



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 1, 2011

The Honorable James Garrity, Chairman  
House Science, Technology, and Energy Committee  
Legislative Office Building, Room 304  
Concord, NH 03301

**Re: HB 402 relative to the authority of the department of environmental services to determine whether outdoor wood-fired hydronic heaters violate air quality emission limits**

Dear Chairman Garrity and Members of the Committee:

Thank you for the opportunity to comment on HB 402, relative to the determination of whether outdoor wood-fired hydronic heaters (OWHH) violate air quality emission limits. The Department of Environmental Services (DES) has some significant concerns regarding this bill.

Laws of New Hampshire 2008, Chapter 362 established the requirements for the sale, installation, and use of OWHH in the State (codified as RSA 125-R). Prior to enactment of RSA 125-R, these devices were unregulated under state or federal law. In January of 2007, the Environmental Protection Agency (EPA) established a voluntary program whereby manufacturers agreed to make cleaner models available to consumers in the spring of 2007 under a phased-in approach. Under this voluntary program, the new models are required to be tested by an accredited third party to verify that these models meet certain cleaner emission levels. EPA then certifies the test results and lists the manufacturer and model type on its website as meeting the cleaner emission levels. RSA 125-R, in essence, codified the EPA voluntary program, and provides that only these cleaner emitting model types can be sold in the State. Lastly, RSA 125-R establishes certain setback and stack height requirements, depending upon the date of installation and the OWHH model type, and also provides municipalities with the authority to adopt and enforce land use ordinances relative to OWHHs that are more restrictive than provided in RSA 125-R.

Laws of New Hampshire 2008, Chapter 362 also amended RSA 147, *Nuisances; Toilets; Drains; Expectorations; Rubbish and Waste*. Specifically, RSA 147:16-b was adopted to provide local health officers with the authority to order that the use of an OWHH be discontinued if it is being operated in a manner that causes a nuisance or is injurious to public health. DES is responsible for providing technical assistance to the Department of Health and Human Services and the local health officer in making such a determination. HB 402 would amend RSA 147:16-b to provide, upon written request by the health officer, that DES determine if an OWHH is in violation of air quality emission limits under federal or state law or regulation. Further, the owner or operator of the OWHH would then be required to reimburse DES for the

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cost of any testing or monitoring that may have been required to determine the existence of a violation.

This approach is problematic for a number of reasons. First, under the EPA program, the manufacturer and OWHH *model type* is certified by EPA as meeting a certain emission standard. RSA 125-R does not require testing and certification of *individual* units as meeting an emission standard, nor does DES have the resources or the expertise to oversee such a testing program as proposed by HB 402. The EPA approved test method for these devices under the voluntary program is a *laboratory* test method and EPA estimates the cost to conduct this testing is ~\$25,000-\$30,000. In addition, while there is no EPA federally approved *field* test method for these devices, DES understands that there is a conditionally approved field test method; however, the equipment used to conduct this testing is extremely expensive (~\$60,000) and DES is unsure of how many, if any, stack testing companies even have this equipment. In addition, there are a number of variables that could impact the accuracy and validity of the test results (*i.e.* load, fuel type, and duration of the test).

Moreover, many of the complaints that DES has received relate to OWHHs that were installed and in operation prior to the effective date of RSA 125-R (August 10, 2008) and there are no federal or state laws or regulations that apply to these devices. Further, even if there were an economically feasible test method available for determining emissions from these "grandfathered" units, it is extremely unlikely that these units could meet even the least stringent emission standard under the EPA voluntary program. Accordingly, HB 402 would require the health officer to order that use of the OWHH be discontinued, even if the homeowner had no other means of providing heat and hot water to their home, and also require the homeowner to reimburse DES for the cost of conducting the test, even in the event that the OWHH were certified as meeting some emission standard.

In summary, DES believes that field testing of individual OWHHs is not cost-effective, would yield suspect test results, and that seeking reimbursement of testing costs from individual homeowners would prove extremely difficult, resulting in overly burdensome regulation on the State and its citizens.

Thank you for the opportunity to provide testimony. Should you have further questions or need additional information, please feel free to contact Robert R. Scott, Director, Air Resources Division (271-1088, [robert.scott@des.nh.gov](mailto:robert.scott@des.nh.gov)) or Pamela G. Monroe, Compliance Bureau Administrator, Air Resources Division (271-0882, [pamela.monroe@des.nh.gov](mailto:pamela.monroe@des.nh.gov)).

Sincerely,

  
For Thomas S. Burack  
Commissioner

Cc: HB 402 sponsors