

CHAPTER 362

HB 1405-FN – FINAL VERSION

05Mar2008... 0736h

05/08/08 1768s

04Jun2008... 2067cofc

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2008 SESSION

08-2008

08/03

HOUSE BILL *1405-FN*

AN ACT regulating outdoor wood-fired hydronic heaters.

SPONSORS: Rep. Shattuck, Hills 1; Rep. Essex, Hills 1; Rep. Mack, Hills 1; Rep. French, Merr 5; Rep. Jillette, Sull 2; Sen. Janeway, Dist 7; Sen. Hassan, Dist 23

COMMITTEE: Science, Technology and Energy

AMENDED ANALYSIS

This bill establishes requirements for the sale, installation, and use of outdoor wood-fired hydronic heaters.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eight

AN ACT regulating outdoor wood-fired hydronic heaters.

Be it Enacted by the Senate and House of Representatives in General Court convened:

362:1 Purpose and Findings.

I. Due to many factors, outdoor wood-fired hydronic heaters (OWHH) are increasingly becoming a primary method of heating homes and other buildings in the winter and providing hot water year round. The basic design of some OWHHs on the market today can cause the fuel to burn incompletely, resulting in thick smoke and high particulate emissions. The problem is exacerbated when other materials such as wet wood and trash are burned. Further, the short stack heights of OWHHs and reduced draft may fail to disperse the smoke adequately, resulting in concentrated pollution at lower heights, impacting residents and neighbors. As is true for many similar emissions, smoke from OWHHs can cause a range of harmful health effects.

II. The general court finds that technologies are emerging that will result in cleaner burning and more efficient outdoor wood boilers. Requiring new boilers to incorporate these technologies will enhance the desirability of their use. This is consistent with a sound energy policy that promotes indigenous, renewable energy sources and an increase in the diversity of the state's fuel supply.

362:2 New Chapter; Outdoor Wood-Fired Hydronic Heaters. Amend RSA by inserting after chapter 125-Q the following new chapter:

CHAPTER 125-R

OUTDOOR WOOD-FIRED HYDRONIC HEATERS

125-R:1 Definitions. In this chapter:

I. "Clean wood" means wood that has not been painted, stained, coated, preserved, or treated with chemicals such as copper chromium arsenate, creosote, or pentachlorophenol. The term does not include construction and demolition debris as defined in RSA 149-M:4, IV-a.

II. "Commissioner" means the commissioner of the department of environmental services.

III. "EPA" means the United States Environmental Protection Agency.

IV. "Municipality" means cities, towns, and counties in which there are located unincorporated towns or organized places. Municipality shall not mean village districts.

V. "Outdoor wood-fired hydronic heater" (OWHH) or "outdoor wood boiler" means a fuel burning device:

(a) Designed to burn wood or other solid fuels;

(b) That the manufacturer specifies for outdoor installation or in structures not normally occupied by humans, including structures such as garages and sheds; and

(c) Which heats building space and water through the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

VI. "Person" means any individual, partnership, firm or co-partnership, association, company, trust, corporation, department, bureau, agency, private or municipal corporation, or any political subdivision of the state, the United States or political subdivisions or agencies thereof, or any other entity recognized by law as subject to rights and duties.

VII. "Phase I OWHH" means an OWHH that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.6 pounds per million British Thermal Units input and is labeled accordingly.

VIII. "Phase II OWHH" means an OWHH that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million British Thermal Units output and is labeled accordingly.

125-R:2 Unit Requirements.

I. Effective January 1, 2009, no person shall sell, offer for sale, or distribute for sale an OWHH that is not a Phase I or Phase II OWHH.

II. Effective April 1, 2010, no person shall sell, offer for sale, or distribute for sale an OWHH that is not a Phase II OWHH. The commissioner shall delay or indefinitely postpone the effective date of this paragraph through rule adoption under RSA 541-A if the EPA does not establish or is delayed later than April 1, 2009 in establishing a certification or qualification process for Phase II OWHHs as determined by the commissioner.

125-R:3 Setback and Stack Height Requirements.

I. No person shall install a Phase I OWHH unless it is installed at least 100 feet from the nearest property line and has a permanent attached stack that is at least 2 feet higher than the peak of the roof of a residence or place of business not served by the OWHH if that residence or place of business is located within 300 feet of the OWHH.

II. No person shall install a Phase II OWHH unless it is at least 50 feet from the nearest property line.

III. No person shall install an OWHH that is not a Phase I or Phase II OWHH unless it is located at least 200 feet from the nearest abutting residence and has a permanent attached stack that is at least 2 feet higher than the peak of the roof of a residence or place of business not served by the OWHH if that residence or place of business is located within 300 feet of the OWHH.

125-R:4 Permitted Fuels. Any person that owns or operates an OWHH shall not use a fuel other than the following:

I. Clean wood;

II. Wood pellets made from clean wood;

III. Home heating oil, natural gas, or propane that complies with all applicable sulfur limits and is used as a starter or supplemental fuel for dual-fired OWHHs; or

IV. Other fuels as approved by the commissioner through rules adopted pursuant to RSA 541-A.

125-R:5 Exemption. An OWHH that is specifically designed to burn wood pellet fuel with metered fuel and air feed and controlled combustion engineering, which is operated according to manufacturers' specifications and burns only wood pellet fuel shall be exempt from this chapter.

125-R:6 Enforcement.

I. The commissioner shall enforce the provisions of this chapter. Any person who violates any provision of this chapter or any rule adopted under this chapter shall be guilty of a violation and may be assessed by the commissioner, after notice and hearing, an administrative fine for the first offense not to exceed \$250 and for each subsequent offense not to exceed \$500. All fine proceeds shall be deposited in the general fund.

II. Whenever the commissioner finds a person has violated any of the provisions of this chapter or rule established under this chapter, the commissioner may issue an order of abatement establishing a compliance schedule with which the person shall comply. Any order of abatement shall become final and enforceable by the commissioner within 30 days of its issuance unless an appeal is filed with the air resources council before the expiration of said 30-day period. The council shall hold a hearing on any such appeal promptly, and shall thereafter issue a decision upholding, modifying, or abrogating the commissioner's order of abatement or any part thereof. The council's decision shall become final 10 days after it is issued.

125-R:7 Municipal Authority. Nothing in this chapter shall be construed to limit the authority of a municipality or the department of health and human services to prevent

and remove nuisances and protect public health in accordance with RSA 147, or of a municipality to adopt and enforce land use ordinances and regulations pursuant to RSA 674 and 675 relative to OWHHs, including but not limited to provisions relative to setbacks and stack heights that are more restrictive than RSA 125-R:3, prohibiting the installation of OWHHs in one or more zoning districts, or requiring in one or more zoning districts the installation of lower emitting versions of OWHHs that have been certified or qualified under this chapter. A municipality shall not establish quantifiable emission limits, require testing, monitoring, or certification, or specify the types of fuels used. In exercising its authority under this section, a municipality shall not unreasonably limit the installation of or hinder the operation of OWHHs.

125-R:8 Notice to Buyers.

I. Prior to the execution of a sale for a new or used OWHH, the distributor/seller shall provide the prospective buyer with a copy of this chapter and a written notice which includes:

(a) An acknowledgement that the buyer was provided with a copy of this chapter;

(b) A list of approved fuel; and

(c) A statement that even if the requirements set forth in this chapter are met there may be ordinances imposed by the buyer's municipality or findings of adverse effects by the commissioner that will limit or prohibit the use of the purchased OWHH.

II. The notice shall be signed and dated by the buyer and the distributor/seller when the sale of the OWHH is completed. The name and address of the owner, name of the manufacturer, and model and date of manufacture of the OWHH shall be included in the completed notice.

III. A copy of the signed written notice required pursuant to paragraph I shall be kept on file by the distributor/seller for a period not less than 3 years from the date of sale and shall be made available upon request for copying and/or inspection to the commissioner, the municipal health officer in the municipality in which the purchased OWHH is installed, and the commissioner of the department of health or human services.

362:3 New Section; Outdoor Wood-Fired Hydronic Heaters. Amend RSA 147 by inserting after section 16-a the following new section:

147:16-b Outdoor Wood-Fired Hydronic Heaters. If the owner or operator of an outdoor wood-fired hydronic heater (OWHH), as defined under RSA 125-R, operates the OWHH in a manner which causes a nuisance or is injurious to the public health, the health officers may, in writing, order that use of the OWHH be discontinued. The department of environmental services shall provide technical assistance to the department of health and human services for the purposes of enforcement of the nuisance provisions under this section.

362:4 Report to Air Pollution Advisory Committee. The department of environmental services shall, in conjunction with the department of health and human services, review complaints filed or reported to either the department or the department of health and human services, by residents or by municipal health officers, and shall review outdoor wood-fired hydronic heater (OWHH) technology, including the achievable emission limits, improvements in OWHH's efficiency and improvements in emission rates of OWHHs. The department of environmental services shall report its findings and recommendations, including any recommendations for legislation, by November 1 of each year until 2012, to the air pollution advisory committee established pursuant to RSA 125-J:11.

362:5 Effective Date. This act shall take effect 30 days after its passage.

Approved: July 11, 2008

Effective Date: August 10, 2008