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

JUL 8 2005

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Allan F. Bedwell
Deputy Secretary
Regulatory Programs
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Re: Enforcement Discretion Concerning Diesel Fuel and Gasoline for the State of Florida

Dear Mr. Bedwell:

The United States Environmental Protection Agency (EPA) has been working with the Florida Department of Environmental Protection (Florida DEP) to evaluate the gasoline and diesel fuel shortages being experienced in the State of Florida as a result of the approach of Hurricane Dennis. Based on this evaluation, EPA and Florida DEP have concluded that shortages of these fuels currently exist, and that these shortages may become worse as the storm approaches Florida.

As you know, under the Clean Air Act (CAA) section 211(g), (h) and (i), 42 U.S.C. §§ 7545(g), (h) and (i), and the regulations promulgated thereunder at 40 C.F.R. Part 80, motor vehicle diesel fuel must have a sulfur content that does not exceed 500 parts per million (ppm) and be free of visible evidence of red dye. In addition, gasoline in Hillsborough, Pinellas, Broward, Dade, Duval and Palm Beach counties is required to have a Reid vapor pressure (RVP) of no more than 7.8 pounds per square inch (psi) during the high ozone season fuels control period. Gasoline in all other Florida counties is subject to a 9.0 psi RVP standard.

Because of the current and expected shortage of motor vehicle diesel fuel meeting the 500 ppm sulfur standard, EPA will exercise its enforcement discretion to temporarily allow regulated parties to supply motor vehicle diesel fuel having a sulfur content greater than 500 ppm with visible evidence of red dye to Florida counties located west of the Apalachicola River. Further, because of the shortage of gasoline meeting the 7.8 psi RVP standard, EPA will exercise its enforcement discretion to temporarily allow regulated parties to supply gasoline meeting a RVP standard of 9.0 psi in Hillsborough and Pinellas counties. This exercise of enforcement discretion is effective immediately and will continue until midnight on Monday, July 18, 2005. However, retail outlets or wholesale purchaser-consumers that receive motor vehicle diesel fuel

having a sulfur content greater than 500 ppm with visible evidence of red dye, or that receive gasoline having an RVP up to 9.0 psi under the terms of this waiver may continue selling or dispensing this fuel after July 18, 2005, until their supplies are depleted.

To the extent practicable, regulated parties must take all reasonable steps to provide compliant gasoline and diesel fuel for use within the State of Florida. Thus, regulated parties must use compliant fuel that is available before using any non-compliant fuel, and regulated parties who transport fuel into the State of Florida must take reasonable steps to transport enough compliant fuel to meet expected demand.

If a regulated party elects to supply motor vehicle diesel fuel having a sulfur content greater than 500 ppm, or to supply gasoline having an RVP greater than 7.8 psi in the above-named counties, to retail outlets or wholesale facilities under this letter, the party must submit a written report to EPA no later than August 15, 2005, which indicates the total volume of motor vehicle diesel fuel or gasoline not meeting the 7.8 psi RVP standard supplied to these retailers and wholesale facilities pursuant to this waiver, on a per day basis. These reports must be sent to the following address:

Adam M. Kushner, Director
Air Enforcement Division
Mail Code 2242A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

If you have questions, please call Mr. George Lawrence, Chief, Mobile Source Enforcement Branch, at (202) 564-1307.

Sincerely,

Thomas V. Skinner
Acting Assistant Administrator