Chapter 160: Outdoor Wood Boiler Replacement and Buy Back Program

- Legislative Format

Chapter 160: OUTDOOR WOOD BOILER REPLACEMENT AND BUY BACK PROGRAM

SUMMARY: This regulation establishes a replacement and buy back program that includes compensation criteria, eligibility for use of the fund, and procedures for certification and verification of removal of an eligible nuisance outdoor wood boiler.

1. Applicability

A. This regulation applies statewide.

B. This regulation applies to owners of nuisance outdoor wood boilers in the State of Maine who qualify for an outdoor wood boiler replacement.

C. This regulation applies to outdoor wood boilers with a rated thermal input of less than 3 MMBtu/hr. Boilers with a rated thermal heat input of 3 MMBtu/hr or greater are subject to Chapter 103 Fuel Burning Equipment Particulate Emission Standard of the Department's Regulations.

2. Definitions

The following terms, as used in this Chapter, have the following meanings:

A. Nuisance outdoor wood boiler. "Nuisance outdoor wood boiler" means an outdoor wood boiler that is causing nuisance conditions as determined by the Department pursuant to Chapter 150 of the Department's Regulations or is a threat to public health or safety.

B. Outdoor wood boiler. "Outdoor wood boiler" (also known as outdoor wood-fired hydronic heater, water stove or outdoor wood furnace) means a fuel burning device that (1) is designed to ~~(1)~~ burn wood, biomass fuel products or other approved solid fuels; (2) ~~that~~ the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., sheds~~garages~~) or is an indoor-rated device housed in a modular or containerized structure; and (3) heats building space ~~and/~~or water, or both, through ~~via~~ the distribution, typically through pipes for a fluid or ducts for air, of a fluid or air heated in the device.~~, typically water or a water/antifreeze mixture.~~

C. Outdoor wood boiler fund or fund. "Outdoor wood boiler fund or fund" means a nonlapsing fund administered by the Commissioner to be used by the Department to upgrade, purchase and replace outdoor wood boilers ~~installed prior to February 1, 2008~~ that create a nuisance condition as defined in Chapter 150 of the Department's Regulations or are a threat to public health or safety.

3. Sources of money for the fund. The fund consists of any money received from the following sources:

A. Appropriations by the State;

B. Contributions from any other source, both public and private; and

C. 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 consent decree and the person against whom the penalty is imposed expressly assents in the agreement or decree that the penalty may be paid into the fund.

4. Establishment of the program

A. The Department shall maintain a list of nuisance outdoor wood boilers and prioritize the list based on the following criteria, including but not limited to:

(1) the threat to public health and safety;

(2) distance to neighboring properties;

(3) population density; and

(4) proximity to sensitive populations.

B. As money becomes available, the Department may extend an offer to owners of nuisance outdoor wood boilers that meet eligibility criteria, to participate in the program based on the Department's prioritization. If money is not available from the outdoor wood boiler fund, a person is eligible for the reimbursement from the fund when money is available, as long as the person replaces the nuisance outdoor wood boiler with a replacement heating appliance and has met the requirements of Sections 4 and 5 of this Chapter.

C. For a person to be eligible to receive compensation from the fund,~~:~~

~~(1) The nuisance outdoor wood boiler must have been installed prior to February 1, 2008; and~~

~~(2) T~~the owner of the nuisance outdoor wood boiler must have explored all possible remedies, including increasing the stack height and setback distance to neighbors, and potential retrofits to eliminate the nuisance conditions.

D. To participate in the program, within 90 days of the Department's offer to participate in the program the owner shall provide the following information to the Department:

(1) a completed application on forms prescribed by the Department and documentation that the eligibility requirement~~s~~ in Section 4(C)~~(1) and (2) have~~ has been met;

(2) a description of the replacement heating appliance that meets the requirements in Section 5 of this Chapter; and

(3) an estimate of the replacement heating appliance, installation, and disposal costs.

E. To the extent funds are available, within 30 days of receipt of the owner's information specified in Section 4(D), the Department shall issue a letter of assurance informing the owner of his or her acceptance into the program and that the owner qualifies for compensation pursuant to Section 4(F). The owner has 90 days from the receipt of the

letter of assurance to install a heating appliance specified in Section 5 of this Chapter and submit the information specified in Section 4(G) of this Chapter to the Department.

F. To the extent funds are available the Department shall compensate owners of nuisance outdoor wood boilers for the cost of a replacement heating appliance as specified in Section 5 of this Chapter. The replacement cost shall not exceed $15,000 and may include the cost of installation and disposal.

G. After the owner receives the Department's letter of assurance and subsequently installs the replacement heating appliance, in order to receive payment from the Department, the owner shall submit the following information:

(1) a signed affidavit confirming the following:

(a) new heating appliance was installed and the nuisance outdoor wood boiler was removed and scrapped or rendered permanently inoperable; and

(b) affirmation that the owner will not replace the replacement heating appliance with a unit of greater particulate emissions for at least 3 years; and

(2) an invoice or sales receipt showing the replacement heating appliance, installation and disposal costs.

H. Upon receipt of the information in Section 4(G)(1) and (2) and subject to the availability of funds, the Department shall provide approved payment to the owner within 30 days.

5. Replacement heating appliances. To the extent funds are available in the fund, the Department shall compensate an owner of an eligible nuisance outdoor wood boiler in accordance with Section 4 of this Chapter only if the owner replaces it with one of the following:

A. an outdoor wood boiler that meets a particulate emission limit of 0.32 lbs/MMBtu heat output or better as certified in accordance with Control of Emissions from Outdoor Wood Boilers, 06-096 CMR 150(3)(E) (effective July 4, 2008);

B. an outdoor pellet boiler that is designed specifically to burn wood pellets and meets a particulate emission limit of 0.32 lbs/MMBtu heat output or better as certified in accordance with Control of Emissions from Outdoor Wood Boilers, 06-096 CMR 150(3)(E) (effective July 4, 2008);

C. a heating source as approved by the Department, including but not limited to, an indoor heating appliance with a heating efficiency of at least 78 % that is designed specifically to burn home heating oil, propane, or natural gas;

D. an EPA certified woodstove or pellet stove; or

E. another heating appliance as approved by the Department.

6. Effective date

Compliance with all applicable provisions of this Chapter is the effective date of the regulation.

7. **Repeal.** This rule is repealed August 31, 2013.

8. **Severability**

Each Section of this Chapter shall be deemed severable, and in the event that any Section of this Chapter is held invalid, the remainder shall continue in full force and effect.

AUTHORITY: 38 M.R.S.A. §610-C

EFFECTIVE DATE: February 25, 2009

BASIS STATEMENT

In April 2008, the Legislature enacted Public Law, Chapter 680, *An Act Establishing an Outdoor Wood Boiler Fund,* which became effective July 18, 2008. This legislation directed the Department to adopt rules establishing an outdoor wood boiler buy back and replacement program for outdoor wood boilers creating nuisance conditions. Chapter 160 establishes compensation criteria, eligibility for use of the fund, and procedures for certification and verification of removal of an eligible nuisance outdoor wood boiler.

In addition to the Basis Statement above, the Department has filed with the Secretary of State's Office response to comments received during the comment period.

BASIS STATEMENT FOR AMENDMENT OF MARCH 18, 2010

In May 2009, the Maine Legislature enacted Public Law Chapter 209 LD 1171 *An Act to Amend the Laws Governing Outdoor Wood Boilers,* which became effective September 12, 2009. This legislation directs the Department to amend this rule to allow a person who upgrades or replaces a nuisance outdoor wood boiler when money is not available from the outdoor wood boiler fund to be eligible for reimbursement from the fund when money becomes available. This amendment also eliminates the date by which an outdoor wood boiler had to be installed in order for it to qualify for funding. No comments were received during the comment period.