State of Minnesota
Department of Commerce
Enforcement Guidance regarding Minnesota Statutes §239.761
Effective August 31, 2017

The Minnesota Department of Commerce ("Commerce") has received a number of requests from entities seeking guidance as to whether Minnesota Statutes section 239.761, will apply to gasoline and E15 sold as gasoline while the EPA waiver of federal Reid vapor pressure (RVP) requirements is in effect. On August 31, 2017 the Environmental Protection Agency (EPA) issued a waiver from the RVP requirements in 40 C.F.R. §80.27 to 38 states, including Minnesota, "in order to minimize or prevent the disruption of an adequate supply of gasoline" as a result of the damage to refineries and pipelines caused by Hurricane Harvey (EPA Waiver). The EPA Waiver is in effect until September 15, 2017.

On September 7, 2017, the EPA issued an extended waiver which lifted certain federal restrictions on reformulated gasoline, and on blend stock used in State Implementation Plan (SIP)-covered areas. The waiver also changed Federal RVP requirements to allow any winter gasoline to be distributed and sold until September 15, 2017, but did not change volatility requirements after that date. As of September 16, 2017 gasoline without ethanol, and E15 sold as gasoline, may not have an RVP which exceeds 11.5 psi. As of September 16, 2017 gasoline with 10% ethanol may not have an RVP which exceeds 12.5 psi.

Minnesota Statutes section 239.761, subdivision 3 establishes a requirement for gasoline that is not blended with biofuel to comply with the ASTM specification D4814-11b. Minnesota Statutes section 239.761, subdivision 4 also establishes a requirement for gasoline that is blended with ethanol to comply with the ASTM specification D4814-11b. Given the "extreme and unusual fuel supply circumstance" due to Hurricane Harvey and the issuance of the EPA Waivers on August 31, 2017 and September 7, 2017, Commerce has determined it is in the best interest of Minnesota citizens to issue this Temporary Stay of Enforcement Action for compliance with Minnesota Statutes section 239.761, subdivisions 3 and 4 as set forth below.

Temporary Stay of Enforcement Action

This Temporary Stay of Enforcement Action is valid only for the period commencing on August 31, 2017 through September 15, 2017. Further, this Temporary Stay of Enforcement Action is specifically limited to a stay in enforcement for gasoline, and E15 sold as gasoline, of the volatility requirements of Table 4 in ASTM D4814-11b as adopted in Minnesota Statutes section 239.761, subdivisions 3 and 4. The RVP of E15 sold as gasoline, and the RVP of gasoline without ethanol, may exceed 9.0 pounds per square inch (psi) for the period of this temporary stay of enforcement action as long as it does not exceed the 11.5 psi limit. The RVP of gasoline with 10% ethanol may exceed 9.0 pounds per square inch (psi) for the period of this temporary stay of enforcement action as long as it does not exceed the 12.5 psi limit.

Nothing in this Stay of Enforcement Action may be interpreted to relieve any entity selling gasoline, or E15 as gasoline, in Minnesota from compliance with all other provisions of Minnesota Statutes chapter 239, including section 239.761, or any other applicable state or federal law.

Date: 9.11.17

Mike Rothman
Commissioner of Commerce

By: _____
Anne O'Connor
Deputy Commissioner and Chief of Staff