



E. SCOTT PRUITT
ADMINISTRATOR

August 29, 2017

The Honorable Greg Abbott
Governor
State of Texas
P.O. Box 12428
Austin, Texas 78711-2428

Re: 2017 Fuel Waiver Concerning the Use of Red Dyed 15 ppm Non-Road Diesel Locomotive and Marine Fuel in the State of Texas

Dear Governor Abbott:

On August 29, 2017, I received a request for a waiver under the Clean Air Act (CAA) made on your behalf to allow the use of red dyed 15 parts per million (ppm) non-road locomotive and marine (NRLM) diesel fuel in diesel-powered highway vehicles in certain Texas counties impacted by Hurricane Harvey, referenced in footnote six of the EPA's August 26, 2017 expanded waiver for Texas.¹ In your request, you explained that this limited waiver is needed because there is not a sufficient supply of highway diesel fuel for these vehicles, which are needed for emergency response and disaster recovery as a result of Hurricane Harvey.²

As you know, regulations promulgated under the CAA require the use of Ultra Low Sulfur Diesel (ULSD) fuel meeting 15 ppm sulfur specifications in diesel-powered highway vehicles. The regulations also require diesel fuel used in highway vehicles to be free of visible evidence of dye solvent red 164 (which has a characteristic red color in diesel fuel), except for motor vehicle diesel fuel that is used in a manner that is tax exempt under section 4082 of the Internal Revenue Code. *See* 40 C.F.R. § 80.520. Refineries in the immediately impacted areas remain shut-down, and the storm has caused significant and widespread destruction, including power outages and damage to

¹ Refer to the EPA's expanded waiver for Texas issued on August 26, 2017 at <https://www.epa.gov/sites/production/files/2017-08/documents/expandedtexasfuelswaiver2017.pdf>.

² For the purpose of this letter, the term "highway vehicle" means "motor vehicle" as defined in Section 216 of the CAA, 42 U.S.C § 7550(2) and highway diesel fuel means "motor vehicle diesel fuel" defined at 40 C.F.R. § 80.2(y).

infrastructure. The effect of the storm damage, evacuations, emergency response and recovery needs has resulted in a shortage of compliant highway diesel fuel in the State of Texas.

The U.S. Environmental Protection Agency, in consultation with the U.S. Department of Energy, has evaluated the impact of fuel supplies as the result of disruptions to the fuel distribution system. Based on this evaluation, the EPA has determined, and the DOE concurs, that it is necessary to take the following action to minimize or prevent disruption of the supply of diesel fuel for diesel-powered highway vehicles in these areas.

I have determined that an “extreme and unusual fuel [] supply circumstance” exists that will prevent the distribution of an adequate supply of compliant fuel for use in diesel-powered highway vehicles in the State of Texas that are needed for emergency response and disaster recovery as a result of Hurricane Harvey. 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 Hurricane Harvey, 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 suppliers of the fuel to these areas. 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 disruptions to the supply of fuel for diesel-powered highway vehicles that are operated for emergency response and disaster recovery, I am issuing this limited waiver of the highway diesel fuel red dye requirements. Under this waiver, the EPA will allow the sale, distribution and use of red dyed NRLM diesel fuel in the State of Texas for use in highway diesel vehicles, but the diesel fuel must meet the 15 ppm standard set forth at 40 C.F.R. § 80.520.

This waiver is effective immediately and will continue through September 15, 2017. Diesel fuel distributed under this waiver may not be introduced into terminal storage tanks from which diesel is dispensed into trucks for distribution to retail outlets after September 15, 2017. Any diesel meeting the conditions of this waiver that is stored in terminal storage tanks for distribution to retail outlets and wholesale purchaser-consumers in Texas on September 15, 2017, may be distributed and sold until the supply is depleted. Likewise, retailers and wholesale purchaser-consumers in these areas may continue selling or dispensing diesel fuel that meets the conditions of this waiver after September 15, 2017, until their supplies are depleted. This waiver applies only to the applicable federal requirements cited above. Please note that the EPA does not have authority to waive any requirements by the U.S. Department of the Treasury and this waiver does not extend to applicable Internal Revenue Service regulations.

The EPA will continue to work with the DOE and affected states to monitor the impact of Hurricane Harvey on the fuel supply situation. This waiver applies only to the applicable federal requirements cited above. Other state or local requirements or restrictions related to this matter may need to be addressed by the appropriate authorities. Should conditions warrant, this waiver may be modified, terminated or extended as warranted. If you have questions you may call me, or your staff may call Phillip A. Brooks at (202) 564-0652.

Respectfully yours,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt". The signature is stylized with a large, sweeping loop at the beginning and a long horizontal stroke extending to the right.

E. Scott Pruitt

cc: The Honorable Rick Perry, Secretary of Energy
The Honorable Steven Terner Mnuchin, Secretary of the Treasury
Richard Hyde, P.E., Executive Director, Texas Commission on Environmental Quality
John P. Moriarty, Acting Associate Chief Counsel, Internal Revenue Service