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

NOV - 2 2012

THE ADMINISTRATOR

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

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Room 225
Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: November 2012 Fuel Waiver Concerning the Use of Diesel Fuel for Disaster Recovery in the State of New York and the Commonwealth of Pennsylvania

Dear Governors Cuomo and Corbett:

I received requests for a waiver under the Clean Air Act (CAA) made on your behalf to allow the use of heating oil in diesel-powered highway and nonroad vehicles and nonroad equipment involved in disaster recovery efforts in the New York metropolitan area and in the Commonwealth of Pennsylvania. In your requests, you explained that this limited waiver is needed because there is not a sufficient supply of compliant fuel for these vehicles and equipment, which are needed for emergency response and disaster recovery as a result of Hurricane Sandy.

As you know, regulations promulgated under the CAA require the use of Ultra Low Sulfur Diesel (ULSD) fuel meeting 15 parts per million (ppm) sulfur specifications in diesel-powered highway and nonroad vehicles and nonroad equipment. The widespread power outages and flooding caused by Hurricane Sandy have resulted in a shortage of ULSD fuel in certain areas of New York and Pennsylvania.

The United States Environmental Protection Agency (EPA), in consultation with the Department of Energy (DOE), has evaluated the impact on fuel supplies as the result of 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 action to minimize or prevent disruption of the supply of diesel fuel for emergency response diesel-powered highway and nonroad vehicles and nonroad equipment in these areas.

I have determined that an "extreme and unusual fuel supply circumstance" exists that will prevent the distribution of an adequate supply of ULSD fuel for use in diesel-powered highway and nonroad vehicles and nonroad equipment in the New York metropolitan area and in the Commonwealth of Pennsylvania that are needed for emergency response and disaster recovery as a result of Hurricane Sandy. 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). 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. 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 and nonroad vehicles and nonroad equipment that are operated in the public interest for emergency response and disaster recovery (as designated by the State of New York and the Commonwealth of Pennsylvania, respectively), I am issuing this limited waiver of the diesel fuel sulfur standards. Under this waiver, the EPA will allow the sale, distribution and use of diesel fuel in the Commonwealth of Pennsylvania, the five boroughs of New York City, and Nassau, Suffolk, Rockland and Westchester counties in the State of New York 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 (e.g., utility service vehicles, ambulances, and fire trucks) and fueling stations eligible under this waiver shall be designated by the State of New York and the Commonwealth of Pennsylvania, 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 shall be 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 State of New York and the Commonwealth of Pennsylvania, respectively.

This waiver is effective immediately and will continue through November 20, 2012. Any fuel authorized under this waiver and remaining in any diesel-powered highway and nonroad vehicles and nonroad equipment after November 20, 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.

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