



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

SEP 15 2008

THE ADMINISTRATOR

The Honorable Rick Perry
Governor
State of Texas
P.O. Box 12428
Austin, Texas 76711

Re: September 2008 Fuel Waiver Concerning TxLED Fuel

Dear Governor Perry:

This is in response to the September 14, 2008 request made on behalf of the State of Texas by Mark Vickery, Executive Director of the Texas Commission on Environmental Quality, that the U.S. Environmental Protection Agency waive certain requirements under the Clean Air Act (CAA) for diesel fuel in Texas. Specifically, EPA is requested to waive the requirement that Texas Low Emission Diesel (TxLED) fuel be sold and distributed in portions of eastern Texas, as the result of the disruption in the supply of fuel caused by Hurricanes Gustav and Ike. As you know, the requirements of Texas' federally-approved State Implementation Plan require TxLED to be sold in a 110-county area¹ of Texas (the "TxLED Counties"). *See* 70 Fed. Reg. 17321 (April 6, 2005). TxLED is a Texas-specific diesel fuel that is required only in the TxLED Counties, and nowhere else in the country. The requested waiver would allow federal Ultra Low Sulfur Diesel (ULSD) with a maximum sulfur content of 15 parts per million (ppm) to be used in the TxLED Counties for approximately a two-week period. *See* 40 C.F.R. Part 80, Subpart I. EPA has determined, and the Department of Energy (DOE) concurs, that it is necessary to take action to minimize or prevent disruption of Texas' diesel fuel supply. By this letter, I am granting a waiver of the TxLED requirements in Texas, as provided below.

¹ The "TxLED Counties" are as follows: The Houston-Galveston-Brazoria area (the counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller); the Beaumont-Port Arthur area (the counties of Hardin, Jefferson and Orange); the Dallas-Fort Worth area (the counties of Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker and Rockwall); and the counties of Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise and Wood.

EPA, in consultation with DOE, has been evaluating the impact of supplies of TxLED as the result of disruptions caused both by Hurricanes Gustav and Ike. Widespread power outages and refinery disruptions in the Gulf area following the recent hurricanes have combined to constrain supplies of TxLED to the TxLED Counties. Several of the Gulf-area refineries and terminals that provide TxLED are still shutdown due to damage and/or power outages. Restarts and restoration of refineries and terminals supplying TxLED are currently expected to take a week or more, and the available supply of TxLED will not be sufficient to supply the TxLED Counties until the refineries and terminals providing TxLED are restored to operational condition. As a result of these continuing impacts of Hurricanes Gustav and Ike, EPA has determined, and DOE concurs, that it is necessary to take the following action to minimize or prevent an inadequate supply of TxLED to the TxLED Counties.

I have determined that an "extreme and unusual fuel supply circumstance" exists that will prevent the distribution of an adequate supply of TxLED to consumers in the TxLED Counties in Texas. CAA § 211(c)(4)(C)(ii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(I). This extreme and unusual fuel circumstance is the result of Hurricanes Gustav and Ike, 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 suppliers of the fuel to this area. CAA § 211(c)(4)(C)(ii)(II), 42 U.S.C. § 7545(c)(4)(C)(ii)(II). Furthermore, I have determined that it is in the public interest to grant this waiver and that this waiver applies to the smallest geographic area necessary to address the fuel supply circumstances. CAA § 211(c)(4)(C)(ii)(III) and (iii)(I), 42 U.S.C. § 7545(c)(4)(C)(ii)(III) and (iii)(I).

Therefore, to minimize or prevent problems with the supply of TxLED, I am today issuing this waiver of the TxLED requirements in TxLED Counties in Texas. Under this waiver, EPA will allow regulated parties to use federally-compliant ULSD in the TxLED Counties. This waiver is effective immediately and will continue through 11:59 p.m. on September 30, 2008. Retail outlets and wholesale purchaser-consumers that receive TxLED under this waiver may continue selling or dispensing this fuel after September 30th, until their supplies are depleted.

This waiver only authorizes the distribution and sale of ULSD in the TxLED Counties. This waiver does not authorize the use of undyed highway diesel fuel nor dyed non-road diesel fuel meeting the 500 ppm sulfur standard found at 40 C.F.R. Part 80, Subpart I in the TxLED Counties.

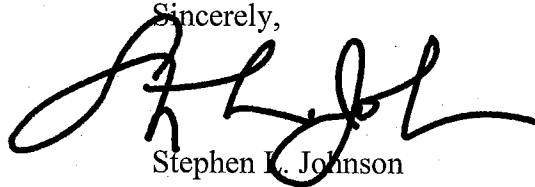
To the extent practicable and as supplies are available, regulated parties should supply and/or dispense TxLED prior to distributing or using ULSD under this waiver. Pursuant to this waiver regulated parties may commingle ULSD and TxLED (*e.g.*, in terminal storage tanks) where necessary. However, to the extent practicable and consistent with supplying market demands (*i.e.*, where tankage is available) regulated parties should take steps to segregate TxLED and ULSD.

After September 30, 2008, refiners and importers may not produce or import ULSD for use in the TxLED Counties. However, any ULSD for use in the TxLED

Counties that is in the distribution system on September 30, 2008 may be distributed and sold until the supply is depleted. ULSD that is in the possession of parties other than retailers and wholesale purchaser-consumers must meet the TxLED requirements by no later than October 15, 2008. Retailers and wholesale purchaser-consumers may continue selling or dispensing ULSD until their supplies are depleted.

EPA will continue to work with DOE and affected states to monitor the impact of Hurricanes Gustav and Ike on the TxLED supply situation in eastern Texas. If you have questions you may call me, or your staff may call Adam M. Kushner at (202) 564-2260.

Sincerely,

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

Stephen L. Johnson

cc: The Honorable Samuel W. Bodman
Secretary of Energy