



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

OCT 25 2005

THE ADMINISTRATOR

The Honorable Ernie Fletcher  
Office of the Governor  
State Capitol  
700 Capitol Avenue  
Frankfort, Kentucky 40601

Re: Fuel Waiver Concerning Diesel Fuel in the State of Kentucky

Dear Governor Fletcher:

I am writing in response to the October 24, 2005 request of Gregory T. Guess, Assistant Director of the Office of Energy Policy for the Commonwealth of Kentucky, for an extension of the waiver of the highway diesel fuel requirements in Kentucky. As you know, on October 4, 2005, as a result of Hurricanes Katrina and Rita, I issued a waiver of the highway diesel fuel requirements in a number of states on or near the East and Gulf Coasts, including the Commonwealth of Kentucky, effective through October 25, 2005.

The United States Environmental Protection Agency (EPA), in consultation with the Department of Energy, has been evaluating the prospect of highway diesel fuel supply problems in the Commonwealth of Kentucky as a result of Hurricanes Katrina and Rita. Based on this evaluation, I have determined that an "extreme and unusual fuel supply circumstance" will continue to exist after October 25, 2005 that prevents the distribution of an adequate supply of compliant highway diesel fuel to consumers in the Commonwealth of Kentucky. CAA § 211(c)(4)(C). This fuel circumstance is the result of Hurricanes Katrina and Rita, 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 the suppliers of highway diesel fuel. *Id.* Furthermore, I have determined that it is in the public interest to grant this waiver.

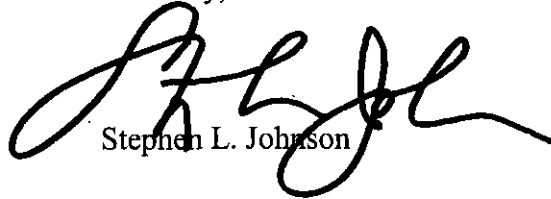
We recognize the environmental and operational importance of the highway diesel fuel requirements, particularly as the requirements relate to diesel engines. However, to minimize or prevent problems with the supply of diesel fuel, I am today issuing this waiver of the highway diesel sulfur requirements and the dye requirements for diesel fuel containing greater than 500 ppm sulfur found at 40 C.F.R. § 80.29 (waiver diesel fuel) for the Commonwealth of Kentucky. This waiver of the highway diesel fuel requirements is effective on October 26, 2005, and will remain in effect through November 14, 2005.

After November 14, 2005, refiners and importers may not produce or import waiver diesel fuel for use in Kentucky. However, any waiver diesel fuel for use in Kentucky that is in the distribution system on November 14<sup>th</sup> may be distributed and sold until the supply is depleted. Waiver diesel fuel is subject to the following requirements after November 14<sup>th</sup>: Waiver diesel fuel that is in the possession of parties other than retailers and wholesale purchaser-consumers must meet the highway diesel fuel regulatory requirements no later than December 29, 2005, and retailers and wholesale purchaser-consumers may continue selling or dispensing waiver diesel fuel until their supplies are depleted.

Pursuant to this waiver regulated parties may commingle waiver diesel fuel and the highway low sulfur diesel fuel (e.g., in terminal storage tanks). However, to the extent practicable and consistent with supplying market demands for highway diesel fuel (i.e., where tankage is available), regulated parties should take steps to segregate and supply diesel fuel that meets the highway diesel fuel regulations.

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. L. Johnson', written over the printed name.

Stephen L. Johnson

cc: Secretary Samuel W. Bodman, Department of Energy