



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, . . . 20460

September 7, 2021

THE ADMINISTRATOR

The Honorable John Bel Edwards
Governor of Louisiana
Office of the Governor
P.O. Box 94004
Baton Rouge, Louisiana 70804

Dear Governor Edwards:

I would like to respond to the September 5, 2021, request for a waiver under the Clean Air Act made on your behalf by the Louisiana Department of Environmental Quality to allow the use of distillate Emission Control Area marine fuel in diesel-powered marine vessels and offshore nonroad engines and nonroad equipment supplied at Port Fourchon. In your request, you explain that this limited waiver is needed because there is not a sufficient supply of compliant fuel for these vessels, engines and equipment, which are needed as a result of Hurricane Ida.

Regulations promulgated under the Clean Air Act require the use of ultra-low sulfur diesel fuel meeting 15 parts per million sulfur specifications in certain diesel-powered marine vessels and in diesel-powered nonroad engines and nonroad equipment. These regulations are found at 40 C.F.R. § 1090.305 and epa.gov/diesel-fuel-standards/diesel-fuel-standards-and-rulemakings. Louisiana has declared a state of emergency as a result of Hurricane Ida. Widespread power outages, refinery shutdowns and flooding caused by the hurricane are preventing the distribution of adequate supplies of ultra-low sulfur diesel at Port Fourchon, which is the primary service hub for the Gulf of Mexico oil field. Off-shore crude oil production in the Gulf of Mexico relies heavily on services provided by marine vessels and offshore nonroad engines and nonroad equipment that obtain ultra-low sulfur diesel at Port Fourchon. Accordingly, these services are needed to supply crude oil to refineries for use in the production of gasoline and diesel fuel. A limited waiver of the requirements to sell ultra-low sulfur diesel as described below will allow these services to continue.

The U.S. Environmental Protection Agency and the Department of Energy have been actively monitoring the supply of fuel. The EPA has concluded, with DOE's concurrence, that it is necessary to take action to minimize or prevent disruption of an adequate supply of fuel to consumers. I have determined that an "extreme and unusual fuel [] supply circumstance" exists that will prevent the distribution of an adequate supply of ultra-low sulfur diesel for use in diesel-powered marine vessels and off-shore nonroad engines and nonroad equipment that are needed for disaster recovery and off-shore crude oil production. CAA § 211(c)(4)(C)(ii)(I), 42 U.S.C. § 7454(c)(4)(C)(ii)(I).

This extreme and unusual fuel circumstance is the result of Hurricane Ida, an event that could not reasonably have been foreseen and is not attributable to a lack of prudent planning on the part of suppliers of the fuel to these areas. 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 of fuel for diesel-powered marine vessels and off-shore nonroad engines and nonroad equipment, I am issuing this limited waiver. Under this temporary waiver, the EPA will allow the sale and distribution of non-ultra-low sulfur diesel fuel at Port Fourchon that exceeds the 15 parts per million standard set forth at 40 C.F.R. § 1090.305 and will waive the prohibition at 40 C.F.R. § 1090.315 that Emission Control Area marine fuel must not be sold for use in nonroad equipment under the following conditions:

1. The non-ultra-low sulfur diesel fuel is limited to supplies of distillate Emission Control Area marine fuel that meets the 1,000 parts per million sulfur standard set forth at 40 C.F.R. § 1090.325 that is currently available at Port Fourchon as of the date of this waiver;
2. The non-ultra-low sulfur diesel fuel is used in model year 2010 or earlier marine vessels or offshore nonroad engines or nonroad equipment, or any model year marine vessels or offshore nonroad engines or nonroad equipment above 750 horsepower;
3. The non-ultra-low sulfur diesel fuel is not used in any diesel-powered marine vessels or offshore nonroad engines and nonroad equipment that is equipped with a diesel particulate filter or catalytic emission control technology;
4. Ultra-low sulfur diesel fuel is not reasonably available for use in the marine vessel or offshore nonroad engine or nonroad equipment;
5. The non-ultra-low sulfur diesel fuel is segregated from any fuel that is sold or labeled as ultra-low sulfur diesel; and
6. To prevent or minimize instances of misfuelling, persons distributing and dispensing non-ultra-low sulfur diesel fuel under this waiver must provide the following warning to the marine vessels and offshore nonroad engines and nonroad equipment owners or operators using non-ultra-low sulfur diesel fuel:

“WARNING: USE OF DIESEL FUEL EXCEEDING THE 15 PPM SULFUR STANDARD IN ANY VEHICLE/ENGINE EQUIPPED WITH A DIESEL PARTICULATE FILTER OR CATALYTIC EMISSION CONTROL DEVICE MAY CAUSE SERIOUS DAMAGE TO THE VEHICLE/ENGINE AND ITS EMISSIONS CONTROL COMPONENTS. ANY PARTY THAT USES ANY FUEL ALLOWED UNDER THIS WAIVER ASSUMES ALL RESPONSIBILITY FOR DAMAGE TO THE VEHICLE/ENGINE.”

Providing the warning in condition 6, shall be a substitute for compliance with the product transfer document requirements in 40 C.F.R. § 1090.1115.

The EPA encourages engine owners and operators to contact the engine manufacturers or distributors to determine if any special maintenance practices should be adopted while operating on high sulfur fuel (e.g., a shortened oil change interval).

This waiver is effective immediately and will continue through September 15, 2021. This waiver applies only to the applicable federal requirements cited above for non-ultra-low sulfur diesel fuel sold and distributed at Port Fourchon for use in diesel-powered marine vessels and offshore nonroad engines and nonroad equipment. Other state or local requirements or restrictions related to this matter may need to be addressed by the appropriate authorities. The EPA recognizes that this is an evolving situation that is causing rapid changes to market dynamics. Should conditions warrant, this waiver may be modified, terminated, or extended as appropriate.

If you have questions, I would be most pleased to assist during this difficult situation. Alternatively, your staff may contact Evan Belser, acting director of the Air Enforcement Division at belser.evan@epa.gov or (202) 768-4494.

Sincerely yours,

A handwritten signature in black ink that reads "Michael S. Regan". The signature is written in a cursive, flowing style.

Michael S. Regan

cc: The Honorable Jennifer M. Granholm
Secretary of Energy