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

NOV 16 2012

THE ADMINISTRATOR

The Honorable Christopher Christie
Governor
State of New Jersey
The State House
P.O. Box 001
Trenton, New Jersey 08625

The Honorable Andrew Cuomo
Governor
State of New York
State Capitol
Albany, New York 12224

Re: October and November 2012 Fuel Waivers Related to Hurricane Sandy

Dear Governors:

On October 31, November 1, and November 2, 2012, following the damage caused by Hurricane Sandy, I waived certain Clean Air Act (CAA) requirements related to the sale, distribution, and use of reformulated gasoline (RFG) and ultra-low sulfur diesel (ULSD) fuel in a number of states impacted by the hurricane. I have received requests on your behalf to extend these waivers to address continuing storm-related fuel supply impacts in the State of New Jersey, the five boroughs of New York City, and Nassau, Suffolk, Rockland, and Westchester counties in the State of New York (the "Affected Areas").

As you know, regulations promulgated under the CAA require gasoline sold in certain areas of New Jersey and New York to meet RFG requirements. The RFG regulations at 40 C.F.R. § 80.78(a)(7) also prohibit any person from combining any reformulated gasoline blendstock for oxygenate blending (RBOB) with any other gasoline, blendstock, or oxygenate, unless certain conditions are met. Further, regulations promulgated under the CAA require the use of ULSD fuel meeting 15 parts per million (ppm) sulfur specifications in diesel-powered highway and nonroad vehicles and nonroad equipment.

The storm surge and flooding associated with Hurricane Sandy significantly damaged the electrical system and the petroleum storage and distribution facilities in the Affected Areas. This damage continues to prevent the distribution of adequate supplies of RFG and ULSD fuel throughout the Affected Areas.

The EPA, in consultation with the Department of Energy (DOE), has evaluated the continuing impact to fuel supplies resulting from the disruptions to the fuel distribution system. Based on this evaluation, the

EPA has determined, and DOE concurs, that it is necessary to take the following actions to minimize or prevent disruption to the supply of gasoline and diesel fuel to the Affected Areas.

I have determined that an "extreme and unusual fuel supply circumstance" exists that will prevent the distribution of an adequate supply of gasoline and diesel fuel to consumers. 42 U.S.C. § 7545(c)(4)(C)(ii)(I). This extreme and unusual fuel circumstance is the result of Hurricane Sandy, a natural disaster 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 these areas. 42 U.S.C. § 7545(c)(4)(C)(ii)(II). Further, 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. 42 U.S.C. § 7545(c)(4)(C)(ii)(III) and (iii)(I).

Therefore, to minimize or prevent disruptions to the supply of gasoline and to the supply of fuel for diesel-powered highway and nonroad vehicles and nonroad equipment that are operated in the public interest for emergency response and disaster recovery, I am issuing this limited waiver of certain of the federal RFG requirements and diesel fuel sulfur standards.

RFG Requirements

The EPA will continue to allow regulated parties to sell conventional gasoline (CG) in the Affected Areas. The provisions at 40 C.F.R. § 80.78(a)(7) that prohibit any person from combining any RBOB with any other gasoline, blendstock, or oxygenate, unless certain conditions are met, continue to be waived. This waiver of the prohibitions at 40 C.F.R. § 80.78(a)(7) only applies to the Affected Areas.

This RFG requirements waiver will continue through December 7, 2012. After December 7, 2012, refiners and importers may not produce or import gasoline that does not meet the RFG standards for distribution or sale in the Affected Areas. However, any CG for use in the Affected Areas that is in the distribution system on December 7, 2012, may be distributed and sold until the supply is depleted. CG that is in the possession of parties other than retailers and wholesale purchaser-consumers must meet the RFG requirements by no later than January 7, 2013. Retailers and wholesale purchaser-consumers may continue selling or dispensing CG until their supplies are depleted.

Diesel Fuel Sulfur Requirements

The EPA will continue to allow the sale, distribution and use of diesel fuel in the Affected Areas that exceeds the 15 ppm standard set forth at 40 C.F.R. §§ 80.510 and 80.520 and that may not meet the marker and red dye requirements in 40 C.F.R. §§ 80.510 and 80.520 under the following limited conditions:

1. The categories of diesel-powered highway and nonroad vehicles and nonroad equipment and fueling stations that are operated in the public interest for emergency response and disaster recovery and that are eligible under this waiver must be designated by the States of New Jersey and New York, respectively;

2. The non-ULSD fuel is used in model year 2006 and earlier diesel-powered highway vehicles;

3. The non-ULSD fuel is used in model year 2010 or earlier nonroad vehicles or equipment, or any model year nonroad vehicles or equipment above 750 horsepower;

4. ULSD fuel is not reasonably available for use in the vehicle or equipment;

5. The non-ULSD fuel is not used in any diesel-powered highway and nonroad vehicles and nonroad equipment that is equipped with a diesel particulate filter or catalytic emission control technology;

6. The non-ULSD fuel is segregated from any fuel that is sold or labeled as ULSD fuel until the non-ULSD fuel is used in the highway vehicle or nonroad equipment; and

7. To prevent or minimize instances of misfueling, persons distributing and dispensing non-ULSD fuel under this waiver must provide the following warning to the diesel-powered highway and nonroad vehicles and nonroad equipment owners or operators using non-ULSD 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 this warning is a substitute for compliance with the product transfer document requirements in 40 C.F.R. § 80.590.

8. Heating oil and nonroad fuel with less than 15 ppm sulfur that contains red dye may be used in any model year diesel-powered highway and nonroad vehicles and nonroad equipment designated by the States of New Jersey and New York, respectively.

This USLD fuel requirements waiver will continue through December 7, 2012. Any diesel fuel authorized under this waiver and remaining in any diesel-powered highway and nonroad vehicles and nonroad equipment after December 7, 2012, may continue to be used until the fuel has been consumed.

The EPA will continue to work with the DOE and affected states to monitor the impact of Hurricane Sandy on the fuel supply situation. Should conditions warrant, this waiver may be modified, terminated or extended, as appropriate. The fuel waivers and associated requirements and limitations set forth in the October 31, November 1, and November 2, 2012 fuel waiver letters continue to be effective through November 20, 2012.

If you have questions you may call me, or your staff may call Phillip Brooks at (202) 564-0652.

Sincerely,

Lisa P. Jackson

cc: The Honorable Steven Chu
Secretary of Energy