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**Agricultural Advisory Board - Outdoor Wood Fired Boilers (OWB)
Subcommittee
Meeting Minutes
November 20, 2009**

Members in Attendance:

George Hazard (PA Farm Bureau)

Others in Attendance:

Jane Greber (DEP)

Ron Davis (DEP)

Robert Reiley (DEP)

Frank Schneider (DEP)

Members that submitted questions, but could not attend:

Larry Breech (Pa Farm Union)

William Wells Jr. (Horticulture Industry)

The meeting started with introductions.

The committee reviewed the response to the question about dual purpose use of Outdoor Wood-Fired Boilers (OWBs). The question from the August 2009 AAB meeting was on whether an OWB that is being used in a dual capacity (heating for both an agricultural operation (barn, outbuilding, etc.) and residential house) would fall under the proposed Chapter 123 (Standards for Contaminants) – Particulate Matter Emissions (Outdoor Wood-Fired Boilers) regulations. The department's official position is that per Section 4.1 of the Air Pollution Control Act (APCA), the Environmental Quality Board does not have the authority to adopt rules and regulations relating to air pollution arising from the production of agricultural commodities, unless the regulations are required by the Clean Air Act. Since there are no Clean Air Act requirements, the Department is prohibited from regulating an OWB that is being used exclusively for agricultural activities. This is also the case if an OWB that is being used for both agricultural and residential activities. However, if the OWB is being used exclusively to heat and/or provide hot water for a residence located on agricultural property, then the proposed regulation would apply. As per the APCA, local municipalities can pass ordinances that are more stringent than the regulations of this Commonwealth. Therefore, any local ordinances that regulate an OWB that is being used for agricultural activities would be valid.

Mr. Frank Schneider asked for Mr. William Wells, on who will enforce the proposed rulemaking. Mr. Ron Davis and Ms. Jane Greber mentioned that the Department's regional air quality staff is in charge of enforcement.

Mr. Schneider asked for Mr. Wells, what are the consequences for those that do not follow the proposed rulemaking. Mr. Davis and Ms. Greber reviewed the Departments compliance initiative. It must be note that there must be a confirmed violation and not just a complaint. As Secretary Hanger indicated at the Environmental Quality Board

meeting (09/15/09) that adopted the proposed regulation, the department is not looking to place OWBs out of service and will provide as much education as the situation allows.

In general, the department's enforcement steps include:

- 1- Voluntary Compliance – This will include education. Although the severity of the violation is taken into consideration.
- 2- If reoccurrence of the same violation, a consent order and agreement may be considered.
- 3- If steps 1 and 2 do not bring operation into compliance, the local magistrate may become involved
- 4- If steps, 1,2,3, do not bring the operation into compliance, fines may be issued
- 5- Last step towards compliance, if all else fails, a cease and desist order will be issued.

Mr. George Hazard questioned whether the department was going to take serious actions on OWB's. Mr. Hazard noted that the preamble quoted that this rulemaking is being prepared due to citizen complaints. He wondered if doing a proposed rulemaking to deal with just citizen complaints was good policy and questioned if there is truly a Particulate Matter 2.5 (PM2.5) issue. Mr. Davis answered that yes there are issues with PM2.5 that need to be addressed, thus the reason for this proposed rule making. He also mentioned that there are existing regulations in place that deal with nuisance issues and other violations.

Mr. Schneider asked for Mr. Wells, that one section of the rulemaking mentions 150 feet of nearest property while another section mentions 500 feet of nearest property. Mr. Davis and Ms. Greber answered that Section 123.14 (d) and Section 123.14 (e) cover the stack height requirements. *Section 123.14 (d) – Stack Height requirements for Phase 2 outdoor wood-fired boilers* requires a stack height of 10 feet above ground (minimum) and must extend at least 2 feet above the highest peak of the highest residence located within 150 feet of the outdoor wood-fired boiler. *Section 123.14 (e) – Stack heights for existing outdoor wood-fired boilers.* The stack height must be 10 feet above ground (minimum) and must extend at least 2 feet above the highest peak of the highest residence located within 500 feet of the outdoor wood-fired boiler. The difference between the 150 feet and 500 feet setbacks is between an existing outdoor wood-fired boiler (500 feet) and a phase 2 outdoor wood-fired boiler (150 feet)

Mr. Schneider, asked for Mr. Larry Breech, about Section 123.14 (e) *Stack heights for existing outdoor wood-fired boilers.* The stack height must be 10 feet above ground (minimum) and must extend at least 2 feet above the highest peak of the highest residence located within 500 feet of the outdoor wood-fired boiler. Has there been any thought on when a building (neighbor's house) is located within 500 feet of your OWB but the building is upslope of the OWB. This possibility could lead to very large smoke stacks. Mr. Hazard added to the question that lead to an example of a neighbor's 2 story house being located 30 feet upslope of your residence. The smoke stack would need to be at a minimum 52 feet high (30 feet for up slope residence, 20 feet for height of the house, 2 feet above highest peek). Mr. Davis and Ms. Greber went through the process of

why this provision is in the regulations. The purpose is to get the emissions higher than the home so they disperse. If the emission point is not above a residence, those emissions could lead to higher PM_{2.5} within that residence.

Mr. Schneider asked for Mr. Wells, what is the extent of height on a smoke stack. Mr. Davis answered that the stack will need to meet the requirements set forth in either Section 123.14 (d) or Section 123.14 (e).

There was discussion on the smoke stack issue with the added costs associated with support structures, cleaning costs, surveying elevations, etc. It was the AAB subcommittee's belief that the AAB should comment on the smoke stack issues.

Mr. Hazard commented that the wording in Section 123.14 (c) *Setback Requirements for Phase 2 Outdoor Wood-Fired Boilers* – should be changed from 150 feet from property line to 150 feet from nearest neighboring residence. The AAB subcommittee recommends that the AAB make this an official comment.

Mr. Hazard commented that making the smoke stack 2 feet above the highest residence could be a struggle. He commented that he does not see it as an issue with neighboring properties, but making a person extend 2 feet past the highest point of their own residence is asking too much. The AAB subcommittee recommends that the AAB make this an official comment.

Mr. Hazard asked if there was a way that this regulation could supercede a local regulation, similar to Act-38. Mr. Robert Reiley and Mr. Davis answered that the APCA will not allow it because it specifically states that municipalities can enact ordinances as long as they are stricter than state and federal regulations. Mr. Hazard questioned why the department would set a regulation that could be superceded by a municipality. Mr. Hazard added that the department should set a statewide emission standard for OWBs and then municipalities can develop more stringent ordinances that address the other issues, as needed. With this approach the municipality would then handle all complaints and enforcement with both existing and new units. The AAB subcommittee recommends that the AAB make this an official comment.

Mr. Hazard questioned the clean wood definition that is listed in Section 123.14 (f) (1). Mr. Davis answered that OWBs must burn clean wood during testing for the EPA Phase 2 certification. Mr. Hazard proposed that a person should be allowed to burn old fence posts, barn wood, etc. in OWB or that those products will just be burnt in piles. Mr. Davis and Ms. Greber acknowledged that some people burn these items in piles or burn barrels, but the household exemption only allows for burning domestic refuse. Items such as tires, railroad ties, treated lumber, hazardous waste, etc are not considered domestic refuse. They also mentioned that a main reason for clean wood versus all types of wood is the possibility of other contaminants being released (carcinogens, multiple compounds, etc.)

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Mr. Hazard asked what happens to OWB manufacturers and dealers that do not follow the proposed rulemaking and sell non-phase 2 OWB units or do not provide the buyers with the required paperwork. Mr. Davis answered that both the buyer and seller are responsible for the provision of the proposed rulemaking. Mr. Hazard questioned why the full responsible should not fall on the seller. Mr. Davis answered that the buyer needs to have some responsibility because they could go out of state to purchase an OWB. Mr. Davis reiterated that the department will look towards education first and then towards enforcement if education does not lead to compliance. Mr. Hazard proposed that the word “willingly” be added to Section 123.14 (b) (2) to protect buyers that are not aware of this regulation.

There being no further discussions, the meeting was ended.