

Connecticut Department of
**ENERGY &
 ENVIRONMENTAL
 PROTECTION**

STATE OF CONNECTICUT)
)
 VS.)
)
 ROBERT M. JR. AND LINDA WHYTE)

Order No. 2308

CONSENT ORDER

- A. With the agreement of Robert M. Jr. and Linda Whyte ("Respondents"), the Commissioner of Energy and Environmental Protection ("Commissioner") finds the following:
1. The Respondents own and operate an Outdoor Wood Burning Furnace ("OWF"), located at 201 Reutemann Road in North Stonington, Connecticut.
 2. The Respondents' OWF meets the definition of an OWF contained in Section 22a-174k of the Connecticut General Statutes ("C.G.S. §22a-174k").
 3. The Respondents' 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.

Date Issued: 2/17/2012

5. Staff from the Bureau of Air Management conducted an inspection of 201 Reutemann Road in North Stonington on August 8, 2011. The Field Engineer determined that the height of the OWF chimney is not above the roof peaks of the residences that are located within 500 feet of the OWF.
 6. Notice of Violation No. 16784 was issued to the Respondents on September 19, 2011 for the observed violation of C.G.S. §22a-174k.
 7. By virtue of the above, the Respondents are in violation of C.G.S. §22a-174k.
- B. With the agreement of the Respondents, 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. The Respondents shall immediately discontinue the operation of any and all OWFs located at the Respondents' residential property.
 2. Within 30 days after the issuance of this Order, the Respondents shall submit written notice to the Commissioner stating that operations of all the OWFs at the Respondents' residential property have been discontinued. Such notice shall be signed by the Respondents and notarized by a Notary Public.
 3. Within 120 days after the issuance of this Order, the Respondents 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 Respondents modify the OWF to fully comply with C.G.S. §22a-174k, then the Respondents shall demonstrate to the Commissioner's satisfaction that the OWF complies with the requirements of C.G.S. §22a-174k.
 5. If the Respondents remove the OWF from the property, the Respondents shall submit written notice to the Commissioner stating that the unit has been removed from the property, within 30 days of removing the unit.
 6. Inspection and Compliance Evaluation. Within 30 days after removing or modifying the unit, the Respondents 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 Respondents 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 Respondents 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 Respondents shall, within 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 Respondents shall implement any approved additional corrective actions in accordance with the approved schedule.

7. Full Compliance. Respondents 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. Respondents 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 Respondents that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondents shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 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 Respondents or, if Respondents are not individuals, by Respondents' 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 Respondents or Respondents' 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 Respondents to an injunction and penalties.

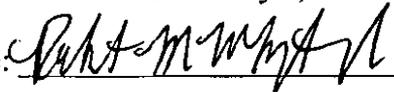
13. False statements. Any false statement in any information submitted pursuant to this order is punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
14. Notice of transfer; liability of Respondents Until the Respondents have fully complied with this order, Respondents shall notify the Commissioner in writing no later than 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. Respondents' 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 Respondents 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 Respondents to undertake further investigation or further action to prevent or abate violations or pollution.
16. Respondents' obligations under law. Nothing in this order shall relieve Respondents 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 Respondents pursuant to this order will result in compliance or prevent or abate pollution.
18. Access to site. Any representative of the Department of Energy and 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 15 days of the date Respondents become 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, Respondents shall submit the correct or omitted information to the Commissioner.

21. Notification of noncompliance. In the event that Respondents become 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, Respondents 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, Respondents 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 Respondents shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondents 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:

Teraesa Chagnon
Department of Energy and Environmental Protection
Air Engineering & Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

Respondents consent 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 Respondents to the terms and conditions of the Consent Order.

Robert M. Whyte, Jr.

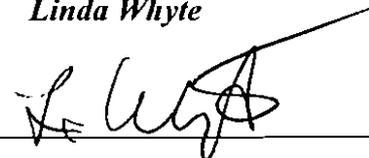
Signature: 

Type Name: ROBERT M WHYTE JR

Type Title: LAND OWNER

Date: 2-4-12

Linda Whyte

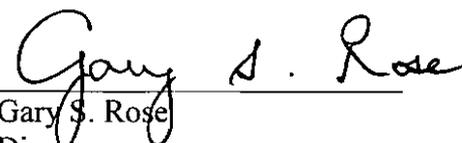
Signature: 

Type Name: LINDA WHYTE

Type Title: LAND OWNER

Date: 2-4-12

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


Gary S. Rose
Director

Engineering & Enforcement Division
Bureau of Air Management

*Department of Energy and Environmental Protection

02-10-2012
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 (DEEP).

MAILED CERTIFIED MAIL,
RETURN RECEIPT REQUESTED