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LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 29, 2010

Honorable John Hanger, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-462 (IRRC #2874)
Environmental Quality Board
Commercial Fuel Oil Sulfur Limits for Combustion Units

Dear Chairman Hanger:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. We will send a copy to the new Standing Committees when they are designated.

If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

sfh

Enclosure

cc: Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-462 (IRRC #2874)

Commercial Fuel Oil Sulfur Limits for Combustion Units

December 29, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the September 25, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. General concerns relating to the Regulatory Review Act criteria of Economic impact or fiscal impacts of the regulation which include the following:

- **Direct and indirect costs to the Commonwealth, to its political subdivisions and to the private sector;**
- **Adverse effects on goods and services, productivity or competition;**
- **Nature of required reports, forms or other paperwork**
- **Feasibility;**
- **Need for the regulation;**
- **Reasonableness;**
- **Implementation procedures;**
- **Timetables for compliance; and**

Policy decision of such a substantial nature that it requires legislative review.

Under Paragraphs (2) of Subsections (a) through (e), sulfur limits will be established for combustion units as of May 1, 2012, as follows:

- 15 ppm sulfur for No. 2 and lighter commercial fuel oil,
- 0.25% sulfur for No. 4 oil, and
- 0.5% sulfur for Nos. 5, 6, and heavier oil.

These requirements apply to the following subsections in Section 123.22:

- (a) Nonair basin areas.
- (b) Erie; Harrisburg; York; Lancaster; and Scranton, Wilkes-Barre air basins.
- (c) Allentown, Bethlehem, Easton, Reading, Upper Beaver Valley and Johnstown air basins.
- (d) Allegheny County, Lower Beaver Valley, and Monongahela Valley air basins.
- (e) Southeast Pennsylvania air basin.

The following comments apply to each provision in Subsections (a) through (e).

Compliance date of May 1, 2012

Senator Mary Jo White, Chairman of the Senate Environmental Resources and Energy Committee (Senate Committee Chairman White) commented that this rulemaking, at the earliest, would not be complete until the summer of 2011 which would allow less than a year to comply. Several refineries commented that compliance by May 1, 2012, will not allow sufficient lead time to allow them to meet the requirements. They cite concerns that the transition requires financing, capital planning, engineering design, environmental permits, construction and startup of the upgraded refining process. Other commentators expressed concern that the compliance date could affect the overall supply of fuel oil, resulting in price increases of diesel truck fuel and home heating fuel. Commentators also cited what they consider to be more reasonable limits and timeframes used by New Jersey. These refineries, as well as other commentators, request at least a four year lead time to comply. The EQB should explain why the compliance date in the final-form regulation is reasonable and the effect on the supply and price of the fuels directly listed in the regulation, as well as other fuels derived from the same source.

Limit of 15 ppm sulfur for No. 2 and lighter commercial fuel

Some commentators support the 15 ppm limit, stating it will provide a better environmental benefit. However, several commentators suggest that 500 ppm is more realistic and would allow efficiency in fuel blending that 15 ppm would not allow. Senate Committee Chairman White commented that a more realistic approach is to consider 500 ppm, which would still amount to a nearly 90% sulfur content reduction. We recommend that the EQB review the 15 ppm limit, and in the final-form regulation explain how the limit used in the final-form regulation recognizes the efficient operation of refineries while addressing the need to protect the environment.

Limit to 0.5% sulfur for No. 5, No. 6 and heavier oil

Two refinery commentators (The National Petrochemical and Refiners Association and ConocoPhillips) state that sulfur removal from heavy fuel oils is technologically difficult, very costly and usually economically cost prohibitive. These commentators state that the market reality of the limit to 0.5% sulfur for these fuels is that they will export them rather than make the investments required to meet the 0.5% limit. We are concerned that the regulation may disrupt the supply of these fuels in Pennsylvania. The EQB should review the 0.5% limit and explain why the impact of the limit in the final-form regulation is needed, reasonable and cost-effective.

Limit to 0.25% sulfur for No. 4 oil

In regard to the 0.25% sulfur limit for No. 4 oil, we request the same evaluation of this limit in the final-form regulation as requested above relating to No. 5, No. 6 and heavier oil. The EQB should review the 0.25% limit and explain why the impact of the limit in the final-form regulation is needed, reasonable and cost-effective.

Supply and indirect costs

Senate Committee Chairman White is concerned that Pennsylvania homeowners who rely on home heating fuel could be impacted by the price and availability of fuel. Commentators believe the regulation could disrupt the overall supply of fuel. They cite concern that the timing and sulfur limits could translate into a higher price for on-road diesel fuel and price spikes for home heating oil. One commentator estimates the regulation could add 20 to 30 cents per gallon to the cost of fuels. The EQB should provide with the final-form regulation submittal an analysis of the impact of the regulation on both the fuels directly included in the regulation and other fuels derived from the same sources, including an analysis of the supply and demand for the fuels and the effect of the regulation on the availability and price of these fuels.

Temporary suspension mechanism

Subparagraphs (2)(iii) of Subsections (a) through (e) include the following:

- (iii) The Department, with the written concurrence of the Administrator of the EPA [Environmental Protection Agency], may temporarily suspend or increase the applicable limit or percentage by weight of sulfur content of a commercial fuel oil set forth in the table in subparagraph (i) if both of the following occur:

- (A) The Department determines that an insufficient quantity of compliant commercial fuel oil is reasonably available in a nonair basin area.
- (B) The Department receives a written request for a suspension or increase on the basis that compliant commercial fuel oil is not reasonably available. The request must include both of the following:
 - (I) The reason compliant commercial fuel oil is not reasonably available.
 - (II) The duration of time for which the suspension or increase is requested and the justification for the requested duration.

We request an explanation of how the temporary suspension mechanism will be effective in addressing a shortage of compliant fuel. The regulation is not clear regarding what process will be followed, when the EPA would complete its review, the content required by the EPA to grant the request or whether the EPA is required to entertain the request. We question how an excessive price for compliant fuel would be considered in the determination of whether compliant fuel is “available.” Also, what alternatives would the Department have if the EPA refuses to entertain the request or denies the request? The EQB should explain how this mechanism is feasible, reasonable and in the best interest of Pennsylvania.

Policy decision of such a substantial nature that it requires legislative review

It is clear that this regulation has direct and indirect effects on a broad range of citizens, businesses and industry. Several comments were received in support of the regulation, even by those who may oppose portions of the regulation. We also recognize from the concerns expressed in the public comments, Senate Committee Chairman White’s comments and our concerns included above that this regulation involves the availability of fuel, the price of fuel, significant economic investment and approval of temporary suspensions by the EPA that may affect the economic interests of all of Pennsylvania. Therefore, the EQB should seek the advice of the legislature on whether this regulation represents a policy decision of such a substantial nature that it requires legislative review.

2. Subsection 123.22(f) Sampling and testing. – Reasonableness; Duplication of requirements.

Two commentators believe the requirements for sampling and testing are unwarranted and may require re-testing of fuels. The EQB should explain why the sampling and testing requirements are needed and would not result in excessive or repetitive sampling and testing of fuels.

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Debra L. Failor
Agency: Environmental Quality Board
Phone: 7-2814
Fax: 705-4980
Date: 12/29/10
Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-462 (IRRC #2874). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Jammy Adams* **Date:** 12/29/10