



TEXAS DEPARTMENT OF AGRICULTURE  
COMMISSIONER SID MILLER

September 11, 2017

Ms. Shannon Rusing  
Vice President of Operations and Chief of Staff  
Texas Oil and Gas Association  
304 West 13<sup>th</sup> Street  
Austin, TX 78701

Re: Suspension of Reid Vapor Pressure (RVP) standards incorporated by 4 TAC § 5.7(a);  
Clarification regarding TDA's enforcement of same

Dear Ms. Rusing:

This letter is in response to your September 8, 2017 email to Stephen Dillon, wherein you requested further clarification of the Governor's suspension of the RVP standards contained in 4 TAC § 5.7(a), and TDA's enforcement of same. As you know, on August 30, 2017, the Governor suspended those standards, acting under his authority provided by Section 418.016(a) of the Government Code. The Texas Department of Agriculture (TDA) has interpreted the Governor's suspension of 4 TAC § 5.7(a) to give TDA maximum regulatory flexibility in the enforcement of these standards, to ensure the availability of a reliable fuel supply as the state recovers from Hurricane Harvey.

TDA is of the opinion that the Governor's suspension of 4 TAC 5.7(a) is clear and that the suspension of the RVP standards runs concurrently with the waiver of these standards by the United States Environmental Protection Agency (EPA). The most recent EPA waiver is dated September 7, 2017 and is intended to minimize or prevent disruption of the nation's fuel supply based on the EPA's evaluation of the continuing effects of Hurricane Harvey on the nation's fuel supply system and the large scale evacuations implemented in response to Hurricane Irma.

TDA has no intention to enforce the RVP standards incorporated into 4 TAC 5.7(a) until: (1) the Governor's suspension is terminated following occurrence of one of the conditions outlined in the August 30, 2017 email from Blake Roach of the Governor's office to Ilissa Nolan of TDA (attached); and (2) a reasonable period of time has elapsed after termination of the suspension, to ensure that retailers have sufficient time to sell all fuel that is non-compliant with the RVP standard. In that regard, TDA will provide reasonable notice to you of TDA's intention to resume enforcement of 4 TAC 5.7(a), so TXOGA has an opportunity to assess the impact of such resumption and to correspond with its constituents regarding such impact.

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TDA has received requests to extend the EPA's waiver or to issue its own waiver, to further clarify the dates and areas where non-compliant RVP fuel may be sold, as the state continues to recover from Hurricane Harvey. TDA lacks the constitutional or statutory authority to extend an EPA waiver or to issue its own waiver. However, TDA can assure you that it will fully utilize the regulatory discretion provided by Section 12.020(a) of the Agriculture Code, along with the Governor's August 30, 2017 temporary suspension of the RVP standards, to prevent disruption of the state's fuel supply.

If your office needs further information regarding the status of TDA's enforcement of the RVP standards incorporated into 4 TAC § 5.7(a), please contact Ms. A.J. Wilson Salazar, TDA's Deputy General Counsel for Enforcement, at 512-463-2936, or via email at [AJ.WilsonSalazar@TexasAgriculture.gov](mailto:AJ.WilsonSalazar@TexasAgriculture.gov).

Very Truly Yours,

  
Mr. Jason Fearneyhough  
Deputy Commissioner

spd:TK:JF *TK*  
enclosure