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

August 31, 2005

THE ADMINISTRATOR

The Honorable Robert Riley
Office of the Governor
State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Re: Emergency Fuel Waiver Concerning Diesel Fuel and Gasoline, August 2005

Dear Governor Riley:

The United States Environmental Protection Agency, in consultation with the Department of Energy and representatives of the various states, has been working to evaluate the prospect of gasoline and diesel fuel supply problems being experienced in many states as a result of Hurricane Katrina. Based on this evaluation, EPA has decided to take the following actions to minimize or prevent supply disruptions of gasoline and diesel fuel.

**Early Use of Winter Gasoline**

The Clean Air Act and EPA's implementing regulations require the use of low volatility gasoline during the summer months in order to limit the formation of ozone pollution. The regulations requiring the use of low volatility conventional gasoline are found at 40 C.F.R. § 80.27 and the regulations requiring the use of low volatility RFG are set forth at 40 C.F.R. § 80.78. These requirements usually end on September 15 of each year.

In order to increase the supply of gasoline and minimize potential gasoline supply disruptions caused by Hurricane Katrina, EPA is waiving the requirement to sell summer gasoline, effective immediately, throughout all fifty states, its territories and the District of Columbia.

**Use of Diesel Fuel that Exceeds the 500 parts per million (ppm) Sulfur Standard**

The Clean Air Act (CAA) sections 211(g), (h) and (I), 42 U.S.C. §§ 7545(g), (h) and (I), and the regulations promulgated thereunder at 40 C.F.R. Part 80, require motor vehicle diesel fuel to have a sulfur content that does not exceed 500 parts per million (ppm) and be free of visible evidence of red dye. In order to increase the supply of motor vehicle diesel fuel and minimize the potential supply disruptions caused by Hurricane Katrina, EPA will temporarily allow regulated parties to supply motor vehicle diesel fuel having a sulfur content greater than

500 ppm with visible evidence of red dye. This waiver is effective immediately throughout all fifty states, its territories and the District of Columbia and will continue through September 15, 2005. However, retail outlets or wholesale purchaser-consumers that receive motor vehicle diesel fuel having a sulfur content greater than 500 ppm with visible evidence of red dye, under the terms of this waiver may continue selling or dispensing this fuel after September 15, 2005, until their supplies are depleted.

I have determined that an "extreme and unusual fuel supply circumstance" exists that will prevent the distribution of an adequate supply of fuel that meets Federal standards. CAA § 211 (c)(4)(C). This fuel circumstance is the result of Hurricane Katrina, a natural disaster, that could not reasonably have been foreseen or prevented and not attributable to a lack of prudent planning on the part of the suppliers of the fuel to these affected States. Id. Furthermore, I have determined that it is in the public interest to grant this waiver.

To the extent practicable, regulated parties must take all reasonable steps to distribute and sell on-hand inventories of gasoline and diesel fuel that would otherwise meet applicable Federal standards. Thus, regulated parties that distribute and sell gasoline or diesel fuel must use fuel that would meet these standards and that is available before using any fuel covered under this waiver.

If you have questions, please call me, or your staff may contact Adam M. Kushner at 202-564-2260.

Sincerely,

Stephen L. Johnson

cc: Secretary Samuel W. Bodman, Department of Energy