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# Air Enforcement: United States Department of Justice and New York City/Department of Education Enter into Consent Judgment to Address Alleged Violations

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The United States Department of Justice (“DOJ”) and the City of New York and New York City Department of Education (“DOE”) entered into a September 27th Consent Judgment (“CJ”) addressing alleged violations of the Clean Air Act.

The CJ was filed in the United States District Court for the Eastern District of New York.

The CJ provides that New York and DOE operate approximately 1,329 oil-fired boilers at 566 of their school buildings.

The relevant oil-fired boilers are stated to have become subject to the Clean Air Act Area Source Boiler Rule (“Rule”) in 2014. The Rule was promulgated pursuant to Section 112 of the Clean Air Act and the implementing regulations are found at 40 C.F.R. Part 63, Subpart JJJJJ.

The Rule requires that oil-fired boiler owners and operators:

- Perform initial and subsequent periodic tune-ups
- Conduct one-time energy assessments
- Give notice of compliance to the United States Environmental Protection Agency by certain deadlines

DOJ alleged in a simultaneously filed Complaint that the DOE failed to comply with various Rule requirements for several years after they took effect. However, DOE is stated to have subsequently brought the oil-fired boilers into compliance with the referenced requirements of the Clean Air Act.

The CJ requires that DOE:

- Regularly and properly conduct periodic tune-ups at regulated boilers
- Conduct the tune-ups according to a checklist ensuring that proper procedures and quality assurance measures are followed
- Ensure that all necessary maintenance or repairs are identified and addressed

In order to mitigate past emissions, DOE has agreed that prior to March 2023 it will convert to natural gas or replace seven large oil-fired boilers that burn No. 4 oil.

The CJ also requires that a semi-annual report and/or notice of expected violation be prepared by July 31 and January 30 each year after lodging of the CJ until its termination.

A civil penalty of \$1 million is assessed.

A copy of the CJ can be downloaded [here](#).