

Consumer Power Advocates

Continuum Health Partners
Fordham University
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Mount Sinai Medical Center
New York University
NYU Medical Center
St. Vincent Catholic Medical Centers

M E M O

Date: February 22, 2009

To: BOMA NY Members

From: Catherine Luthin / John Dowling

Subject: DRAFT NYCDEP PROPOSAL on boiler fuel
Natural Gas Reliability Advisory Group (NGRAG)
January 14, 2009 Conference call and February 2009 follow up

At the request of Consumer Power Advocates, the NGRAG discussed the DEP's proposed prohibition on the use of #4 and #6 fuel oil within NYC. DEP had circulated a draft rule among some oil suppliers in advance of the formal rulemaking, which we forwarded to NGRAG. The current draft rule is attached. We expect the rule to be published with 30 days, with a 60 day comment period to follow. The City Hall point person is Carter Strickland for this proposal. He can be reached via email at CStrickland@cityhall.nyc.gov.

Our concerns were:

1. Does this apply to all existing boiler operators?
2. Will this have an effect on electric reliability or cost?
3. Is there sufficient oil and/or gas infrastructure to replace residual oils?
4. What provision will be made for projects currently under construction?

First, regardless of language ([highlighted in the copy below](#)) that seems to imply that this immediately applies to all boilers, DEP assured us this that ban applies only for new or replacement boilers or burners, and promised a clarification in future drafts. The highlighted language is boilerplate intended to catch the unlicensed plumber projects.

We were also told that large electric generators are beyond the reach of DEP and therefore exempt. (DEP to confirm that.) That is an important concern because NYISO rules require a significant of oil burning capacity in the City for reliability in the event of a gas pipeline failure.

It does apply to about 9100 boilers, using a total of 400 million gallons of #4 and #6 annually. DEP estimates that these are replaced at the rate of 3%+ per year. That would add about 0.25%-1% annual growth to the gas system. Con Ed flat out stated that firm gas service would be unavailable in those volumes, and that even interruptible gas will require costly construction, especially in the local distribution system.

The rule is fairly harsh for projects in construction at the time the rule takes affect. Exemptions are for a period of one year only, and are only available to those who have spent 80% of the cost of the project. See **Economic Hardship** below.

This was the first meeting with the utilities. DEP has not yet spoken to oil suppliers. In early February PSC staff did follow up with NYC DEP personnel. At this point there has not been any change to the attached draft of the DEP proposal. The DEP stated that they had contacted Con Edison and National Grid and are following up. A meeting is scheduled with Con Ed in the near future.

Another point made was, an oil tank that holds #4 or #6 fuel oil may not be suitable for holding #2 fuel oil. Also, the #2 fuel oil industry may have trouble serving all those new customers. At present NYC fuel oil is a specially blended low sulfur type of product that is produced to meet the NYC market.

NYSERDA commented that the “devil is in the details” with respect to the oil industry readiness to respond. The industry would need to know how many customers are going to interruptible gas and this will be unknown for a while. The switch may cause significant problems on the gas infrastructure and the oil infrastructure and what that impact may be is unknown.

**Department of Environmental Protection
Notice of Opportunity to Comment on Amending
Chapter 2 of Title 15 of the Rules of the City of New York
Rules Pertaining to the Prohibition of the Use of #4 and #6 Fuel Oil**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by §1043 and §1403(c) of the Charter of the City of New York, and §24-105 of the Administrative Code of the City of New York that the Department of Environmental Protection is proposing to promulgate rules pertaining to the prohibition of the use of #4 and #6 fuel oil in fuel burning installations within the City of New York.

PLEASE BE ADVISED THAT WRITTEN COMMENTS regarding the proposed rule may be sent on or before [INSERT DATE] to the New York City Department of Environmental Protection, Office of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Elmhurst, NY 11373, Attention: Erin Gray, Esq.

PLEASE BE FURTHER ADVISED THAT ORAL COMMENTS regarding the proposed rule may be delivered at a public hearing to be held on [INSERT DATE] at the New York City Department of Environmental Protection, 59-17 Junction Boulevard, 6th Floor, Elmhurst, NY 11373 from 10:00 A.M. to 12 Noon. Persons who have questions about the hearing should contact Belinda Pantina at 718 595-6555.

Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided are asked to contact Belinda Pantina at the phone number shown above on or before two weeks prior to the hearing.

PLEASE BE FURTHER ADVISED THAT COPIES OF ALL WRITTEN COMMENTS and a summary of the oral comments delivered at the public hearing will be available for inspection within a reasonable time after receipt between the hours of 9:00 A.M. to 5:00 P.M. at the Department of Environmental Protection, Office of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.

The proposed rule was not listed in the Department's FY '08 Regulatory Agenda.

Please note that as the entire rule is new, the text is underlined.

Statement of Basis and Purpose

Administrative Code §24-102 and 105 states, in summary, that the City is authorized to reduce the emission of harmful air pollutants into the open air by actively regulating and eliminating such emissions.

The Commissioner is authorized under §24-105 of the Administrative Code of the City of New York and §1403(c) of the Charter of the City of New York to promulgate rules to enforce the provisions of the Air Pollution Control Code. The use of #4 and #6 fuel oil is detrimental to the quality of air in the City of New York, and the use of cleaner burning fuels such as #2 fuel oil and/or natural gas will result in an improvement in the air quality of the City of New York.

In order to bring about the improvement in the air quality of the City of New York, the DEP is proposing to amend 15 RCNY §2 to prohibit the use of #4 and #6 fuel oil for combustion equipment in the City of New York.

The following definitions shall be added alphabetically to 15 RCNY §2-02:

DEP. “DEP” shall mean the New York City Department of Environmental Protection.

Heating Season. “Heating Season” shall mean the period from October first through May thirty-first.

#2 Oil. “#2 Oil” shall mean fuel oil grade No. 2 as classified by the American Society for Testing and Materials (ASTM).

#4 Oil. “#4 Oil” shall mean fuel oil grade No. 4 as classified by the American Society for Testing and Materials (ASTM).

#6 Oil. “#6 Oil” shall mean fuel oil grade No. 6 as classified by the American Society for Testing and Materials (ASTM).

Economic Hardship. “Economic Hardship” shall mean that 80% or more of the costs associated with an installation have been paid, and the additional time required to bring the installation into compliance with the provisions of 15 RCNY §2-15 *et. seq.* would lead to undue delay so that the proposed equipment could not be in operation at the beginning of the heating season following the installation.

Work Permit. “Work Permit” shall mean an installation or alteration permit issued by the Commissioner.

The following is proposed as an addition to the current rule:

§2-15.1 Prohibition of the Use of #4 and #6 Fuel Oil.

(a) Notwithstanding any provision to the contrary in Chapter 2 of this rule, the Commissioner shall not issue a Work Permit nor a Certificate of Operation for equipment that uses #4 oil or #6 oil as of the effective date of this section except as modified herein.

(b) The Commissioner shall not approve any amendment that modifies a previously granted Work Permit or Certificate of Operation to subsequently use #4 or #6 oil.

(c) A Work Permit granted before the effective date of this section, or as provided for in subsection (e) below for equipment using #4 or #6 oil, may be issued for a period of six months, and may be renewed for a period not exceeding an additional six months pursuant to §24-127(c) of the Administrative Code. A Work Permit that has lapsed may be extended by the Commissioner, provided, however, that the subsequent expiration date of the Work Permit shall not be more than one year from the date that the Work Permit was originally issued.

(d) A Certificate of Operation subsequently granted for a Work Permit issued under the provisions of subsection (c) above using #4 oil or #6 oil shall be valid for a period of one year, and may not be renewed except as provided in §2-15.2 and/or §2-15.4, unless the Certificate of Operation has been amended to provide that natural gas and/or #2 oil is in use. The fee for issuance of a Certificate of Operation valid for one year under the provisions of this subsection shall be one-third of the fee as shown in §24-136(c)(1), Schedule A, of the Administrative Code.

(e) An owner of equipment that is using #4 or #6 oil who has not filed an application for a Work Permit after the effective date of this section shall file said application within thirty days. A Work Permit and Certificate of Operation granted under the provisions of this subsection that uses #4 or #6 oil shall be subject to the conditions of subsections (c) and (d) above.

§2-15.2 Applications Based on Economic Hardship.

(a) Notwithstanding the provisions of §2-15(a), the Commissioner may issue an approval of a Work Permit application for equipment using #4 or #6 oil, provided that the owner of the proposed equipment demonstrates to the satisfaction of the Commissioner that installation of equipment using natural gas and/or #2 oil will result in economic hardship. A Certificate of Operation subsequently granted under the provisions of this subsection shall be subject to the conditions of §2-15.1(c) and (d).

(b) The Commissioner may grant an extension of time for a previously issued Certificate of Operation using #4 or #6 oil issued under the provisions of §2-15.1 that expires during the heating season, provided that the owner of the equipment demonstrates to the satisfaction of the Commissioner that equipment using natural gas and/or #2 oil cannot be installed because of circumstances outside the control of the owner before the end of the heating season.

(c) An extension of time for a Certificate of Operation granted under this section shall be for a period not exceeding nine months.

§2-15.3 Reserved.

§2-15.4 Procedure for Variance.

(a) An application for a variance from the provisions of this Chapter shall be submitted and sealed by a Professional Engineer or Registered Architect licensed under Education Law §7202 or §7302. The application shall contain the following information:

(1) Name and address of the owner of the premise where the equipment is located, along with the premise address.

(2) Name, address, and telephone number of the engineer or architect submitting the request for a variance.

(3) Make and model number of the boiler and burner, along with the proposed grade of fuel (#4 or #6 oil).

(4) Application number assigned by the Bureau of Environmental Compliance, if available.

(5) Evidence that compliance with the provisions of this section prohibiting the use of #4 or #6 oil would result in an undue economic hardship for the owner because of a substantial investment previously made for the equipment.

(b) Applications for a variance under this section shall be sent to: Director of Engineering, Bureau of Environmental Compliance, New York City Department of Environmental Protection, 59-17 Junction Boulevard – 9th Floor, Elmhurst, NY 11373.

(c) A Work Permit granted a variance under this section may be extended by the Commissioner pursuant to §24-127(c) of the Administrative Code.

(d) A variance granted under this section shall not be renewed, and shall expire on the last day of a Certificate of Operation issued by the Bureau of Environmental Compliance for the equipment. A Certificate of Operation granted a variance under this section shall be valid for a period of one year, and may be renewed only if the application has been amended to provide that natural gas and/or #2 oil is in use.

(e) The fee for issuance of a Certificate of Operation valid for one year under the provisions of subsection (d) above shall be one-third of the fee as shown in §24-136(c)(1), Schedule A, of the Administrative Code.

(f) The Commissioner shall not issue a Work Permit nor a Certificate of Operation pursuant to the requirements of this section unless the equipment has been accepted by the Bureau of Environmental Compliance for use with the grade of fuel shown on the application for a variance.