STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 MAY 26 AM9:22

EXECUTIVE ORDER

No. 2020-102

Temporary Relief from Standard Vapor Pressure Restrictions on Gasoline Sales

Rescission of Executive Order 2020-31

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are likely to be appealed.

On May 22, 2020, I issued Executive Order 2020-99, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)–(2). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

Due to the steep fall-off in gasoline demand as a result of the COVID-19 pandemic, gasoline storage capacity is limited and more time is needed to transition the distribution system in order to come into compliance for the summer driving season. Without a waiver of the summer gasoline requirements, parties upstream of retailers and wholesale purchasers would have been required to stop selling the winter gasoline sitting in their storage tanks on May 1, 2020, which would have prevented them from loading summer gasoline into the storage tanks, resulting in a shortage of gasoline. A gasoline shortage could result in higher prices at the pump, making it harder for families already struggling with the economic impacts of COVID-19 to put food on the table. It could also cause longer lines at service stations across Michigan, increasing in-person interactions and putting people at risk. In order to reduce economic hardship, reduce in-person work, and minimize the risk of transmission, I find it reasonable and necessary to temporarily waive the summer low volatility requirements and blending limitations for gasoline.

With this order, Executive Order 2020-31 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Rule 4(g) of Regulation No. 564, promulgated by the Laboratory Division of the Department of Agriculture and Rural Development, 1987 AACS, as amended, R 285.564.4(g) of the Michigan Administrative Code, regarding vapor pressure, is temporarily suspended through May 31, 2020.

2. Gasoline received at retail on or before May 31, 2020 that does not meet the June 1 vapor pressure standard, as outlined in the Motor Fuels Quality Act of 1984, as amended, the Motor Fuels Quality Act section 10d (MCL 290.650d), Regulation No. 561 Dispensing Facility Vapor Pressure R 285.561.2 (Rule 2) and R 285.561.3 (Rule 3), or Regulation No. 564 Automotive Motor Fuel Purity, Additives, and Grading R 285.564.4 (Rule 4 Table 5) may be sold through June 30, 2020.

3. Any gasoline received at retail on or after June 1, 2020 shall at time of delivery meet the vapor pressure requirements outlined in the Motor Fuels Quality Act of 1984, as amended, the Motor Fuels Quality Act section 10d (MCL 290.650d), Regulation No. 561 Dispensing Facility Vapor Pressure R 285.561.2 (Rule 2) and R 285.561.3 (Rule 3), or Regulation No. 564 Automotive Motor Fuel Purity, Additives, and Grading, R 285.564.4 (Rule 4 Table 5).

4. Consistent with the Environmental Protection Agency's March 27, 2020 waiver, gasoline that does not meet the low volatility requirements, as specified above, may no longer be introduced into terminal storage tanks. Any gasoline not meeting the requirements may continue to be distributed from terminal storage tanks to retailers through May 31, 2020.

5. The Department of Agriculture and Rural Development shall coordinate state compliance with this order.

6. Executive Order 2020-31 is rescinded.

7. This order is effective immediately.

Given under my hand and the Great Seal of the State of Michigan.

Date: May 22, 2020

Time: 4:56 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE