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Via ELECTRONIC MAIL

Environmental Quality Board
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Dear Chairperson Hanger:

The Clean Air Council submits the following comments on the Proposed Rulemaking on Commercial Fuel Oil Sulfur Limits for Combustion Units as published in the Pennsylvania Bulletin on September 25, 2010. The Council welcomes the opportunity to comment on this important rulemaking.

The Council is a non-profit environmental organization headquartered at 135 S. 19th St., Suite 300, Philadelphia, PA 19103. For more than 40 years, the Council has fought to improve the air quality in the Greater Philadelphia area, across Pennsylvania and beyond. The Council's mission is to protect everyone's right to breathe clean air.

1. Background and General Comment:

Heating oil burners emit particulate matter (PM), oxides of nitrogen (NO_x), sulfur dioxide (SO₂), mercury (Hg), and carbon dioxide (CO₂).¹ These pollutants have a major impact on public health, ozone formation, fine particulate, regional haze, and acid precipitation. The NO_x and SO₂ emissions directly impact the attainment and maintenance of the National Ambient Quality Standards (NAAQS) for ozone and fine particulate as respective precursors of these criteria pollutants.

Fine particulate matter and ozone cause respiratory disease, cardiovascular disease and premature death. At particular risk from elevated ozone and particulate emissions are the elderly, people with preexisting heart and lung disease, and the very young. The U.S. Environmental Protection Agency (EPA) relies on well-established studies which demonstrate these connections

¹ "Low Sulfur Heating Oil in the Northeast States: An Overview of Benefits, Costs, and Implementation Issues." NESCAUM, December 2005, p. v.

and form the basis for the EPA's setting of the NAAQS for ozone and particulate. Thousands of Pennsylvanians die prematurely every year due to exposure to elevated levels of fine particulate. The PA Department of Environmental Protection (DEP), in the preamble to the proposed rule, estimates that the proposed regulation would cut 29,000 tons of sulfur dioxide in the Commonwealth, which will lead to substantial decrease in local particulate emissions.

Pennsylvania's rulemaking is similar to action recently taken by New York, Connecticut and Maine. It also mirrors the current federal standard for on-road diesel.

The present sulfur limits for commercial fuel oil in Pennsylvania's air quality regulations have been in force for over 30 years. In that time, technology has advanced greatly as has the understanding of the extent of health impacts from exposure to particulate matter and ozone. The Council believes that revision to the Chapter 123 Standards for Contaminants Sulfur Compound Emissions regulations pertaining to Combustion units at section 123.22 is urgently needed in order to meet present and upcoming ambient air quality standards throughout the Commonwealth.

Given the significant amount of pollution contributed by fuel oil combustion, it is imperative that aggressive reductions in the permissible sulfur content in fuel oil sold and consumed in Pennsylvania be achieved.

2. The New Standard and its Implementation:

The proposal establishes new sulfur content limits for No. 2 fuel oil, No. 4 fuel oil, and Nos. 5 and 6 fuel oil, respectively. As No. 2 fuel oil is most commonly used for residential and institutional heating purposes, emissions from its use have a significant air quality impact in sizable communities across the Commonwealth. 1.2 million homes in Pennsylvania use oil for heat. For that reason, the Council is pleased to see that the proposed rule imposes a 15 ppm standard for No. 2 fuel oil and that, unlike the existing standard, it is consistent across all air basins and non-air basins alike.

By reducing unhealthful air pollution such as sulfur dioxide and fine particulate matter, the proposal will improve visibility, helping Pennsylvania meet reasonable further progress on regional haze requirements. In addition, a significant ancillary benefit will be obtained in the form of reduced furnace maintenance needs due to the lower sulfur content in the new fuel oil.

However, the effectiveness of the proposal in protecting public health and in meeting present and future NAAQS is jeopardized by the Department's decision to include a "waiver" process wherein the implementation of the emission standards can be delayed.

The Council strongly opposes the Proposed Regulation's suspension procedure for the sulfur limits found at 123.22(a)(2)(iii), 123.22(b)(2)(iii), 123.22(c)(2)(iii), 123.22(d)(2)(iii), and 123.22(e)(2)(iii). Under this procedure, a temporary suspension or relaxation of the standard would be made available if requested by industry, if certain demonstrations of need are made and

if the EPA concurs with the Department decision to allow a waiver. Such a suspension does not appear necessary or prudent.

First, the proposal sets forth May 2012 as the time at which the sulfur limits must be met. There is, built-in, a 16-month lead time from the likely effective date of this regulation and the compliance date. This does not account for the additional advanced notice of the Department's direction evinced from the draft of this regulation which was discussed at the Air Quality Technical Advisory Committee Meeting in February 2010. May 2012 is more than sufficient notice for the industry to prepare--for refiners to ramp up production of compliant fuels and for distribution networks to sell off existing supplies of non-compliant fuels.

Allowing for this suspension of the limit is merely an invitation to refiners to continue to produce the high sulfur content fuel longer than they otherwise would absent this "escape hatch." As the preamble to this Rule notes, the sulfur percent in the proposal is consistent with several important national regulations which are already in effect or will be prior to the compliance date for this proposal, and as such the industry has made the transition to the lower sulfur content products. Thus, it seems exceedingly likely that an expansion of the products that feature reduced sulfur by May 2012 will pose no technological hardship upon the refiners which supply the vast bulk of commercial fuel oil to Pennsylvania end users.

Indeed, the Department and a representative of industry acknowledged a lack of anxiety from industry regarding the prospect of meeting the regulatory deadline for sulfur content compliance at the AQTAC meeting of February 18, 2010, when the draft form rulemaking was presented. It should be noted that the February draft did not contain the suspension procedure, and yet was approved by the advisory committee by a unanimous vote, with numerous industry representatives present.

The Council views the "(iii) suspensions" as lacking in any reasonable justification and therefore urges the removal thereof.

3. Sampling and Recordkeeping:

The Council supports the Department's addition of sampling requirements in 123.22(f). This improves the existing regulation by ensuring that each batch of commercial fuel oil must be sampled and tested for its sulfur content. The sampling changes include updates to the applicable Methods for sampling according to the American Society for Testing Materials. These updates are appropriate. 123.22(f) also provides for additional methods of sampling to be used if they are approved by the DEP or the EPA.

The Council also supports the Department's addition of recordkeeping and reporting requirements to the regulation at 123.22(g). These new provisions will greatly enhance the Department's ability to determine that only compliant fuels are being used across the Commonwealth. Further, this section gives the Department the ability to track batches of fuel oil

through refinery production to end usage. The section is also practical, as it imposes no recordkeeping requirements or other burden upon residential end users.

4. Conclusion:

The Council believes that this proposal to reduce sulfur by the levels specified is appropriate and necessary in order for the Department to meet its obligations to attain NAAQS and achieve regional haze goals. The Council recommends that the Department withdraw the compliance date suspension procedure and move forward with the remainder of the regulation to final rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Minott", with a horizontal line extending to the right.

Joseph Otis Minott, Esq.
Executive Director

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Cooper, Kathy

From: Joseph Minott [joe_minott@cleanair.org]
Sent: Monday, November 29, 2010 11:49 AM
To: EP, RegComments
Subject: Commercial Fuel Oil Sulfur Limits for Combustion Units; Proposed Rulemaking; 40 Pa. Bulletin 39 (p. 5456, 9/25/10)
Attachments: 20101129_114338.pdf

Dear Sir/Madam: Please find attached the Council's comments on the proposed Rulemaking on Commercial Fuel Oil Sulfur Limits for Combustion Units; Proposed Rulemaking; 40 Pa. Bulletin 39 (p. 5456, 9/25/10). Thank you.

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