

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel
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JUN 30 2022

RE: Enforcement Discretion Related to ECL § 19-0327(3) Bioheating Fuel Requirements

To Whom it May Concern:

This is to advise you that, subject to the terms set forth in this letter, the New York State Department of Environmental Conservation ("Department") will exercise its authority to utilize enforcement discretion with respect to certain provisions of § 19-0327 of the New York State Environmental Conservation Law ("ECL"). The Department will exercise this authority regarding the provisions subject to the terms set forth below in lieu of full compliance with ECL § 19-0327. This enforcement discretion is effective on July 1, 2022 and will expire on July 1, 2023.

ECL § 19-0327(3) requires that on or after July first, two thousand twenty-two, all heating oil sold for use in any building within the state shall be bioheating fuel that contains at least five percent biodiesel¹. This requirement became effective on December 22, 2021 and expanded the bioheating fuel requirement from a few downstate counties to all counties statewide.

The Department was informed by New York's fuel suppliers that the recent amendment only allows for a short 6 1/2 month timeframe to complete the necessary retrofit and installation to conduct the bio-blending necessary to meet the July 1st requirement. The retrofits and installation necessary to meet the new requirement, and to allow its distribution and storage networks to be safely compatible for biodiesel blends, is time, labor and capital-intensive. This would normally require at least 12 months to complete the engineering, procurement and construction necessary to safely upgrade a terminal. Also, supply chain delays associated with the pandemic and otherwise have made this challenge even greater. The industry on average is seeing a 50% increase in critical material and component lead times, which in some cases translates to an additional 15 weeks in procurement timelines.

While a majority of terminals in upstate New York are available and ready to meet the July 1st deadline, a few areas of the state will be disproportionately impacted. If fuel suppliers are not able to provide traditional heating oil in upstate regions impacted by the July 1st deadline while the facilities are still undergoing the necessary upgrades, customers in those regions will be forced to look for alternative sources of heating oil if available. This will increase costs, as heating oil will need to be obtained from locations that are much farther away; and increase emissions, as alternate sources of heating oil

¹ Added L.2017, c. 315, § 1, eff. Sept. 13, 2017. Amended L.2021, c. 750, § 1, eff. Dec. 22, 2021; L.2022, c. 5, § 1, eff. Dec. 22, 2021.



Department of
Environmental
Conservation

will need to be transported by truck from farther away. These challenges will be further exacerbated if they occur in the middle of the heating season, especially in the colder areas of the state. Also, the supply reliability of sources could suffer, resulting in widespread shortages of heating oil, particularly in those upstate regions currently undergoing the necessary upgrades. This could result in suppliers being forced to raise prices to the consumer and/or limit the amount of heating oil that they can supply to their customers.

Due to the significant impact on upstate customers relying on a safe and reliable supply of heating fuel, especially in the colder regions of the State, the potential for increased truck emissions resulting from transporting alternate fuel supplies further distances, and the continuing challenges on New York's fuel supply wrought by the pandemic, the Department finds that enforcement discretion is in the best interest of the State and will help ensure the protection of public health, welfare and the environment. Specifically, the Department is issuing this limited enforcement discretion to allow fuel suppliers to continue to supply traditional heating oil to New York customers until July 1, 2023 in order to allow for additional time to perform the necessary biofuel blending upgrades at upstate regional terminals which will allow adequate time to meet the requirements of ECL § 19-0327(3). For purposes of this enforcement discretion, the one-year extension applies to all heating oil sold for use in any building outside the counties of Nassau, Suffolk and Westchester since those counties have already been subject to the requirements of ECL § 19-0327(2) since 2018. All other provisions of ECL § 19-0327 remain in effect and will be enforced.

Thank you for your cooperation in this matter. Questions regarding this enforcement discretion should be directed to Khai Gibbs, Esq. of the Office of General Counsel at (518) 402-9185.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Berkman', with a long horizontal flourish extending to the right.

Thomas S. Berkman
Deputy Commissioner
and General Counsel

cc: Regional Directors
Regional Air Pollution Control Engineers
Regional ECO Cpt.