



RENT STABILIZATION ASSOCIATION • 123 William Street • New York, NY 10038

Mitchell L. Posilkin, Esq.
General Counsel

Tel: 212..214.9244
mposilkin@rsanyc.org

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Department of Environmental Protection
of the City of New York
Office of Legal Affairs
Erin Callahan, Esq.
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373

RE: Proposed Rules by the Department of Environmental Protection Relating to the Use of No. 4 and No. 6 Fuel Oil in Heat and Hot Water Boilers and Burners

Dear Ms. Callahan:

These comments are submitted on behalf of the members of the Rent Stabilization Association, a trade association of 25,000 members who own or manage approximately one million apartments throughout the City of New York. These comments are in opposition to regulations proposed by the Department of Environmental Protection (DEP) relating to the use of No. 6 fuel oil and are in addition to the comments submitted by the New York City Fuel Alliance, of which RSA is a member.

In brief, the proposed regulations would require the owners of almost 6,000 buildings to cease using No. 6 fuel oil by 2015 and No. 4 fuel oil by 2030. DEP, by insisting upon the prohibition of, and the conversion away from, No. 6 fuel oil in such an abbreviated timeframe, has either failed to consider or simply disregarded the fiscal impact that the proposed regulations will have on the ability of property owners to continue to maintain and operate affordable housing.

While there is no dispute that the financial implications of these proposed regulations for property owners will vary, in any scenario significant financial burdens will be borne by both owners and tenants. One way or another the costs associated with these regulations will need to be paid. For those owners of adequate means, some will use these regulations as the opportunity to convert not merely from No. 6 to No. 4 but, in anticipation of 2030, directly from No. 6 to No. 2 fuel oil or gas. These conversions will result in extraordinary major capital improvement rent increases (as set forth below). For those tenants for whom the ability to pay current rental amounts is problematic, these major capital improvement rent increases could endanger their continued tenancies. In those situations where owners cannot collect these increases, particularly in buildings

with predominantly low-income and moderate-income tenants, their financial viability will be at risk. Furthermore, the anticipated 35% increase in fuel costs based upon the conversion merely from No. 6 to No. 4 will result in increased costs to property owners and, potentially, to tenants in the amount of at least \$42.70 per apartment per month.

For other owners who are already operating at the margins of profitability, the implications are enormous; by extension, the implications for the City itself are equally serious. The proposed regulations fail to take into account the dramatically higher fuel costs that will, invariably, result. These regulations cannot be considered in a vacuum but must take into account the bottom-line reality of owning and managing property. A phased implementation timetable would allow for the replacement of existing equipment at the end of their useful life. With that approach, DEP could accomplish its goal of improving air quality for all New Yorkers while giving property owners a reasonable and fair opportunity to comply and do so in a manner that is less burdensome on the most vulnerable owners and tenants.

As noted by the New York City Fuel Alliance, the conversion costs for adjusting No. 6 boilers to burn No. 4 oil are approximately \$10,000. However, the Alliance also makes clear that the increased costs associated with No. 4 fuel, together with the costs relating to heating system upgrades and tank testing, combine to make these regulations a threat to the financial viability of a large number of predominantly “outer borough” property owners.

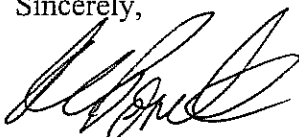
For cooperatives, condominiums and unregulated rentals, it is inevitable that those costs will be passed on in their entirety, impacting upon cooperative shareholders, condominium owners and free-market tenants. In the rent regulated environment, however, the historical reality is that the Rent Guidelines Board never grants rent increases for rent stabilized apartments that even roughly approximate the established price index of operating costs. In the absence of authorizing legislation, there is no reason to assume that these increased costs will ever be reflected in the annual rent adjustments determined by the Board. As a result, rent regulated property owners will continue to fall further behind in their ability to maintain profitability. It is that very profitability that makes it possible for them to continue to pay the ongoing increases in real estate taxes, water and sewer charges and other operating costs.

Other costs arise from the decision by owners to replace existing burners. While such a replacement is not necessarily required to burn No. 4 oil, such a replacement is required to burn No. 2 oil or to convert to gas. Owners with adequate means to do so may choose to undertake a replacement to No. 2 or gas ahead of the 2030 deadline. While owners of rent regulated properties each year expect that the Rent Guidelines Board will fail to recognize the increased costs that owners face, including compliance with regulations such as these, the major capital improvement rent increase process set forth in the rent regulation laws is an objective, mathematical determination. Thus, tenants of a ten-unit building where the owner spends \$100,000 to replace a burner can expect to receive rent increases of \$119.05 per unit per month. Similarly, tenants of a twenty-unit building will receive increases of \$59.52 per month and \$29.76 per month for tenants of a forty-unit

building. Obviously, if the costs for owners are higher, as would typically be the case for a conversion to gas, the associated rent increases would be higher as well.

RSA respectfully urges DEP to amend the proposed regulations to allow for the graduated phase-out of No. 6 and No. 4 burners and boilers upon the expiration of their current useful life, the incorporation of genuine, broadly applicable hardship provisions, the implementation of required financial incentives, and adoption of the several recommendations of the Alliance, so that the City may achieve a balanced approach to achieving improved air quality while also recognizing the genuine financial concerns of owners and tenants throughout the City.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Posilkin', written in a cursive style.

Mitchell Posilkin
General Counsel