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Reply to:
x Watertown District Office

June 3, 2010

Hon. Alexander Grannis, Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-4500

Re: Outdoor Wood Boiler – Proposed DEC Regulations (Part 247)

Dear Commissioner Grannis:

I am presenting these preliminary comments today on the Department of Environmental Conservation's (DEC) proposed regulation of Outdoor Wood Boilers (OWBs). As DEC is involved in a series of public hearings over the next several weeks around the State, my staff and I will be listening intently to the Department's explanations, and to public testimony presented. After considering all of this information, I will be submitting more comprehensive comments prior to the close of the public comment period on July 2, 2010.

I would like to thank DEC for providing the public with opportunities to be heard in locations across the State. However, I am concerned that citizens who are residents in rural areas in northern, central and upstate New York, where OWBs are in extensive use, may not, due to travel times and other difficulties, have an opportunity to attend one of the scheduled meetings. I encourage aggressive outreach by DEC to elicit as wide a range of comments as possible.

The existence of local laws regulating the use of OWBs demonstrates that there have been situations where OWBs have proven to be a concern to residents and municipalities. DEC's proposal, however, is a one-size-fits-all approach to an issue that is not evenly experienced.

In addition to participating in this process on behalf of my constituents, I have introduced legislation (S.8061) that will allow for the continued use of OWBs currently in operation, require that any new boilers sold in New York be EPA approved, and allow for local decision making with respect to typically local issues such as set backs.

Specific details of the proposed DEC regulations are of significant concern to many rural residents, and some of my initial concerns regarding the current proposal are laid out below.

Useful life of individual units not considered

This proposal would require many, perhaps thousands, of OWBs to be taken out of service before the end of their useful life. The requirement to replace all existing OWBs purchased prior to September 1, 2005 is particularly troublesome. While it may be that some systems should be replaced after this amount of time, if an OWB is still in good working order, it seems much more reasonable to require that it be replaced with a unit with improved air pollution controls when the old unit itself needs replacing. OWBs can cost close to \$10,000 and many have warranties of 20–25 years. Requiring replacement based solely upon age is unrealistic and unfair.

The calendar is not a reliable predictor of temperature and should not be used to restrict seasonal use of OWBs

As currently drafted, these regulations will limit the use of OWBs between May 15 and August 31 in the Northern Heating Zone, which includes Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Oneida, Oswego, St. Lawrence, Saratoga, Warren and Washington Counties. This restriction is of particular concern, as it does not take into account the reality of climate shifts in our northern region. In many areas of the North Country, it is necessary to continue heating residences periodically well into the summer months. The attached map from Cornell University's Northeast Regional Climate Center shows that the date of the average last spring frost, where weather dips to 32 °F or below, is well into June, or even July for parts of New York State. It is also not uncommon for temperatures to dip into the heating range on mid to late August nights. Telling residents that they cannot heat their homes during cold weather is not an appropriate role of State Government.

Replacement of hot water source required

DEC's demand that residents using OWBs for hot water replace their existing systems with new, indoor water heaters, because this proposal prohibits OWB use during summer months, is poorly justified. The proposal does not take into account the realities of our current economic situation. There is no consideration given for potential accommodations that might be made to allow continued use for the life of the existing hot water equipment.

Problems are not universal and costs are not equal

OWBs are generally used in more rural areas. Many of these systems have never been the subject of a complaint. Yet DEC's one-size-fits-all regulatory approach will cause economic hardship for all users, not just those relatively few causing problems.

New York State is not alone in facing economic hardships these days. I know that DEC itself is painfully aware of cuts that need to be made to accommodate the lack of funding. This awareness should be extended to the circumstances of our residents as well.

In the best of times, rural residents often earn lower incomes than their urban neighbors. We must acknowledge the impact of this current economic crisis on individual residents. To expect these New

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Yorkers to finance replacement of both their primary heating and hot water source, when these existing systems may be in perfectly good working order, is both callous and unrealistic.

Incomplete economic analysis

The economic analysis provided by DEC is incomplete. While DEC did provide some analysis of the economic impact of these new proposed regulations, it does not seem that the true costs are accurately reflected in its projections. For instance, the cost of increasing the required stack height to 18 feet includes only the cost of purchasing additional materials. Construction costs are not included, nor are any engineering costs (e.g. the use of guy-wires to stabilize the newly increased stack height). Also missing from DEC's analysis are the costs associated with installation of a newly required indoor water heating source which could easily include significant plumbing and electrical work.

Questions regarding stack height

There is inadequate justification for the specific stack heights selected by DEC. While DEC is clearly attempting to protect individuals from the effects of smoke drifting from OWBs directly into neighboring residences, the justification for an 18 foot stack height is unclear. Toward that end, I would appreciate DEC's explanation as to how 18 feet was determined to be the minimum height for OWB stacks.

The proposed regulations require an 18 foot *minimum* stack height, and for new OWBs the permanent stack height must extend *a minimum of 2 feet above the peak of any roof structure located within 150 feet of the OWB*. From reading this, it seems that if the height of barns and silos are included in the definition of "structure", stack heights could easily exceed 60 feet. The stability of such free standing stacks seems highly suspect and the reasoning for this requirement is not adequately explained.

I appreciate your time and attention today and look forward to hearing from others on this proposed regulation. Ultimately, this process is important whether we address concerns with OWBs through legislation or regulation. The end result should adequately address existing problems without supplanting local government or unduly interfering in the daily lives of rural New Yorkers. As noted earlier, I will be submitting more detailed comments prior to the end of the public comment period on this important issue.

Sincerely,



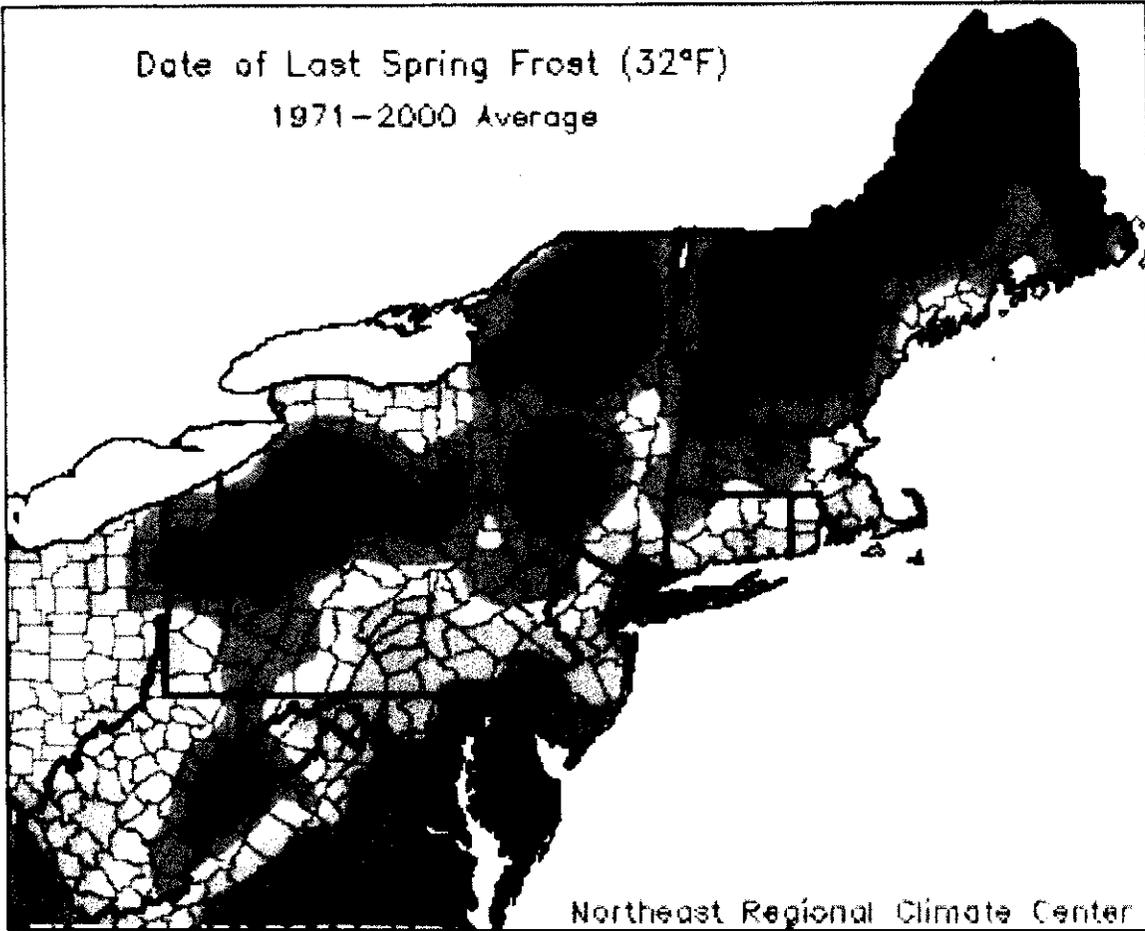
Darrel J. Auberline
State Senator

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enc.

cc. John Barnes, NYS DEC

Attachment 2



Apr 15 Apr 22 Apr 29 May 6 May 13 May 20 May 27 Jun 3

http://www.nrcc.cornell.edu/mosquito/images/lastFrost_med.png

[1] The estimated cost does not reflect the cost to install the OWB, which includes a concrete pad, a power source, and piping—both underground and in the building being heated. This adds several thousand dollars to the total.