



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

October 4, 2005

THE ADMINISTRATOR

The Honorable Haley Barbour  
Office of the Governor  
P.O. Box 139  
Jackson, Mississippi 39205

Re: Fuel Waiver Concerning Diesel Fuel

Dear Governor Barbour:

On September 13, 2005, pursuant to section 211(c)(4)(C) of the Clean Air Act, I waived the diesel sulfur requirements under section 211(g) & (i) of the CAA and the regulations promulgated thereunder at 40 C.F.R. Part 80 (the highway diesel fuel requirements) for the Petroleum Administration for Defense Districts (PADDs) I,<sup>1</sup> III,<sup>2</sup> and the State of Tennessee. Subsequently, on September 30, 2005, I issued a waiver to add the Commonwealth of Kentucky to the states covered by my September 13, 2005, waiver. The September 13 and 30, 2005, waivers, which are in effect through October 5, 2005, were issued because of shortages of highway diesel fuel that resulted from Hurricanes Katrina and Rita. The highway diesel fuel regulations require motor vehicle diesel fuel to have a sulfur content that does not exceed 500 parts per million (ppm) and be free of visible evidence of red dye.

The U.S. Environmental Protection Agency, in consultation with the U.S. Department of Energy, has continued to evaluate the prospect of highway diesel fuel supply problems as a result of both Hurricanes Katrina and Rita. Based on this evaluation, I have determined that an "extreme and unusual fuel supply circumstance" will continue to exist after October 5, 2005, that prevents the distribution of an adequate supply of compliant highway diesel fuel to consumers in PADD III and the following states: Virginia, North Carolina, South Carolina, Georgia, Florida,

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<sup>1</sup> PADD I includes the District of Columbia and the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Virginia, North Carolina, South Carolina, Georgia, and Florida.

<sup>2</sup> PADD III includes the following states: New Mexico, Texas, Louisiana, Mississippi, Alabama and Arkansas.

PADD III and the following states: Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee and Kentucky. 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.

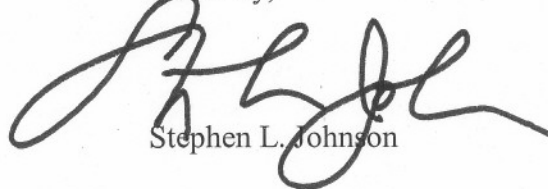
We recognize the environmental and operational importance of the highway diesel fuel requirements, particularly as the requirements relate to diesel engines. However, to minimize or prevent problems with the supply of diesel fuel, I am today issuing this waiver of the highway diesel sulfur requirements 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 PADD III and the following states: Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee and Kentucky. This waiver of the highway diesel fuel requirements is effective upon the expiration of the September 13 and 30, 2005, waivers and will remain in effect through 11:59 p.m. on October 25, 2005.

After October 25, 2005, refiners and importers may not produce or import waiver diesel fuel. However, any waiver diesel fuel that is in the distribution system on October 25, 2005, may be distributed and sold until the supply is depleted. Waiver diesel fuel is subject to the following requirements after October 25, 2005: Diesel fuel intended for fueling highway motor vehicles in the possession of parties other than retailers and wholesale purchaser-consumers must meet the highway diesel fuel regulatory requirements no later than December 10, 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, Director of the Air Enforcement Division, at (202) 564-2260.

Sincerely,



Stephen L. Johnson

cc: Secretary Samuel W. Bodman, Department of Energy