



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

DEC 29 2009

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Charles T. Drevna
President
National Petrochemical & Refiners Association
1667 K Street, NW, Suite 700
Washington, DC 20006

Re: Extension of Exercise of Enforcement Discretion Concerning the Ultra Low Sulfur Diesel Sampling and Testing Consortium

Dear Mr. Drevna:

I am writing regarding the ultra low sulfur diesel (ULSD) fuel requirements that are the subject of United States Environmental Protection Agency (EPA) correspondence dated May 31, 2006 (enclosed), and December 6, 2008 (enclosed). In the 2006 letter, EPA agreed to exercise enforcement discretion to allow compliance flexibility regarding certain ULSD sulfur standard defense provisions at 40 C.F.R. § 80.613. As explained in the 2006 letter, and in an enclosure entitled "Refiner Consortium ULSD Testing Program," we used our enforcement discretion to allow refiners and distributors to use an independent survey association, funded by an industry consortium, to conduct nationwide sampling and testing of ULSD, in lieu of refiner-specific or distributor-specific quality assurance sampling and testing programs at retail outlets, in order to establish the sampling and testing defense element for violations found at retail outlets. This nationwide ULSD program produces statistically significant sampling, and the results of the sampling and testing program are reported to EPA. This program also results in an approach to ULSD sampling and testing that is, on a nationwide basis, more efficient and more uniform than the existing sampling and testing requirements under 40 C.F.R. § 80.613. This program is explained in greater detail in our 2006 letter and the enclosure to that letter.

The exercise of EPA's enforcement discretion as it relates to compliance with the ULSD sulfur standard defense provisions was intended to be a bridge to a rulemaking that has been initiated by EPA. The rule would allow refiners and distributors to use alternative procedures for conducting quality assurance (QA) programs for demonstrating the periodic sampling and testing that would be necessary to assert a defence against allegations of certain diesel fuel sulfur violations. See 40 C.F.R. § 80.613(a)(1), (b) and (d). The exercise of enforcement discretion set forth in the 2006 letter would have expired on December 31, 2008. It was extended through December 31, 2009, by a letter dated December 6, 2008. However, these rule changes have yet to be completed. We now expect the rule to be finalized in early 2010. Since the considerations

that justified the 2006 and 2008 exercises of enforcement discretion have not changed, EPA will extend its exercise of enforcement discretion to allow additional time for completion of the rule changes. Refiners and distributors may continue to use nationwide independent sampling and testing of ULSD through July 31, 2010, or until EPA completes the rule change regarding ULSD sampling and testing quality assurance, whichever is earlier. This extension is also subject to the limitations and conditions that are described in the 2006 letter, which can also be found at: <http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/dieseltech053106.pdf>, and which is attached hereto.

If you have any questions regarding these matters, you may call Erv Pickell of my staff, at (303) 312-7152.

Sincerely,


Cynthia Giles

Enclosures