



## *Representing New York's Heating Fuels Industry*

### **Legislative Report**

**July 2016**

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In April, 2016, the Oil Heat Institute of Long Island (OHILI) retained the firm of Shenker Russo & Clark, LLP (SRC) for governmental affairs representation in New York State. During the last three months of the Legislative Session, SRC went to work reviewing over 350 pending legislative proposals of interest to association members, as well as developing a short term proactive agenda which was focused on a statewide biodiesel blending requirement.

There were two proposals on a biodiesel blending requirement. The first was a 2% statewide blending mandate (A.6070B). That bill was not getting traction in the State Senate due to concerns about biodiesel supply and demand impact on price. The second proposal was an in-state biodiesel production level as the implementation trigger for a blend graduating from a 2% to 5% blend (S.7553A / A.10529A).

While the overall discussions were more positive on the production trigger legislation, there were still concerns as the American Petroleum Institute (representing the major oil companies) fiercely opposed the legislation. At the end of the day, the production trigger bill advanced to the Senate Calendar, but no vote was not taken up prior to their adjournment. The Assembly did not move either piece of legislation.

Other legislative proposals under consideration:

S.6024A – Public Service Commission program to extend natural gas hook-ups to 550,000 homes within 100 feet of an existing natural gas distribution line and another 500,000 homes within the utility franchise area. This legislation passed the Senate prior to SRC being retained. SRC held meetings with the sponsors and also Assembly leadership to keep the bill from advancing in the Assembly.

S.7818/A.3599 – Requires that every pipe and tank used for storage and delivery of home heating oil shall be marked with a unique identification number or a bar code and filed with the Commissioner of Environmental Conservation. This bill was meant to avoid erroneous fills to homes that converted to natural gas. SRC met with the sponsors informing them that current law requires the fill pipe to be removed or filled with concrete and sealed to avoid the erroneous fills. The sponsors agreed to hold the bill and work with OHILI on future legislation to enforce the current law before a conversion can be completed.

S.7210/A.9571 – Requires the registration and reporting by major oil storage facilities with the New York State Energy Research and Development Authority (NYSERDA). This legislation is duplicative of post-Hurricane Sandy requirement by the state Department of Environmental Conservation. SRC met with the sponsors to inform them of this duplicative reporting and suggested that the state agencies simply share this reported information.

S106/A556 - Requires owners and operators of petroleum bulk storage facilities located in New York City to undertake comprehensive accident prevention plans for the prevention of spills and leaks of petroleum and have an independent quarterly audit of the implementation plan. This legislation has been around since 1989 and was introduced in response to an Exxon spill in Brooklyn. SRC met with the Assembly sponsor and informed them of the Spill Prevention Control and Countermeasure (SPCC) plans all facilities must keep on file. This bill has passed the Assembly each year since 1989. The sponsor agreed not move the bill this year based upon the SPCC information provided.

With the Legislative Session recessed, SRC will be meeting over the summer with the New York State Energy Coalition to plan a legislative strategy for the remainder of 2016 and 2017.



### ELIMINATION OF THE NYS PETROLEUM BUSINESS TAX

Over 75,000 small businesses in New York State rely on heating oil for space heating and are subject to the petroleum business tax (PBT). The PBT rate is currently 5.2 cents-per-gallon plus applicable state and local sales tax. It should be noted, however, that natural gas used for space heating is not subject to the PBT. This tax on commercial heating oil needs to be eliminated. By eliminating the PBT on non-residential space heating, the state will help lower the operating costs for thousands of small businesses.

### LIEN BILL

The Lien Law is intended to protect the value of services rendered to real property. Heating oil dealers provide a crucial service to commercial buildings and apartment buildings that use heating oil or kerosene as a source of heat, hot water, or for forms of energy or power. However, heating oil dealers are not permitted by law to file a lien against real property for non-payment of fuel deliveries. On the other hand, natural gas utilities do have the right to file liens and are paid owed bills. Thus, heating oil dealers are frequently unable to collect monies owed from commercial buildings for delivered heating oil either as a result of the transfer of ownership of a building or because the costs of recovery amounts owed through court proceedings outweigh the value of the monies owed. As a result, heating oil dealers are often denied remuneration for that fuel that they provide to nonpaying buildings. The shortfalls experienced by heating oil dealers, as a result of nonpayment, can lead to higher heating costs for all customers that do pay for their fuel oil bills.

NYSEC will propose legislation that would permit heating oil dealers to seek recovery of monies owed to them for the delivery of heating fuel or kerosene to commercial properties or large apartment buildings through the filing of a lien to collect for past delivered fuel oil. By allowing heating oil dealers to file a lien for oil delivered the legislation would correct the inequity created by the nonpayment by commercial building owners. Further, it will give oil dealers the ability to collect old past due oil bills particularly when the building is sold to a new owner.

### BIODIESEL BLENDING REQUIREMENT

In an effort to help move the industry to a renewable home heating fuel, NYSEC supports a statewide biodiesel blending requirement of up to 5%. A renewable, biodiesel blended heating oil would provide not only a efficiency gains to the home heating system, but also help reduce the greenhouse gas emission across the entire spectrum of GHG emissions. As New York State has a 30% carbon reduction target by 2050, such a law would help bring along the home heating oil sector which, in many cases, will continue to serve approximately 25% of the households in the state.

Since 2012, New York City has had a 2% blending requirement and the NY City Council is currently debating legislation to extend that blending percentage to 5% in 2017, 10% in 2022, 15% in 2027 and 20% in 2032.

New York State has not yet followed suit even though efforts have been underway for several years to pass statewide blending requirement legislation. NYSEC supports legislation modeled after the Pennsylvania and Oregon statutes providing that in-state production attain certain levels prior to the blending requirement being implemented. Based on the state's heating oil usage of 1.2 billion gallons, the bill specifically would require 12 million gallons (1%) to trigger a 2% blending requirement and 30 million gallons (2.5%) to trigger a 5% blending requirement. However, the 2% blending requirement would be statewide and the 5% would be phased-in throughout the state with the Metropolitan New York area (NY City, Nassau, Suffolk, Rockland and Westchester counties) going first and then two years later the remainder of the state would follow in a 5% blending requirement.

### NORA

The National Oilheat Research Alliance (NORA) is a national check-off program established in 2000. It provides funding equal to two-tenths of one cent per gallon of home heating oil sold nationally to help advance home heating fuel research & development (R&D), energy efficiency, technician and industry training, and consumer education. New York State is the largest consumer of home heating oil in the country. Advances in R&D and energy efficiency has allowed consumers to lower their home heating use by 40% over the past decade. Yes, NORA programs have helped consumers go from using 1,200 gallons to 700 gallons on-average per year.

Establishing a NYS NORA program at one-tenth of a cent per gallon would allow the home heating industry in New York to supplement the efforts afforded the industry from the federal program. Similar to the federal program, the NYS NORA proposal would provide for additional R&D, energy efficiency programs, industry training and consumer education.