



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

NOV 19 2012

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Bob Martin, Commissioner  
New Jersey Department of Environmental Protection  
401 E. State Street  
7<sup>th</sup> Floor, East Wing  
Trenton, NJ 08625-0402

Joseph Martens, Commissioner  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-1010

RE: No Action Request for Emergency Diesel Generator Fueling Provisions Necessitated by Hurricane Sandy

Dear Sirs:

On October 31, 2012, to address the shortage of Ultra Low Sulfur Diesel available to operate certain emergency and recovery related equipment, the Environmental Protection Agency (EPA) issued a No Action Assurance (NAA) in which the Agency exercised, under certain conditions, its discretion not to pursue enforcement for violations of the New Source Performance Standards and/or the New Jersey State Implementation Plan for operation of stationary emergency diesel generators and pumps primarily in service for the public interest to use home heating oil for fuel instead of the legally required ultra low sulfur diesel (ULSD). *See* 40 C.F.R. Sections 60.4207, and 52.1570(c)(91)(i)(A). On November 13, 2012, this NAA was extended to and including November 20, 2012. In light of the continuing effects of Hurricane Sandy on the supply of fuels in New Jersey and New York, there is a need to further extend the NAA.

Accordingly, under the conditions set forth below, in New Jersey and New York the EPA will not take enforcement actions for violations of the New Source Performance Standards, the New Jersey State Implementation Plan and/or the New York State Implementation Plan for operation of stationary emergency diesel generators and pumps primarily in service for the public interest (water treatment, wastewater treatment, solid waste disposal, fuel providers, nursing homes, hospitals, etc.) using home heating oil for fuel instead of the legally required ultra low sulfur diesel (ULSD).<sup>1</sup> *See* 40 C.F.R. Sections 60.4207, and 52.1570(c)(91)(i)(A). This No Action Assurance is granted under the following conditions:

1. Non-ULSD fuel (home heating oil) is used only in stationary diesel generators and pumps that are being used for emergency purposes and are in service for the public interest;

<sup>1</sup> Higher sulfur home heating oil can physically be burned in emergency diesel engines, but should be avoided in 2011 and 2012 engines between 175 and 700 hp, because it may damage parts of the engine.

2. ULSD is not reasonably available for use in the generators or pumps;
3. The non-ULSD fuel (home heating oil) being used remains segregated from ULSD fuel until the non-ULSD fuel is used in, or removed from the generators or pumps; and
4. Owner/operators of the generators or pumps make best efforts to obtain compliant fuel or fuel with the lowest sulfur content, comply with the equipment manufacturer maintenance requirements at the earliest practicable time, and exercise good air pollution control practices.

This NAA is in effect commencing November 20, 2012, and terminates December 7, 2012 at 11:59 PM EST.<sup>2</sup> The EPA reserves the right to revoke or modify the NAA if the EPA believes that such action is necessary to protect public health and the environment. This NAA does not apply to any other federal requirements that may apply to regulated activities at these sources. Nothing in this exercise of enforcement discretion relieves any person of the obligation under law, if any, to report emission from operation of equipment covered by this action.

The issuance of a NAA for this period of time is in the public interest. Through today's NAA, the EPA is continuing its commitment to work to address the very difficult circumstances caused by Hurricane Sandy. If you have any questions, please give me a call at (202) 564-2440, or call Phillip Brooks, of my staff at (202) 564-0652.

Sincerely,

  
Cynthia Giles  
Assistant Administrator

cc: William O'Sullivan, Director, Division of Air Quality, NJDEP  
Steve Flint, Assistant Director, Division of Air Resources, NYDEC  
Dore LaPosta, Director, Division of Enforcement and Compliance Assistance, EPA Region 2

---

<sup>2</sup> This NAA is intended to work in tandem with the Administrator's "October and November 2012 Diesel Fuel Waiver" issued on November 16, 2012, that, among other things, waives until December 7, 2012 certain requirements under Title II of the Clean Air Act that are applicable to Mobile Source generators and pumps in emergency use in New York and New Jersey. This NAA addresses complementary requirements under Title I of the Clean Air Act, in New York and New Jersey.