

SUPPLEMENTAL BASIS STATEMENT  
CHAPTER 160, OUTDOOR WOOD BOILER REPLACEMENT AND BUY BACK  
PROGRAM  
FEBRUARY 5, 2009

List of Commenters

1. Ernest Grolimund  
Citizen
2. Bea Violette  
Citizen
3. Robert Frank, Jr.  
Private Forestry Consultant
4. Timothy Carter  
House of Representatives
5. Ed Miller  
American Lung Association
6. Jerry Scanlin  
Citizen
7. Beth Luce  
Citizen
8. Tom Mauzaka  
Citizen

**Chapter 160 Outdoor Wood Boiler Replacement and Buy Back Program**

General Comments

1. Comment: Given the difficult budget environment we will be facing during the 124<sup>th</sup> Legislature, the money available to the fund will not be enough to provide a meaningful outcome. It seems that we may need to take a more aggressive approach to supplemental funding for the program. (commenter 4)

*Response: The Department recognizes the fiscal limitations of state funding which is one of the reasons the Legislature directed alternative funding sources, such as, Supplemental Environmental Projects (SEP) monies be used. The Department agrees*

*that alternative funding sources should be pursued and continues to investigate other funding options.*

2. Comment: Given the current economic situation and the results of a recent statewide survey we are completing, there is no doubt that there will be significantly more wood burned this year in Maine than in the recent past. While as a public health organization, we clearly understand the critical need for affordable heat to keep homes warm, our primary concern is that energy production at the home or power plant level does not threaten the health of the population. Particulate matter such as wood smoke is a health hazard of increasing concern and there is no known safe level of exposure. As a result, we support efforts to minimize the amount of public exposure to wood smoke and other sources of particulate matter. (commenter 5)

*Response: The Department agrees and believes the primary reason the Legislature authorized the buy back program, which provides the Department with another tool to deal with problem outdoor wood boilers, is to minimize the public's exposure to wood smoke.*

3. Comment: No nuisance outdoor wood boilers have been shut down. The DEP could still enforce even without money for replacements. (commenter 1)

*Response: While it is true no units have been shutdown, the Department is enforcing this regulation. It takes time to make people aware of the regulation which has been in effect since November 2007. The Department has been working with the problem cases and given them an opportunity to correct the problems. The Department has been working with a number of people, we've been documenting what they've been doing, and we have sent out at least two letters of warning to people who have violated the regulation. Further steps include either pursuing a shutdown order or administrative consent agreement.*

4. Comment: The commenter supports the buy back program; however, she believes that all OWBs should be shutdown except for those in very secluded areas where the only health they can endanger is the health of the owner not the neighbor. A neighbor should not be subjected to the smoke and smell from an OWB. (commenter 2)

*Response: The Department believes this program will help resolve a number of outstanding complaints.*

5. Comment: The commenter supports the buy back program and hopes his neighbor's OWB will qualify for a replacement under the program and give him relief from the smoke. (commenter 3)

*Response: The Department believes this program will help resolve a number of outstanding nuisance outdoor wood boilers.*

6. Comment: While we understand that the program as designed will be a direct benefit to the affected neighbors as well as the OWB owner, it does seem a bit unfair that those who have suffered the impact of wood smoke exposure (eg. financial, medical, loss of use of their private property) get no compensation for, in some cases, years of involuntary exposure, expenses for trying to reduce exposure or other related costs. (commenter 5)

*Response: The Legislature did not provide authority for this kind of compensation.*

7. Comment: It is our assumption that once a “nuisance” OWB qualifies for the Buy Back Program, if the offer to replace it is rejected, steps will be taken to immediately halt its operation. (commenter 5)

*Response: The Department believes this is the logical progression of the enforcement process.*

8. Comment: In many cases the “nuisance” OWB has been an issue for months if not years. While the regulations state that the owner must have exhausted all other potential remedies, it is unclear how long they have to do this. Does the DEP have a specific timeline for how much time can elapse from the documentation of a “nuisance” OWB and when the owner must take action? We suggest that if an OWB is a designated “nuisance” that it is immediately shut down and the DEP works with the owner to assure that possible remedies are potentially effective and timely. (commenter 5)

*Response: Once an outdoor wood boiler is designated a “nuisance” under this new regulation, the owner will be given an opportunity to take corrective actions. The Department intends to provide technical assistance in exploring cost effective solutions. It is not the Department’s intention for the owner to implement all possible remedies which could result in unintended consequences of excessive costs with little environmental benefit. The Department has not set a timeframe for implementation of these remedies, but instead will deal with each situation on a case-by-case basis.*

9. Comment: The commenter recommends that the OWB industry should help support the Buy Back Program Fund. (commenter 6)

*Response: The Legislature authorized that the fund consists of any money received from the following sources:*

- (1) Appropriations from the State;*
- (2) Contributions from any other source, both public and private; and*
- (3) Up to \$200,000 of civil penalties for violations of air quality laws or rules administered by the Department if the penalties are imposed pursuant to an administrative consent agreement, etc. and if all parties agree.*

*The Legislature did not require that the manufacturers support the buy back program; however, the program is able to accept money from them if they choose to contribute.*

## Establishment of the program

10. Comment: Section 4(C)(1): Since Maine did not prohibit the sale of existing inventory when the emission limit of 0.60 was established on April 1, 2008, we don't agree with only covering situations in which an OWB was installed prior to February 1, 2008. In fact, we do not see the necessity of having any specific installation date. (commenter 5)

*Response: The Legislature specified the February 1, 2008 date in the outdoor wood boiler fund legislation. The Department believes the Legislature anticipated that fewer older technology outdoor wood boilers would be on the market and those being sold were subject to Chapter 150 setback and stack height requirements thereby greatly reducing the potential for nuisance conditions. The Department has included a recommendation to eliminate the February 1, 2008 deadline in its January 2009 report to the Legislature concerning improvements to the regulation.*

11. Comment: We also do not support the limitation to an owner's primary residence. A nuisance OWB installed at a rental property can also be a public health threat. (commenter 5)

*Response: The Department agrees that any OWB causing a nuisance condition should be eligible for the buy back and retirement program and has amended the rule to reflect that change.*

12. Comment: The commenter supports this regulation, but because the older technology OWB continued to be sold and installed past February 1, 2008 the criteria for receiving compensation should also be changed to a later date. His neighbor installed an OWB after February 1, 2008 and because it is impacting him he wants his neighbor to be eligible for compensation to replace his OWB. (commenter 8)

*Response: See response to comment # 10.*

13. Comment: Section 4(G)(1)(b): We do not support the 3 year limit on replacing the "state funded" replacement heating appliance with one with greater particulate emissions. Under no circumstances should any unit, especially a "state funded" unit be replaced with a more polluting appliance. (commenter 5)

*Response: The purpose of the 3-year limit is to ensure that a homeowner wouldn't immediately sell the state-funded heating appliance for a profit and install a less expensive, more polluting one. The Department supports the concept that a cleaner unit should not be replaced with a dirtier one, but it is beyond the Department's resources to administer this type of requirement for an extended period of time.*

14. Comment: The commenter owns an OWB in a residential area where other homes and a nearby mill burn wood. Her neighbor has complained to the Department about the smoke from the OWB so the owner worked with the neighbor and the Department to

relocate the boiler and raise the stack. Several opacity readings by the Department show the opacity to be within acceptable limits. The commenter supports the Buy Back Program, but believes compensation for the cost of a replacement system should be increased. (commenter 7)

*Response: The commenter provided compelling evidence in her testimony at the hearing that the maximum compensation amount for the cost of a replacement system in the proposed rule would not cover all the costs and should be increased. The Department agrees and has increased the maximum compensation amount from \$10,000 to \$15,000.*

15. Comment: An owner that qualifies for a replacement heating appliance may not be able to accept the offer because most people would not be able to pay for a replacement heating appliance up front and then be reimbursed by the Department. (commenter 7)

*Response: The Department anticipates that in many cases the homeowner will work with the vendor/dealer to secure a replacement unit and no upfront money will be necessary, eliminating the need for upfront money secured through a third party. The Department will work to facilitate the transactions and believes the letter of assurance will provide the lender with sufficient documentation that the funds are available. Administratively, it is easier for the State to respond to an invoice instead of providing money to a homeowner who intends to purchase a heating appliance.*

#### Replacement heating appliances

16. Comment: It seems that this program should be involved in providing funding for taking steps to mitigate nuisance conditions in addition to OWB replacement. It may be more cost-effective to upgrade the unit than to replace it, and an upgrade could reduce the environmental impact of disposing of units as well. (commenter 4)

*Response: The Legislature only provided authority for the replacement of nuisance outdoor wood boilers when establishing the fund. No provisions for upgrades were included.*

17. Comment: Section 5(A): Rather than specifying an emission limit, since State funds are being used for this purchase, the new OWB should be the lowest emission appliance available given the budget restrictions in the Buy Back Program. Since this rule is scheduled to be repealed in 2013 and there is likely to continue to be significant improvements in OWB emissions, it is not good policy to set an emission limit that is already being exceeded today by some units. (commenter 5)

*Response: The Department agrees that the cleanest possible unit is the preferred heating appliance, but believes homeowners need flexibility in choosing a replacement heating appliance that is right for them. However, the Department has amended the rule (Section 5(B)) to require an outdoor pellet boiler to meet 0.32 lbs/MMBtu heat output or better to qualify as a replacement heating appliance. The Department provides information and links on its website for homeowners to evaluate different heating appliances.*