



# Emergency Response

## Fuel Waivers and No Action Assurance

U.S. Environmental Protection Agency

Phillip Brooks, Director  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance



# Topics to be Covered

- Waiver of fuel quality/composition rules
  - Overview of the fuel supply system
  - Legal authority for waiving fuel standards
  - The fuel rule waiver process
- No Action Assurance (briefly)



# Disclosure and Apology

- The following Slides are too dense for me to cover in detail today.
- Consider putting a printout of these slides in your emergency response file just in case you need them.


# What is a Fuel Waiver?

- In the event of a fuel supply emergency, EPA, with the concurrence of the Department of Energy, may temporarily waive a fuel or fuel additive requirement if doing so will alleviate the fuel supply emergency.
- Clean Air Act Section 211(c)(4)(C), which authorizes fuel waivers, specifies the criteria for granting a fuel waiver, and the conditions that must be included in a fuel waiver.
- Fuel waivers cannot be issued to address concerns regarding the price of fuel.

# Waiver Authority Delimited by Clean Air Act Section 211(c)(4)(C)

(ii) The **Administrator** may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive . . . if, after consultation with, and concurrence by, the **Secretary of Energy**, the Administrator determines that—

- (I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;
- (II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel or fuel additive to such State or region; and
- (III) it is in the public interest to grant the waiver (for example, when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation which cannot otherwise be compensated for).




# Clean Air Act

## Section 211(c)(4)(C) cont'd.

(iii) If the Administrator makes the determinations required under clause (ii), such a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

(II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;



# Clean Air Act

## Section 211(c)(4)(C) cont'd.

(III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator (but which shall be for the shortest practicable period), after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;

(IV) the waiver applies to all persons in the motor fuel distribution system; and

(V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.



# Common Causes of Fuel Shortages

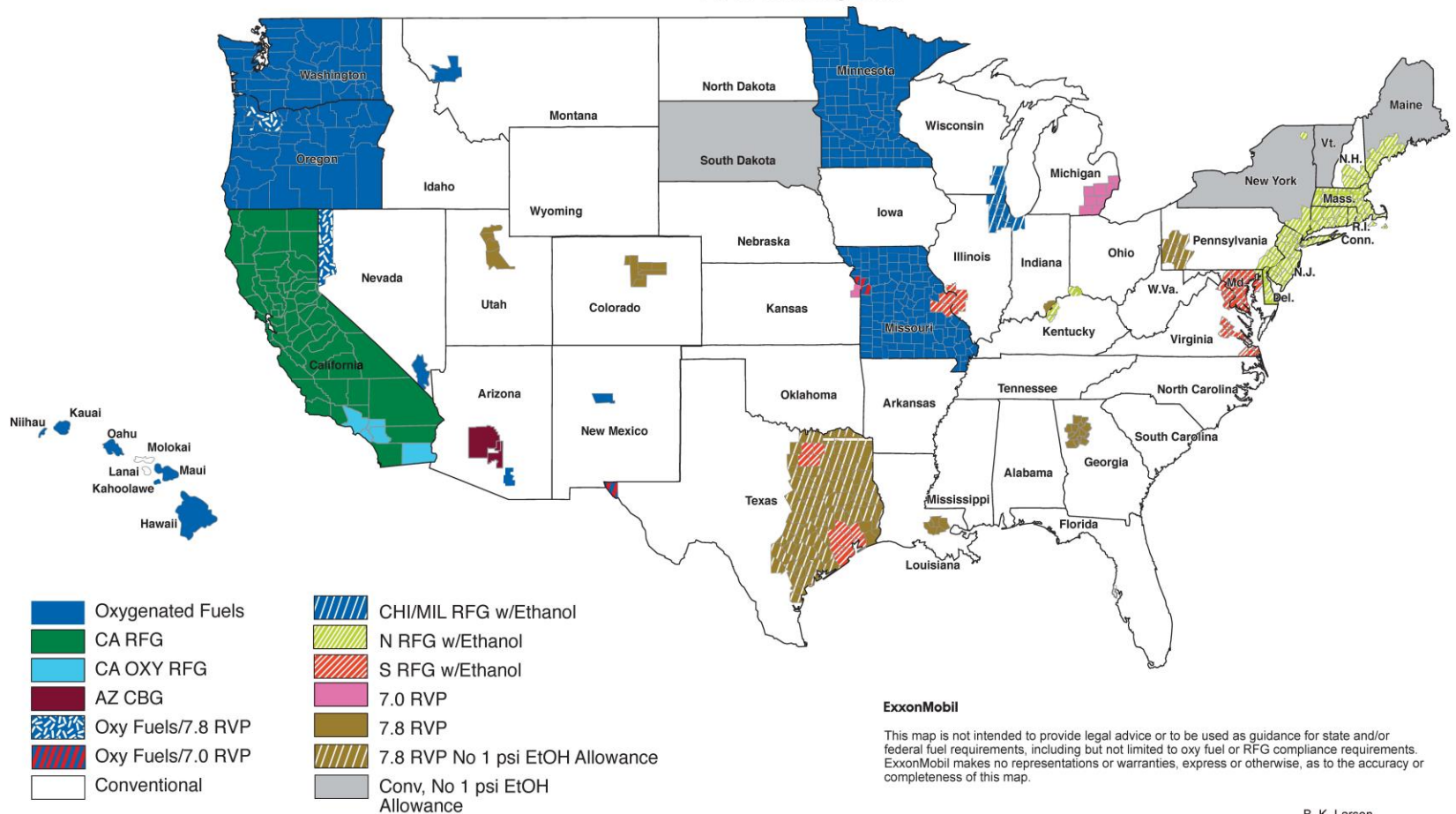
- Storms
- Fuel Pipeline Interruptions/Breaks
- Refinery Outages



# The Fuel Requirements and the Fuel Supply System

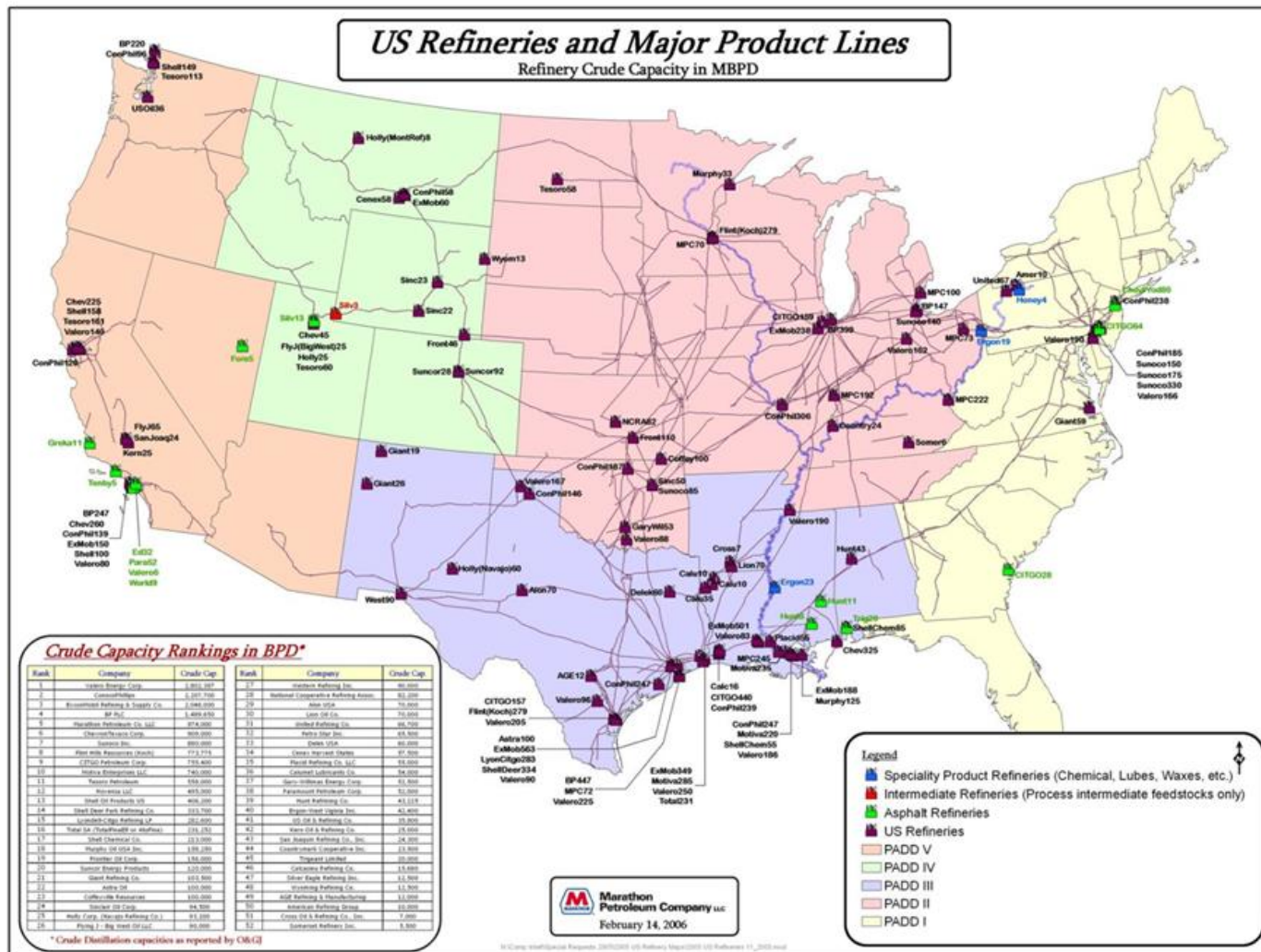
# U.S. Gasoline Requirements

## As of January 2018

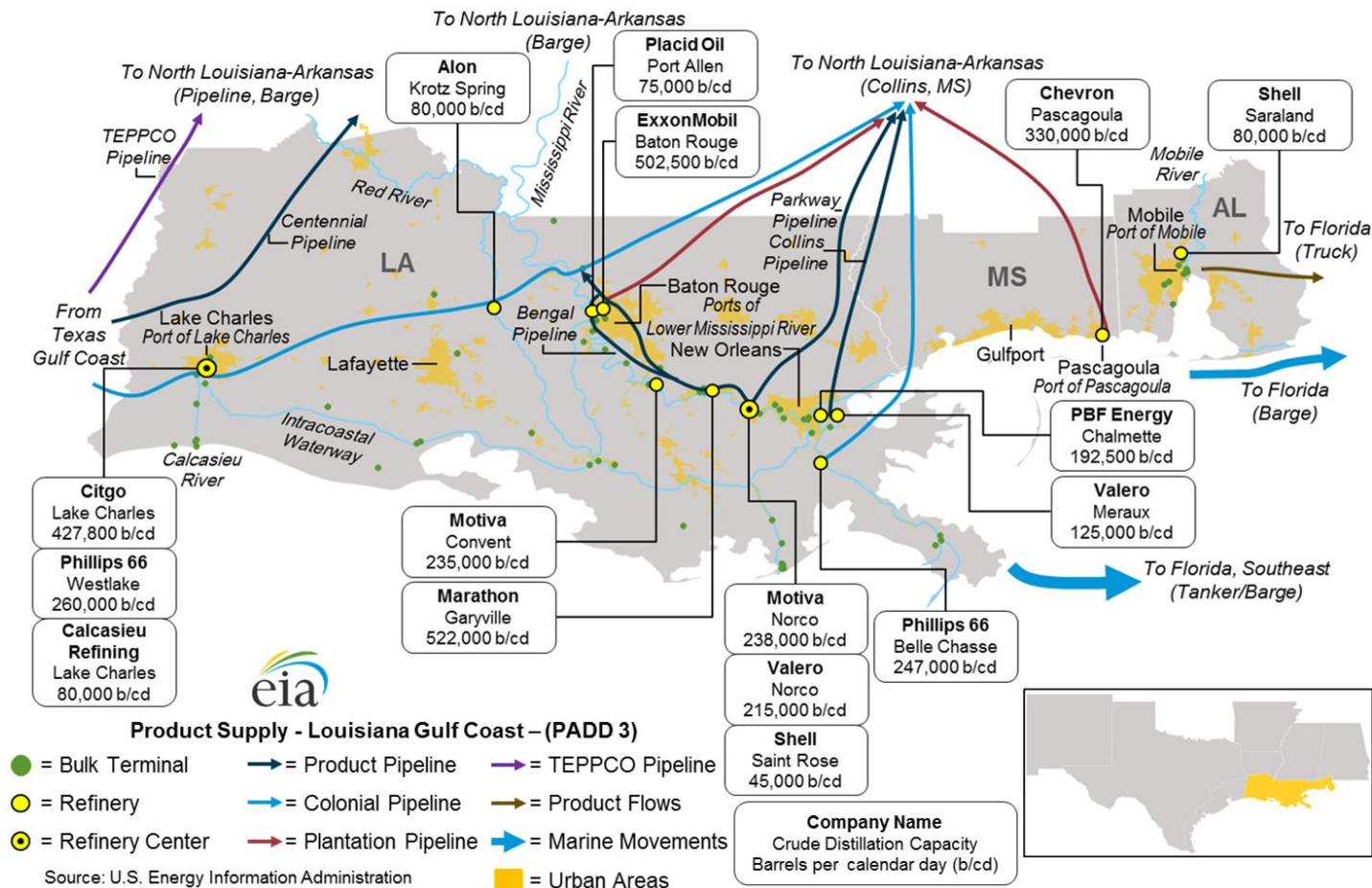


B. K. Larson  
IN# 013018

# Pipeline and Refinery Map



# Product Flow example (PADD3)





# Fuel requirements that can affect supply in an emergency

- Gasoline RVP
- RFG Standards
- Federal sulfur limits for diesel
- Comingling restrictions
- State fuel requirements (e.g. additives)
- Other fuel quality requirements (not usually an issue)



# Storms and Floods are the Most Frequent Cause of Fuel Supply Problems

(The Waiver Team typically starts work well before an actual shortage.)

**From:** Gustafson, Kurt

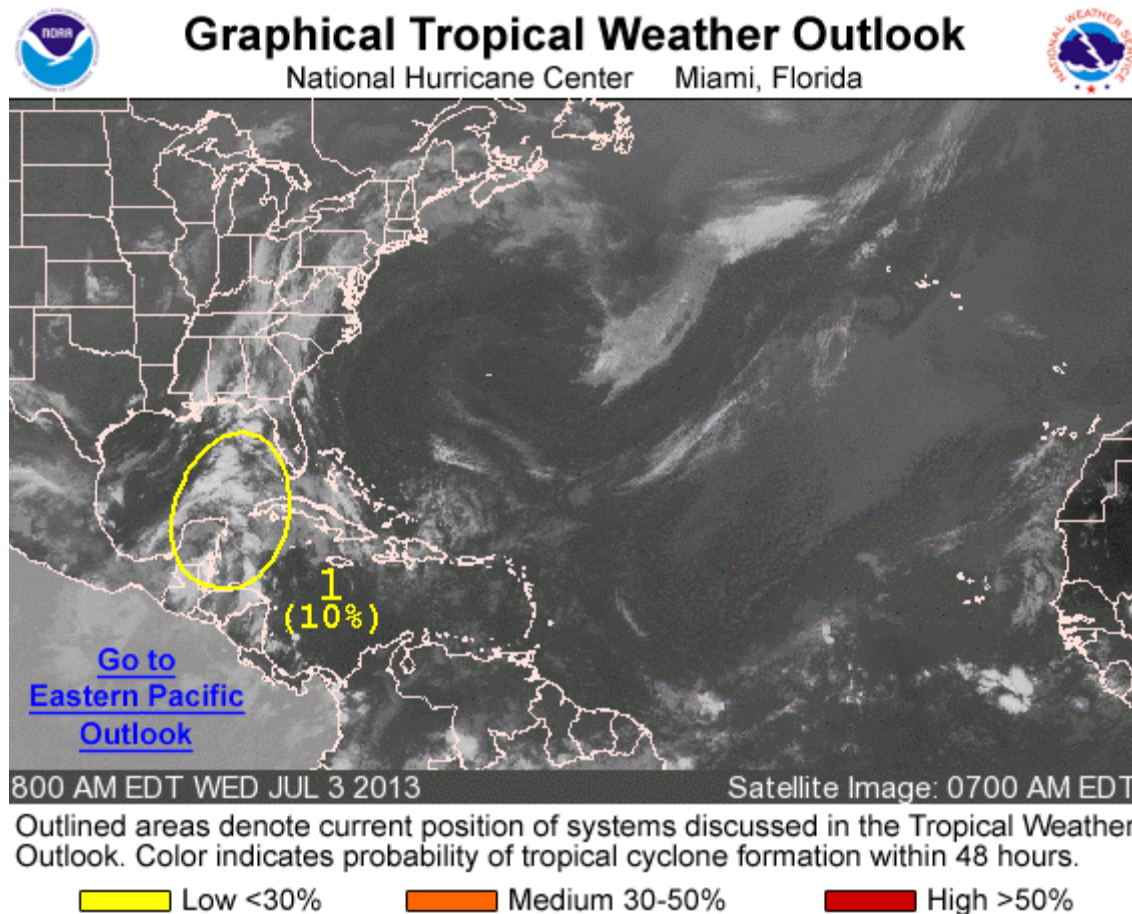
**Sent:** Wednesday, July 03, 2013 5:56 AM

**To:** Weihrauch, John; McKenna, Chris; Kodish, Jeff; Thompson, Christopher; Werner, Jacqueline

**Cc:** Bunker, Byron; Brooks, Phillip; Simon, Karl

**Subject:** Tropical Weather Outlook (July 4th weekend).

Since we are headed into a long weekend, I wanted to send the current outlook around as there is a system that NOAA is watching and which is located relatively close to the Bay of Campeche. The system has a low chance of becoming a cyclone in the next 48 hours, but NOAA indicates conditions are marginally conducive to development. Due to the systems proximity, its impact could occur this weekend if it were to develop



# Initial Steps in the Response to a Potential Fuel Emergency

- EPA receives an initial indication that fuel shortage may manifest.
  - EPA may learn of a potential shortage from notification by those in the fuel supply chain (e.g., refiners or distributors), from press or other reports of a supply problem (e.g., pipeline break), or independently (e.g., tracking hurricane severity and path for potential impacts).
  - Those inquiring about or seeking to have EPA issue a fuel waiver (e.g., affected suppliers) are asked to provide supply related information.
- EPA HQ Waiver Team begins initial outreach to key contacts and organizes the response group. Essential additional participants in the response group include:
  - Department of Energy
  - EPA Regional Offices
  - States
- As the threat matures, regular response group coordination teleconferences begin.

# Who can request a Fuel Waiver?

- EPA policy is that a formal request for a fuel waiver must be made by the Governor or a state official with the authority to make the request on behalf of the Governor.
- EPA works early and closely with officials of the state(s) affected by a potential fuel supply emergency. EPA's strong preference is that a waiver request is made only after consultation with the EPA Waiver Team.
- Since Hurricanes Katrina and Rita, EPA has established regular points of contact with States commonly affected by fuel emergencies (e.g., Gulf-area states, and those most directly affected by Gulf-area refinery outages).
  - In many circumstances, the primary State point of contact is the State Air Division Director's Office.
  - In some circumstances, we also communicate directly with the Governor's and/or State Energy Offices if the situation requires.

# Can a state waive a SIP fuel program without EPA?


- No. State fuel programs that are part of a SIP are federally enforceable, and the requirements cannot be waived unless waivers are issued by **both** EPA and the state.
- EPA coordinates with State contacts to ensure that when conditions exist that warrant an emergency waiver that both the State and EPA issue parallel waivers that achieve the desired outcome.

# What information does a state need to provide to EPA when requesting a waiver?

- EPA must make the findings required by the statute. The more of that information the State can supply, the faster the process moves.
- EPA, DOE and States are partners in this effort – we work together to help develop successful waiver requests.
- Key inputs that typically should be included in a waiver request include:
  - The type of fuel for which a shortage exists;
  - The affected geographic area;
  - Fuel supply status (e.g. existing/expected outages);
  - Expected duration of the shortage; and
  - The specific waiver being requested, including the duration, geographic area, and the alternative fuel that would be allowed.

# What are EPA and DOE doing in the early stages of a fuel emergency?

- The Fuel Waiver Team (EPA HQ and DOE) make a preliminary decision whether waiver is may be needed.
- OECA begins drafting waiver in it is case needed.
- OAR ensures that affected Regional Office(s) and State(s) are appropriately informed on status.
- EPA Regional Offices establish and maintain communication with State officials on storm response.
- Waiver team investigates the status of supply, alternate product, and all information required for findings required by law to issue a waiver.



# EPA Waiver Team (decisional) Roles

- OAR and OECA staff reach concurrence on draft waiver.
- OAR obtains AA OAR and DOE concurrence.
- OECA seeks concurrence from the Assistant Administrator for OECA.
- Upon the concurrence of the OECA Assistant Administrator, the draft waiver is transmitted to the Office of the Administrator.
- Office of Administrator issues the recommended waiver.
- Typically, the time from final draft of a waiver to execution by the Administrator is less than two hours.



# Waiver Team (post decisional) roles

In Parallel:

- OAR calls affected States upon issuance of a waiver.
- OAR informs the EOC and other EPA offices of issuance.
- OECA posts the waiver to the EPA public web site.
- OECA distributes the waiver by email to known interested parties (state personnel, industry, and others).




# **What can the State do to expedite a waiver request?**

- Communicate with the EPA waiver team before a formal request -- expedites the process, minimizes risk of confusion.
- Coordinate internally with Executive, Environmental, Energy, and Agricultural agencies; especially if State regulations must be waived in conjunction with federal requirements (e.g., SIP fuels or consumer protection rules such as ASTM specifications).
- Compile fuel supply and consumption/projection data (of both compliant and non-compliant fuels) to substantiate request.
- Provide specific information on the efforts to seek alternative sources of compliant fuel and the results of that search.

# EPA Fuel Waiver Resources

- OECA: Air Enforcement Division
  - Tony Miller at 303-312-7161 or [miller.anthony@epa.gov](mailto:miller.anthony@epa.gov)
  - Jeff Kodish at 303-312-7153 or [kodish.jeff@epa.gov](mailto:kodish.jeff@epa.gov)
- OAR: Compliance Division
  - Kurt Gustafson at 202-403-4419 or [gustafson.kurt@epa.gov](mailto:gustafson.kurt@epa.gov)
  - Madison Le at 202-507-3062 or [le.madison@epa.gov](mailto:le.madison@epa.gov)
- Outside of normal business hours, the point of contact is the EPA Emergency Operations Center, at 202-564-3850
- Website information: <https://www.epa.gov/enforcement/fuel-waivers>  
Includes: Waiver Criteria, Q&A, FAQ, copies of prior waivers and other information



In an actual emergency the EPA team is available seven days a week, day and night.

# What is “No Action” Assurance?

- “No action” assurance (also called an “exercise of enforcement discretion”) is:
  - A definitive oral or written statement
  - given outside the context of an enforcement action
  - that EPA will not proceed with an enforcement response for a specific individual violation of an EPA-administered law or regulation
  - or will (or will not) enforce in a particular manner or under a set of circumstances.

# Policy Limits “No Action” Assurance

- There are long-standing internal enforcement guidance documents that provide a framework for analyzing requests for “no action” assurances.
- No Action Assurance is an extraordinary action taken by EPA in extremely unusual cases where it is necessary to serve the public interest and there is no other mechanism available to adequately address the situation.
- Only the OECA Assistant Administrator may issue a no action assurance.
- No action assurances are not binding, on and do not preclude action by, 3<sup>rd</sup> parties (states, citizens, etc.).

# What Does a No Action Assurance Contain?

- Generally a no action assurance will include the following elements or features:
  - A limited time period.
  - A description/reference to a specific statutory/regulatory provision for which flexibility is being provided.
  - Specific conditions tailored to the exigencies of the situation being addressed, and mitigation of any potential harm.
  - An acknowledgement of the request and/or description of the need.
  - A justification for why the no action assurance is in the public interest.
  - Retention of discretion to revoke or modify as appropriate.



# Extra Slides