



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

AUG - 1 2014

Ms. Valerie Satterfield Edge
Deputy Attorney General
Delaware Department of Justice
102 West Water Street, 3rd Floor
Dover, Delaware 19904

Dear Ms. Edge:

I wish to inform you of the outcome of the U.S. Environmental Protection Agency's reconsideration of an issue raised in the Delaware Department of Natural Resources and Environmental Control's (DE DNREC) petition for reconsideration of the final rule, "National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines" (RICE NESHAP/ICE NSPS) (78 FR 6674; January 30, 2013). Following promulgation of the January 30, 2013, final rule, the EPA received three petitions for reconsideration pursuant to section 307(d)(7)(B) of the Clean Air Act. The EPA received a petition dated March 29, 2013, from Calpine Corporation and PSEG Power LLC; a petition dated April 1, 2013, from DE DNREC; and a petition dated April 1, 2013, from Clean Air Council, Citizens for Pennsylvania's Future, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Pace Energy and Climate Center, Sierra Club and West Harlem Environmental Action Inc. (Clean Air Council *et al.*).

On September 5, 2013, the EPA announced reconsideration of and requested public comment on the following issue raised in the petitions for reconsideration from DE DNREC and Clean Air Council *et al.*: timing for compliance with the ultra-low-sulfur diesel (ULSD) fuel requirement for emergency compression ignition (CI) engines that operate or are contractually obligated to be available for more than 15 hours per calendar year for the purposes specified in 40 CFR 63.6640(f)(2)(ii) [emergency demand response] and (iii) [deviations of voltage or frequency of 5 percent or more], or that operate for the purpose specified in 40 CFR 63.6640(f)(4)(ii) [local system reliability].¹ This letter addresses only the outcome of the EPA's reconsideration of the issue of timing of the ULSD requirement.

The DE DNREC and Clean Air Council *et al.* petitions for reconsideration indicated that the public lacked an opportunity to comment on the timing of the ULSD requirement. Although the EPA added this provision in response to public comments on the proposal, the EPA granted reconsideration to provide an opportunity for public comment on this issue. The EPA received 23 public comments on the notice of reconsideration that addressed this issue. After careful consideration of the petitions for reconsideration and the public comments received on the notice of reconsideration, the EPA has decided not to propose any changes to the regulations relating to the timing of the ULSD fuel requirement. Following is a discussion of the EPA's final decision on this issue. A summary of the public comments

¹ The EPA also granted reconsideration of two additional issues raised in the other petitions for reconsideration.

received on the September 5, 2013, notice of reconsideration and the EPA's responses to those comments is enclosed (see "Response to Comments Document") and can be found in the rulemaking docket at docket number EPA-HQ-OAR-2008-0708.

Timing for Compliance with the ULSD Fuel Requirement for Emergency Engines

The January 30, 2013, final amendments to the RICE NESHAP included a provision requiring existing stationary emergency CI RICE with a site rating of more than 100 brake horsepower (HP) and a displacement of less than 30 liters per cylinder that operate or are contractually obligated to be available for more than 15 hours per year for the purposes specified in 40 CFR 63.6640(f)(2)(ii) and (iii), or that operate for the purpose specified in 40 CFR 63.6640(f)(4)(ii), to use ULSD fuel beginning January 1, 2015, except that any existing diesel fuel purchased (or otherwise obtained) prior to January 1, 2015, may be used until depleted. The EPA added this fuel requirement in the January 30, 2013, final amendments to the RICE NESHAP and gave sources until January 2015 to meet the requirement. The EPA provided sources until January 2015 to comply to ensure that sources had sufficient lead time to implement the new requirements and make any physical adjustments to engines, including fuel seals, and other facilities such as tanks or other containment structures, as well as any needed adjustments to contracts and other business activities, that may be necessitated by these new requirements.

The petitions for reconsideration from the DE DNREC and Clean Air Council *et al.* requested that the requirement to use ULSD fuel for certain emergency engines take effect immediately. The DE DNREC indicated in the petition that ULSD is already widely available and is likely the only diesel fuel available in most areas. The petition for reconsideration from Clean Air Council *et al.* disagreed with the EPA that significant lead time is needed for facilities to come into compliance with the ULSD fuel requirement and indicated that the EPA had offered no evidence that adjustments would be necessary to operate engines on ULSD. The petition for reconsideration from DE DNREC also expressed concern with the provision allowing depletion of non-ULSD fuel purchased prior to January 2015, and Clean Air Council *et al.* recommended that the EPA only allow the depletion of any non-ULSD that was purchased prior to the date a reconsideration is proposed.

After careful consideration of the issues raised with respect to timing of the ULSD requirement in the petitions for reconsideration and the public comments received on the September 5, 2013, notice of reconsideration, the EPA has decided not to propose any changes to the requirements related to timing of the ULSD requirements. Commenters indicated that a number of facilities are not currently using ULSD and will need lead time to comply with the ULSD requirement. Information from the Energy Information Administration (EIA)² also indicated that a significant percentage of diesel fuel being purchased is not ULSD; the public comments did not provide any specific information to contradict the EIA data. The EPA notes that the record demonstrates that adjustments for ULSD may be necessary. According to the memo in the rulemaking docket, "Summary of Ultra Low Sulfur Diesel Issues with Stationary Internal Combustion Engines" (document number EPA-HQ-OAR-2008-0708-0003), experience with the transition to ULSD for mobile CI engines showed that differences in the aromatic content of ULSD may require replacement of gaskets and seals to prevent fuel-system leaks. Commenters also noted that fuel additives and accelerated preventive maintenance may be necessary to address any differences in the lubricity of ULSD. Commenters indicated that lead time is also necessary so that facilities can also make adjustments to fuel purchase contracts.³ Thus, the record reflects that the lead time provided is appropriate for facilities to come into compliance with the ULSD requirement. In

² U.S. Energy Information Administration. Distillate Fuel Oil and Kerosene Sales by End Use. Available at http://www.eia.gov/dnav/pet/pet_cons_821use_dcu_nus_a.htm.

³ See for example document number EPA-HQ-OAR-2008-0708-1532.

addition, as noted by public commenters, if facilities do not have the ability to use up existing fuel, they will have to drain their tanks and dispose of the non-ULSD fuel in some manner, or operate their engines beyond normal practice to use up their existing supply. These options are not desirable from an environmental or cost perspective. For further discussion of this issue, please see the enclosed response to comments.

We thank you for raising this issue and appreciate your comments and interest in this matter.

Sincerely



Gina McCarthy

Enclosure