



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

DEC 12 2012

OFFICE OF
AIR AND RADIATION

Mr. David M. Friedland
Beveridge & Diamond, PC
1350 I Street, NW
Suite 700
Washington, D.C. 20005

Dear Mr. Friedland:

This letter addresses a potential issue arising from the recent revision of the settlement agreement between EnerNOC and its co-petitioners and the U.S. Environmental Protection Agency, in which the date for taking final action regarding the provisions of the RICE NESHAP (published March 3, 2010), RICE II NESHAP (published August 20, 2010) and ICE NSPS was revised from December 14, 2012, to January 14, 2013.

As we have discussed, the deadline for requesting a compliance extension for certain compression ignition engines subject to the RICE NESHAP from the relevant permitting authority is January 3, 2013 -- 120 days before the May 3, 2013, compliance date for those engines. See 40 C.F.R. § 63.6(i)(4)(i)(B). However, the provisions of 40 C.F.R. § 63.6(i)(4)(i)(C) allow for submittal of a compliance extension request after the January 3, 2013, deadline, provided the need for the compliance extension arose after that date and the need arose due to circumstances beyond the reasonable control of the owner or operator.

The EPA understands the unique situation facing owners and operators of emergency engines as a result of the recent extension of the date for final action. We recognize that the owners and operators of some emergency engines covered by the rule may not need to file for a compliance extension under the final reconsidered rule but will not know that until after the January 3, 2013, filing deadline. It is the EPA's view that under these unique circumstances, if the provisions for any particular engines promulgated in the January 14, 2013, final rule in fact differ from those of the proposal in a way that creates a need for sources to seek compliance extensions, it would be reasonable to read the regulations to allow for the filing of extension requests after January 3, 2013. The final rule will have been issued after that date and, if the final rule is substantially different from the proposal necessitating a request for a compliance extension that was not anticipated based on the proposal, those circumstances would be beyond the control of the sources.

If you have any questions, please do not hesitate to call Robert Wayland at (919) 541-1045.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gina McCarthy', with a long horizontal stroke extending to the left.

Gina McCarthy
Assistant Administrator