



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

MAY 31 2006

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Tom Chapple, Director
Division of Air Quality
Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501-2617

Re: Enforcement Discretion Regarding Diesel Fuel in Alaska

Dear Mr. Chapple:

I am writing in response to your May 25, 2006 letter to the U.S. Environmental Protection Agency requesting that EPA exercise its enforcement discretion to allow the use in rural Alaska of diesel fuel that does not meet the 500 parts per million (ppm) sulfur standard, pending an EPA rulemaking adopting an alternative low-sulfur diesel fuel transition program for the State of Alaska.

Section 211(i) of the Clean Air Act (CAA), 42 U.S.C. § 7545(i) and the implementing regulations found at 40 C.F.R. § 80.29, limit the sulfur content in highway diesel fuel sold in most parts of the country to 500 ppm. However, since 1993, EPA has exempted Alaska from the 500 ppm highway diesel fuel sulfur standard because of Alaska's unique geographical, meteorological, air quality and economic factors. See, e.g., 64 Fed. Reg. 34126 (June 25, 1999).

On January 18, 2001, EPA published the final ultra-low sulfur diesel (ULSD) regulations. See, 66 Fed. Reg. 5002. The ULSD regulations, which go into effect beginning June 1, 2006, impose the same diesel sulfur standards nationwide, including in Alaska. On October 13, 2005, EPA published a proposed rule regarding the ULSD requirements in Alaska, 70 Fed. Reg. 59690 (the Alaska ULSD Proposal), and on May 25, 2006, EPA signed a final rule based on this proposal (the Alaska ULSD Rule). The Alaska ULSD Rule will provide additional time, until June 1, 2010, for rural areas of Alaska to meet the 15 parts per million (ppm) ULSD standard. In addition, the Alaska ULSD Rule will extend the exemption from the 500 ppm diesel sulfur standard during this transition period, and require use of pump labels in rural Alaska indicating the presence of high sulfur diesel fuel. However, the Alaska ULSD Rule will not become final until 30 days after its publication in the Federal Register, which will be after June 1, 2006.



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As is explained in the preamble to the Alaska ULSD Proposal, rural Alaska presents a unique situation regarding diesel fuel use. The majority of distillate fuel used in rural Alaska is for stationary sources such as power generation and home heating. Alaska estimates that highway vehicles consume only about one percent of the distillate fuel in rural areas. Heating oil constitutes about 95 percent of distillate usage, and marine engines about four percent. A single grade of distillate fuel generally is distributed to rural Alaska. In order to ensure the fuel can be used in the arctic conditions, the fuel usually is Jet A (which has a pour point of minus 50 degrees Fahrenheit). If the national ULSD requirement were followed, either multiple grades of arctic-suitable fuel would have to be transported and stored, or a single grade of fuel meeting the 15 ppm standard would need to be used. Either approach would represent significant economic hardship for many rural communities in Alaska. The extended transition period for use of ULSD that is contained in the Alaska ULSD Proposal would give communities in rural Alaska until 2010 to decide whether to use only one grade of diesel fuel (i.e., ULSD), or to build additional storage tanks to handle multiple grades of distillate. See, 70 Fed. Reg., at 59697.

Based upon the foregoing, I am exercising my enforcement discretion to allow motor vehicle diesel fuel that is designated for use in, and only is used in, areas of Alaska not accessible by the Federal Aid Highway System (exempt diesel fuel), to not meet the downstream ULSD standards and requirements under 40 C.F.R. Part 80, Subpart I, and the sulfur standards under 40 C.F.R. § 80.29. This exercise of enforcement discretion is further contingent on:


- Exempt diesel fuel not being used in Model Year 2007 and later model year highway vehicles or engines;
- Exempt diesel fuel being segregated from nonexempt highway diesel fuel; and
- Regulated parties meeting the product transfer document requirement in proposed 40 C.F.R. § 69.51(d)(3).

I am further exercising my enforcement discretion to allow the use of diesel fuel in urban areas of Alaska that does not comply with the 500 ppm sulfur standard under 40 C.F.R. § 80.29(a)(1) until the ULSD implementation dates under the Alaska ULSD Rule, and to allow retailers and wholesale purchaser-consumers in all areas of Alaska to dispense highway diesel fuel without meeting the pump labeling requirements set forth in 40 C.F.R. §§ 80.570(a) and (b).

This exercise of enforcement discretion is effective beginning June 1, 2006, and will continue until the effective date of the Alaska ULSD Rule, or until September 1, 2006, whichever is earlier.

If you have any questions regarding this matter, you may call Erv Pickell, Fuels Team Leader, at (303) 236-9506.

Sincerely,



Granta Y. Nakayama