

LOG OF TELEPHONE CALL

CPSA 6 (b)(1) Cleared
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No Mifs/PrivLibrs
Products Identified
Excepted by
Firms Notified,
Comments Processed.

OFFICE OF THE SECRETARY
FEDERAL RESERVE SYSTEM
19.3 JUL -9 P 2:32

SUBJECT: Kerosene

DATE OF CALL: July 8, 1998

CALLER: Thomas Smith, National Kerosene Heater Association (NKHA)

PERSON CALLED: James F. Hoebel, CPSC Engineering Sciences *James F. Hoebel*

SUMMARY OF CALL: After Dr. Harold Smith of NKHA called Mr. Hoebel to describe the problems related to a new law relating to a tax on certain petroleum distillates (see previous phone log of June 12, 1998, attached), Mr. Smith sent additional documentation relating to the situation (also attached).

Mr. Smith then called on July 8, after the July 1 effective date, to discuss further. He noted that IRS seemed concerned, but that the implementing regulations have been issued. He said that NKHA may get together with the National Federation of Independent Businesses, the American Petroleum Institute, and the petroleum marketers to see what actually happens in the marketplace. He said that the major concern now is the possibility that some will mix kerosene with #2 heating oil or diesel oil. He asked whether CPSC has done anything.

I said no: we haven't determined yet if we need to change our consumer information materials that refer to "water clear" 1-K kerosene. It is difficult to predict what will happen in the marketplace.

- cc: Ken Giles, EXPA
- Marilyn Wind, EHHS
- Linda Smith, EHHA
- Lori Saltzman, CCA
- Eleanor Perry, ESME
- Nick Marchica, ES
- Mary Ann Danello, EH
- Ron Medford/Jacquie Elder, EXHR
- Steve Lemberg, OGC
- Warren Prunella, ECON

LOG OF TELEPHONE CALL

CPSA 6 (b)(7) Cleared

No Mfrs/Prvtlble of

Products Identified

Excepted by

Firms Notified,

Comments Processed

SUBJECT: Kerosene

IR 30118 A

DATE OF CALL: June 12, 1998

CALLER: Harold Smith, National Kerosene Heater Association (NKHA)

PERSON CALLED: James F. Hoebel, CPSC Engineering Sciences



SUMMARY OF CALL: Dr. Smith returned Mr. Hoebel's call of June 10, 1998. Mr. Hoebel had been informed by Ken Giles, EXPA, that dyed 1-K kerosene was being marketed, and that this practice may not be consistent with some CPSC publications that advised consumers to seek "water-clear" kerosene. Dr. Smith provided the background for this situation.

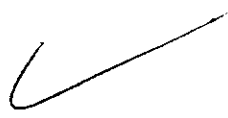
Dr. Smith said that there is a new law that becomes effective July 1, 1998, that imposes an additional tax of 24 cents per gallon on certain petroleum distillates used for heating. However, red dyed kerosene is essentially exempt from this tax. It is possible that both red dyed and clear 1-K kerosene may be available to consumers.

This new practice affects both the current UL standard for kerosene heaters and the ASTM D3699 kerosene standard that has a color specification. NKHA is working with UL, who plans to begin testing on July 1 comparing performance of dyed kerosene with undyed kerosene using existing heaters. They will be looking at fuel consumption rates and emissions. The tests should be completed by the end of August. NKHA plans to conduct additional long term tests looking at wick effects and fuel consumption.

The dye being used is an aromatic azo dye, containing some nitrogen molecules, and is a solid dispersed in a solution. Suppliers are using concentrations of dye of 23 ppm.

NKHA is also concerned over the print materials available to consumers. They have developed a one-page insert to their standard brochure explaining the issue, but is planning no other changes at this time. After the emissions testing is completed, they may develop a more detailed addendum, if appropriate. If EXPA is interested in the current material, Dr. Smith said they can call him, and he'd be glad to FAX the material.

- cc: Ken Giles, EXPA
- Marilyn Wind, EHHS
- Linda Smith, EHHA
- Lori Saltzman, CCA
- Eleanor Perry, ESME



NKHA

NATIONAL KEROSENE HEATER ASSOCIATION

1816 Old Natchez Trace Franklin, Tennessee 37064

(615) 790-0770 * (615) 790-6700 FAX

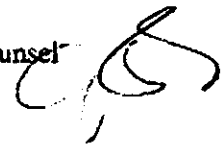
117 Second Street, NE, Washington, D.C. 20002

(202) 812-6440 * (202) 546-7307 FAX

FAX COVER SHEET

TO : Frank Boland, Internal Revenue Service, 202-622-4524

COPIES : Dr. Harold F. Smith, NKHA, Jim Hoebbel, CPSC, Don Grob, U.L.

FROM : J. Thomas Smith, General Counsel 

DATE : June 24, 1998

RE : Safety Concerns About Red-dyed Kerosene/Taxing Regime

NO. PAGES : 9, (including cover)

COMMENTS : NKHA has continually expressed its concerns about the safety consequences of the Red-dyed Kerosene/Taxing Regime since 1993. So have the U.S. Consumer Product Safety Commission, the Fire Service and Underwriters Laboratories. Their letters are attached hereto. We understand that next week you will be issuing regulations to implement the new law. Although Underwriters Laboratories has begun its testing, we do not have a definitive information about the impact of the use of red-dyed fuel in portable kerosene heaters on indoor air quality. We are hearing isolated reports of proposed price increases for water-clear kerosene, and termination of supply that could pose the additional safety risks outlined in the enclosed letter to the Senate Finance Committee. Whatever you might do in the regulations to ameliorate the negative impact of the regime could be critical from the standpoint of the safety of consumers that use our products.

We respectfully urge your consideration of these risks as the regulation are written.

CONFIDENTIALITY NOTICE: THE COMMENTS ON AND ENCLOSURES WITH THIS COVER SHEET ARE INTENDED FOR THE SOLE AND EXCLUSIVE USE OF THE INDIVIDUAL ADDRESSEE(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND MUST NOT BE DISCLOSED TO ANY THIRD PARTY. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN EMPLOYEE OF THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY THIS OFFICE IMMEDIATELY BY TELEPHONE (REVERSING THE CHARGES) AND MAILING THE ORIGINAL TO THIS OFFICE AT THE ADDRESS BELOW (POSTAGE DUE). THANK YOU.

NKHA**NATIONAL KEROSENE
HEATER ASSOCIATION, INC.**

December 6, 1997

Brigitta Gulya Pari
Tax Counsel
Senate Committee on Finance
SD-219 Dirksen Senate Office Building
Washington, D.C. 20510-6200
And By Fax to 202-225-5920

Re: Tax & Dyeing of Kerosene-Impact on Portable Kerosene Industry and Consumers

Dear Brig:

We appreciated the concern you expressed at the meeting October 16, 1997 of all parties with an interest in the above subject. Here is a summary of the concerns of the National Kerosene Heater Association ("NKHA") and our industry:

1. **Kerosene Availability** - We continue to be concerned about the impact of the tax and dye regime on the availability of kerosene to consumers. If consumers cannot find kerosene they will turn to gasoline despite our product warnings and the accident records indicate that use of gasoline can lead to multiple fatality fires. Enclosed is a copy of a joint press release by NKHA and the U.S. Consumer Product Safety Commission that demonstrates the urgency of this concern.

Of the 22 million portable kerosene heaters sold since 1976, we estimate that 15 million are still in use. Surveys of consumer use patterns conservatively suggest a demand for 900 million gallons a year. Since 1995 DOE estimates suggest only 550 million gallons are produced annually for home heating, we believe that a large portion of our market is served by excess jet fuel. This information about the demand for kerosene for our portable heaters is also a compelling argument that the savings projected for this legislation from curbing evasion is largely illusory because there is simply not enough excess kerosene out there to be used for evasion purposes. This size of our market need means that consumers will be forced to buy and use either the red dye or turn to the far more dangerous choice of gasoline.

2. **Indoor Air Quality** - As I told you on October 16, there have been no tests of which we are aware of the indoor air quality impact of the red dye when burned indoors in an unvented kerosene heater. Since our meeting we have held a telephone conference call with Morton International, the primary supplier of the diesel dye, "Solvent Red 164". They told us that the dye is approximately 11% nitrogen, and shipped us a sample. The Material Safety Data Sheet supplied with the product notes that nitrogen dioxide is one of the emission products. The NKHA has recently completed a ten year project in cooperation with the U.S. Consumer Products Safety Commission and Underwriters Laboratories

1816 OLD NATCHEZ TRACE * FRANKLIN, TENNESSEE 37064 * 615-790-0770 * FAX 790-6700

December 6, 1997

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which developed an indoor air quality standard for nitrogen dioxide that is incorporated into UL Standard 647 governing new generation kerosene heaters. UL647 sets the maximum allowable nitrogen dioxide emission rate at .005 cc/kj of heat produced. We have begun tests at U.L. to determine whether the dye will affect emission rates and at an NKHA site to determine whether it will cause residue build-up at the top of the wick guide or otherwise impact wick performance and emissions.

3. **23 State Law Mandates of "Water Clear" Kerosene** - We have produced information about the laws of 23 states that require kerosene intended for use in portable kerosene heaters comply with American Society of Testing and Materials "ASTM" Standard I-K which states that the kerosene should be "water-clear." There is some question concerning whether the red dyed kerosene could even be sold at retail for use in these states. The state regulatory response could adversely impact availability of kerosene, in the absence of a clear preemption provision in the dyeing requirements.

4. **Consumer Preference for "Water-Clear" and Resistance to Red-Dyed Kerosene** - Even if the air quality issues are satisfactorily resolved, and we can change all the instruction manuals and the NKHA Safety Information Brochure to reflect appropriate instructions about red-dyed fuel, consumers may be reluctant to make the change. If the consumer habit does not change, the effect may be the same as a fuel shortage.

5. **Shortage of Kerosene at Terminals in Some Markets Due to Dye Injection Mandate** - The decision was made quite effectively at the October 16 meeting that some terminals might elect not to carry kerosene rather than make the injection dyeing investment. Any such shortage is of concern to us because consumers might resort to gasoline use.

6. **Tax or Price Increase on "Water Clear" Kerosene** - As long as all retailers file for a tax refund and no tax is passed along to consumers, this might not be a concern. We know, however, that some retailers may not make the investment in the concrete posts or other construction to make their kerosene pumps "not suitable for use in fueling any diesel powered highway vehicle...". Even if they do, there is a serious risk of a price increase.

Our local service station which sells kerosene explained to me why this mandated capital expense is so unnecessary. The kerosene pump was next to the diesel pump and had concrete posts in place, but they would not prevent use of the pump to put kerosene in an automobile or truck. The owner pointed out that since kerosene sold at \$1.39 a gallon, but diesel was \$1.29, consumers were not likely to use very much kerosene instead of diesel. Information we have seen about the national average price for these fuels indicate that kerosene can be over 20 cents per gallon more expensive than diesel. He also said he only sold about 1000 gallons of kerosene a season, and that most consumers use only small amounts in their tanks in cold weather to prevent gelling. He said any additional expense would probably prompt him to stop selling the kerosene.

If a 24.3 cent price increase is imposed on kerosene at the pump, it will make gasoline up to 20 cents a gallon cheaper. That differential might tempt some consumers to opt to use gasoline and take the known risk. Further, those retailers that do make the change and must bear the administrative burden of filing for refunds, may increase the price of kerosene just to cover these additional costs.

Consumers who pay the higher price are not going to be very happy with the Congress for causing these increases and it could be a significant political issue.

We hope you will consider these concerns in any amendments to the legislation, or in recommendations for IRS regulations that might subsequently be issued. If you have any questions or if we can assist further in any way, please let me know.

Sincerely,



J. Thomas Smith
General Counsel

Senator Helms
Washington, DC

September 30, 1997
Page 2

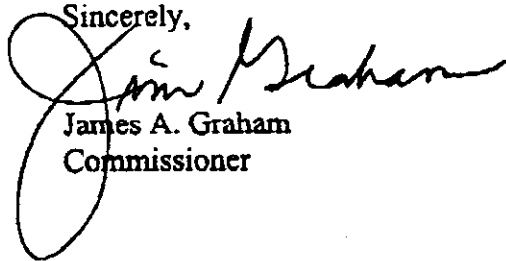
the heater's wick, resulting in poor or incomplete combustion. Second, if the kerosene is dyed, it will be impossible for consumers to determine if their kerosene has been contaminated. In fact, distinguishing it from fuel oil and off-road diesel fuel will be impossible. Even if testing reveals that the dye does not contribute to harmful emissions, it is this second issue that causes me much concern.

A second consequence involves the addition of the federal tax to 1-k kerosene that is not dyed. Petroleum marketers will add the tax to the retail price because it will be added to the price they are charged. In addition, I understand there is no mechanism for consumers to get a refund of the federal tax. The net effect is a 20% to 25% increase in the retail price. I must point out that 1-k kerosene is a fuel used by many people who can least afford such a large price increase.

I am told various interest groups will be offering solutions to the problem to the Senate Finance and House Ways and Means Committees in the next few days. One possible solution is to establish a registration program for kerosene so that petroleum marketers can file for the tax refund. Such a program will permit marketers to buy undyed kerosene with the tax added, but sell it to consumers without the added tax. The marketer will be responsible for filing for the refund.

Thank you for looking into this issue. It is an important one for consumers and petroleum marketers alike. Please contact me if you have any questions or if I can supply you with additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Graham", written over a large, stylized circular flourish.

James A. Graham
Commissioner

JAG:dhd

cc: Gary Harris, Executive Vice President
NC Petroleum Marketers Association
✓ J. Thomas Smith, General Counsel
National Kerosene Heater Association
Muriel Offerman, Secretary
NC Department of Revenue

New England Association**of Fire Marshals**

June 2, 1997

The Honorable Christopher J. Dodd
 United States Senate
 Washington, D.C. 20510-0702

18 WILLOW BROOK DRIVE
 GLASTONBURY, CT 06033
 (800) 657-2563

Re: Dyeing of Kerosene

Dear Senator Dodd:

As you may remember, the New England Association of Fire Marshals wrote to you last year regarding an Administration proposal to classify kerosene as "diesel fuel" and subject it to the same tax and dye scheme as that latter fuel. We understand that the Administration has put forth the same proposal during this current budget cycle. The Association renews its objection. Our members believe that such action could have adverse health and safety consequences for consumers.

For forty years, consumers, many of whom are low-income families, have used undyed, "water white" kerosene as the primary fuel with which to heat their homes. Often they burn kerosene in small unvented heaters. They understand that undyed kerosene means purity, and they are reluctant to use a dyed fuel. In fact, we are concerned that they may instead purchase gasoline for their heaters -- posing significant risk of fire or explosion to themselves and their families. In our earlier letter we explained that the dye for diesel fuel had been changed from blue to red because the Federal Aviation Administration had been concerned about the consequences of consumer confusion and the use of the wrong fuel in aircraft. Those same concerns are present in the kerosene debate.

Moreover, New Englanders use a great many unvented space heaters. The burning of dyed kerosene in such units may present health problems for its users. There have been no tests conducted on the effects of this proposed dye scheme. It is likely to be detrimental to the public.

Therefore, the Association strongly urges you to oppose the proposal to subject kerosene to the same tax and dye scheme as diesel fuel.

Sincerely,

Henry E. Tracy
 Secretary/Treasurer



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Frank Boland
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Room 5228
CC:DOM:CORP:T:R (PS-52-93)
Washington, D.C. 20044

OCT 15 1993

Dear Mr. Boland:

The U.S. Consumer Product Safety Commission (CPSC) is an independent regulatory agency whose mission is to protect the public against unreasonable risks of injury associated with consumer products, provide consumers with information on the safe use of products, assist consumers in evaluating the comparative safety of consumer products, develop uniform safety standards for consumer products, and promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries. The CPSC has jurisdiction over residential combustion appliances that utilize various fuels.

The CPSC staff offers the following comments on the Advance Notice of Proposed Rulemaking concerning the dyeing of diesel fuel destined for a nontaxable use ("Diesel Fuel Excise Tax", Federal Register, August 26, 1993, Vol 58, No. 164, page 45081).

For over a decade, the CPSC staff has strongly encouraged the use of water-clear, 1-K kerosene for residential kerosene heaters in order to avoid the release of more indoor air pollutants into a home or prevent the possibility of fire or explosion from the use of improper fuel. The staff urges the Internal Revenue Service to take the necessary steps to ensure the continued availability of water-clear, 1-K kerosene to consumers for use in their heaters.

The staff raises the general concern about the use of dyes or markers in fuels without prior testing to determine the effect on emissions. Burning dyed fuels or fuels with markers may result in emissions that are detrimental to the health of the public.

The CPSC staff urges the Internal Revenue Service to consider all possible ramifications to the use of dyes or markers in fuels that are tax exempt.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori E. Saltzman".

Lori E. Saltzman
Project Manager for
Indoor Air Quality



Underwriters Laboratories Inc.

333 Pfingsten Road
Northbrook, Illinois 60062-2096
(847) 272-8800
FAX No. (847) 272-8129
MCI Mail No. 254-3343
Telex No. 6502543343

Fax: 202-228-1264

March 6, 1998

The Honorable Bill Frist
United States Senate
567 Dirkson Building
Washington, D.C. 20510-4205



Re: Potential Health and Safety Consequences of Red Dyed Kerosene

Dear Senator Frist:

Underwriters Laboratories Inc. (UL) is an independent, not-for-profit testing laboratory whose mission for over 100 years has been to advance the cause of public safety. UL develops nationally recognized safety standards for many consumer products, including kerosene heaters. UL 647, the *Standard for Safety for Unvented Kerosene-Fired Room Heaters and Portable Heaters*, contains the test methods and requirements used in UL's product safety certification program for these products.

We understand that the Taxpayer's Relief Act of 1997 requires kerosene to be treated as taxable diesel fuel unless the kerosene is dyed red. Red dyed kerosene would be available to consumers for use in kerosene heaters. This may pose a potential consumer product safety hazard. Use of inappropriate or contaminated fuels in kerosene heaters is a demonstrated fire hazard and has been a matter of significant concern to UL and the United States Consumer Product Safety Commission. A copy of their October 15, 1993 letter on this subject is enclosed. Any alteration of the fuel to be used in UL certified kerosene heaters would present safety concerns that UL would require close investigation.

Further, the impact of emissions from kerosene heaters on indoor air quality is of significant public safety interest. The introduction of even minute quantities of dye into kerosene would, at the very least, necessitate product testing to determine whether the materials introduced to impart color adversely affect the emissions from kerosene heaters.

Finally, we are concerned that consumers who use kerosene heaters will be confused with regard to the use of kerosene which is not "water-clear". The instructions provided with UL certified kerosene heaters as well as the warnings which appear on the product itself, direct consumers to use only water-clear I-K kerosene. The introduction of a dyed kerosene fuel would require, at minimum, a revision of the UL Standard to address this situation and revision to the markings on the future production of kerosene

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heaters. With respect to kerosene heaters already in the field, a significant educational effort directed at consumers to explain the use of dyed kerosene would have to be undertaken and would require substantial time and effort.

UL has begun work on these issues. However, we estimate that the time required to conduct the appropriate testing of this product for use in UL certified kerosene heaters, and to effect the necessary revisions to UL Standards, could not be accomplished before mid-1999.

We ask that you and your committee take these comments in consideration with respect to any decisions relating to the effective date of the Taxpayer's Relief Act, which we understand is currently July 1, 1998.

Very truly yours,



Harry P. Jones
Associate Managing Engineer
Engineering Services - 415A

c: Tom Smith (NKHA) (FAX) ✓
Brigitta Gulya Pari (FAX)



State of North Carolina

Department of Agriculture

Raleigh

JAMES A. GRAHAM
COMMISSIONER

September 30, 1997

Senator Jesse Helms
403 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator:

I am writing you concerning a matter of concern to me. The recently enacted Taxpayer Relief Act of 1997 contained a provision requiring off-road kerosene to be either taxed or dyed. The purpose of the provision was to stop the nontaxation of kerosene when it is used as an engine fuel. The North Carolina Department of Agriculture and Consumer Services is responsible for enforcing our state's petroleum quality laws. Thus, we have a great interest in any action involving petroleum products.

While the intended purpose of the provision has merit, a potential problem affecting thousands of our state's citizens has been created. 1-k kerosene is a very popular fuel used in unvented kerosene heaters. Under the new law, beginning July 1, 1998, this product must be either taxed at the federal rate of 24.4 cents per gallon or dyed. Either action has consequences that I believe will be unacceptable to consumers. The new provision also applies to 2-k kerosene, but since this product is used much differently than 1-k, the impact of the law for that product is not nearly so great. That situation could quickly change if refiners and distribution terminals limit the availability of 2-k kerosene in reaction to the new provision.

Before detailing the consequences of the new tax provision, let me provide a very brief description of unvented kerosene heaters and how they are used. The heaters are free-standing, portable units and are intended to heat a single room. They are not intended to be whole house heaters. These heaters are designed to use 1-k kerosene that can best be described as "water white" in color. This color characteristic is an indicator that the fuel has not been contaminated with other petroleum products or another foreign product. Consumers have been cautioned to look at the color and use only the "water white" fuel. This is important because the fuel is used in unvented heaters. If the wrong or contaminated fuel is used, the emissions given off by combustion may prove harmful. This is of great concern because thousands of these unvented heaters are used in homes and businesses.

The first consequence involves at least two issues with using dyed 1-k kerosene in unvented heaters. First, to my knowledge, there has been no testing done to determine if burning dyed kerosene gives off harmful emissions. No one has investigated whether the dye will build up on