



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 24 2005

THE ADMINISTRATOR

The Honorable Dave Heineman
Office of the Governor
P.O. Box 94848
Lincoln, Nebraska 68509-4848

Re: Fuel Waiver Concerning Diesel Fuel in the States of Iowa and
Nebraska

Dear Governor Heineman:

The United States Environmental Protection Agency (EPA), in consultation with the Department of Energy, has continued to evaluate the prospect of highway diesel fuel supply problems as a result of Hurricanes Katrina and Rita. Based on this evaluation, I have determined that an "extreme and unusual fuel supply circumstance" exists that prevents the distribution of an adequate supply of compliant highway diesel fuel to consumers in the States of Iowa and Nebraska. CAA § 211 (c)(4)(C). This fuel circumstance is the result of Hurricanes Katrina and Rita, natural disasters, that could not reasonably have been foreseen or prevented and is not attributable to a lack of prudent planning on the part of the suppliers of highway diesel fuel. Id. Furthermore, I have determined that it is in the public interest to grant this waiver.

We recognize the environmental and operational importance of the highway diesel fuel requirements, particularly as the requirements relate to diesel engines. However, to minimize or prevent problems with the supply of diesel fuel, I am today issuing this waiver of the highway diesel sulfur requirements and the dye requirements for diesel fuel containing greater than 500 ppm sulfur found at 40 C.F.R. § 80.29 (waiver diesel fuel) for the States of Iowa and Nebraska. This waiver of the highway diesel fuel requirements is effective immediately and will remain in effect through November 13, 2005.

After November 13, 2005, refiners and importers may not produce or import waiver diesel fuel for use in Iowa or Nebraska. However, any waiver diesel fuel for use in Iowa or Nebraska that is in the distribution system on November 13th may be distributed and sold until the supply is depleted. Waiver diesel fuel is subject to the following requirements after November 13th: Waiver diesel fuel that is in the possession of parties other than retailers and wholesale purchaser-consumers must meet the highway diesel fuel regulatory requirements no later than December 28, 2005, and retailers and wholesale purchaser-consumers may continue selling or dispensing waiver diesel fuel until their supplies are depleted.

Pursuant to this waiver regulated parties may commingle waiver diesel fuel and the highway low sulfur diesel fuel (e.g., in terminal storage tanks). However, to the extent practicable and consistent with supplying market demands for highway diesel fuel (i.e., where tankage is available), regulated parties should take steps to segregate and supply diesel fuel that meets the highway diesel fuel regulations.

If you have questions please call me, or your staff may call Adam M. Kushner at 202-564-2260.

Sincerely,

A handwritten signature in dark ink, appearing to read 'S. Johnson', written over the typed name.

Stephen L. Johnson

cc: Secretary Samuel W. Bodman, Department of Energy