



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

THE ADMINISTRATOR

OCT 10 2008

The Honorable Janet Napolitano
Governor of Arizona
1700 West Washington
Phoenix, Arizona 85007

Re: October 2008 Fuel Waiver Concerning Type 2 "Cleaner Burning Gasoline" Requirements in Portions of Arizona ("Area A")

Dear Governor Napolitano:

This letter responds to the October 10, 2008 request made on your behalf by Stephen A. Owens, Director of the Arizona Department of Environmental Quality, that the U.S. Environmental Protection Agency waive certain requirements for the sale and distribution of "Cleaner Burning Gasoline" (CBG) required by Arizona's federally-approved state implementation plan (SIP) that covers Maricopa County and parts of Pinal and Yavapai Counties, designated as "Area A" under the Arizona SIP.¹ See 69 Fed. Reg. 10161. Specifically, as the result of disruptions to the production and delivery of Arizona CBG that is required under the SIP, Arizona has requested that the deadline for the transition from summertime "Type 1" CBG to wintertime "Type 2" CBG in Area A be extended to from November 1, 2008 to November 15, 2008. The State of Arizona has additionally indicated that it will exercise its enforcement discretion consistent with this request. In response to Arizona's request, EPA has determined, and the United States Department of Energy (DOE) concurs, that it is necessary to take action to minimize or prevent disruption of an adequate supply of gasoline in Arizona. By this letter, I am granting a waiver of Arizona's federally-enforceable "Type 2" CBG requirements, as described below.

EPA, in consultation with DOE, has been evaluating the impact of supplies of gasoline to Arizona as the result of disruptions and damage caused by Hurricane Ike to Gulf-area refineries and pipelines. More than 80% of Arizona's CBG is delivered from pipelines that originate in Texas. The remaining percentage of Arizona gasoline is provided from California-based refineries. All gasoline distributed and sold in

¹ See Ariz. Rev. Stat. § 49-541 (designating boundaries of "Area A"); Ariz. Admin. Code R20-2-701 (designating Area A as a "CBG covered area" under Arizona's SIP).

Area A, including at retail outlets, is required under Arizona's SIP to have completed the transition from summertime "Type 1" CBG to wintertime "Type 2" CBG by November 1, 2008. To meet this requirement, a transition period begins several weeks in advance of the November 1st deadline, during which "Type" 2 CBG is distributed and sold in Area A, in addition to "Type" 1 CBG. During this transition period, any further distribution of "Type 1" CBG in Area A must cease by at least a week to ten days in advance of the November 1st deadline, to ensure that all parties are in compliance with the "Type 2" CBG requirement by the deadline. However, the refinery and pipeline disruptions caused by Hurricane Ike have delayed deliveries of both "Type 1," and in particular "Type 2," CBG to Arizona. In addition to the hurricane-caused disruptions to the production and delivery of Arizona CBG, a fire and multi-day shut-down at the Kinder-Morgan terminal in Pasadena, Texas on September 24, 2008, further delayed deliveries of Arizona CBG through the Longhorn Pipeline. As a result, there are insufficient supplies of "Type 2" currently available for distribution during the transition period to complete the transition to "Type 2" CBG by November 1st. Furthermore, still-delayed deliveries of "Type 1" CBG currently in the Longhorn Pipeline will not arrive in the Arizona area until after the time that the continued distribution of this fuel would otherwise cease, in order to meet the November 1st deadline. This combination of factors is preventing an adequate supply of both "Type 1" CBG and "Type 2" CBG to this area during the transition period prior to November 1st, as well as an adequate supply of Type 2 CBG after November 1st. As a result, EPA has determined, and DOE concurs, that it is necessary to take the following action to minimize or prevent an inadequate supply of gasoline to Arizona Area A.

I have determined that an "extreme and unusual fuel supply circumstance" exists that will prevent the distribution of an adequate supply of gasoline to consumers in Arizona. 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 Ike, a natural disaster that could not reasonably have been foreseen or prevented, as well as the Pasadena terminal fire and shutdown, and is not attributable to a lack of prudent planning on the part of suppliers of the fuel to this area. 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 with the supply of gasoline, I am today issuing this waiver of the federally-enforceable requirement of Arizona's SIP for "Type 2" CBG beginning November 1, 2008. *See* 40 C.F.R. § 52.120 (Arizona SIP). Pursuant to this waiver, the period for transition from "Type 1" CBG to "Type" 2 CBG in Area A is extended to 11:59 p.m. on November 15, 2008. The requirement for "Type 2" CBG in Area A is therefore effective beginning November 16, 2008. However, retailers and wholesale consumer-purchasers that receive "Type 1" CBG under this waiver prior to November 16th may continue to dispense or sell this fuel after this date, until their supplies are depleted.

EPA and DOE will continue to monitor the fuel supply situation in Arizona. If you have questions you may 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: The Honorable Samuel W. Bodman
Secretary of Energy