



Connecticut Department of  
**ENERGY &**  
**ENVIRONMENTAL**  
**PROTECTION**

## CONSENT ORDER

A. With the agreement of Mr. David Lavoie ("Respondent"), the Commissioner of Energy and Environmental Protection ("Commissioner") finds the following:

1. The Respondent owns and operates an Outdoor Wood Burning Furnace ("OWF"), located at 19 Buffcap Road, Ellington, Connecticut.
2. The Respondent's OWF meets the definition of an OWF contained in Section 22a-174k of the Connecticut General Statutes ("C.G.S. §22a-174k").
3. The Respondent's OWF was installed after July 8, 2005, and is therefore subject to the installation and operating requirements of C.G.S. §22a-174k.
4. Pursuant to C.G.S. §22a-174k, no person shall, from July 8, 2005, construct, install, establish, modify, operate or use an OWF, unless (1) it was constructed, installed, established, modified, operated or in use prior to July 8, 2005, or (2) it complies with the following: (A) Installation of the OWF is not less than 200 ft from the nearest residence not serviced by the OWF; (B) Installation of the chimney of the OWF is at a height that is more than the height of the roof-peaks of the residences that are located within 500 ft of the OWF, which residences are not serviced by the OWF, provided the chimney height is not more than 55 ft; (C) No other materials are burned in the OWF other than wood that has not been chemically treated.
5. In response to complaints the Department received regarding the Respondent's OWF, staff from the Bureau of Air Management inspected 19 Buffcap Road in Ellington on October 5, 2010. The Compliance Specialist determined that the OWF was within 200 feet from the nearest residence not served by the OWF. Also, it was determined that the chimney of the OWF was lower than the roof peak of at least two residences not serviced by the OWF that are located within 500 feet of the OWF.
6. Notice of Violation (NOV) No. 16659 was issued to the Respondent on December 28, 2010 for the observed violations of C.G.S. §22a-174k.
7. By virtue of the above, the Respondent is in violation of C.G.S. §22a-174k.

B. With the agreement of the Respondent, the Commissioner, pursuant to Sections 22a-6, 22a-171, 22a-174, 22a-177, and 22a-178 of the Connecticut General Statutes, orders as follows:

1. On or before April 15, 2012, the Respondent shall discontinue the operation of any and all OWFs located at the Respondent's residential property.
2. On or before April 15, 2012, the Respondent shall submit written notice to the Commissioner stating that operations of all the OWFs at the Respondent's residential property have been discontinued. Such notice shall be signed by the Respondent and notarized by a Notary Public.
3. On or before October 15, 2012, the Respondent shall either remove the OWF from the property or modify the unit to fully comply with the requirements of C.G.S. §22a-174k.
4. If the Respondent modifies the OWF to fully comply with C.G.S. §22a-174k, then the Respondent shall demonstrate to the Commissioner's satisfaction that the OWF complies with the requirements of C.G.S. §22a-174k.
5. If the Respondent removes the OWF from the property, the Respondent shall submit written notice to the Commissioner stating that the unit has been removed from the property, within thirty (30) days of removing the unit.
6. Inspection and Compliance Evaluation. Within thirty (30) days after modifying or relocating the unit, the Respondent shall contact the Commissioner and schedule dates and times for the Commissioner's staff to inspect the OWF and verify compliance with all applicable statutes, and regulations. The Respondent shall not operate the OWF except to provide the Department the opportunity to evaluate compliance with applicable statutes and regulations on the dates, and at the times scheduled in accordance with this paragraph. Subsequent to the inspection(s) and compliance evaluation(s), the Respondent shall not operate the OWF, unless the Commissioner has provided written authorization to do so. Should the inspection(s) and/or compliance evaluation(s) show that the OWF does not comply with applicable regulations, the Respondent shall, within thirty (30) days of receipt of the Commissioner's written notice that the OWF does not comply with applicable statutes and regulations, either submit a written proposal and schedule for additional corrective action for the Commissioner's review and written approval, or dismantle the OWF and remove it from the property. The Respondent shall implement any approved additional corrective actions in accordance with the approved schedule.
7. Full Compliance. Respondent shall not be considered in full compliance with this order until all actions required by this order have been completed as approved and to the Commissioner's satisfaction.
8. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within thirty (30) days of the Commissioner's notice of deficiencies. In approving any document or other action under this order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this order. Nothing in this paragraph shall excuse noncompliance or delay.

9. Definitions. As used in this order, "Commissioner" means the Commissioner or a representative of the Commissioner.
10. Dates. The date of "issuance" of this order is the date the order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of the submission to the Commissioner of any document required by this order shall be date such document is received by the Commissioner. The date of any notice by the Commissioner under this order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this order, the word "day" as used in this order means calendar day. Any document or action which is required by this order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.

11. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and Respondent or Respondent's chief executive officer and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information is punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law."

12. Noncompliance. This order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this order may subject Respondent to an injunction and penalties.
13. False statements. Any false statement in any information submitted pursuant to this order is punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
14. Notice of transfer; liability of Respondent. Until the Respondent has fully complied with this order, Respondent shall notify the Commissioner in writing no later than fifteen (15) days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this order or after obtaining a new mailing or location address. Respondent's obligations under this order shall not be affected by the passage of title to any property to any other person or municipality.
15. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by the Respondent pursuant to this order have not successfully corrected all violations, fully

characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.

16. Respondent's obligations under law. Nothing in this order shall relieve Respondent of other obligations under applicable federal, state and local law.
17. No assurance by Commissioner. No provision of this order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this order will result in compliance or prevent or abate pollution.
18. Access to site. Any representative of the Department of Environmental Protection may enter the facility without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this order.
19. No effect on rights of other persons. This order neither creates nor affects any rights of persons or municipalities that are not parties to this order.
20. Notice to Commissioner of changes. Within fifteen (15) days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.
21. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
22. Submission of documents. Any document required to be submitted to the Commissioner under this order shall, unless otherwise specified in this order or in writing by the Commissioner, be directed to:

Kathryn Shinkiewicz  
Department of Energy and Environmental Protection  
Bureau of Air Management  
Air Engineering & Enforcement Division  
79 Elm Street  
Hartford, Connecticut 06106-5127

Respondent(s) consents to the issuance of this Consent Order without further notice. The undersigned certifies that he/she is fully authorized to enter into this Consent Order and to legally bind Respondent to the terms and conditions of the Consent Order.

Mr. David Lavoie

Signature: David Lavoie

Print Name: David Lavoie

Print Title: \_\_\_\_\_

Date: 11-17-11

Issued as a final order of the Commissioner of Energy and Environmental Protection.

Gary A. Rose

Gary Rose  
Director

Bureau of Air Management

\*Department of Energy and Environmental Protection

02-07-2012

Date

\*Public Act 11-80, effective July 1, 2011, established the Department of Energy and Environmental Protection as the successor agency to the Department of Environmental Protection.

MAILED CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED