



E. SCOTT PRUITT
ADMINISTRATOR

September 6, 2017

The Honorable Rick Scott
Governor of Florida
PL 05 The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

Re: 2017 Fuel Waiver Concerning the Use of Red Dyed 15 ppm Non-Road Diesel Locomotive and Marine Fuel in the State of Florida

Dear Governor Scott:

On September 5, 2017, 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 Florida forecasted to be directly impacted by Hurricane Irma and already impacted by Hurricane Harvey. In your request, you explained that given the unprecedented magnitude of Hurricane Irma, and the variability of meteorological models that show potentially devastating impacts to multiple population centers throughout the state, planning is underway to address evacuation logistics, flooding, seaport and other transportation sector impacts, and associated fuel supply interruptions. Further, your request stated that this limited waiver is needed because there is not a sufficient supply of highway diesel fuel for vehicles that are operated for emergency response, disaster recovery operations and impending evacuations.¹ In addition, state and federal governments have declared states of emergency for Florida, mandatory evacuation orders have been issued for parts of Florida, and large-scale evacuations have already begun from Monroe County and other areas in southern Florida.

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

¹ For the purpose of this letter, the term "highway vehicle" means "motor vehicle" as defined in Section 216 of the CAA, 42 U.S.C § 7550(2) and highway diesel fuel means "motor vehicle diesel fuel" defined at 40 C.F.R. § 80.2(y).

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 Florida and along evacuation routes remains impacted due to Hurricane Harvey, and the evacuations now underway due to Hurricane Irma have and will continue to deplete already constrained supplies of compliant highway diesel fuel in the State of Florida.

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 concurs, 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 Florida that are needed for emergency response and evacuations due to Hurricane Irma. 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 two hurricanes, natural disasters 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 that are operated for emergency response and evacuations, I am issuing this limited 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 Florida 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 22, 2017. 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 22, 2017. 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 Florida on September 22, 2017, 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 22, 2017, 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 Irma 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,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a long horizontal flourish extending to the right.

E. Scott Pruitt

cc: The Honorable Rick Perry, Secretary of Energy
The Honorable Steven Terner Mnuchin, Secretary of the Treasury
Jeffery F. Koerner, Director, Florida Division of Air Resource Management
John P. Moriarty, Acting Associate Chief Counsel, Internal Revenue Service