



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

SEP 27 2005

THE ADMINISTRATOR

Governor Rick Perry
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

Re: Texas Low Emission Diesel Fuel Waiver

Dear Governor:

On September 23, 2005, the Texas Commission on Environmental Quality (TCEQ) requested that the United States Environmental Protection Agency (EPA) issue a waiver to extend the compliance dates of the Texas Low-Emission Diesel (TXLED) requirements in its Federally-enforceable State Implementation Plan (SIP) for 30 days. As a result of Hurricane Rita, Texas is experiencing shortages of diesel fuel due to the temporary shutdown of refineries and the evacuations of Texas' coastal areas. As you know, on April 6, 2005, EPA approved the TXLED program under the Texas SIP. 70 Fed. Reg. 17,321 (April 6, 2005). The SIP requires that producers and importers comply with the TXLED program beginning October 1, 2005, bulk plant distribution facilities beginning November 15, 2005, and retail fuel dispensing outlets, wholesale bulk purchaser-consumer facilities and all other affected persons beginning January 1, 2006. Id. On September 23, 2005, TCEQ granted enforcement discretion that extended the applicable effective dates of the State's TXLED program by 30 days.

EPA, in consultation with the Department of Energy and TCEQ continues to evaluate the prospect of diesel fuel supply problems being experienced as a result of Hurricane Rita. Based on this evaluation, I have determined that an "extreme and unusual fuel supply circumstance" exists that will prevent the distribution of an adequate supply of TXLED. CAA §211(c)(4)(C). This fuel circumstance is the result of Hurricane Rita, 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 the fuel to this area. Id. Furthermore, I have determined that it is in the public interest to grant this waiver.

I recognize the environmental benefits of the TXLED program. However, to minimize or prevent problems with the supply of diesel fuel, I am today issuing this waiver of the TXLED requirements until midnight on October 21, 2005 for producers and importers, December 5, 2005 for bulk plant distribution facilities, and January 21, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser-consumer facilities and all other affected persons. While the

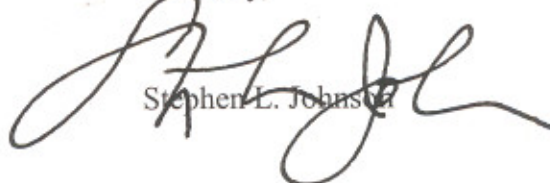
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provisions of the CAA § 211(c)(4)(C) limit this waiver to a maximum of 20 days, I recognize that the conditions that give rise to the need for this waiver may continue for some time. EPA will continue to monitor the situation and will issue a second waiver if appropriate.

If you have questions please 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. Johnston", written over the printed name.

Stephen L. Johnston

Cc: Secretary Samuel W. Bodman, Department of Energy