NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of Article 19 of the New York State Environmental Conservation Law (ECL) and Part 247 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

-by-

CHARLES R. MATTES,

Respondent.

ORDER

DEC Case No. R7-20141204-142

This administrative enforcement proceeding concerns allegations by staff of the New York State Department of Environmental Conservation (Department) that respondent Charles R. Mattes (respondent) violated ECL article 19 and 6 NYCRR part 247 by his operation of a new outdoor wood boiler on property that he owned in the Town of Cicero, Onondaga County.

Department staff commenced this proceeding by serving respondent with a notice of hearing and complaint dated December 15, 2014. Respondent served an undated answer on Department staff.

Prior to April 15, 2011, respondent Mattes operated an uncertified outdoor wood boiler on property that he owned in the Town of Cicero. The outdoor wood boiler was grandfathered at that location and the boiler was not required to be certified pursuant to 6 NYCRR part 247. At some time after April 15, 2011, respondent disconnected the boiler from the structure it serviced and moved it approximately one half mile away to a noncontiguous parcel that he also owned. He then connected the outdoor wood boiler to the piping and electrical connections of a newly constructed building and commenced operating it at that location.

Department staff contends that, as a result of respondent’s actions in moving the grandfathered uncertified outdoor wood boiler after April 15, 2011, connecting it to a different structure, and then commencing operation, the outdoor wood boiler was no longer grandfathered and now constituted a new

outdoor wood boiler under 6 NYCRR part 247. Accordingly, Department staff asserts that the boiler's operation is illegal.

Because the relevant facts were not in dispute, Department staff served respondent's counsel with a motion for an order without hearing dated April 24, 2015. Department staff by its motion seeks an order: (i) finding respondent liable for the violation alleged; (ii) directing respondent to immediately cease operation of the outdoor wood boiler; and (iii) imposing on respondent a civil penalty of one thousand dollars ($1,000). Respondent opposed staff's motion by response dated June 8, 2015. Department staff served a reply memorandum of law dated June 12, 2015.

The matter was assigned to Administrative Law Judge (ALJ) Michael S. Caruso, who prepared the attached summary report (Summary Report). I hereby adopt the Summary Report as my decision in this matter, subject to my comments below.

A "new outdoor wood boiler" is defined as "[a]n outdoor wood boiler that commences operation on or after April 15, 2011" (6 NYCRR 247.2[b][9]). No person may operate a "new outdoor wood boiler" unless the model has been certified by the Department (see 6 NYCRR 247.8[a]). The outdoor wood boiler at issue in this proceeding is uncertified (see Summary Report, at 3), and, upon its relocation and operation, meets the definition of "new outdoor wood boiler" (see Summary Report, at 8).

The record demonstrates that respondent: (a) disconnected a previously grandfathered uncertified outdoor wood boiler from the structure it serviced; (b) relocated the boiler to a different parcel of land that he owned; (c) connected the boiler to a newly built structure; and (d) commenced operation of the outdoor wood boiler on that parcel. As respondent commenced the operation of the outdoor wood boiler on that parcel after April 15, 2011, the outdoor wood boiler became subject to the regulatory requirements governing new outdoor wood boilers. As a result, respondent could not legally commence operation of the outdoor wood boiler without certification (see Summary Report, at 6-10).

Based upon my review of the ALJ's Summary Report, including but not limited to his detailed review of the regulatory language, and the underlying record, I hold respondent liable for the violation of 6 NYCRR 247.8(a) as a result of his operation of an uncertified new outdoor wood boiler on property in the Town of Cicero.

Pursuant to ECL 71-2103, any person who violates a provision of ECL article 19 or any regulation promulgated thereto is liable, in the case of a first violation, for a penalty of not less than five hundred dollars nor more than eighteen thousand dollars and is subject to an additional penalty for each day during which the violation continues. In addition, the person may be enjoined from continuing such violation.

The civil penalty of one thousand dollars ($1,000) that Department staff requests in its motion for an order without hearing, and that the ALJ recommends, is authorized and appropriate. In addition, I adopt the ALJ's recommendation that respondent be directed to immediately cease operation of the outdoor wood boiler. I also direct respondent to notify Department staff immediately upon the cessation of the outdoor wood boiler's operation.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

I. Pursuant to 6 NYCRR 622.12, Department staff's motion for an order without hearing is granted.

II. Respondent Charles R. Mattes is adjudged to have violated 6 NYCRR 247.8(a) by operating an uncertified new outdoor wood boiler on property in the Town of Cicero, Onondaga County, New York (known as Onondaga County Tax Map parcel number 080.-01-01.2).

III. Respondent Charles R. Mattes is hereby assessed a civil penalty in the amount of one thousand dollars ($1,000). The penalty shall be due and payable within thirty (30) days after service of this order on respondent. Payment shall be made in the form of a cashier's check, certified check, or money order made payable to the order of the New York State Department of Environmental Conservation, and mailed or hand-delivered to:

Joseph Sluzar, Esq.
Regional Attorney
NYS Department of Environmental Conservation, Region 7
615 Erie Boulevard West
Syracuse, NY 13204.

IV. Upon service of this order upon respondent, respondent Charles R. Mattes is directed to immediately: (a) cease operation of the uncertified new outdoor wood boiler; and (b) notify Department staff of the cessation of the operation of the boiler.

V. All communications from respondent to the Department concerning this order shall be directed to Joseph Sluzar, Esq., at the address referenced in paragraph III of this order.

VI. The provisions, terms and conditions of this order shall bind respondent Charles R. Mattes, and his agents, successors, and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: ______________/s/_______________
Basil Seggos
Acting Commissioner

Dated: February 8, 2016
Albany, New York

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 19 of the New York State Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 247,

by

CHARLES R. MATTES,

Respondent.

SUMMARY REPORT ON MOTION FOR ORDER WITHOUT HEARING

DEC Case No. R7-20141204-142

Appearances of Counsel:

-- Edward F. McTiernan, Deputy Commissioner and General Counsel (Joseph Sluzar, Regional Attorney, of counsel), for staff of the Department of Environmental Conservation

-- Marco Marzocchi, for respondent Charles R. Mattes

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (DEC or Department) staff charges respondent Charles R. Mattes (respondent) with operating an outdoor wood boiler (OWB) in violation of ECL article 19 and 6 NYCRR part 247 on property owned by respondent in the Town of Cicero, Onondaga County. Department staff commenced this proceeding by serving respondent a notice of hearing and complaint dated December 15, 2014. Respondent served an undated answer on Department staff. Department staff filed a statement of readiness dated March 13, 2015.

The matter was assigned to me, and I conducted a conference call with the parties to schedule a hearing in the matter. Department staff chose to serve a motion for an order without hearing dated April 24, 2015. The motion was supported by the

affidavit of Joseph Sluzar [Sluzar Affidavit], sworn to April 24, 2015, with the following Exhibits attached:

A. Notice of Hearing, Pre-Hearing and Complaint, dated December 15, 2014;
B. Respondent's Answer, undated;
C. Statement of Readiness, dated March 13, 2015;
D. Affidavit of Reginald G. Parker [Parker Affidavit], sworn to April 24, 2015, with Exhibits A-D attached; and
E. Affidavit of Paul Sherman [Sherman Affidavit], sworn to April 20, 2015 with Exhibit A attached.

Department's motion was accompanied by staff's memorandum of law dated April 24, 2105 and an electronic copy of the Assessment of Public Comments, 6 NYCRR Part 247, Outdoor Wood Boilers.

Respondent opposed staff's motion by response memorandum of law dated June 8, 2015 with the Department "Fact Sheet, Outdoor Wood Boilers, Summary of Part 247," dated February 3, 2011 (Fact Sheet) attached. Department staff served a reply memorandum of law dated June 12, 2015. This summary report addresses the Department staff's motion and respondent's opposition thereto.

Applicable Law

An OWB is defined as "[a] fuel burning device that: (i) is designed to burn wood or other fuels; (ii) is specified by the manufacturer for outdoor installation or installation in structures not normally occupied by humans; and (iii) is used to heat building space and/or water via the distribution, typically through pipes, of a gas or liquid (e.g., water or water/antifreeze mixture) heated in the device." (6 NYCRR 247.2[b][10].) The regulations define a "new outdoor wood boiler" as "[a]n outdoor wood boiler that commences operation on or after April 15, 2011." (6 NYCRR 247.2[b][9].) "Commence operation" means "[t]he initial start-up of the combustion chamber of a new outdoor wood boiler after all piping and electrical connections between the new outdoor wood boiler and the structure(s) it serves have been completed." (6 NYCRR 247.2[b][3].)

In addition, all new OWBs must be certified by the Department before being sold, leased or operated (6 NYCRR 247.8[a]) and be located 100 feet or more from the nearest property line (6 NYCRR 247.5[b]). If the new OWB is "installed

on contiguous agricultural lands larger than five acres[, the OWB] shall not be located less than 100 feet or more from the nearest residence not served by the outdoor wood boiler" (6 NYCRR 247.5[b][1]).

Facts

The relevant facts are not in dispute. Respondent owns noncontiguous real property located in the Town of Cicero, Onondaga County identified on the Onondaga County Tax Maps as parcels 080.-01-01.2 (parcel 1)[1] and 051.4-12-10.2 (parcel 2)[2] (see Complaint at ¶ 10; Answer at unnumbered ¶ 2; Parker Affidavit at ¶ 7 and Exhibits A and C; Sherman Affidavit at ¶ 3). Before April 15, 2011, respondent commenced operation of an OWB on parcel 2 (see Complaint at ¶ 11; Answer at unnumbered ¶ 2; Parker Affidavit at ¶ 8). The OWB is identified as a Classic model manufactured by Central Boiler. The Classic model OWB is not certified by the Department (see Complaint at ¶ 11; Answer at unnumbered ¶ 2; Parker Affidavit at ¶ 8 and Exhibit B).

Sometime after April 15, 2011, respondent disconnected the OWB from the piping and electrical connections at parcel 2 and moved the OWB to parcel 1 approximately one-half mile away from its original location. The OWB was installed - connected to new piping and electrical connections - at parcel 1 and has been operating on parcel 1 since its relocation (see Complaint at ¶ 12; Answer at unnumbered ¶ 2; Parker Affidavit at ¶ 10; Sherman Affidavit at 8).

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[1] Staff's and respondent's papers reference the tax map parcel number for Parcel 1 as 080.01-01.3 and 080.-01-01.2. The correct section, block and lot number for parcel 1 is 080.-01-01.2 (see Parker Affidavit at ¶ 7 and Exhibit C; Sherman Affidavit at ¶ 3). Both lots (80.-01-01.2 and 80.-01-01.3) are owned by respondent and are noncontiguous to parcel 2. I, sua sponte, conform the pleadings to the proof.

[2] The parties refer to Parcel 2 as tax map parcel number 051.-4-12-10.2. A tax map parcel number consists of three separate numbers to identify the section-block-lot separated by a hyphen. The correct number in this instance would be 051.4-12-10.2 according to the Onondaga County Department of Finance, Office of Real Property Services (see http://ocfintax.ongov.net/Imate/propdetail.aspx?swis=312289&printkey=05100400120100020000).

I. **Summary of the Parties' Positions**

A. Department Staff

In Department staff's complaint and motion for order without hearing, staff alleges that respondent violated ECL 6 NYCRR part 247.

1. Violation of 6 NYCRR part 247

Department staff recognizes that the installation and operation of respondent's OWB at parcel 2 prior to April 15, 2011 does not constitute a violation of 6 NYCRR part 247. Neither did the continuing operation of the OWB at that site, because the unit was grandfathered as long as it remained at parcel 2 (see Parker Affidavit at ¶ 9). Department staff, however, argues that once the OWB was moved and installed at a new location that the regulations applicable to new outdoor wood boilers apply (see Parker Affidavit at ¶¶ 10 and 11). Specifically, staff argues that the certification requirement of 6 NYCRR 247.8 is triggered when a grandfathered OWB commences operation at a new location after April 15, 2011 (see id.).

It is staff's position that the definitions of "new" OWB and "commence operation" support the conclusion that an OWB moved to and commencing operation at respondent's parcel 1 after April 15, 2011 constitutes a new OWB that must be certified by the Department and meet all the regulations applicable to new OWBs. According to staff, the definition of "commence operation" ties the date of an OWB's initial start-up to the structure it serves. Therefore, an OWB moved and connected to a different structure on or after April 15, 2011 is by application of the definitions, a new OWB.

Department staff's complaint and motion for order without hearing contain a single cause of action for violation of 6 NYCRR 247.8 due to the operation of an uncertified new OWB at parcel 1.

2. Penalty and Remedial Relief

Department staff's complaint sought a civil penalty of at least $500 but not more than $18,000. On the motion for order without hearing, staff is seeking a civil penalty in the amount of $1,000 and justifies the penalty requested based on the statutory penalty provision (see ECL 71-2103) and application of

the Department's Civil Penalty Policy (DEE-1)(see Parker Affidavit ¶ 15).

In addition, staff's complaint and motion for order without hearing seek an order that directs respondent to cease operating the uncertified OWB.

B. Respondent

Respondent opposes staff's motion. Respondent agrees that the relevant facts are "substantially undisputed." (See Respondent's Memorandum of Law at 1.) Respondent argues that the Department's interpretation of 6 NYCRR part 247 ignores or contradicts the plain meaning of the regulations. Respondent also argues that because the Department's interpretation conflicts with the plain meaning, the Department is not entitled to deference.

Next respondent argues that only one initial start-up of the OWB in question occurred, and that occurred before April 15, 2011 on parcel 2. (See Respondent's Memorandum of Law at 3.) Therefore, respondent avers, the OWB in question cannot be a new OWB subject to the certification provisions in the regulation. To bolster that argument, respondent claims that the OWB was and still is located within the agricultural land of a farm operation. Respondent references the definition of agricultural land (6 NYCRR 247.2[b][1]), and its inclusion of noncontiguous lands, to argue that there was only one initial start-up on respondent's agricultural lands. Respondent also points to the lack of regulatory language restricting or prohibiting the relocation of an OWB within a farm operation after the initial start-up.

Respondent also argues that Department staff's reliance on guidance contradicts the plain language of the regulations. Respondent refers to the Fact Sheet, which states in relevant part:

> "A used OWB moved from one property to another shall be considered a new OWB at the second property and subject to all provisions applicable to new OWBs. Therefore, the used OWB must be a model certified for sale in New York and the seller must provide prospective buyers with a Notice to Buyers form. The setback and stack height requirements must also be met."

Respondent argues that the first sentence only relates to a sale or lease of a used OWB to third parties. Therefore, it does not support staff's argument that relocation of an OWB within a farm operation constitutes a sale of a new OWB subject to the regulations.

Lastly, respondent argues that the Department's application of part 247 to a farm operation would constitute an undue burden upon respondent's right to farm in violation of Agriculture and Markets Law § 305-b.

II. <u>Discussion</u>

As stated above, the relevant facts are undisputed in this proceeding, thus dispensing with the need to determine whether material issues of fact exist sufficient to require a hearing (<u>see</u> 6 NYCRR 622.12[e]; CPLR 3212[b]). Whether those facts constitute a violation is the question.

To recap, respondent installed and operated an uncertified OWB on parcel 2 prior to April 15, 2011. In regulatory terms, the OWB commenced operation on parcel 2 prior to April 15, 2011. Sometime after April 15, 2011, Respondent removed the OWB from the piping and electrical connections at parcel 2, moved the unit approximately one-half mile down the road to parcel 1, where respondent connected the OWB to the piping and electrical connections of respondent's new storage building.[3]

The question presented in this proceeding is whether moving the OWB to parcel 1 after April 15, 2011, where the OWB was connected to the piping and electrical connections of respondent's new storage building transforms the previously grandfathered OWB into a new OWB under 6 NYCRR part 247.

The parties disagree as to the meaning and application of the regulatory definition, "commence operation." A new OWB is an OWB "that commences operation on or after April 15, 2011." (6 NYCRR 247.2[b][9].) Commence operation means the "initial start-up of the combustion chamber of a new outdoor wood boiler after all piping and electrical connections between the new outdoor wood boiler and the structure(s) it serves have been completed." (6 NYCRR 247.2[b][3].)

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[3] Presumably, this occurred after June 29, 2012, the date of the building permit application for the storage building. (<u>See</u> Parker Affidavit, Exhibit C; Sherman Affidavit at ¶ 8.)

Respondent argues that only one initial start-up occurred in this case, in part, because that is the plain reading of the regulatory definition, but also because the initial start-up occurred within agricultural land of a respondent's farm operation that includes parcels 1 and 2.

Department staff, on the other hand, argues that whether or not an OWB is by regulatory definition "new" depends on the first or initial date the OWB is connected to and heats a specific structure.

This proceeding then turns on the issue of regulatory construction. In such matters, a court must first examine the text's plain meaning as that is the clearest indication of legislative intent. (See Majewski v Broadalbin-Perth Cent. Sch. Dist., 91 NY2d 577, 583 [1998]). "In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning" (id. [quoting Tompkins v Hunter, 149 NY 117, 122-123 (1896)]). It is also well settled that a regulation must be construed as a whole and so interpreted to give effect to every part of the regulation. (See East Acupuncture, P.C. v Allstate Ins. Co., 61 AD3d 202, 209 [2d Dept 2009]).

A plain reading of the definition of "commence operation" requires the reader to examine the whole definition, not its bits and pieces. In doing so, it is clear that the initial start-up of the combustion chamber in question occurs after completing all the piping and electrical connections between the OWB and the structure(s) it serves. Therefore, the initial start-up is determined by the structure being served by the OWB.

This leads to a reasonable conclusion that the date that the OWB is connected to a specific structure and fired up determines whether the OWB is a new OWB as defined. If the connections are made between an OWB and a structure and the unit fired up after April 15, 2011, the unit is a new OWB for the purposes of the regulatory requirements. This is consistent with the intent of the regulation to reduce air pollution and address the growing complaints and concerns related to uncontrolled operation of OWBs. (See NYS Register, January 19,

2011 at 31.)[4] This reading involves no contradictions or absurdities. As such, I am restrained from adding to or taking away from the plain text meaning.

Respondent's interpretation would have this court ignore the plain language of the definition that demonstrates that it is only after the connections are made between the structure to be served and an OWB that an initial start-up occurs. In the instant proceeding, the initial start-up of the OWB in question occurred after the piping and electrical connections were made between the structure and OWB located on parcel 2. That initial start-up occurred before April 15, 2011. Therefore, the OWB commenced operation on parcel 2 before April 15, 2011 and by definition was not a new OWB.

Then sometime after April 15, 2011 respondent moved the OWB one-half mile down the road to a new parcel of land and connected the piping and electrical connections between the OWB and the structure to be served. After making those connections respondent started the OWB. That act constitutes an initial start-up after the completion of connections between the OWB and the storage building on parcel 1. In this proceeding, the OWB did not serve the structure located on parcel 1 until after April 15, 2011. As such, the OWB in question commenced operation on parcel 1 after April 15, 2011 and by definition is a new OWB subject to the regulatory requirements for new OWBs.

Turning to the question presented above, whether moving the OWB to parcel 1 after April 15, 2011, where the OWB was connected to the piping and electrical connections of respondent's new storage building transforms the previously grandfathered OWB into a new OWB under 6 NYCRR part 247. I conclude the answer is yes, as the intent of the Department is clear from the plain text of the definition of "commence operation."

The analysis continues with respondent's argument that the OWB is still located on respondent's agricultural lands and therefore the initial start-up on those lands only occurred before April 15, 2011. Respondent's argument ignores the plain regulatory text that determines when an OWB commences operation by reference to when the OWB was connected to the structure to be served and fired-up for the first time. The language is

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[4] I take official notice, pursuant to 6 NYCRR 622.11(a)(5), of the notices published in the New York State Register related to the proposed rule and adoption of 6 NYCRR part 247.

clear - it is the date of the connection to a given structure that matters, not the ownership or type of the land.

Moreover, Department staff's reading and application of definitions gives effect to the regulation as whole and does not conflict with the plain text or the intent of the regulation – the prevention of air pollution and nuisance conditions. The Department adopted part 247 to address the growing complaints by neighbors regarding the use of OWBs. (See NYS Register, April 21, 2010 at 19; January 19, 2011 at 30.) In addition, the proposed rulemaking published on April 21, 2010 defined an "existing" OWB as one that commenced operation prior to April 15, 2011. (See NYS Register, April 21, 2010 at 20.) The definition of "commence operation" was the same as the adopted definition. (See id. and NYS Register, January 19, 2011 at 30.)

The proposed rule also contained provisions for the phasing out of all "existing" OWBs and replacing them with certified OWBs. (See NYS Register, April 21, 2010 at 21.) When the Department removed those provisions due to public comment, the Department also removed the definition of existing OWB. (See NYS Register, January 19, 2011 at 31.) As adopted, 6 NYCRR part 247 allows those OWBs that commenced operation prior to April 15, 2011 to continue operating (subject to the provision of 6 NYCRR 247.3 and 247.4) so long as the OWB remains connected to the structure the OWB served when the OWB commenced operation.

Respondent's reading of the relevant regulatory language would allow a person to move an uncertified OWB from place to place, structure to structure, in perpetuity without the OWB ever being subject to the certification, setback and stack height requirements. I conclude that the plain reading of the text does not support respondent's position. Moreover, respondent's reading of the definition of "commence operation" ignores much of the definition by fixating on a couple of words and leads to a result contrary to the intent of the regulation.

Respondent's remaining contentions are without merit, but I address them in turn. Respondent argues that the lack of regulatory language restricting or prohibiting the relocation of an OWB within a farm operation after the initial start-up supports respondent's position. As discussed above, being a farm operation has no bearing on the analysis except where setback provisions are applied.

Respondent also argues that staff cannot rely on guidance that contradicts the plain text of the regulation. Respondent,

however, does not provide any support for the argument. The Fact Sheet quoted by respondent is a summary of the adopted regulation where staff, in part, stated:

> "A used OWB moved from one property to another shall be considered a new OWB at the second property and subject to all provisions applicable to new OWBs. Therefore, the used OWB must be a model certified for sale in New York and the seller must provide prospective buyers with a Notice to Buyers form. The setback and stack height requirements must also be met." Fact Sheet, Outdoor Wood Boilers, Summary of Part 247, dated February 3, 2011.

Respondent argues that the first sentence only applies to sales and because respondent did not sell the OWB, it cannot be a new OWB. I disagree. The first sentence is not limited by the sale of an OWB; rather it is applicable to any used OWB moved from one property to another, regardless of ownership. Once moved and connected to a new structure, the OWB is considered a new OWB and the first sentence alerts the reader that the moved OWB will be subject to all provisions applicable to new OWBs, including the provisions related to the certification, sales, setback and stack height requirements.

Lastly, respondent's argument that the application of part 247 to a farm operation violates Agriculture and Markets Law § 305-b is unsupported. Agriculture and Markets Law § 305-b, entitled "Review of proposed rules and regulations of state agencies affecting the agricultural industry," sets up a procedure for the commissioner of the Department of Agriculture to review and comment on a proposed rule or regulation by another State agency which may have an adverse impact on agriculture and farm practices in the State. Part 247 is not a proposed rule as it has been in effect since January 28, 2011. Furthermore, Agriculture and Markets Law § 305-b contains no affirmative obligations for the Department or any other State agency to perform or violate.

Conclusion of Law

I conclude that respondent commenced operation of an uncertified new OWB on parcel 1 on or after April 15, 2011 in violation of 6 NYCRR 247.8. Department staff is entitled to judgment as a matter of law.

III. Penalty and Relief Requested

Department staff did not fix a penalty in its complaint but requested that a penalty between $500 and $18,000 be assessed against respondent. The civil penalty of $1,000 sought by Department staff on the motion is supported by ECL 71-2103 and consistent with the Department's Civil Penalty Policy (DEE-1). ECL 71-2103 provides a civil penalty for any person who violates any provision of ECL article 19 or any code, rule or regulation promulgated pursuant thereto of not less than five hundred dollars or more than eighteen thousand dollars for said violation and additional penalty not to exceed fifteen thousand dollars for each day the violation continues.

Department staff justifies its requested penalty of $1,000 based on neighbor complaints about the smoke from the OWB and the continued operation of the OWB. Department staff witnessed the violation on two days and is requesting the minimum of five hundred dollars per day penalty for two days of violation.

The relief requested by Department staff is authorized under the ECL and consistent with the Civil Penalty Policy. In addition, respondent should be directed to cease operating the uncertified OWB.

IV. Ruling and Recommendation

Accordingly, on the issue of respondent's liability for the violation alleged, Department Staff's motion is granted in all respects. I recommend that the Commissioner issue an order:

1. Granting Department staff's motion for order without hearing.

2. Holding respondent Charles R. Mattes in violation of 6 NYCRR 247.8(a) for operating an uncertified new outdoor wood boiler.

3. Directing respondent Charles R. Mattes to pay a civil penalty of one thousand dollars ($1,000) for the above referenced violation.

4. Directing respondent Charles R. Mattes to cease operating the uncertified outdoor wood boiler.

5. Directing such other and further relief as he may deem just and proper.

/s/
Michael S. Caruso
Administrative Law Judge

Dated: June 22, 2015
Albany, New York