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For additional information on this or any environmental related issue, please contact E. Christopher Murray, Esq., partner and chair of Ruskin Moscou Faltischek's Environmental Law Practice Group. He can be reached at 516-663-6515 or emurray@rmfpc.com.

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EPA NARROWS NEW RULES REGARDING OIL FIRED BOILERS

By E. Christopher Murray, Esq.



In June of 2010, the United States Environmental Protection Agency ("EPA") proposed source rules for numerous categories of hazardous air pollutants, including regulations for commercial, industrial and institutional oil fired boilers. If implemented, the proposed rules would have required boilers commonly found in New York City schools, hospitals, churches and municipal buildings to meet strict emission limits for particle matter and carbon monoxide.

However, faced with more than 4,800 comments during the public comment period, which demonstrated that the proposed emission limits for area source, oil fired boilers were based on improper and inadequate information, and could neither be met by currently available equipment nor effectively measured for compliance, the EPA concluded that the proposed numerical emission standards for typical oil burners were unrealistic and otherwise unnecessarily stringent.

As a result, the EPA has now published a final rule that is significantly different than originally proposed. Instead of requiring numerical emission limits for the kinds of oil fired boilers commonly used in New York City buildings, the EPA is instead requiring permanent management practice standards. Under the final rules, by March of 2014 the EPA will require boilers to implement a bi-annual tune up program as specified in the Code of Federal Regulations at 40 CFR Part 63, and new equipment will need to implement a bi-annual tune up program upon the start up of the facility. Further, under the EPA's modified approach, there was a decision to regulate oil burning equipment using generally available control technology, rather than the stricter maximal achievable technology.

If the EPA had stuck with the proposed numerical emission limits, as opposed to management practice standards, the resulting federal regulations would have been far stricter than New York's already onerous local laws regarding oil burning equipment. Instead, under the new rules, the EPA requirements will not be more stringent than those already in place under New York City laws and regulations, as well as New York State regulations with regard to the content of fuel oil used in oil burning equipment.

The EPA's retreat from its draconian proposed rules with regard to oil burning equipment is a clear sign that the reach of government regulations regarding the environment is under strict scrutiny. There is now more emphasis on balancing measures to protect the environment with need for economic growth and for affordable energy. At a time with consistent high unemployment and a weak economy, the EPA was forced to adopt the management practice approach to regulate emissions of oil burning equipment that is compatible with New York's existing local laws so as to not further burden our economy.

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