



Representing New York's Heating Fuels Industry

2019 Legislative Session Summary of Issues for the New York State Energy Coalition

The 2019 Legislative Session came to a close on June 20, 2019. On behalf of the New York State Energy Coalition (NYSEC), the firm of Shenker Russo & Clark LLP (SRC) was successful in advocating for the home heating industry to pass legislation and defeat other legislation.

The 2019 Legislative Session marked an historic occasion as it was only the second time in the past 107 years that the Democrats held all three legislative bodies of New York State government – the Governor, State Senate and State Assembly. The last time Democrats held this power was in 2009-2010; prior to that it was in the early 1900's.

SRC actively monitored 331 pieces of legislation this session that could have had an impact on the home heating industry. They spanned issues including: carbon taxes, global warming, carbon emissions, taxes on petroleum products, petroleum infrastructure, petroleum spills, efficiency programs, renewable energy, sustainable energy programs, wind power, solar power, hydro-power, green jobs, utility rates, electric generation, electric vehicles, natural gas pipelines, natural gas fracking, natural gas/methane leakage, environmental justice, etc.

Many did not move out of their committees of jurisdiction, while several passed either the Senate or Assembly, and a few passed both houses and will be considered by the Governor for approval. There were several proposals of note that we will address in this summary:

- Conversions from Oilheat Systems and the Abandonment of Heating Oil Systems
- Standards for Biodiesel Blending of Heating Oil
- Major Oil Storage Facilities Financial Responsibility
- Climate Leadership and Community Protection Act

Conversions from Oilheat Systems and the Abandonment of Heating Oil Systems

For the past two years, NYSEC has proposed legislation that would address when a homeowner looks to convert from a home heating with oil to an alternative form of heating fuel and abandon their heating system. The legislation, S.3360 / A.6193, passed both the Senate and Assembly and now awaits gubernatorial action.

In 1995, the state added to the State Executive law, Section 378, Subdivision 13, requirements that certain steps be followed for the proper abandonment of a heating system and its component parts to protect the home and the environment – including the emptying of and removal/abandoning in-place of the storage tank and removal of all its piping, and removal of the fill pipe or filling the fill pipe with concrete.

The key concern upon a conversion is not the emptying of the contents or the removal and/or abandonment of the storage tank, but rather the proper removal or filling of the fill pipe with concrete. If the fill pipe is not removed or filled with concrete, and the homeowner does not notify their home heating oil delivery of the conversion, there is a potential for the heating oil delivery company will show up and make an erroneous delivery of oil. If the oil delivery person opens the fill cap to inspect the fill pipe and all looks clear, they will attempt to deliver the heating oil, with the heating oil being pumped ending up in the homeowner's basement.

This legislation will help prevent this from occurring in the future. The legislation requires the Department of State to develop an informational notice of the requirements in state law that must be given to any homeowner when they enter into an agreement to convert a home heating oil system to an alternative fuel. The bill also requires the homeowner to notify their home heating oil delivery company of the conversion to avoid the possibility of an erroneous delivery.

There is no indemnification of the heating oil delivery company, and no penalties on the homeowner, but once the homeowner has been provided with the requirements of how to properly abandon a home heating system under the state law and building code, they will be more diligent to make sure the abandonment is done correctly.



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Standards for Biodiesel Blending of Heating Oil

Since July 2018, Westchester, Nassau and Suffolk counties, along with New York City, have had a 5% (B5) blending standard with no issues relating to price, supply or equipment. New York City local law (Int-642-2015) increases the blend level in the five-boroughs to 10% in 2025, 15% in 2030 and 20% in 2034.

When it became apparent that Climate Change issues were going to be front and center with the new Progressive Democrat Legislature, SRC brought the biodiesel blending issues to the Senate and Assembly Environmental Conservation Committee chairs. They were very interested in the environmental benefits of biodiesel blending from a CO₂e emissions savings, as well as the fact that this could be done at no cost to consumers. The notion of moving the blending level to 20% (B20) and up to 50% (B50) was something of interest to the chairs.

Thus, SRC helped coordinate discussions with New York Oil heating Association, the Oil Heat Institute of Long Island and the Empire State Energy Association, and after several meetings, the group jointly proposed the following statewide biodiesel blending schedule: 2021 – 5%; 2023 – 10%; 2025 – 20%; 2030 – 50%.

It should be noted that as the state moves to lower greenhouse gas emissions in the fossil fuel sector by 40% in 2030 and by 85% in 2050, the potential to immediately impact the CO₂ emissions in the space heating sector with 1.6 million homes using 1 billion gallons of heating oil is attractive. For every 10% biodiesel blended, NYS would be eliminating 100 million gallons of heating oil and saving 1.05 million metric tons of carbon emissions.

After negotiations with the two Environmental Conservation Committee chairs, they introduced legislation, S.6344 / A.8134, that would move the statewide biodiesel levels to 5% in 2021 and 10% in 2026. It seems like the potential to move to higher blending levels was something they wanted to take up in future years, as the main focus of their attention was the New York State Climate Leadership and Community Protection Act (see below).

The bill seemed to be moving along well, but an issue arose regarding consumer warranties on home heating appliances as current warranties do not cover issues for fuel use above a 5% biodiesel blend. Thus, if the state were to mandate higher blending levels, they would be by statute voiding the consumer warranty. After some discussion, the issue seemed to have been resolved. In the 11th hour, however, it reappeared and became a stumbling block given the timing of the issue resurgence just hours before the Legislature was to end the Legislative Session.

As previously discussed with the sponsors, and during the 11th hour, the New York heating oil industry pledged to establish a Risk Retention Group self-insured program to cover warranty claims made due to fuel use above the 5% blend for any resident in New York State who had a covered heating oil appliance under warranty.

At the end of the Legislative Session, the legislation would not move forward in both the Senate and Assembly, thus we live to fight another day in the 2020 Legislative Session. As you will read below, the passage of the Climate Leadership and Community Protection Act (CLCPA) took center stage on the environmental stage with the legislature and we believe it provides a great opportunity for biodiesel to play a big role in the future of the space heating sector and be in compliance with the CO₂e emissions limits for 2030 (40% reduction) and 2050 (85% reduction), for as we know, B50 provides a 39% reduction from ULSD and B100 is currently at 78% reduction. The discussions with the two sponsors will continue off-session with the hope of moving a proposal forward early in the 2020 Legislative Session.

Major Oil Storage Facilities Financial Responsibility

In prior years, legislation was pending that would have changed the definition of financial responsibility for major oil storage facilities (MOSF). At present, the financial responsibility requirements for MOSFs in the state is set at \$1 million per incident per facility in an aggregate not to exceed \$2 million per facility per year. This bill would delete that reference and define MOSFs as part of the definition in the vessels which would change the levels to \$50 million to \$350 million depending upon the facility. This would financially cripple a company with a MOSF. As a matter of fact, upon investigation, it was found that such levels of insurance were not even available to MOSF terminal operators.



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In past years, even though the bill passed in the Assembly, SRC was able to stop this proposal from passage in the Senate. This year, we went directly to the Assembly sponsor and Assembly leadership on the issue prior to the bill being introduced for the 2019 session, and were able to convince them of the detriment this bill would cause to the many small family-owned heating oil businesses in the state, and the bill was never introduced. Thus, we averted the issue for the coming year.

New York State Climate Leadership and Community Protection Act S.6599 (Kaminsky) / A.8429 (Englebright) – Governor Program Bill #7

Governor Andrew M. Cuomo released his Governor's Program Bill, which reflects a three-way agreement with the Assembly and the Senate on addressing climate change. The legislation is sponsored by the Chairmen of the Environmental Conservation Committees, with numerous co-sponsors reflecting a majority of both houses, including the Energy Committee Chairman Senator Kevin Parker and Assemblyman Michael Cusick. This legislation is an economy-wide emission reduction requirement. The bill passed both the Senate and Assembly on June 19th. Below is a summary of important provisions.

Statewide Greenhouse Gas Emission Limits

The bill sets forth the following greenhouse gas emission limits based off the 1990 emission levels:

- 2030 – 60% of 1990 emissions (40% reduction)
- 2050 – 15% of 1990 emissions (85% reduction)

The regulations for these emission targets will be established within 4 years of the effective date of the law. The regulations shall include:

- Measures to reduce emission from greenhouse gas emission sources, from internal combustion vehicles that burn gasoline or diesel fuel and boilers or furnaces that burn oil or natural gas
- Such plans shall be designed and implemented in a manner to minimize costs and to maximize the total benefits and encourage early action to reduce greenhouse gas emissions

There are two sections where biofuels are not allowed to be used:

- In the renewable energy program – even though biofuels are currently an identified fuel in the state's renewable portfolio
- In the offset section where entities can use offsets to account for their overproduction of greenhouse gases

Climate Action Council

The bill creates a 22-member Climate Action Council that now is to be co-chaired by the NYS Department of Environmental Conservation and New York State Energy Research & Development Authority (NYSERDA). Twelve state commissioners in total will serve on the council, along with 2 appointees of the Governor, 3 from the Senate Majority Leader, 3 from the Assembly Speaker and 1 each from the minority leaders of the Senate and Assembly. The Council would consult with the New York Independent System Operator (NYISO).

The Council will convene advisory panels including: transportation, energy intensive and trade-exposed industries, land use and local governments, energy efficiency and housing, power generation, and agriculture and forestry.

Within three years from the effective date, the advisory panels will provide recommendations to the Council on specific topics and the preparation of the scoping plan. The council will hold at least six regional public comment hearings.

The scoping plan shall identify and make recommendations on:

- Performance based standard for sources of greenhouse gas emissions in all sectors – transportation, building, industrial, commercial and agriculture
- Measures to reduce emissions from the electricity sector by displacing fossil-fuel fired electricity with the renewable electricity or energy efficiency



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- Measure to achieve reductions of energy use and beneficial electrification of water and space heating in buildings, establishing appliance efficiency standards

The Council will convene a Just Transition Working Group, which would include members such as the NYS Department of Public Service, environmental justice communities, labor, and clean energy developers. This transition group will advise the Council on topics such as:

- Workforce development and training related energy efficiency measures, renewable energy and other clean energy technologies
- Identify energy-intensive industries and related trades and identify sector specific impacts of the state's current workforce and avenues to maximize worker skills
- Identify sites of electric generating facilities that may be closed as a result of a transition to clean energy and the issues and opportunities presented by reuse of those sites
- Impact of the potential carbon reduction measure on the competitiveness of New York state business and industry
- Renewable energy and other clean energy technologies with specific focus on workforce issues
- Evaluate the total potential implementation costs and potential economic and non-economic benefits of the plan

The Value of Carbon – i.e.: Carbon Tax

The bill includes the language on the Value of Carbon. No later than one year after the effective date of these provisions, the DEC, in consultation with NYSERDA, would establish a social cost of carbon (SCC) for use by state agencies. The SCC would serve as a monetary estimate of the value of not emitting a ton of greenhouse gas emissions.

The DEC would determine the SCC based upon marginal greenhouse gas abatement costs or on the global economic, environmental, and social impacts of emitting a marginal ton of greenhouse gas emissions into the atmosphere, utilizing a range of appropriate discount rates, including a rate of zero.

The NYISO and DPS have already been through a year-long exercise where they gathered stakeholders and worked on a proposal for establishing a Social Cost of Carbon along with potential implementation targets. The social cost was estimated to be approximately \$47.00 per ton of carbon; if implemented on fossil fuels, which would translate into a \$0.47 tax on each gallon of heating oil.

Renewable Program Goal for Electric Power Generation Increased to 70 Percent

By June 30, 2021, the bill would require the Public Service Commission (PSC) to establish a program to require that a minimum of 70 percent of the statewide electric generation secured by load serving entities (LSEs) subject to the PSC's jurisdiction for end-use customers in 2030 be generated by renewable

energy systems. By 2040, the bill would require that the statewide electrical demand system be zero emissions. The current Clean Energy Standard is a 50 percent renewable energy requirement by 2030. The bill requires the PSC to design the program to address its impacts on safe and adequate electric service in the state under reasonably foreseeable conditions. The bill provides that the PSC may modify the LSEs' obligations and/or targets upon consideration of these impacts.

The bill defines "renewable energy systems" as systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity. Thus, no usage of biodiesel in power production.



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By July 1, 2024 and every two years thereafter, the PSC would review the program to determine: the progress in meeting the targets for the deployment of renewable energy systems and zero emission sources and factors that could frustrate that progress; distribution of systems by size and load zone; and annual funding and expenditures.

The bill would allow the PSC to temporarily suspend or modify the obligations under the program if the PSC makes a finding, after conducting a hearing, that the program: impedes safe and adequate electric service, likely impairs “existing obligations and agreements” and/ or increases consumer late payments or service disconnections.

Wind Power – Solar Power – Energy Storage Capacity

By July 1, 2024, the PSC would be required to establish programs for the procurement by the State's load serving entities of at least:

- 9 GW of offshore wind by 2035
- 6 GW of photovoltaic solar generation by 2025
- 3 GW of statewide energy storage capacity by 2030

The bill requires the PSC to design the programs to provide substantial benefits for disadvantaged communities. The PSC shall, to the extent practicable, specify that a minimum percentage of energy storage projects should deliver clean energy benefits into NYISO load zones that serve disadvantaged communities. Energy storage projects also would be deployed to reduce the use of peaking facilities in or near these communities.

NYSERDA would consider enhanced incentive payments for solar and community distributed generation projects with particular focus on, but not limited to, those serving disadvantaged communities that save energy costs or demonstrate community ownership models.

Offsets

The bill includes provisions for offsets, including carbon capture and sequestration. However, the bill states that electric generation sources are not eligible to participate in the offset mechanism.

The use of offsets shall account for not greater than 15 percent of statewide greenhouse gas emissions estimated as a percentage of 1990 levels, and the use of this mechanism must offset a quantity greater than or equal to the greenhouse gases emitted.

The use of offsets would not result in a disproportionate burden of environmental impacts on disadvantaged communities. The bill would prioritize offset benefits in disadvantaged communities. Waste-to-energy projects, including incineration and pyrolysis and biofuels use for energy or transportation purposes shall not be eligible for offset usage.

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