

**The Massachusetts Oilheat Council
& The New England Fuel Institute**

**Written Comments for the Consideration of
Senator John F. Kerry of Massachusetts, Chairman
United States Senate Committee on Small Business & Entrepreneurship**

**Massachusetts Field Hearing
“The Rising Costs of Energy: Challenges and Opportunities for Small Businesses”
May 28, 2008**

The Massachusetts Oilheat Council (MOC) and the New England Fuel Institute (NEFI) are pleased to submit comments and offer you some insight into how current market conditions have affected home heating oil dealers, especially in light of the fact that many of them are second and third generation family-run small businesses.

- **About MOC**

Established in 1955, the MOC is a business association for heating oil and petroleum products companies. We represent more than 300 companies across the state, including retail and wholesale/supplier operations. Collectively, our members store, sell and deliver nearly 70 percent of the heating oil used statewide. About one million homes rely on Oilheat for their source of energy. The MOC also represents thousands of licensed Oilheat technicians, and the major Oilheating equipment manufacturers.

- **About NEFI**

NEFI is a 60-year-old trade association representing well over 1,100 heating fuel dealers and related service companies in the region. Its members deliver over 40 percent of the nation’s home heating oil, and many market biodiesel, bioheat, propane, kerosene, jet fuel, off-road diesel and motor vehicle fuels. NEFI is the largest heating oil trade group in the nation, and is a public policy advocate both regionally in the Northeastern United States and also on the national level. More recently, NEFI has developed an expertise in speculative energy trading and the lack of oversight in the energy futures markets, and leads a broad national-coalition that advocates for greater transparency, accountability and oversight in the commodities trading markets.

- **The Impact of Rising Energy Costs on Oilheat Retailers in Massachusetts**

1.) High Crude Oil & Commodity Costs:

The historic run-up in the cost of crude oil, and hence the cost of the core refined product that our members sell – heating oil – has had a dramatic impact on almost every aspect of

these small business's operations. Crude oil pricing has nearly doubled over the past two years with prices hovering between \$60 and \$70 per barrel in 2006, to a record high of over \$138.00 per barrel on June 6, 2008. These record high numbers for crude have fueled a commensurate, steady rise in the wholesale price of heating oil. Last week, for example, heating oil was selling for nearly \$4.00 per gallon wholesale on the New York Mercantile Exchange (NYMEX), the world's largest physical commodity futures exchange and the preeminent trading forum for energy and precious metals.

These high energy prices have translated into several other major challenges for the retail fuel dealer including:

- a.) Severely strained bank credit lines** – Retail heating oil dealers, like other small businesses, must have a secure relationship with a bank and a line of credit in order to help finance operations. Lines of credit are based on a number of business factors and it can be difficult to get approval for a higher level of credit. Under these conditions, one can easily see how a limited line of credit for a retail heating oil dealer is quickly exhausted when the wholesale price for heating oil more than doubles. Remaining financially sound is a daunting day-to-day challenge because of the price volatility plaguing crude and heating oil, but nevertheless crucial in assuring that retailers are able to obtain the product they need for the customers that need it. The Senator's seat on the Finance Committee places him in a position that offers an advantageous edge in combating these issues, and MOC and NEFI would be interested in working with his office to explore possible solutions that would help alleviate the credit strain on small business heating oil dealers.
- b.) Overwhelming customer receivables** – High energy prices obviously impact the consumer as well, and most retail heating oil dealers are facing a huge drag on cash flow because customers cannot afford to pay their entire heating oil bill. Customer receivables are at all time highs for retailers, and these companies need the cash flow to help pay their business expenses (bank charges, employee salaries/benefits, business insurance, overhead costs, etc.), and to finance future purchases of heating oil from wholesale suppliers who require prompt electronic payment for the fuel.
- c.) Customer relations woes and negative public relations:** With prices high for consumers, retail heating oil dealers and their employees have had to spend an inordinate amount of time trying to assist customers with payment plans, and explain the often times unexplainable volatility in the energy markets. Heating oil dealers must take the time to answer customer questions and complaints, otherwise they may lose these customers to a competitor. Additionally, retail heating oil dealers have had to increase their customer communications efforts in order to stave off unwarranted negative public relations regarding the image of "oil" and the misperception that retail heating oil dealers are amassing vast profits like the major oil companies.

2.) Gas Utility Encroachment:

The state's largest gas utility has wasted no time in capitalizing on the historic rise in home heating oil prices. With the statewide average price currently around \$4.60 per gallon from a full-service heating oil dealer, National Grid, who recently absorbed Keyspan, has launched an aggressive multi-media ad campaign targeting Oilheat customers. The ads, which encourage conversion to natural gas, make some very deceptive if not outright false claims as to the benefits of natural gas versus Oilheat. Unfortunately, while the Oilheat industry has made significant progress in manufacturing more efficient equipment and significantly reducing greenhouse gas emissions, we lack the collective resources necessary to combat the slanderous super-sized utilities alone; the state Attorney General has thus far turned a blind eye to complaints from MOC. Therefore, retail dealers will continue to suffer, losing ill-informed customers to gas, and further compounding an already desperate situation.

3.) LIHEAP – State Margin-Over-Rack Leveraging Programs a Strain

The Low Income Home Energy Assistance Program (LIHEAP) has been invaluable in providing home energy cost assistance to elderly and low-income households. Since the inception of the federal LIHEAP program in 1981, the Oilheat industry has been a staunch supporter of LIHEAP and the Weatherization Assistance Program (WAP). NEFI, with support from MOC, has advocated for a fully funded LIHEAP in the amount of \$5.1 billion and WAP at \$700 million as authorized by the Energy Policy Act of 2005. Additionally, MOC has worked with state officials in order to insure a healthy and effective energy assistance program in the state of Massachusetts. We and our member companies have also teamed with local charities, non-profit programs, fuel funds and other efforts to help meet the needs of low income individuals, in the face of insufficient government fuel assistance resources. MOC has been working with Citizens Energy since 2002 on its successful heating oil assistance program, commonly referred to as “Joe for Oil,” which refers to the program's founder, former Massachusetts Congressman Joe Kennedy.

However, the very structure of LIHEAP is placing disproportionate strain on heating oil retailers in states like Massachusetts where “leveraging” is used to garner additional federal funds. In Massachusetts, the leveraging program for fuel oil and propane (often called “deliverable fuels”) is a discount program called Margin-Over-Rack (MOR). For retailer heating oil dealers involved in the LIHEAP program, the MOR program pays the fuel dealer the lesser of either a set margin per gallon or their regular retail price on the date of delivery. By accepting a lower profit margin, retailers must take a hit on their already marginalized bottom lines. MOR places tremendous financial risk on fuel dealers and makes it more difficult to remain competitive and profitable amidst volatile oil prices, particularly as they compete against rate-payer subsidized electric and natural gas utilities. Although state regulated gas and electric utilities contribute to the leveraging program, they can recoup any loss by running the contributions through their individual state ratemaking process, in essence passing the cost along to all of their customers. Heating oil retailers do not share this ability, thus placing them at a competitive

disadvantage. Additionally, MOR puts the oilheat retailer at odds with the fuel assistance program administrators they have supported for decades. And finally, since LIHEAP only pays a portion of a recipient's household energy cost, the Oilheat dealer must then shift the customer to a more realistic market-based cost-per-gallon when LIHEAP benefits end. This shift unfairly creates a new class of customers for retail heating oil dealers.

- **The Burden Federal Regulations Place on Small Business Oilheat Dealers**

1.) HAZMAT Registration Fees

On top of the previously mentioned obstacles our retail dealers face today, there is additional weight from overly-burdensome federal regulations. Most heating oil retailers pay an annual fee to the Department of Transportation (DOT) for their company's annual HAZMAT registration. Currently most pay either \$275 or \$1,000, depending on the size of their business. The DOT is planning to drastically increase the latter fee for "large companies" by as much as \$2,000. Due to a glitch in the way that heating oil dealers are currently classified, many may be made subject to this drastic increase, and forced to pay the larger amount. It also makes it more difficult for dealers to receive federal loans and increased lines of credit with their banks and suppliers. Currently, the Small Business Administration classifies heating oil dealers as large businesses if their gross receipts exceed \$11.5 million per year. NEFI has communicated the inadequacy of this threshold, due mainly to the rising cost of product, and has requested that the SBA reclassify heating oil dealers (and propane dealers, which are subject to a \$6.5 million threshold) to an employee-based threshold. The SBA has begun the rulemaking process but it is severely delayed.

2.) TWIC Program

The Transportation Worker Identification Credential (TWIC), required by the Transportation Security Administration (TSA), has become increasingly burdensome. TWIC requires a background check and worker "ID" for unescorted access to certain secure areas of the nation's maritime transportation system, including the terminals that many heating oil dealers access to obtain product. Therefore, heating oil transporters must not only be subject to federal and state mandated background checks for HAZMAT endorsed Commercial Drivers Licenses, but they must also undergo a background check and fee for TWIC. This is both costly and needlessly duplicative.

3.) SPCC Requirements

The EPA's Spill Prevention, Control and Countermeasure (SPCC) poses a major cost burden and regulatory compliance challenge to small business heating oil dealers that have on-site storage. The rule requires specific bulk storage facilities that meet the federal compliance threshold of 1,320 gallons in aggregate above ground storage (or 42,000 in underground storage) to prepare, amend and implement detailed security and emergency contingency plans and new infrastructure requirements in order to plan for the event of an unintended release of product. New amendments to the regulation passed in

recent years will become effective on July 1, 2009, and bulk storage heating oil companies are facing as much as tens-of-thousands in infrastructure upgrades, personnel costs and certified engineer expenses in order to comply with the new rule. Additionally, some EPA enforcement officials are interpreting the rule to include parked oil trucks with storage in the calculation for the above ground storage compliance trigger. The average truck contains 2,800 gallons of product. Therefore, many small companies, some of whom simply park their trucks overnight in order to make early morning or emergency oil deliveries and have no on-sight storage, are at risk of a costly enforcement action. NEFI has reached out to the EPA to resolve this issue, but so far has been unsuccessful.

4.) Transition to Lower Sulfur Distillate Fuels

While our industry fully supports the move towards low (500-ppm) and ultra-low (15-ppm) sulfur diesel fuel and heating oil, we are wary of the financial implications of requiring their widespread use at this time. Already, the EPA has begun requiring that low and ultra-low diesel fuel be used in on- and off-road diesel engine vehicles and equipment. By December, 2010, the EPA will require that all diesel engine vehicles use ultra-low sulfur diesel fuel (with the exception of locomotive and marine engines, which have until 2012). This transition has already put a strain on diesel fuel prices nation-wide, as well as the availability of high-sulfur distillate fuel, which is afforded a lower-cost spot price differential, and now can be used as heating oil only. While MOC and NEFI recognize that low and ultra-low sulfur fuels hold the promise of greater efficiency and many environmental benefits, it is important to balance these concerns with those of the small business owner. Moving too quickly to lower sulfur heating oil without ensuring adequate supply and without being mindful of the potentially higher costs, lower sulfur product could put an additional strain on the heating oil dealer and their consumers.

Industry Initiatives to Alleviate Negative Impact on Heating Fuel Retailers

MOC, in conjunction with NEFI, have taken real action to protect the interests of our retail heating oil dealers in the face of extremely high energy costs. The following can be attributed in part to the joint efforts of MOC and NEFI, both statewide and in Washington:

1.) The 2007 Farm Bill

On May 14th, 2008 Congress voted overwhelmingly in favor of the 2007 Farm Bill, a vote that indicates enough support to override a threatened veto by the President. Included in the bill is language that allows for the closing of the notorious "Enron Loophole" – a loophole that allows for profiteering by speculators who operate in unregulated electronic futures markets. Although the 2007 Farm Bill is just one weapon in the battle against excessive speculation and potential manipulation by traders, it is nevertheless an important one. Passage shows the federal government's readiness to address commodity markets trading issues, and their willingness to hold speculators in these markets up to the light of a more regulated exchange. But more needs to be done, including addressing the Foreign Markets Loophole, which allows trading of U.S.

destined goods by overseas exchanges under inadequate or non-existent oversight, and the “swaps loophole,” which exempts index fund and swaps traders from transparency and anti-manipulation rules. The CFTC must also “get tougher” on speculative trading through (hopefully) greater funding, and rigorous enforcement of existing rules and future authorities granted by Congress.

2.) Adequate Federal LIHEAP Funding

Despite resistance from President Bush, the federal budget now allows for the full funding of LIHEAP and WAP for FY2009. An additional 1 billion in emergency relief funding was authorized by Congress to supplement 2008’s budget. While this is very positive news, we will continue to push for additional funding and a change in the leveraging aspects of the LIHEAP statute that make participation in the program difficult for small business heating fuel retailers. MOC and NEFI are members of national coalitions and will continue to advocate for strong federal and state energy assistance programs.

3.) Massachusetts Biofuel Mandate

With the help of MOC, Massachusetts may soon become one of the first big Oilheat states to mandate the use of biofuel - a blend of heating oil and crop-based feed stocks such as soy beans, vegetable and plant oils. Back in November of 2007, Governor Deval Patrick filed legislation - HB 4364 - calling for a biofuel and biodiesel mandate that would require a 2% blend of biofuel in heating oil by July 2010, with incremental percentage blends of 3, 4 and 5% annually increasing through 2013. In February, MOC's Board of Directors voted unanimously to support the biofuel mandate, and that support has helped the legislation gain momentum on Beacon Hill. Since that time, MOC has been intimately involved in the legislative drafting process and we are currently working closely with key state legislators and aides to craft legislation that mandates the use of safe, effective, and high quality biofuel products for Oilheat retailers and consumers alike.

Thank you again for the opportunity to submit comments on “*The Rising Costs of Energy: Challenges and Opportunities for Small Businesses.*” Please let us know if we can be of further assistance to you, your staff or your colleagues on the committee.

Sincerely,

Michael Ferrante
President, MOC
(781) 237-0730

Alisha Frazee
Association Specialist, MOC

James Collura
Vice President, Public Policy and Communications, NEFI
(617) 924-1000