



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

September 13, 2005

THE ADMINISTRATOR

The Honorable Robert Riley
Office of the Governor
State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Re: Fuel Waiver Concerning Diesel Fuel

Dear Governor Riley:

On August 31, 2005, pursuant to Section 211(c)(4)(C) of the Clean Air Act (CAA), I waived the diesel sulfur requirements under Sections 211(g) & (i) of the CAA and the regulations promulgated thereunder at 40 C.F.R. Part 80 (the highway diesel fuel requirements), for all fifty states, U.S. territories, and the District of Columbia. The August 31, 2005, waiver, which expires at midnight on September 15, 2005, was issued because of shortages of highway diesel fuel that resulted from Hurricane Katrina. 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.

EPA, in consultation with the Department of Energy, has continued to evaluate the prospect of highway diesel fuel supply problems as a result of Hurricane Katrina. Based on this evaluation, I have determined that an "extreme and unusual fuel supply circumstance" will continue to exist after September 15, 2005, that prevents the distribution of an adequate supply of compliant highway diesel fuel to consumers in Petroleum Administration for Defense Districts (PADDs) I and III¹ and the State of Tennessee. CAA § 211 (c)(4)(C). This fuel circumstance is the result of Hurricane Katrina, a natural disaster 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.

¹ 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. PADD III includes the following states: New Mexico, Texas, Louisiana, Mississippi, Alabama and Arkansas.

Therefore, to minimize or prevent problems with the supply of diesel fuel, I am issuing this second 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 PADDs I and III plus the State of Tennessee. This second waiver is effective upon expiration of the first waiver and will remain in effect through 11:59 p.m. on October 5, 2005.

After October 5, 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 5, 2005, may be distributed and sold until the supply is depleted. Waiver diesel fuel is subject to the following requirements after October 5th: 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 requirements no later than November 20, 2005, and retailers and wholesale purchaser-consumers may continue selling or dispensing waiver diesel fuel until their supplies are depleted.

The use of diesel fuel that meets the 500 ppm sulfur standard is very important in meeting environmental and operational requirements for diesel engines. Accordingly, 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 500 ppm sulfur standard.

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 printed name.

Stephen L. Johnson

cc: Secretary Samuel W. Bodman, Department of Energy