



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

September 13, 2017

The Honorable Rick Scott
Governor of Florida
PL 05 The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

Re: No Action Assurance for the Use of Non-Ultra Low Sulfur Diesel in Limited Diesel-Powered Highway and Nonroad Vehicles and Equipment

Dear Governor Scott:

This letter is in response to the need for a No Action Assurance (NAA) to facilitate utility operators engaged in hurricane response activity impacted by Hurricane Irma. Your letter states that the State of Florida is currently addressing the impacts of Hurricane Irma to the state's power grid. Given the unprecedented magnitude of this storm, and the impacts to multiple population centers throughout the state, acute fuel availability issues have arisen, specifically the availability of Ultra Low Sulfur Diesel (ULSD) fuel for use in response vehicles and equipment operated by Duke Energy Florida (Duke),¹ which is in the process of responding to power outages to more than 875,000 customers. Due to logistical circumstances relating to ongoing weather- and geography-related transportation interruptions caused by the aftermath of Hurricane Irma, Duke is not able to obtain adequate supplies of ULSD needed to operate its fleet of response vehicles.

In light of this emergency situation, EPA will exercise its discretion not to pursue enforcement for violations of 40 C.F.R. § 80.610(e) and associated Subpart I regulations for the use of Duke's diesel reserves of approximately 4 million gallons of dyed diesel fuel (identified as "Marine Gas Oil" in the Certificate of Analysis Job ID 577018-16-0030478 for the Martin Operating Partnership, L.P.) on hand at the Port of Tampa, the Certificate of Analysis for which show sulfur content of between 16 and 18 ppm. This NAA is in effect commencing immediately, and terminates when the 4 million gallons of Marine Gas Oil on hand is expended, or on September 22, 2017, at 11:59 PM EDT, whichever comes first. EPA reserves the right to revoke or modify the

¹ This NAA applies to Duke, utility contractors working on behalf of Duke, and other utilities or utility contractors engaged in hurricane response activities.

NAA if the EPA believes that such action is necessary to protect human health and the environment. This NAA does not apply to any other federal requirements that may apply to regulated activities other than those listed above.

As a condition to this NAA, Duke must limit the use any diesel fuel containing up to 20 ppm of sulfur to on-road response vehicles and non-road equipment owned and operated by Duke, owned and operated by utility contractors working on behalf of Duke, or owned and operated by other utilities or utility contractors engaged in hurricane response activity, and where the manufacturer of Duke's vehicle's engines have confirmed that the engines are capable of operating with fuel containing up to 20 ppm of sulfur without sustaining any damage to the engines or exhaust after-treatment emissions controls devices (e.g., diesel particulate filters, catalytic emissions control technology) that could not be reversed through proper maintenance. Duke must also make best efforts to use diesel fuel meeting the 15-ppm standard set forth in 40 C.F.R. § 80.520 and the use of diesel fuel above 15 ppm would be a last resort to avoid circumstances under which utility vehicles would otherwise be incapable of operating due to a lack of fuel.

The issuance of an NAA for this period of time is in the public interest. Through today's NAA, the EPA is continuing its commitment to address the very difficult circumstances caused by Hurricane Irma. If you have any questions about this NAA, please contact Phillip A. Brooks, at 202-564-0652 or brooks.phillip@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lawrence Starfield".

Lawrence Starfield
Acting Assistance Administrator

cc: The Honorable Rick Perry, Secretary of Energy
Jeffery F. Koerner, Director, Florida Division of Air Resource Management
The Honorable Steven Mnuchin, Secretary of the Treasury
John P. Moriarty, Acting Associate Chief Counsel, Internal Revenue Service