



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF THE ADMINISTRATOR

February 19, 2021

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 responds to the February 19, 2021 request for a waiver under the Clean Air Act (CAA) made on your behalf by Toby Baker, Executive Director of the Texas Commission on Environmental Quality (TCEQ), to address a fuel supply emergency caused by refinery and distribution terminal disruptions resulting from the unusually severe temperatures and frozen precipitation throughout the state of Texas. You request that the U.S. Environmental Protection Agency waive the requirements in the Texas State Implementation Plan (SIP) relating to the oxygenated gasoline requirements that apply in El Paso County and the Texas Low Emission Diesel (TxLED) requirements that apply in 110 Texas counties.

EPA and the U.S. Department of Energy have been actively monitoring the supply of fuel to Texas and coordinating with Texas officials. The unusually severe temperatures and frozen precipitation throughout the state has curtailed gasoline and diesel supplies. 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 diesel fuel in Texas.

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 El Paso County and diesel fuel to consumers in the areas covered by the TxLED program. 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 unusually severe temperatures and frozen precipitation 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).

El Paso County Oxygenated Gasoline Waiver

TCEQ requested a waiver of Texas' federally approved SIP that requires the use of oxygenated gasoline in El Paso County. *See* 59 Fed. Reg. 46,766 (Sept. 12, 1994). I am issuing this waiver of the El Paso County oxygenated gasoline requirements to minimize or prevent problems with the supply of gasoline to this area. This waiver is effective immediately and will continue through March 5, 2021. Under this temporary waiver, regulated parties may sell or distribute gasoline that does not comply with the federally enforceable SIP oxygenated gasoline requirements in El Paso County. Gasoline that does not meet the oxygen requirements may not be dispensed into trucks for distribution to retail outlets in El Paso County after March 5, 2021. Retail outlets and wholesale purchaser-consumers that receive gasoline under this waiver may continue selling or dispensing this fuel after March 5, 2021, until their supplies are depleted.

We are also waiving the regulations at 40 C.F.R. § 1090.710(b) for gasoline sold in El Paso County that require certain downstream parties to add the type and amount of oxygenate that is specified on the Product Transfer Document to gasoline before oxygenate blending (BOB), unless the party recertifies the BOB. This waiver is effective immediately and will continue through March 5, 2021.

Parties who use the flexibility provided by this waiver must ensure that the gasoline they produce, sell, and distribute meets all other applicable standards.

Texas Low Emission Diesel Waiver

TCEQ requested a waiver of Texas' federally approved SIP that requires TxLED to be sold in 110 counties in Texas. *See* 66 Fed. Reg. 57,196 (Nov. 4, 2001). TxLED is a Texas-specific diesel fuel that is required only in certain counties in Texas, and nowhere else in the country. The counties subject to the TxLED requirements are listed in 30 Texas Administrative Code (TAC) § 114.319.

I am issuing a waiver of the TxLED requirements in the 110 identified counties to minimize or prevent problems with the supply of TxLED. Under this waiver, EPA will allow regulated parties to use federally-compliant 15 parts per million Ultra Low Sulfur Diesel (ULSD) in the 110 identified counties. This waiver is effective immediately and will continue through March 5, 2021. Retail outlets and wholesale purchaser-consumers that receive ULSD under this waiver may continue selling or dispensing this fuel after March 5, 2021, until their supplies are depleted.

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 or

terminated as warranted. If you have questions you may contact me, or your staff may contact Evan Belser, Deputy Director of EPA's Air Enforcement Division, at Belser.Evan@epa.gov or 202-768-4494.

Sincerely,

JANE
NISHIDA

Digitally signed by
JANE NISHIDA
Date: 2021.02.19
20:49:42 -05'00'

Jane T. Nishida
Acting Administrator

cc: David G. Huizenga, Acting Secretary of Energy
Toby Baker, Executive Director, Texas Commission on Environmental Quality