



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

OFFICE OF
THE ADMINISTRATOR

October 12, 2018

The Honorable Rick Scott
Governor of Florida
PL 05 The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

Re: 2018 Fuel Waiver Concerning the Use of Red Dyed 15 ppm Non-Road Diesel Locomotive in the State of Florida

Dear Governor Scott:

On October 12, 2018, 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 utility, emergency response and other diesel-powered highway vehicles responding to/assisting in recovery efforts in the Florida Panhandle area (“emergency response vehicles”). The request explains that this waiver is needed due to diesel fuel supply interruptions caused by Hurricane Michael, a Category 4 storm that has caused significant supply and power disruptions to multiple populations centers. Further, your request stated that this limited waiver is needed because there is not a sufficient supply of highway diesel fuel for emergency response vehicles.¹

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. The fuel supply situation in Florida has been impacted due to Hurricane Michael, and the emergency operations and recovery efforts now underway will continue to deplete supplies of compliant highway diesel fuel in the State of Florida.

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

¹ 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).

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 emergency response vehicles.

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 emergency response vehicles due to Hurricane Michael. 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 a Category 4 hurricane 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 the State. 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 emergency response vehicles, 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 Florida for use in emergency response vehicles, but the diesel fuel must meet the 15ppm standard set forth at 40 C.F.R. § 80.520.

This waiver is effective immediately and will continue through October 26, 2018. 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 October 26, 2018. 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 Florida on October 26, 2018, may be distributed and sold until the supply is depleted. Likewise, retailers and wholesale purchaser-consumers in the State may continue selling or dispensing diesel fuel that meets the conditions of this waiver after October 26, 2018, 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 Michael 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 "Andrew R. Wheeler", with a long horizontal flourish extending to the right.

Andrew R. Wheeler
Acting Administrator

cc: The Honorable Rick Perry, Secretary of Energy
The Honorable Steven Terner Mnuchin, Secretary of the Treasury
Jeffery F. Koerner, Director, Florida Division of Air Resource Management
John P. Moriarty, Acting Associate Chief Counsel, Internal Revenue Service