



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

OFFICE OF  
THE ADMINISTRATOR

September 17, 2018

The Honorable Roy Cooper  
Governor of North Carolina  
Office of the Governor  
20301 Mail Service Center  
Raleigh, North Carolina 27699

Re: September 17, 2018 Fuel Waiver Concerning the Use of Red Dyed 15 ppm Non-Road Diesel Locomotive and Marine Fuel in the State of North Carolina

Dear Governor Cooper:

On September 17, 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 diesel-powered highway vehicles in the State of North Carolina. The request explains that this waiver is needed due to diesel fuel supply interruptions given the unprecedented magnitude of rainfall from Hurricane Florence and the resulting devastating impacts to multiple population centers throughout the State.

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 North Carolina and along evacuation routes remains impacted due to Hurricane Florence, and the emergency operations now underway will continue to deplete already constrained supplies of compliant highway diesel fuel.

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 has concurred, 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 the State.

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 North Carolina due to Hurricane Florence. 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 Florence, an event 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 diesel-powered highway vehicles, I am issuing this 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 North Carolina 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 28, 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 September 28, 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 North Carolina on September 28, 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 September 28, 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 Florence 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,



Andrew R. Wheeler  
Acting Administrator

cc: The Honorable Rick Perry, Secretary of Energy