

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violations  
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"),

**SUMMARY REPORT AND  
ORDER OF  
DISPOSITION**

- by -

DEC Case No.  
R7-20140206-13

**JEFF MYERS,**

Respondent.

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Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Joseph Sluzar, Regional Attorney, of counsel), for staff of the Department of Environmental Conservation
- Patrick M. Snyder, for respondent Jeff Myers

**Proceedings**

The New York State Department of Environmental Conservation (DEC or Department) staff commenced this administrative enforcement proceeding by serving respondent Jeff Myers (respondent) with a notice of hearing and complaint dated December 15, 2014 charging respondent with operating an outdoor wood boiler (OWB) in violation of 6 NYCRR part 247. Respondent served an answer dated March 6, 2015 on Department staff.

The matter was assigned to me, and a hearing was held on May 14, 2015 in the Department's Region 7 Office, 615 Erie Boulevard West, Syracuse, New York. The parties filed post-hearing briefs and the record was closed on July 27, 2015. I submitted a hearing report dated July 30, 2015 recommending that the Commissioner find respondent in violation of 6 NYCRR 247.8(a) for operating an uncertified new outdoor wood boiler, and directing respondent to pay a civil penalty of two

thousand five hundred dollars (\$2,500) for the above referenced violations, with payment of one thousand five hundred dollars (\$1,500) of the penalty suspended, and directing respondent to cease operating the uncertified new outdoor wood boiler.

The Commissioner, by Interim Decision and Order dated February 24, 2016, found respondent violated 6 NYCRR 247.8(a) by operating an uncertified new outdoor wood boiler on property located at 249 Lake Road, Town of Dryden, New York and directed respondent to immediately cease operation of the uncertified outdoor wood boiler. The matter was remanded to me for further development of the record regarding the assessment of a civil penalty. In addition, if the respondent made a demonstration to Department staff of a compelling need to continue the use of the OWB for heating his residence, the Commissioner authorized Department staff, upon good cause shown, to allow respondent to operate the OWB until April 15, 2016.

On April 7, 2016, Department staff and Mr. Myers advised me that the parties had settled on a penalty of one thousand dollars (\$1,000) and resolved all issues between the Department and respondent.

### **Discussion**

A stipulation executed by all the parties to the proceeding resolving any or all issues removes those issues from further consideration in the hearing (see 6 NYCRR 622.18[c]). Where the parties' agreement resolves all remaining issues, such as the case here, the agreement must be incorporated into a written stipulation and accepted by all parties. The stipulation must then be submitted to the administrative law judge to be included in the hearing record, along with written statements, signed by the parties or their representatives, stating that the stipulation resolves all issues between the parties (see DEC Organization and Delegation Memorandum 94-13, Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings, May 5, 1994 at 2).

In this proceeding, I have received into the record a stipulation incorporating the agreement of the parties together with signed statements from the parties indicating that the stipulation resolves all issues between the parties.

**Order of Disposition**

ACCORDINGLY, IT IS HEREBY ORDERED that the hearing record in this proceeding is closed.

/s/

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Michael S. Caruso  
Administrative Law Judge

Dated: May 23, 2016  
Albany, New York