 7545(c)(4)(C)(ii)(III) and (iii)(I).

Therefore, to minimize or prevent disruptions of the supply of gasoline in El Paso County, I am issuing this waiver of the federal RVP requirements in the federally-approved Texas SIP and the requirements at 40 C.F.R. § 1090.215(a)(5) that apply in the El Paso area. Under this temporary waiver, regulated parties may produce, sell, and distribute gasoline in El Paso County with an RVP of no more than 9.0 psi (10.0 psi if the gasoline contains between 9% and 15% ethanol). This waiver is effective immediately and will continue through September 16, 2023. I have concluded that this is the shortest practicable time necessary to permit the correction of the extreme and unusual circumstances preventing distribution of an adequate supply of compliant gasoline.

Since the federally-enforceable SIP requirement to sell 7.0 psi RVP gasoline ends on September 16, 2023, this waiver does not address downstream standards that apply after the end of the waiver period. This waiver only applies to the requirements cited above, which are applicable in El Paso County. 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 or terminated as appropriate.

If you have questions, you are welcome to contact me, or your staff may contact John Lucey, Deputy Associate Administrator for Intergovernmental Relations, at lucey.john.d@epa.gov or 202-564-1820.

Sincerely yours,

A handwritten signature in black ink that reads "Michael S. Regan". The signature is written in a cursive style with a large, prominent "M" and "R".

Michael S. Regan

cc: The Honorable Jennifer M. Granholm, Secretary of Energy