

**MEMORANDUM**

**TO:** Board of Environmental Protection  
**FROM:** Ron Severance, Bureau of Air Quality  
**DATE:** February 5, 2009  
**RE:** Adoption: Chapter 160, Outdoor Wood Boiler Replacement and Buy Back Program

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**Statutory and Regulatory Reference:**

A. Statutory authority.

38 MRSA Section 585-A provides that the Board of Environmental Protection "may establish and amend regulations to implement ambient air quality standards and emission standards. These regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and prevent air pollution."

B. Specific legal mandates requiring adoption.

Public Law, Chapter 680, An Act Establishing an Outdoor Wood Boiler Fund, directs the Department to develop a rule that includes, but is not limited to, criteria for determining whether an outdoor wood boiler constitutes a nuisance condition or threat to public health or safety and is eligible for use of the fund, compensation criteria and amounts and procedures for certification and verification of removal and possible replacement of eligible outdoor wood boilers.

**Location/Applicability:**

The proposed regulations will apply statewide.

**Description:**

In April 2008, the Legislature also enacted Public Law, Chapter 680, An Act Establishing an Outdoor Wood Boiler Fund. This Public Law:

- established a nonlapsing fund administered by commissioner to be used by the department to upgrade, purchase and replace outdoor wood boilers that create a nuisance condition as defined in the department's rules or threat to public health or safety.

- established an allotment of \$200,000 in FY 2008/2009. 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 or court-ordered degree and the person against whom the penalty is imposed expressly assents in the agreement or degree that the penalty may be paid to the fund.
- directed the Department to develop a rule that includes, but not limited to, criteria for determining whether an outdoor wood boiler constitutes a nuisance condition or threat to public health or safety and is eligible for use of the fund, compensation criteria and amounts and procedures for certification and verification of removal and possible replacement of eligible outdoor wood boilers.

On October 16, 2008, the Board of Environmental Protection held a public hearing on the Department's proposed Chapter 160, Outdoor Wood Boiler Replacement and Buy Back Program. The proposed Chapter 160 established a replacement and buy back program to remove nuisance outdoor wood boilers that were installed prior to February 1, 2008 and replace them with approved heating appliances. The Department proposed to maintain a list of nuisance outdoor wood boilers and prioritize them for the program based on the threat to public health and safety and proximity to neighbors and sensitive populations. To receive compensation, the owner of the outdoor wood boiler must have explored all possible remedies, including increasing the stack height and setback distances to neighbors and potential retrofits to eliminate the nuisance conditions. Compensation may include the cost of installation and disposal and shall not exceed \$10,000.

**Discussion:**

The Department received comments from eight interested parties. After reviewing the comments received at the hearing and during the comment period, the Department amended Chapter 160 in the following areas:

**Nuisance outdoor wood boiler locations (Section 4(C)(1)).** The Department amended the rule to allow any nuisance outdoor wood boiler to qualify for funding, not just those located at primary residences. Outdoor wood boilers located at rental properties and seasonal camps determined to be a nuisance qualify for the buy back and replacement program.

**Compensation (Section 4(F)).** Based on testimony given at the hearing detailing the cost and installation of a new Phase 2 outdoor wood boiler, the Department recommends increasing the maximum compensation for a replacement heating appliance from \$10,000 to \$15,000.

**Replacement heating appliance (Section 5(B)).** The Department amended this section to require that outdoor pellet boiler meet a 0.32 lbs/MMBtu heat output or better to qualify as a replacement heating appliance. EPA commented that outdoor pellet boilers are not inherently less polluting than other types of outdoor wood heaters and not all units can meet the 0.32 lbs/MMBtu Phase 2 limit.

**Minor clarifications.** As requested by a Board member at the hearing, the Department added “To the extent funds are available” at the beginning of Section 4(E). Also, the Department believes the language in Section 5 that replacement heating appliance criteria meet setback and stack height requirements in Chapter 150, Control of Emissions from Outdoor Wood Boilers is not necessary since all new installations are subject to the Chapter 150 requirements.

**Environmental Issues:**

In addition to fine particulates, wood combustion emissions contain sulfur oxides, nitrogen oxides, carbon monoxide and potentially cancer-causing compounds including formaldehyde, polycyclic aromatic hydrocarbons, benzene and dioxins. Fine particulates can aggravate lung diseases such as asthma, emphysema and bronchitis. Children, the elderly and those with respiratory problems are most at risk from exposure to wood smoke.

**Departmental Recommendation:**

The Department recommends that the Board adopt the rule as amended.

**Estimated Time of Presentation:**

15 minutes