



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

The Honorable Rick Perry
Governor
State of Texas
P.O. Box 12428
Austin, Texas 76711

Re: Response to State of Texas Fuel Waiver Request, dated August 31, 2008

Dear Governor Perry:

This is in response to the August 31, 2008 request for a waiver under the Clean Air Act (CAA) made on your behalf by Mark R. Vickery, Executive Director of the Texas Commission of Environmental Quality, to address a fuel supply emergency caused by the impending landfall of Hurricane Gustav. The letter requests that the U.S. Environmental Protection Agency waive the federal regulations requiring reformulated gasoline (RFG) sold in the Houston-Galveston-Brazoria area and in the Dallas areas (the "RFG covered areas"¹). *See* 40 C.F.R. §§ 80.70(h) and (j)(12). As you know, regulations promulgated under the Clean Air Act require gasoline sold in the covered areas to meet RFG standards and requirements. *See* 40 C.F.R. §80.41. In addition, the letter requests that the U.S. Environmental Protection Agency waive the federal regulations requiring low volatility gasoline to be sold in Jefferson, Orange and Hardin counties. Regulations promulgated under the Clean Air Act require gasoline sold in the designated counties to have maximum Reid Vapor Pressure (RVP) of 7.8 pounds per square inch (psi) during the "high ozone" season, through September 15, 2008. In addition, the "high ozone" period for a number of eastern and central Texas counties continues though October 1, 2008 (the "RVP covered areas").² *See* 40 C.F.R. § 80.27. EPA has determined, and the United States Department of Energy (DOE) concurs, that it is necessary to take action to minimize or prevent disruption of Texas's gasoline supply in the RFG and RVP covered areas. By this letter, I am granting a waiver to Texas, as described below.

Hurricane Gustav, which is currently a Category 3 hurricane, is projected to make landfall on the Gulf Coast on Monday, September 1. On August 29, President George W. Bush declared

¹ The Houston-Galveston-Brazoria RFG covered area consists of the counties of Brazoria, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller and Chambers. The Dallas RFG covered area consists of the counties of Collin, Dallas, Denton and Tarrant.

² The "high ozone" season for the following RVP covered areas extends through October 1: Angelina, Aransas, Austin, Bee, Bexar, Bowie, Brazos, Calhoun, Colorado, DeWitt, Goliad, Jackson, Jasper, Lavaca, Matagorda, Nacogdoches, Navarro, Newton, Nueces, Polk, Refugio, Sabine, San Jacinto, San Patricio, Shelby, Smith, Travis, Trinity, Tyler, Victoria, Walker and Wharton.

a federal state of emergency for Texas. Evacuation orders were issued for a number of coastal Texas counties on August 30th and 31st, and shortages of gasoline are now being experienced in both the RFG and RVP covered areas. The mandatory and voluntary evacuations of the coastal Texas counties, and the emergency shutdown of a number of Gulf area refineries, have caused a shortage of gasoline in the RFG covered areas. In addition, the heavy demand on available supplies throughout eastern Texas is causing a shortage of gasoline in the RVP covered areas. In order to increase the supply of gasoline and minimize the potential gasoline supply disruptions to the RFG and RVP covered areas as the result of Hurricane Gustav, EPA, in consultation with DOE, will temporarily waive certain fuel requirements, as provided below.

I have determined that an “extreme and unusual fuel supply circumstance” exists that will prevent the distribution of an adequate supply of gasoline to consumers in the RFG and RVP covered areas. 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 Hurricane Gustav, a natural disaster that could not reasonably have been foreseen or prevented, and is not attributable to a lack of prudent planning on the part of suppliers of the fuel to this area. CAA § 211(c)(4)(C)(ii)(II), 42 U.S.C. § 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. CAA § 211(c)(4)(C)(ii)(III) and (iii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(III) and (iii)(I).

We recognize the environmental benefits of these fuel programs. However, to minimize or prevent problems with the supply of gasoline, I am today issuing this waiver of the RFG and RVP requirements for the covered areas in Texas that are subject to these standards. This waiver is effective immediately and will continue through 11:59 p.m. on September 10, 2008. Under this temporary waiver, EPA will allow regulated parties to sell and distribute supplies of gasoline, as provided below.

RFG Covered Areas

Under this temporary waiver, EPA will allow regulated parties to sell and distribute conventional gasoline (CG) in the RFG covered areas. This waiver is effective immediately and will continue through 11:59 p.m. on September 10, 2008.

After September 10, 2008, regulated parties may not introduce gasoline that does not meet the RFG standards into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in the RFG covered areas. However, no later than September 24, 2008, the gasoline dispensed from such terminal tanks for distribution and sale in the RFG covered areas must meet all RFG standards. Retailers and wholesale purchaser-consumers may continue selling or dispensing CG gasoline in the RFG covered areas until their supplies are depleted.

To the extent practicable and consistent with supplying market demands for gasoline (*e.g.*, where tankage is available), regulated parties should take steps to segregate and supply

gasoline that meets RFG standards. Refiners and importers that provide CG to the RFG covered areas under this waiver should exclude the CG gasoline distributed to the RFG covered areas under this waiver from their annual compliance calculations under 40 C.F.R. § 80.67, but should include CG distributed under this waiver in their anti-dumping calculations.

RVP Covered Areas

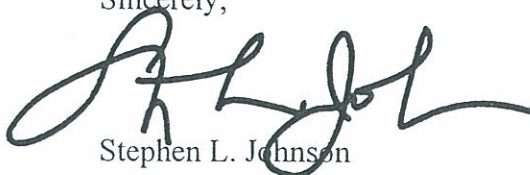
Under this temporary waiver, EPA will allow regulated parties to sell or distribute 9.0 psi RVP gasoline in the RVP covered areas. In addition, the requirement of 40 C.F.R. § 80.27(d) that a 1 psi increase is allowed only if the ethanol content is between 9% and 10% by volume, is waived. This waiver is effective immediately and will continue through 11:59 p.m. on September 10, 2008.

Jefferson, Orange and Hardin counties: After September 10, 2008, regulated parties may not introduce gasoline that does not meet the 7.8 psi RVP requirement of 40 C.F.R. § 80.27 into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in these three counties. However, the gasoline dispensed from such terminal tanks for distribution and sale in these three counties is not required to meet the 7.8 psi RVP requirement of 40 C.F.R. § 80.27 for the remainder of the "high ozone" period, through September 15. Retailers and wholesale purchaser-consumers may continue selling or dispensing gasoline not meeting the applicable RVP standard until their supplies are depleted.

All other counties in the RVP covered area: After September 10, 2008, regulated parties may not introduce gasoline that does not meet the 7.8 psi RVP requirement into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in counties in the RVP covered area for which the "high ozone" period continues to October 1, 2008. However, the gasoline dispensed from such terminal tanks for distribution and sale in these counties is not required to meet the 7.8 psi RVP for the remainder of the "high ozone" period, through October 1. Retailers and wholesale purchaser-consumers may continue selling or dispensing gasoline not meeting the applicable RVP standard until their supplies are depleted.

EPA will continue to work with DOE and affected states to monitor the impact of Hurricane Gustav on the fuel supply situation in the Gulf region. If you have questions you may call me, or your staff may call Adam M. Kushner at (202) 564-2260.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. L. Johnson', written over a horizontal line.

Stephen L. Johnson

cc: The Honorable Samuel W. Bodman
Secretary of Energy