

State of Vermont
Agency of Natural Resources
Department of Environmental Conservation
Air Pollution Control Division

**Air Pollution Control Regulations
Section 5-204
Outdoor Wood-Fired Boilers**

**Summary of Comments and Response to Comments
On the Proposed Rule**

August 19, 2009

TABLE OF CONTENTS

	Page
I. List of Written and Oral Comments Received	3
II. Response to Written and Oral Comments Submitted by June 23, 2009	4
• General Comments	4
• Applicability of Rule	5
• Exemptions from Rule	5
• Definitions	6
• Existing Units & Old-Style OWBs	6
• Installation Issues	7
• Operation Issues	9
• Certification & Testing	10
• Other issues	13

Appendix A: Copies of all written comments submitted during the public comment period

**I. LIST OF WRITTEN AND ORAL COMMENTS RECEIVED
FROM 5/14/09 THROUGH 6/23/09**

Listed below are the names and affiliations of all persons submitting written and/or oral comments on the proposed rule during the public comment period. This list also provides the alphabetical code, if any, used in the Response to Comments to identify the author of a particular comment or comments.

Commenter	Representing	Date Received	Type	Code
Marc Cohen	Massachusetts Dept. of Environmental Protection	5/21/09	Written	MassDEP
Rebecca Ryan	American Lung Association in Vermont	6/15/09	Written	ALA
Matt Levin	Vermonters for a Clean Environment	6/23/09	Written & oral	VCE
Philip Gitlen, Esq.	Central Boiler, Inc.	6/23/09	Written	CB
Anne Arnold	USEPA, Region I, Boston	6/23/09	Written	EPA
Al Duey, Zoning Officer	Town of Burke	5/21/09	Written	None
Gary Leavens	Self	5/21/09	Written	None
Elizabeth Mason	Self	6/3/09	Written	None
Steve Morris	Air Quality Program, Anchorage Dept. of HHS	6/11/09	Written	None
Karen Paris	Self & brother Tom	6/23/09	Written & oral	None
Norma Jean Kenyon	Self	6/23/09	Written	None

II. RESPONSE TO WRITTEN AND ORAL COMMENTS SUBMITTED BY JUNE 23, 2009

-- GENERAL COMMENTS --

1. COMMENT: • The rule will provide significant health protection and encourage use of the most efficient OWBs in our state. (VCE-1) • The State of Vermont is developing new rules to regulate OWBs, and I support this new rule. (K. Paris, written testimony, 6/16/09 hearing)

RESPONSE: The Agency notes these expressions of support and agrees that the rule will encourage the use of efficient wood combustion technology that should provide increased health protection from fine particles and other emissions.

2. COMMENT: Why was Vermont the last state in the region to adopt a Phase II rule? Why didn't Vermont regulate OWBs earlier so as to prevent problems with existing OWBs? (G. Leavens, 5/21/09 e-mail)

RESPONSE: Vermont was the first state in the nation to adopt rules specific to outdoor wood boilers (in 1997), and Maine and Vermont were the first states to adopt a Phase I emission standard for new OWBs. (Vermont's and Maine's Phase I standards went into effect at approximately the same time: March 31 and April 1, 2008.) Although Maine and New Hampshire have already adopted rules or statutes that contain both Phase I and II standards, the effective dates of their Phase II standards are essentially identical to the proposed effective date of Vermont's Phase II standard (i.e., April 1, 2010). Last winter, Massachusetts adopted a rule that skipped the Phase I standard and imposed a Phase II standard immediately. New York State, Rhode Island and Connecticut have yet to adopt regulations with emission standards specific to residential wood boilers.

Prior to the Agency adopting its 1997 OWB rule, little was known about OWB emissions or their impacts on health and the environment. The Agency believes that implementation of the set back and stack height standards in the 1997 rule at least, in many cases, prevented the old style boilers from being installed in more densely developed areas. When it became obvious that the initial rule was inadequate, work began on the development of a particulate test method and standard for OWBs.

3. COMMENT: We recommend that the Agency revise its proposed rule to be more consistent with NESCAUM's model rule for outdoor wood-fired hydronic heaters (OWHHs). (EPA-Intro)

RESPONSE: Unlike a U.S. EPA regulation with the force and effect of law, the NESCAUM model rule does not impose legally binding requirements on states choosing to regulate OWHHs. *See Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1020 (D.C. Cir. 2000) ("Only 'legislative rules' have the force and effect of law. A 'legislative rule' is one

the agency has duly promulgated in compliance with the procedures laid down in the statute or the Administrative Procedure Act.”). Even though “EPA provided technical and financial support” for NESCAUM to develop the model rule, it is merely an advisory document “that states, tribes and local authorities may elect to use, in whole or in part, if they choose to regulate hydronic heaters.” U.S. EPA, EPA’s Hydronic Heaters Program website, available at http://www.epa.gov/woodheaters/what_epa_doing.htm (visited on July 28, 2009). In fact, the introduction to NESCAUM’s model rule explains: “The various provisions of this model rule are suggestions and examples.” *See* NESCAUM Model Regulation for Outdoor Hydronic Heaters at 1 (Jan. 29, 2007). Accordingly, when drafting the proposed regulation, the Agency carefully considered NESCAUM’s model rule, but carefully exercised its discretion to differ from the model rule in some respects.

-- APPLICABILITY OF RULE --

4. COMMENT: • Central Boiler fully supports the new “applicability” provisions set forth in proposed Section 5-204(a)(1) which clarify that the Vermont OWB regulations only apply to OWBs “for use in Vermont” (CB-2). • 5-204 (a)(1): It is our understanding that the entire rule applies only to OWB *for use in Vermont*, which means old-style OWBs can be sold to persons who live in other states, but not Vermonters, past March 31, 2010. This would be a difficult, if not impossible, rule to enforce, and may create a temptation by dealers and Vermont purchasers to break the rule (ALA-3).

RESPONSE: There were two comments on the proposed change in the applicability of the rule to covering only OWBs sold, distributed, etc. “for use in Vermont”. One comment was in favor of and one was opposed to this change, as noted above. The Agency agrees with the comment that allowing Vermont dealers to sell and install “old-style” OWBs for use in other states may make the ban on sales of uncertified OWBs for use in Vermont more difficult to enforce. However, not adopting this rule change may negatively impact the sales of some Vermont OWB dealers, particularly those near the border of any state, such as New York, that has not yet adopted an emission limit for OWBs. For this reason, the Agency intends to retain this change to the rule’s applicability provision.

-- EXEMPTIONS FROM RULE --

5. COMMENT: “Personal use” is not defined under Section 5-101 of VT regulations. Without this definition, it appears that this exemption provides a loophole for virtually everyone that the regulation purports to cover (i.e., those listed under 5-204(a)(1)). To avoid this, we suggest adding a sentence to the end of Section 5-204(a)(2)(ii) to limit personal use to residential use. (EPA-1)

RESPONSE: In response to this comment, the Agency is amending § 5-204(a)(2)(ii) of the regulation by adding language indicating that the term “personal use” refers to the use of an OWB by an individual for residential purposes only. The new language is shown below.

For the purposes of this section, “personal use” means the use of an OWB by an individual solely for residential space or domestic water heating and not to service a commercial or institutional establishment.

-- DEFINITIONS --

6. COMMENT: Does Vermont's definition of OWB allow for coal burning in dual fuel designs? (MassDEP-2)

RESPONSE: Under § 5-204(b) of the proposed rule, OWB is defined as a device that is "designed to burn primarily wood" In addition, § 5-204(c)(3)(ii) specifies the types of allowable fuels that may be burned in an OWB, including untreated natural wood; wood pellets made from untreated natural wood; other biomass fuels; and oil, gas or propane when used as a starter or supplemental fuel. Therefore, the rule does not allow for coal burning in dual fueled units. Outdoor boilers designed to be fueled only with coal do not meet the definition of OWB and would not be subject to the rule.

-- EXISTING UNITS & OLD-STYLE OWBs --

7. COMMENT: • All provisions allowing purchase or sale in Vermont of "existing units" should be eliminated (ALA-1&2). • The exception for "existing units" in the Phase I certification requirement [Section 5-204(e)(1)(i)] is confusing. (EPA-8)

RESPONSE: In response to these comments, the Agency deleted the definition of "existing unit" from § 5-204(b) and the exceptions for existing units that appeared in §§ 5-204(c)(1)-(2), (d)(1) and (e)(1). As initially proposed, "existing units" that were purchased and received by a dealer in Vermont before October 1, 2007 could be sold and distributed any time before March 31, 2010 without being certified as a Phase I OWB. However, given that almost two years have now passed since October 1, 2007, the Agency believes that there are few, if any, "existing units" still available for sale in Vermont. In any event, the new rule will allow such units to be sold and distributed for use outside of Vermont. Therefore, the exception for "existing units" no longer seems necessary and removing it makes the regulation easier to understand and follow.

8. COMMENT: A number of commenters suggested a need to remove or more strongly regulate "old-style", uncertified OWBs. • The new rule should include stronger regulation for "old-style OWBs", including change-out upon property transfer, seasonal or air quality based limits, or the phase out of old units by a certain date. (ALA-6) • We recommend that, at a minimum, the Agency impose set back and stack height requirements on all "installed" units, consistent with Option C in NESCAUM's model rule. (EPA-2) • Older, existing units should be removed or more strongly regulated. (K. Paris, oral and written testimony, 6/16/09 hearing; N.J. Kenyon, 6/23/09 e-mail) • The Agency should consider a "buy-back" or "change-out" program for older, pre-Phase I OWBs. (VCE-2) (ALA-6)

RESPONSE: Retroactively establishing set back and stack height requirements for OWBs installed prior to October 1, 1997, or more stringent requirements for OWBs installed after October 1, 1997, would impose an unfair economic burden on Vermonters who purchased and installed their OWBs in good faith in accordance with existing regulations, and could even leave some Vermonters without a source of heat. In addition, mandating the removal of such units either through change out upon property transfer or a

phase out would require a separate rulemaking under the Vermont Administrative Procedure Act. However, the Agency strongly supports the idea of a “buy-back program” to replace older problem OWBs with new technology, cleaner wood boilers. Older, uncertified OWBs emit more smoke than newer models and are more likely to pose nuisance and health threats for neighbors. While no Agency funds are currently available for such a program, there is a possibility that some funds may become available to establish an OWB buy-back program in the future. In addition, municipalities or nonprofit groups may want to consider implementing their own buy-back programs. If necessary, the Agency will consider other ways to address emissions from older units, including a seasonal use limitation or mandatory phase-out program, in future OWB regulations.

-- INSTALLATION ISSUES --

Stack Height Requirements.

9. COMMENT: Comments were received suggesting both that the current stack height requirement for older, uncertified units installed after October 1, 1997 is too high or just not feasible, and that the requirement should be revised to be 5 feet higher than the roof of the nearest building. (MassDEP-1) (EPA-6)

RESPONSE: Based on our experience in implementing this requirement, the Agency agrees that, in some cases, the stack height requirement for uncertified units installed after October 1, 1997 may be too high and is often not feasible. In some instances, OWB owners were required to install very tall stacks, but the additional height had little impact on the complaints because the smoke dropped to ground level within relatively short distances. In other cases, the complainants' homes were higher in elevation than the OWB, and the higher stack height potentially caused increased exposures. On the other hand, imposing stricter stack height requirements on uncertified units installed after October 1, 1997 would have a retroactive effect and impose an unfair economic burden on owners who installed their OWBs in good faith to meet the existing requirements of Section 5-204. Moreover, the Agency believes that in many cases the existing stack height requirement has helped to minimize smoke exposures. At this time, the Agency cannot justify altering the stack height requirement for uncertified OWB units which also must be at least 200 feet from neighboring residences.

10. COMMENT: Two comments suggested that the Agency impose stack height requirements for Phase I and/or Phase II OWBs consistent with Maine's OWB rule or the NESCAUM Model Rule and one comment questioned the Agency's comfort level with not imposing a minimum stack height for Phase II OWBs. (CB-4) (EPA-7) (S. Morris, Anchorage Air Quality Program)

RESPONSE: Based on the Agency's experience with the stack height requirements for old uncertified OWBs, increasing the stack height often may have little effect on impacts on neighbors. The gasification process utilized by the new technology OWBs involves carefully controlled primary and secondary combustion air inputs. The effect on the

combustion process of tall stacks, which can alter combustion air draft, is uncertain. The Agency will recommend that owners of new technology OWBs follow the manufacturers' stack height recommendations for most efficient operation and to minimize potential health impacts on neighbors. Very tall stacks can also cause an economic burden to the owners and are often unsightly. Human exposures to wood combustion emissions are best reduced by requiring highly efficient combustion processes which burn-off any particles or toxic emissions. The Agency will also work closely with the US EPA to revise its "New Source Performance Standards" for residential heaters to include even stricter particle standards for residential wood-fired heaters, including outdoor wood boilers.

Set Back Requirements.

11. COMMENT: The Agency should increase the pre-Phase I and Phase I set backs from 200 feet to "more than 500 feet from any property line [or nearest building]", per the NESCAUM model rule and NYSDEC's modeling. (EPA-3&5)

RESPONSE: The Agency would prefer to focus on reducing particle emissions from OWBs rather than increasing the set-back distance for Phase I units which would have a minimal impact for the following reasons. Based on our records, the vast majority of certified OWB sales since the implementation of the Phase I emission standard have been of units that already comply with the proposed Phase II standard. As appropriate, consumers appear to be focusing on the cleanest most efficient OWBs. In addition, there will only be a short period of time between the adoption of this proposed rule (including any modified Phase I set back requirement) and the March 31, 2010 effective date of the Phase II standard during which there can be additional sales of Phase I units. Thus, the number of units affected by a change in set-back would be minimal. Furthermore, if the set back requirement was changed to "500 feet from any property line" for Phase I units for this interim period, there would be two different set back requirements for Phase I units, based on their date of installation. This would be very confusing and more difficult to enforce. Other states with Phase I set-back requirements include Maine with a set-back of 100 feet to a property line or 120 feet to an occupied dwelling, and New Hampshire which established a set back of 100 feet to any property line. Vermont's current and proposed rule is generally more stringent than these standards. With regard to changing the set back requirement for pre-Phase I OWBs, please see the response to comment #8.

12. COMMENT: Comments on the proposed Phase I and II set back distances were widely varied and can be summarized as follows:
- All OWBs, including Phase I and II, should be installed at least 200 ft. away from any residence, school or health care facility. (ALA-4)
 - The set back distance should be kept at 200 feet for Phase II models. (VCE-3)
 - Change the Phase I and II set back requirements to "a 200 foot set back from the abutting properties building envelope". (Town of Burke, 5/21/09 e-mail)
 - Phase II OWBs should be located more than 100 feet from "any property line" (EPA-4)
 - The 100 foot setback required for Phase II OWBs is unnecessary and unfairly discriminates against OWBs. (CB-3)

RESPONSE: The Phase I set back requirement is discussed in the previous response. The Agency is proposing to reduce the set back requirement for Phase II in recognition of the more stringent Phase II particulate emission standard. Modeling by the State of New York indicated that the impacts of emissions from Phase II boilers at any distance from them were below the $35 \mu/M^3$ (24 hour average) federal particulate standard. Modeling by Vermont of complex terrain situations found somewhat higher impacts in most, but not all, terrain settings modeled. The higher impacts were found to be relatively infrequent. Phase II set back distances established by other states include 50 feet from the property line or 70 feet from a dwelling (Maine), 50 feet from the property line and 75 feet from a dwelling for residential units (Massachusetts) and 50 feet from the nearest property line (New Hampshire). The NESCAUM Model Rule does not suggest set back or stack height requirements for residential size Phase II OWBs. Both the NESCAUM Model Rule and the Massachusetts rule include set back distances for commercial OWBs, but there are currently no commercial sized Phase II OWBs on the market and such units are likely to be uncommon in the future. The Agency has chosen to use set backs based on distances to structures because distances to lot lines can be very difficult to determine in rural areas. The Agency maintains that the 100 foot setback distance proposed in this rule is appropriate to minimize most impacts on neighbors, while encouraging the purchase and installation of cleaner burning Phase II OWBs.

The Agency does not agree that the proposed 100 foot set back requirement unfairly discriminates against OWBs. In general, OWBs have a larger heating capacity and burn more fuel than residential wood stoves. Therefore, they emit greater amounts of fine particles and other pollutants on a mass per time basis. The low stacks generally associated with OWBs also contribute to the greater potential for impacts of emissions on neighbors. Indoor woodstoves or indoor furnaces/boilers generally have stacks ending above the roofs of the structure being heated.

-- OPERATION ISSUES --

13. COMMENT: Under proposed Section 5-204(b), we recommend revising the definition of "Untreated Natural Wood" to read as follows: "...means *natural wood* that has not been treated with any preservative, herbicide, pesticide, adhesive, paint, stain, oil or other chemical or coating, and that has not been previously saturated by salt water." (EPA-10)

RESPONSE: Considering that the State of Vermont is landlocked, is distant from any body of salt water and that Lake Champlain is a fresh water lake, the Agency has decided it is not necessary to revise the proposed regulation as suggested.

14. COMMENT: [Nuisance provision] • 5-204(c)(2)(v): Public nuisance should be clearly defined to allow a single neighbor to have recourse if neighboring OWB is creating pollution. (ALA-5) • EPA requests that the Agency either add a definition of "nuisance" or "public nuisance" to Section 5-101 or add this definition in Section 5-204. We recommend deleting the word "public". (EPA-11)

RESPONSE: The Agency recognizes that the term “nuisance” is not defined in Section 5-101 of the regulations. However, Section 5-241(1), which is entitled “Nuisance,” provides: “A person shall not discharge, cause, suffer, allow, or permit from any source whatsoever such quantities of air contaminants or other material which will cause injury, detriment, nuisance or annoyance to any considerable number of people or to the public or which endangers the comfort, repose, health or safety of any such persons or the public or which causes or has a natural tendency to cause injury or damage to business or property”. Thus, Section 5-241(1) explains the term and generally prohibits public nuisances caused by the discharge of air contaminants from any source. The word “public” was originally added to Section 5-204 because the Agency intended the nuisance provision in Section 5-204 to be applied in a manner that is consistent with Section 5-241. The Agency does not currently have adequate resources to investigate, verify and resolve private nuisances related to the operation of OWBs.

15. COMMENT: [Seasonal use limitation] I think there should be a regulation that (OWBs) cannot be used from May 1 to Oct. 1. During the winter when our house is closed up it does not bother us. (E. Mason, 6/3/09 e-mail)

RESPONSE: Since Vermont is a primarily rural state, it is possible in many situations for OWBs to be located far enough away from neighbors that the smoke does not cause a problem in warm weather when people are more likely to be outdoors. Furthermore, the newer Phase I and II OWBs should smoke less and be less likely to create a nuisance during the summer. However, if citizen complaints about smoke from OWBs operating in the summer months continue, the Agency may consider seasonal operating restrictions in future revisions to the OWB regulation.

16. COMMENT: We recommend that the Agency also extend its opacity regulations (Section 5-211) so that they apply to OWBs. (EPA-12)

RESPONSE: This change would require a separate rulemaking under the Vermont Administrative Procedure Act. In any event, the Agency believes that visible emissions from units that comply with either the Phase I or Phase II emission limits should be minimal. Also, the responsibility of complying with the visible emissions standards in Section 5-211 would lie with the individual OWB owner. In order to minimize the burden on individual homeowners, the Agency prefers to leave the onus of compliance on the manufacturers who are required to develop designs that result in lower emissions.

-- CERTIFICATION & TESTING --

17. COMMENT: • One commenter fully supports the proposed 0.32 pounds per million BTUs of heat output Phase II particulate emission limit and agrees that it will provide regional consistency and a common market area, as well as be consistent with Phase 2 of US EPA’s voluntary OWHH program. (CB-1) • A second commenter supports the use of mass emission standards (18 g/hr and 20 g/hr of PM) for different size OWBs, as this will provide regional consistency. (MassDEP-3)

RESPONSE: The Agency agrees that the Phase II standard is consistent with those of the surrounding states and believes it is important that the states have consistency on this issue to avoid a “patchwork” of various state emission standards. The Agency also agrees that the Phase II standard is consistent with US EPA’s voluntary Phase II OWHH program. The Agency notes these comments and has nothing further to add.

18. COMMENT: The rule should be amended to add a reference to the ASTM test method for continuous feed OWBs. (CB-5)

RESPONSE: While the Agency recognizes the concern expressed by this comment, it does not agree that it is necessary to amend the rule as suggested. Section 5-204(e)(3)(iv)(C) of the proposed rule allows for the use of “alternative methods approved by the Air Pollution Control Officer.” Such approved “alternative methods” are likely to include the relevant sections from ASTM method E2618-08 for the testing of continuously fed biomass fueled units such as Central Boiler’s Maxim M250. Under this provision, the Agency will also likely approve the use of a modified form of Appendix A of ASTM method E2618-08 used for the testing of mass storage units that cannot be tested using USEPA Test Method 28 OWHH. All these test methods are relatively new and will likely evolve in the future. It is likely that other test methods will be developed in the future to deal with new wood boiler designs. US EPA is also considering major revisions to the Residential Wood Heater NSPS that will likely result in alterations to test methods for wood burning devices. It is essential that the Agency has the flexibility allowed by the “alternative method” provision, rather than having to attempt a lengthy and time consuming rule revision process to approve each new or modified test method.

19. COMMENT: It is not clear what criteria the Agency would use to judge if an alternative testing protocol is acceptable, and EPA’s OWHH program would not accept testing using an alternative method. (EPA-9)

RESPONSE: It is impossible to predict the types of test alterations that will be proposed in the future or the precise criteria for evaluating the acceptability of any particular alteration. The Agency will consult with the manufacturer involved, the testing laboratory, the USEPA Hydronic Heater Program and possibly other state programs to ensure that any test alterations are necessary, legitimate and consistent with other state and federal program requirements. The Agency greatly appreciates and respects the work performed by USEPA to review complex test reports and qualify OWHHs. The Agency relies on those test reviews for certification purposes. The Vermont OWB certification program is, however, separate from the USEPA voluntary program, and the Agency may accept alternative test methods or test modifications for certification purposes that would not be acceptable to the USEPA OWHH program. In addition, the USEPA’s OWHH program applies only to wood heaters rated at less than 350 million BTUs per hour of heat output (residential size), whereas the Vermont rule also applies to OWBs with output capacities greater than 350 million BTUs per hour. It may be necessary to use alternative test methods to test larger OWBs that are not addressed by the USEPA program.

The Agency believes that EPA's OWHH program will also find it necessary to alter test methods or accept alternative test methods as this relatively new OWHH program evolves. The EPA Phase 2 OWHH Partnership Agreement states the following:

“Relevant sections from ASTM method E2618-08 will be used for testing continuously fed biomass fuels. Models equipped with heat storage units will be tested per Appendix A of ASTM method E2618-08, except wood in cribs will be used as the fuel rather than cordwood as specified in the method. Partner and EPA recognize that these test guidelines are relatively new, and that issues may surface during their use. Partner and EPA agree to work together in good faith to resolve any such issues.”

20. COMMENT: The provision on certification revocation, and in particular the references to action of other States or “any evidence,” no matter how such evidence may be outweighed by other evidence, that an OWB or model line does not meet the requirements of the regulations, should either be eliminated or amended to set forth the procedure that will be followed, consistent with the basic notions of fairness and due process, before any certification is revoked. (CB-6)

RESPONSE: In response to this comment, the Agency is amending § 5-204(e)(4) of the regulation in two respects. First, the Agency is amending § 5-204(e)(4)(v) to specify that a certification may be revoked based on the denial or revocation of a certification by another state or U.S. EPA only on the grounds specified in § 5-204(e)(4)(i)-(iv) of the regulation. Second, the Agency is amending § 5-204(e)(4)(vi) of the regulation to change “Any other evidence” to “A finding based on any other evidence” to clarify that the weight of the evidence will be taken into account. These changes are shown in underline/strikeout below. In addition, the basic notions of fairness and due process will be met by following the applicable procedures in the Vermont Administrative Procedure Act prior to revoking any certification. Further, any decision to revoke a certification will be appealable to the Vermont Environmental Court pursuant to 10 V.S.A. § 8504.

- (e)(4) Certification Revocation. A certification of an *OWB*, or *model*, may be revoked by the Air Pollution Control Officer based on any of the following:
- (i) The *OWB* does not meet the applicable emission limit in subdivision (e)(2) of this section based on test data from a retesting of the original unit on which the certification test was conducted;
 - (ii) A finding that the certification test was not valid;
 - (iii) Physical examination showing that a significant percentage of production units inspected are not similar in all material respects to the representative *OWB* submitted for testing;
 - (iv) Failure of the *manufacturer* to maintain all documentation pertaining to the certification test, including the full test report and raw data sheets, laboratory technician

notes, field technician notes, if any, calculations and the test results for all test runs;

- (v) Denial or revocation of emissions certification or qualification for an *OWB*, or *model*, by another state or the USEPA based on any of the grounds in paragraphs (e)(4)(i)-(iv) of this section; or
- (vi) A finding based on ~~any~~ other evidence that an *OWB*, or *model*, does not comply with the requirements of this subsection.

-- OTHER ISSUES --

21. COMMENT: In preparing our remarks, we contacted VPIRG, VNRC and CLF (the environmental organizations listed on the Public Input Statement) for their input. We were disappointed to learn that none of them had been contacted by the Agency about the drafting of the Phase II rule. This seems like a critical failure of the rulemaking process, one which weakens the rule and chances of a collective, and thus stronger, enforcement effort. (VCE-6)

RESPONSE: On or about May 20, 2009, the Agency sent a letter to a number of interested parties and organizations, notifying them of the proposed Phase II rule, the public comment period on the rule, and the public hearing on June 16, 2009. This letter specifically solicited comments on the proposed rule. Our records indicate that copies of this letter were sent to, among others, the American Lung Association (ALA) in Vermont, CLF, Natural Resources Defense Council, and VPIRG, as well as, Vermonters for a Clean Environment (VCE). To date, the Agency has received written or oral comments on the proposed rule, including several suggested changes to the rule, from the ALA in Vermont and VCE. See the other portions of this document for our responses to these comments and suggested changes. The Agency welcomes the opportunity to create a stronger partnership with the environmental community and others to assist in implementing and enforcing all of the OWB rules. In fact, over the past few years, the ALA in Vermont, working with the Agency, has done an excellent job in providing the public with detailed information about the potential adverse health effects caused by the smoke from old-style OWBs and other useful information.

22. COMMENT: We hope that the Air Pollution Control Division will make application of this rule a priority. (VCE-5)

RESPONSE: The Agency has put a large amount of time and effort into developing reasonable emission standards and other requirements to control the air pollution caused by OWBs. We intend to continue to work actively with manufacturers, dealers, the environmental community and others to fairly implement the rule and assure compliance with it.

23. COMMENT: We also hope that the Agency will encourage continuous improvement in both technology and installation by considering a Phase III rule. (VCE-4)

RESPONSE: It is reasonable to expect that, as wood combustion technologies progress in the future, OWB manufacturers will be able to produce OWBs with even lower emissions and greater efficiencies than current Phase II type models. In the near future, the Agency plans to focus its efforts on achieving such technological improvements through working with the USEPA on updating and expanding the federal New Source Performance Standard for Residential Wood Heaters.

24. COMMENT: Vermont references its OWB rule in its proposed Regional Haze SIP. If Vermont is relying on this regulation as part of its regional haze plan, Vermont should submit this rule to EPA as a SIP revision. Furthermore, if this rule is to be submitted as a SIP revision, the alternative tests allowed under the certification program should also require EPA approval. (EPA-13)

RESPONSE: Vermont's proposed Regional Haze SIP has been revised to remove the reference to Vermont's OWB rule. Given Vermont's low sulfur emission contributions and commitment to adopt a rule establishing low sulfur fuel limits, the Agency determined that it did not need to rely on the OWB rule to obtain Vermont's share of emission reductions needed to meet the reasonable progress goals for the first 10-year planning cycle. The Agency will, however, continue to evaluate the need to include the OWB rule and other control measures in future visibility SIP submissions.

Appendix A

**Copies Of All Written Comments Submitted
During The Public Comment Period**