

MEMORANDUM

To: Senator Christopher Bray, Chair, Senate Committee on Natural Resources and Energy

From: Heidi Hales, Director, Air Quality and Climate Division
Doug Elliott, Chief, Air Permitting Section
Megan O'Toole, DEC Associate General Counsel

Date: May 8, 2019

Re: UPDATED - Follow-up to testimony on wood heat

On Wednesday, May 1, 2019, during invited testimony regarding wood heat, the Committee requested the following from the Air Quality and Climate Division (AQCD):

1. A brief summary of the issues.
2. Approximate timeline for amending the wood heater rule.
3. Proposed interim pathway for wood heaters (in advance of effective date of amended rule).
4. Potential mechanisms for the Legislature to assist the AQCD with rulemaking and/or an interim pathway.

Each of these items are specifically addressed below, with proposed draft language included as an Appendix for the Legislature's consideration to assist the AQCD in implementing an interim solution.

1. Summary of issues:

On December 15, 2016 the AQCD adopted the federal regulations for residential wood heaters, expanding their applicability in Vermont to commercial, industrial, and institutional units under 2.5 million BTU per hour heat output. This regulation replaced the existing state regulations for outdoor wood boilers which had been adopted to address severe air quality problems being caused by those units. The inclusion of commercial, industrial, and institutional units was also intended to prevent manufacturers of noncompliant units from labeling those units as "commercial only" and avoiding liability for their installation in residential applications.

The AQCD has been actively working to develop an updated wood heater regulation that would allow alternative means of demonstrating compliance with the standards, while still protecting air quality. However, as was discussed in testimony, any wood burning unit of any size if installed for residential purposes must be EPA certified. The Agency has no flexibility on this. If EPA has not certified wood chip units then they are not allowed to be sold, installed, or used in a residential application. The Agency is not federally preempted in the case of institutional, industrial and commercial installations of wood heaters.

2. Timeline for amending the wood heater rule:

The AQCD intends to submit a draft of the revised regulation to the Senate Committee on Natural Resources and Energy by July 1, 2019, commence rulemaking on or before October 1, 2019, and adopt such rules on or before May 1, 2020. The draft regulations will propose alternative means of demonstrating compliance the emission standards.

3. Proposed interim pathways:

Option A. In the interim until final regulations can be adopted, the AQCD proposes to allow for those entities seeking to install new wood heaters in an institutional, industrial, and commercial application to alternatively seek an Air Pollution Control Permit to Construct (“construction permit”) prior to installation. The AQCD’s construction permit program, which has been in place for decades, will allow the Agency to work directly with each entity that is installing and operating the heater on a case by case basis to establish alternative means of demonstrating compliance while ensuring that the goals of protecting air quality and advancing these type of heating systems are met.

This interim permitting process for these types of heaters will sunset when the Agency has adopted amendments to Section 5-204 of the Regulations that address the concerns regarding air quality and certification of these larger, institutional, industrial and commercial units.

We expect permitting fees associated with applications for construction permits to be \$2000, given that an engineering fee will likely not be applicable and will be waived. The annual registration fee requirement for sources that emit more than five tons of criteria pollutants will also likely not be applicable.

Option B: In the interim until final regulations can be adopted, the AQCD proposes, as alternative to Option A, to allow manufacturers of new wood heaters that may be installed in an institutional, industrial, and commercial application to alternatively seek certification of a particular model unit of an appliance for installation in Vermont. Once certification of the unit is issued by the Air Pollution Control Officer, all installations of the unit model will be allowed during the interim period.

A fee of \$1000 will be due along with each certification application given the time and resources associated with reviewing data and details of certification applications to ensure that all applications are reviewed consistently and fairly. ANR anticipates that complete review of each application will take 16-24 hours of staff time, including reaching out to the manufacturers with questions and learning and understanding a variety of non-U.S. test methods and their parameters.

The AQCD offers the language in the Appendix below for the Legislature’s consideration for Session Law to assist the AQCD in implementing the interim solution.

Appendix Proposed Draft Language

Sec. X AMENDMENTS TO AIR POLLUTION CONTROL REGULATIONS REGARDING WOOD HEATERS; COMMENCEMENT; ADOPTION; INSTITUTIONAL, COMMERCIAL AND INDUSTRIAL WOOD HEATING APPLIANCES

(a) The Secretary of Natural Resources, in consultation with interested parties and parties having expertise in wood heating and wood heat appliances, shall adopt amendments to the provisions of the Vermont Air Pollution Control Regulations governing the manufacture, sale, purchase, installation and operation of wood heating appliances for use in institutional, commercial or industrial applications in Vermont. Such rules shall allow for alternative methods of demonstrating compliance with applicable air quality and efficiency standards as determined by the Air Pollution Control Officer.

(1) On or before July 1, 2019 the Secretary of Natural Resources shall submit to the Senate Committee on Natural Resources and Energy and House Committee on Energy and Technology a copy of the draft rule amendments to the provisions of the Vermont Air Pollution Control Regulations as required in subsection (a) and this section.

(i2) The Secretary of Natural Resources shall commence rulemaking under subsection (a) of this section on or before October 1, 2019 and adopt such rules on or before May 1, 2020.

Subsection (b) OPTION A.

(b) Until such time that a rule amendment as required in subsection (a) of this section is adopted, and notwithstanding 10 V.S.A. §555(a) and §5-204 of Code of Vermont Rules 12-031-001, wood heating appliances for use in institutional, commercial or industrial applications shall be classified as an air contaminant source for the purposes being subject to the permitting requirements of 10 V.S.A. §556, unless such appliance has been certified by the EPA as meeting the requirements of 40 C.F.R. Part 60, Subparts AAA and QQQQ as published in the Federal Register on March 16, 2015.

Subsection (b) OPTION B.

(b) Until such time that a rule amendment as required in subsection (a) of this section is adopted, and notwithstanding §5-204 of Code of Vermont Rules 12-031-001, manufacturers of wood heating appliances for use in institutional, commercial or industrial applications shall be subject to a certification process conducted by the Agency of Natural Resources wherein each discrete model to be installed in Vermont shall be certified by the Air Pollution Control Officer before installation occurs, unless such appliance has been certified by the EPA as meeting the requirements of 40 C.F.R. Part 60, Subparts AAA and QQQQ as published in the Federal Register on March 16, 2015.

(1) Certification procedure: (A) The Secretary shall draft and finalize a certification procedure in accordance with this section as soon as practicable following the effective date of this section.

(B) A fee of \$1000 shall be due the Agency for each certification application that is submitted in accordance with the certification procedure.

(C) Certification of a particular unit model issued by the Air Pollution Control Officer is not subject to the procedures and requirements of 10 V.S.A. Chapter 170.