



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

THE ADMINISTRATOR

OCT 18 2005

The Honorable Rick Perry  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

Re: Second Texas Low Emission Diesel Fuel Waiver

Dear Governor Perry:

I am writing in response to the September 23, 2005 letter of Mark R. Vickery, Deputy Executive Director of the Texas Commission on Environmental Quality (TCEQ), in which he requests that the United States Environmental Protection Agency (EPA) issue a waiver to extend the compliance dates of the Texas Low-Emission Diesel (TXLED) requirements in its Federally-enforceable State Implementation Plan (SIP) for a total of 30 days. The SIP requires that producers and importers comply with the TXLED program beginning October 1, 2005, bulk plant distribution facilities beginning November 15, 2005, and retail fuel dispensing outlets, wholesale bulk purchaser-consumer facilities and all other affected persons beginning January 1, 2006. 70 Fed. Reg. 17,321 (April 6, 2005). On September 23, 2005, TCEQ granted enforcement discretion that extended the applicable effective dates of the State's TXLED program by 30 days.

As you know, on September 27, 2005, I issued a waiver to extend the compliance dates of the TXLED program for 20 days, the maximum amount of time statutorily allowed for fuel waivers. Since issuance of the initial waiver, we have continued to monitor the situation. In addition, TCEQ has continued to request that EPA extend the compliance dates for the TXLED program by a total of 30 days, due to the impacts of Hurricane Rita which have caused a shortage of diesel fuel in Texas.

EPA, in consultation with the Department of Energy and TCEQ continues to evaluate the prospect of diesel fuel supply problems being experienced as a result of Hurricane Rita. Based on this evaluation, I have determined that an "extreme and unusual fuel supply circumstance" exists that will prevent the distribution of an adequate supply of TXLED. CAA §211(c)(4)(C). This fuel circumstance is the result of Hurricane Rita, a natural disaster, that could not reasonable have been foreseen or prevented and is not attributable to a lack of prudent planning on the part of the suppliers of the fuel to this area. Id. Furthermore, I have determined that it is in the public interest to grant this waiver.

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I recognize the environmental benefits of the TXLED program. However, to minimize or prevent problems with the supply of diesel fuel, I am today issuing this second waiver of the TXLED requirements until midnight on October 31, 2005, for producers and importers, December 15, 2005, for bulk plant distribution facilities, and January 31, 2006, for retail fuel dispensing outlets, wholesale bulk purchaser-consumer facilities and all other affected persons.

If you have questions please call me, or your staff may call Adam M. Kushner at 202-564-2260.

Sincerely,



Stephen L. Johnson

cc: Secretary Samuel W. Bodman, Department of Energy