



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Air Quality

**REVISION OF THE MAXIMUM ALLOWABLE SULFUR
CONTENT LIMIT FOR NO. 2 AND LIGHTER
COMMERCIAL FUEL OIL**

25 Pa. Code Chapter 123
49 Pa.B. 3482 (July 6, 2019)
Environmental Quality Board Regulation #7-546
(Independent Regulatory Review Commission #3238)

Comment and Response Document

Revision of the Maximum Allowable Sulfur Content Limit for No. 2 and Lighter Commercial Fuel Oil

On July 6, 2019, the Environmental Quality Board (Board or EQB) published a *Pennsylvania Bulletin* notice of public hearings and written comment period on the proposed amendment to Chapter 123 (relating to standards for contaminants) (49 Pa.B. 3482). The proposed rulemaking would amend § 123.22 (relating to combustion units) to reduce the maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil, generally sold for and used in residential and commercial furnaces and oil heat burners for home or space heating, water heating, or both, from the current limit of 500 parts per million (ppm) of sulfur to 15 ppm. This reduction would help the Commonwealth make further progress toward its Clean Air Act obligation to address regional haze and visibility impairment impacting Federal Class I areas, benefit public health, and improve visibility impairment in urban and rural areas of the Commonwealth.

The public comment period opened on July 6, 2019, and closed on September 9, 2019. Three public hearings were held on the proposed rulemaking, on August 6, 7, and 8, 2019, in Pittsburgh, Norristown, and Harrisburg, respectively.

This document summarizes the written comments received during the public comment period. Five individuals presented testimony during the public hearings. The Independent Regulatory Review Commission (IRRC) submitted written comments following the public comment period, which are also summarized in this document. No written comments were received from the Senate or House Environmental Resources and Energy Committees, but the Department did receive a comment from Pennsylvania State Senator Scott Hutchinson. Each comment is listed with an identifying number for each commenter that made the comment. A list of the commenters, including name and affiliation, can be found below.

This final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the Commonwealth's State Implementation Plan (SIP) upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

Copies of all comments received are posted on the IRRC web site at <http://www.irrc.state.pa.us>. Search by Regulation # 7-546 or IRRC # 3238.

<u>Table of Commenters to the Environmental Quality Board</u>	
ID	Name/Address
1.	James Deiter Deiter Bros. Heating Cooling Energy 1226 Stefko Boulevard Bethlehem, PA 18017
2.	Tim Watkins Tevis Energy, Inc. 960 Old Harrisburg Road Gettysburg, PA 17325
3.	Bruce Limbert Moyer Indoor Outdoor 113 East Reliance Road Souderton, PA 18964
4.	Kevin Steele H.B. Steele & Son, Inc. 17 Municipal Road Orwigsburg, PA 17961
5.	Russell Christoff Rusty's Oil & Propane, Inc. 275 Spring Street Houtzdale, PA 16651
6.	Thomas McKenzie Penn-Mar Oil Company 121 Myrtle Avenue Waynesboro, PA 17268
7.	Quincy Longacre Better Home Heat Council of the Lehigh Valley P.O. Box 613 Emmaus, PA 18049
8.	Richard Wisser Morris E. Wisser Coal & Fuel Oil, Inc. 1829 Pope Road Allentown, PA 18104
9.	Steve Oehlert Oehlert Brothers, Inc. – Delaware Valley Fuel Dealers 1203 South Township Line Road Royersford, PA 19468
10.	Ben Zimmerman Penn Petroleum Inc., T/A William R. Gift 2314 Farmington Avenue Boyertown, PA 19512

11.	Heather Troain Talley Petroleum Enterprises 10046 Allentown Boulevard Grantville, PA 17028
12.	Mike Leymeister Jack Rich, Inc. 617 Altamont Boulevard Frackville, PA 17931
13.	Tony Malandra Yeager's Fuel, Inc. 1431 West Green Street Allentown, PA 18102
14.	Michael Adams Adams Petroleum Products, Inc. 2060 Big Sewickley Creek Road Sewickley, PA 15143
15.	Andrew P. Bradigan Bradigan's, Inc. 114 South Water Street Ext Kittanning, PA 16201
16.	Kate Duffey D.E. Duffey & Sons P.O. Box 763 Plymouth Meeting, PA 19462
17.	Leonard Zvorsky South Central Pennsylvania Energy Association 1265 Tumblestone Drive Mount Joy, PA 17552
18.	Michael McCarthy Shipley Energy 415 Norway Street York, PA 17403
19.	Jason L. Mengel Buckeye Partners, L.P. 5 Tek Park 9999 Hamilton Boulevard Breinigsville, PA 18031
20.	Michael Hinds Hinds Oil Company, Inc. P.O. Box 100 Montrose, PA 18801
21.	Sharon Davis New Jersey Department of Environmental Protection 401 East State Street Trenton, NJ 08625

22.	Senator Scott E. Hutchinson Senate of Pennsylvania Senate Box 203021 Harrisburg, PA 17120
23.	Ted Harris Pennsylvania Petroleum Association 911B South Eisenhower Boulevard Middletown, PA 17057
24.	David Sumner, Executive Director Independent Regulatory Review Commission 333 Market Street, 14th Floor Harrisburg, PA 17101

Acronyms used in this Comment and Response Document

EPA – United States Environmental Protection Agency
EQB – Environmental Quality Board
IRRC – Independent Regulatory Review Commission
NRLM – Nonroad, Locomotive, and Marine
MANE-VU – Mid-Atlantic/Northeast Visibility Union
PM_{2.5} – Fine particulate matter
PPM – Parts per million
SIP – State Implementation Plan

COMMENTS AND RESPONSES

General Support of Proposed Rulemaking

1. Comment: Commenters supported the reduction in the maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil from the current limit of 500 ppm to 15 ppm. (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23)

Response: The Department appreciates the comments.

2. Comment: Commenters supported the proposed rulemaking because it aligns Pennsylvania with the rest of the Mid-Atlantic and New England states who have already implemented a maximum allowable sulfur content limit of 15 ppm for No. 2 and lighter commercial fuel oil. (1, 2, 3, 4, 5, 7, 11, 13, 15, 16, 18, 21, 23)

Response: The Department appreciates the comments. Pennsylvania will now have the same maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil as the rest of its Northeast and Mid-Atlantic counterparts and will no longer be at a competitive disadvantage.

3. Comment: Commenters indicated that homeowners will realize cost savings and environmental benefits due to their existing units running cleaner and more efficiently. (1, 2, 3, 4, 6, 7, 11, 12, 13, 15, 16, 17, 18, 20, 23)

Response: The Department agrees that implementation of the reduced maximum allowable sulfur content limit included in this rulemaking will provide benefits to homeowners.

4. Comment: Commenters noted that the proposed rulemaking will assist in the distribution, capacity, transportation, and storage of fuel. (3, 5, 12, 14, 17, 18, 20, 23)

Response: The Department agrees that this rulemaking will assist the industry in its distribution, capacity, transportation, and storage of fuel.

Small Business Impact

5. Comment: A commenter noted concern with the proposed rulemaking, stating that this proposal will place an onerous financial burden on a small transmix facility and that requiring the immediate reduction of the maximum allowable sulfur content limit is drastic and burdensome. (22)

Response: The Department understands the commenter's concern. The commercial fuel oil industry as a whole, however, will benefit from having consistent maximum allowable sulfur content limits in both No. 2 and lighter commercial fuel oil and transportation diesel fuel including NRLM and highway transportation diesel fuels. Consistent maximum allowable sulfur content limits will help refinery owners and operators, distributors, carriers, and owners and operators of commercial fuel oil and transportation diesel fuel terminals minimize the number of storage tanks and delivery trucks needed. The maximum allowable sulfur content limit for

NRLM and highway transportation diesel fuels is already 15 ppm. No. 2 and lighter commercial fuel oil with a maximum sulfur content of 15 ppm could be combined with NRLM and highway transportation diesel fuel in the same storage tanks and delivery trucks, thus minimizing the number of storage tanks and delivery trucks needed.

The Department has revised the compliance date in the final-form rulemaking to September 1, 2020, to provide certainty for refinery owners and operators, distributors, carriers, and owners and operators of commercial fuel oil and transportation diesel fuel terminals. This compliance date provides ample notice for businesses to adapt their operations for the 2020-2021 fuel delivery season. Non-compliant fuel purchased and delivered by businesses to the ultimate consumer before the compliance date of September 1, 2020, may still be used by the ultimate consumer after the compliance date. If the owner or operator of the facility in question cannot make the needed plant upgrades, fuel with a higher sulfur content may be marketed on and after September 1, 2020, to states that do not have a maximum allowable sulfur content limit of 15 ppm for No. 2 and lighter commercial fuel oil (e.g. Ohio, West Virginia, and Virginia). The owner or operator of this facility may also reach out to the Department to discuss their situation.

Further, the regulatory amendments proposed in this rulemaking will help the Commonwealth make progress toward addressing its Federal Clean Air Act obligation to reduce regional haze and visibility impairment in Federal Class I areas. This rulemaking is consistent with the course of action set forth in the *Statement of the Mid-Atlantic and Northeast Visibility Union (MANE-VU)* adopted on June 20, 2007 (2007 MANE-VU “Ask”), and in MANE-VU’s August 25, 2017, *Statement of the MANE-VU States Concerning a Course of Action Within MANE-VU Toward Assuring Reasonable Progress For the Second Regional Haze Implementation Period (2018-2028)* (2017 MANE-VU “Ask”). To address the impact of regional haze on mandatory Federal Class I areas within the MANE-VU region, the 2007 MANE-VU “Ask” established that the member states would pursue a coordinated course of action, including pursuing the adoption and implementation of the following strategy to reduce the sulfur content of distillate oil (a general classification for one of the petroleum fractions produced in conventional distillation operations) in the “inner zone” MANE-VU states (New Jersey, New York, Delaware, and Pennsylvania, or portions thereof) to 500 ppm by 2012 and to 15 ppm by 2016. The 2017 MANE-VU “Ask” specifies that member states are to expeditiously pursue adoption of the low-sulfur content maximum allowable limit of 15 ppm for No. 2 and lighter commercial fuel oil if they have not done so.

Pennsylvania is currently the only member State in MANE-VU that does not have the requirement for a maximum allowable sulfur content of 15 ppm for No. 2 and lighter commercial fuel oil, putting the Commonwealth at a competitive disadvantage. Public comments for this proposed rulemaking from small and large businesses alike overwhelmingly supported reducing the maximum allowable sulfur content for No. 2 and lighter commercial fuel oil from 500 ppm to 15 ppm.

Request for Biofuel Mandate

6. Comment: Commenters requested a mandate for a biodiesel requirement (i.e. B2, 2% biodiesel or higher). (3, 8)

Response: The mandate requested is outside the scope of this rulemaking. Section 123.22 is being amended to help the Commonwealth meet its Clean Air Act obligations and the 2007 and 2017 MANE-VU “Asks,” which push for states to implement a maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil of 15 ppm. Although the proposed rulemaking does not provide for a biodiesel mandate, it also does not prevent the use of a certain percentage or blend of biodiesel in home heating oil.

Disposal of No. 2 and lighter commercial fuel oil with a sulfur content of 500 ppm

7. Comment: A commenter suggested that there will not be any additional outlets to dispose of No. 2 and lighter commercial fuel oil with a sulfur content of 500 ppm once Pennsylvania joins the other Northeast and Mid-Atlantic States that have switched to a maximum allowable sulfur content of 15 ppm. (19)

Response: The Department understands the commenter’s concern. However, the majority of No. 2 and lighter commercial fuel oil being sold throughout Pennsylvania already has a maximum sulfur content of 15 ppm. If stored by the ultimate consumer prior to the compliance date, the fuel may be used by the ultimate consumer even if it has a sulfur content greater than 15 ppm. Additionally, fuel with a higher sulfur content may be marketed to nearby states that do not have a maximum allowable sulfur content limit of 15 ppm for No. 2 and lighter commercial fuel oil (e.g. Ohio, West Virginia, and Virginia).

Compliance Date Comments

8. Comment: Commenters expressed concern regarding the proposed compliance date being a date “60 days after the effective date of adoption.” The commenters recommended that the compliance date be a “fixed” date, such as July 1, 2020, or September 1, 2020, rather than a moving target date of “60 days after the effective date of adoption.” A fixed date is desired for market purposes, especially to avoid affecting the winter heating season. (19, 23)

Response: The Department understands this concern and revised the compliance date in the final-form rulemaking to September 1, 2020. Using September 1, 2020, as the compliance date provides certainty and will ensure that there is enough lead time for the industry to make the necessary transition. It will still allow for more than 60 days lead time, as was provided in the proposed rulemaking, and will ensure that disruptions to the 2020-2021 winter heating season are avoided.

IRRC Criteria

9. Comment. IRRC submitted a comment letter asking if the Department considered a fixed implementation date to allow the regulated community to plan for the transition to the lower sulfur content limit. (24)

Response: Please see the Department’s response to comment 8.

10. Comment. IRRC also asked whether a less costly or less intrusive alternative method of achieving the goal of the regulation was considered for small businesses in the fuel oil supply chain impacted by this regulation. (24)

Response: The Department evaluated the benefits and costs of the proposed rulemaking. As explained in the response to Question 24 of the accompanying Regulatory Analysis Form, there are no less intrusive or less costly alternative regulatory provisions available. These regulatory amendments will help the Commonwealth make reasonable progress toward its Clean Air Act obligation to reduce regional haze and visibility impairment impacting Federal Class I areas. This control measure is a regional initiative for the MANE-VU states to assist in reducing regional haze in Federal Class I areas, as well as to assist in reducing the formation of ground-level ozone and PM_{2.5} and PM_{2.5} precursors throughout the Commonwealth.

Please also see the Department's response to comment 5.