

Regulatory Alert

CHANGES FOR FACILITIES DUE TO HB2174



House Bill (HB) 2174, enacted by the 85th Texas Legislature, was signed by the Governor and is effective September 1, 2017. HB 2174 amended the Texas Agriculture Code, Chapter 13, Sections 13.001, 13.029, 13.101, 13.1011, 13.1015, 13.1016, 13.1017, 13.114 & 13.1151 and Chapter 17, Sections 17.072 & 17.073, changing the Texas Department of Agriculture's role in the inspection and testing of motor fuel metering devices and motor fuel quality to verify compliance with standards promulgated by the National Institute of Standards and Technology (NIST) and American Society for Testing and Materials (ASTM), which are adopted by law. Licensed Service Companies and Technicians are now responsible for inspecting, testing, and calibrating devices with a flow rate of 20 gallons per minute (gpm) or less and motor fuel quality inspection and testing. The Department is responsible for performing audits, reviews, registration inspections, and/or service observations in accordance with Chapter 13 and Chapter 17 of the Texas Agriculture Code.

Facilities who sell fuel via motor fuel metering devices with a flow rate of 20 gpm or less can expect the following changes:

- The facility must contact a Licensed Service Company currently registered with the Department to schedule a full calibration for all motor fuel metering devices at their location every two years. Failure to comply with the two year calibration requirement will result in all motor fuel metering devices being tagged out of order at the location by a TDA inspector.
- Licensed Service Companies will now be conducting inspections previously completed by TDA inspectors and reporting required information to the department for review, in addition to calibrating motor fuel metering devices.
- Complaint inspections on device(s) identified by the complainant will be conducted at facility locations for every three complaints TDA receives for said location in a 12 month period.
- Once three complaints have been processed for a facility, and a complaint inspection has been finalized, at this point the complaint number will start over at #1, and the 12 month period will also start over.
- If a facility's location has not received a full calibration within an 18 month period, a complaint inspection shall be performed by a licensed service company registered with TDA on the motor fuel metering device(s) identified in the complaint. If the device is not within tolerance, a calibration shall be performed.
- It is the facility's responsibility to contact a third party Licensed Service Company to complete a complaint inspection on all motor fuel metering devices identified in the facility's "Action Required" complaint letter, at their location.
Facilities may not use a Licensed Service Company (LSC) that is owned and/or operated, in an any aspect, by an entity which is owned or operated by the entity of the facility noted in the complaint.
- Facilities can find an LSC currently registered with the department on the TDA website at www.texasagriculture.gov listed under Reports & Publications, List of Licensed Service Companies, Licensed Service/Inspection Company.
- The facility will receive 2 notices via USPS or to the facility's contact email address provided to the department, making the facility location aware of the complaints TDA has received from the public. **When TDA receives the 3rd complaint, an "Action Required" letter will be sent to the facility contact notifying them to contact an LSC to complete a calibration on the device(s) indicated and address the issues identified by the complainants.** The facility is responsible for giving important complaint information to the LSC from the "Action Required" letter, specifically the IQ complaint #. The LSC will need the IQ complaint # for the report they submit to the Department.
- As indicated by statute, the facility shall contact a LSC for a complaint inspection to be conducted within 30 days from the date the facility is notified of the complaint with "Action Required". The LSC then has 10 days to submit their LSC report to TDA from the date of device inspection, testing and/or calibration.
- If after 45 days from the date the complaint is received by TDA, we have not received a finalized report from the LSC who completed the calibration for the facility location, a TDA inspector will issue out of order tags on all motor fuel metering devices in question at the location.
- **Any and all payments or licensing issues should still be sent to the Texas Department of Agriculture.** Facilities are not under any circumstances to give any license application documents or licensing fees to License Service Companies License Service Technicians.
- Fuel quality sampling must be performed by a Licensed Service Company in response to any fuel complaints received by the Department. A TDA inspector will deliver a fuel testing kit to the facility along with instructions and shipping documents. A Licensed Service Company will draw a fuel sample and ship it by UPS to TDA's contracted laboratory in the instructions. Shipping and laboratory tests are prepaid by the Department. Samples must be drawn and shipped within five days of receiving the kit and notice.
- Routine fuel samples will be conducted in the same way. A TDA inspector will deliver fuel testing kits on a schedule developed by the Department and the facility will contact a Licensed Service Company to draw the sample. Routine samples must be drawn and shipped within ten days of notice.