

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Establishing an Outdoor Wood Boiler Fund

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §610-B, sub-§4 is enacted to read:

4. Emergency powers. If the commissioner finds after investigation that an outdoor wood boiler is being operated in a manner that may create a nuisance condition or a danger to public health or safety, the commissioner may order any person operating that outdoor wood boiler to immediately cease or prevent that operation, and the commissioner may take such action as may be necessary to terminate or mitigate the danger or likelihood of danger. The commissioner may also issue an order to any person contributing to the danger or likelihood of danger to cease or prevent that contribution.

A. An order issued under this subsection must contain findings of fact describing, insofar as possible, the site of the operation and the nuisance condition or danger to the public health or safety.

B. Service of a copy of the commissioner's findings and order under this subsection must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

C. The person to whom the order is directed shall comply immediately. An order may not be appealed to the Superior Court, but the person to whom the order is directed may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by the person to whom the order was directed. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote.

The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

Sec. 2. 38 MRSA §610-C is enacted to read:

§ 610-C. Outdoor Wood Boiler Fund

1. Fund established. The Outdoor Wood Boiler Fund, referred to in this section as "the fund," is established as a nonlapsing fund administered by the commissioner to be used by the department to 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.

2. Sources of money. 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.

3. Application of fund. The department shall apply the money in the fund toward the purchase and replacement of outdoor wood boilers installed prior to February 1, 2008 and determined by the department to constitute a nuisance condition or threat to public health or safety. The department shall adopt rules that include, but are 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. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill creates the Outdoor Wood Boiler Fund with which outdoor wood boilers determined by the Department of Environmental Protection to constitute a nuisance condition or threat to public health or safety will be purchased by the State and retired or replaced with units that do not create a nuisance condition or threat to public health or safety. The bill also provides the Commissioner of Environmental Protection the authority to shut down any outdoor wood boiler that creates a nuisance condition or threat to public health or safety.