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Policy for Residential Wood Heaters

**CLEAN AIR ACT STATIONARY SOURCE PENALTY POLICY
APPENDIX VII (Revised May 18, 1999)**

**RESIDENTIAL WOOD HEATERS
40 C.F.R. PART 60, SUBPART AAA**

The Clean Air Act Stationary Source Civil Penalty Policy ("the CAA penalty policy") provides the basis for determining the minimum civil penalty EPA will accept in settlement of enforcement actions taken pursuant to Title I of the Clean Air Act. The CAA penalty policy provides guidance to pretrial settlement of initial enforcement actions in district courts.

The New Source Performance Standards for Residential Wood Heaters (NSPS), 40 C.F.R. Part 60, Subpart AAA, warrants a penalty scheme related to the CAA penalty policy, but modified to reflect certain unique features of the wood heater¹ industry. Unlike other NSPS programs, the wood heater NSPS regulates a mass-produced consumer product marketed nationally and is directed at manufacturers, distributors, and retailers. In addition, management of the wood stove enforcement program is centralized at Headquarters rather than delegated to the Regions.

This Appendix, which may be used to calculate the gravity component of a penalty, should be used in conjunction with the general penalty policy to determine the minimum civil penalty that the EPA will accept in settlement for violations of the wood heater NSPS. An example of such a penalty determination is attached.

This Appendix retains in full the concept of adjusting the economic benefit² and gravity components to provide equitable treatment of the regulated community. In addition, the final penalty assessment may be further adjusted to reflect the litigation risk, the offender's ability-to-pay³, and other unique factors.

¹ For the purpose of this penalty policy, the following terms will be used interchangeably and regarded as synonymous: "residential wood heater", "residential wood stove", "wood heater", "wood stove", "stove".

² The economic benefit of noncompliance typically involves delayed/avoided costs, and an increase in profitability conferred by the illegal competitive advantage.

³ Decisions on an offender's ability-to-pay will be based on the computer model calculations using ABEL or similar programs developed by the EPA.

In developing the gravity component penalty assessments for each violation, the relative importance of each respective requirement to the overall regulatory scheme was evaluated. Matrices addressing the "Size of the Violator" and the "Length of Time of Violation" factors are also provided.

CALCULATION OF GRAVITY COMPONENT

SIZE OF THE VIOLATOR (calculate once per violator)

Net Worth of Corporation or
Net Current Assets of Partnership

| | |
|-----------------------------|----------|
| Under \$100,000 | \$1,000 |
| \$100,001 - \$1,000,000 | \$2,000 |
| \$1,000,001 - \$5,000,000 | \$4,000 |
| \$5,000,001 - \$20,000,000 | \$7,000 |
| \$20,000,001 - \$40,000,000 | \$11,000 |
| \$41,000,001 - \$70,000,000 | \$16,000 |
| Over \$70,000,000 | \$22,000 |

LENGTH OF TIME (calculate for each violation)

| | |
|-----------------|---------|
| 0 to 6 months | \$500 |
| 7 to 12 months | \$1,000 |
| 13 to 18 months | \$1,500 |
| over 19 months | \$2,500 |

VIOLATIONS OF 40 C.F.R. PART 60, SUBPART AAA

| | |
|---|--|
| 60.533(j) (2) Failure to renew the certificate of compliance for a model line prior to the expiration date if it still qualifies as certifiable. (If this is the only violation, do not add the "Size of the Violator" penalty.) | \$250 per 100 stoves manufactured |
| 60.533(o) (2) Failure to conduct adequate parameter QA inspection. | \$500 per stove not inspected as required ⁴ |
| 60.533(o) (3) Failure to conduct emission test QA program. | \$500 per stove not tested as required ⁴ |
| 60.535(g) Failure by a laboratory to seal a wood stove after completion or suspension of certification testing. | \$1000 per model line. |
| 60.536(i) Use of incorrect information on a temporary label. | \$1000 per model line and \$10 per wood stove manufactured |
| 60.536(a) (1) Use of incorrect information on a permanent label. | \$1000 per model line and \$10 per wood stove manufactured |
| 60.537(a) (1), (2) Failure to maintain record of certification test. | \$100 per model line ⁴ |
| 60.537(a) (1), (3) Failure to maintain record of parameter QA program. | \$1,000 per model line ⁴ |
| 60.537(a) (1), (4) Failure to maintain record of emission test QA program. | \$1,000 per model line ⁴ |
| 60.537(a) (1), (5) Failure to maintain record of sales. | \$1,000 ⁴ |

⁴ The penalty for this violation may be reduced if the regulatory requirement is partially fulfilled.

| | |
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| 60.537(c) Failure to maintain or produce sealed stove. | \$2,000 per sealed stove required ⁴ |
| 60.537(f) Failure to report biennially on certified model line. | \$100 per model line ⁴ |
| 60.537(g) Failure to maintain record of R&D exempted stoves. | \$500 per model line ⁴ |
| 60.537(h) Failure to maintain record of used stoves. | \$500 ⁴ |
| 60.537(i) (1) Failure to maintain records for five years. | \$500 ⁴ |
| 60.538(a) Operation of affected facility without a permanent label. | \$500 per stove |
| 60.538(b) Manufacturer offers for sale, advertises for sale, or sells a stove without permanent label and/or certification test. | \$3,000 per model line and \$30 per stove manufactured |
| 60.538(c) Manufacturer offers for sale, advertises for sale, or sells a stove without a permanent label after July 1, 1990. Use this penalty in situations where certification is not required (e.g., export stoves, coal-only stoves). | \$1,000 per model line and \$10 per stove manufactured |
| 60.538(c) Retailer offers for sale, advertises for sale, or sells an export stove in the United States. | \$200 per stove offered for sale |
| 60.538(c) Retailer offers for sale, advertises for sale, or sells a stove without a permanent label after July 1, 1990. | \$200 per stove offered for sale |

⁴ The penalty for this violation may be reduced if the regulatory requirement is partially fulfilled.

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|---|--|
| 60.538(d)(1)(i),(2) Manufacturer offers for sale, advertises for sale, or sells a stove with a permanent label, but no temporary label. | \$1,000 per model line and \$10 per stove manufactured |
| 60.538(d)(1)(i),(2) Retailer offers for sale, advertises for sale, or sells a stove with a permanent label, but no temporary label. | \$100 per stove offered for sale |
| 60.538(d)(1)(ii) Manufacturer offers for sale, advertises for sale, or sells a stove having a permanent label, but no owner's manual. | \$1,000 per model line and \$10 per stove manufactured |
| 60.538(d)(1)(ii) Retailer offers for sale, advertises for sale, or sells a stove having a permanent label, but no owner's manual. | \$100 per stove offered for sale |
| 60.538(d)(1)(iii) Manufacturer offers for sale, advertises for sale, or sells with no catalyst warranty, a catalytic stove that has a permanent label. | \$1,000 per model line and \$10 per stove manufactured |
| 60.538(d)(1)(iii) Retailer offers for sale, advertises for sale, or sells with no catalyst warranty, a catalytic stove that has a permanent label. | \$100 per stove offered for sale |
| 60.538(e) Manufacturer offers for sale, advertises for sale, or sells a stove after notice of certificate revocation. | \$2,000 per stove manufactured |
| 60.538(e) Retailer offers for sale, advertises for sale, or sells a stove after notice of certificate revocation. | \$1,000 per stove offered for sale |
| 60.538(f) Installation or operation of stove inconsistent with label or owner's manual. | \$500 per stove |
| 60.538(g) Operation of a stove with deactivated or removed catalyst. | \$1,000 per stove |
| 60.538(h) Operation of an altered stove. | \$1,000 per stove |

60.538(i) \$1,000 per stove
Alteration or removal of permanent label.

* *Includes amendments for 40 CFR Part 60 Sections 60.535(g), 60.536(i) and 60.536(a)(1) dated August 27, 2004.*

EXAMPLE

An inspector files a violation report against Blockbuster Incorporated (BI), which produces the Blue Flame and Heat Jet wood heater model lines. The report, dated November 1, 1998, states that Blue Flame was sold without a temporary label or owner's manual, and that the company failed to conduct a certification test on the Heat Jet model line. In addition, the Heat Jet model line lacks permanent and temporary labels as well as an owner's manual. Blue Flame production since July 1, 1997, totaled 464 units with sales of 223 units, while Heat Jet production since July 1, 1998, totaled 108 units with sales of 36 units. The after-tax net profit on each unit sold was \$225. BI is a financially viable company with a net worth estimated at \$800,000.

The initial assessment of BI's violations indicates the following violations by model line:

Blue Flame

§60.538(d)(1)(i), (2) Advertising for sale/selling a stove(s) without a temporary label.

§60.538(d)(1)(ii) Advertising for sale/selling a stove without an owner's manual.

Heat Jet

§60.538(b) Advertising for sale/selling a stove without a permanent label and/or certification test.

Note: The temporary label and owner's manual violations are inapplicable for the Heat Jet model line because the units were not permanently labeled.

EPA issues a Finding of Violation to BI which includes both the Blue Flame and Heat Jet violations. In addition, an Administrative Order is issued to correct these violations.

BI does correct all the Blue Flame violations by the stated deadline (i.e., April 1, 1999), but does not take any action toward correcting the Heat Jet violations because they are uncertifiable. When contacted by EPA personnel after the deadline, Blockbuster says it feels no obligation to correct the

Heat Jet violations. At this point, EPA decides to bring a civil action against BI, and makes a referral to the Department of Justice.

The preliminary deterrence amount is the sum of the economic benefit and gravity components. In this case, the economic benefit must be evaluated: 1) by using the BEN computer model to compute the economic benefit of avoiding/deferring the compliance expenses for the Blue Flame stoves; and 2) by computing the economic benefit of illegally manufacturing/selling the Heat Jet stoves.

For purposes of computing the economic benefit using BEN, the following cost figures (as of December 1, 1998), and the BEN standard/default values were used to perform the various computations. One-time, nondepreciable expenses for BI are: \$116 for printing/attaching temporary labels, \$10,000 for development of an owner's manual, and \$446 for printing owner's manuals. EPA personnel run the BEN computer model using a compliance date of April 1, 1999, and payment of the penalty on May 1, 1999. The BEN model indicates an economic benefit of \$1,002.

For purposes of calculating the economic benefit from the sales of the uncertifiable Heat Jet heaters using an illegal competitive advantage, the assistance of a financial analyst is necessary because of the added complexity. In this case, the illegal competitive advantage associated with the Heat Jet sales is the after-tax net profit for the Heat Jet model line sales. The benefit calculation yields \$8,100 (36 units x \$225/unit).

Note that the Agency will issue detailed guidance on illegal competitive advantage (ICA) penalty calculations in FY 1999. ICA calculations tend to be more complex than BEN calculations. Until the enforcement personnel gain more experience with ICA cases, ICA calculations should be made on a case-by-case basis utilizing the services of a financial analyst.

The gravity component is calculated using Appendix VII, as follows:

Size of the Violator: \$2,000

Length of Time: \$2,000 x 2 = \$4,000
 \$1,000 x 1 = \$1,000

Violation

Penalty Calculation

\$60.538(d)(1)(i), (2)

\$1,000 + (\$10 x 464) = \$5,640

Lack of a temporary labels.

§60.538(d)(1)(ii) $\$1,000 + (\$10 \times 464) = \$5,640$
 Lack of an owner's manual.

§60.538(b) $\$3,000 + (\$30 \times 108) = \$6,240$
 Lack of a permanent
 label/certification test.

Gravity Component = \$24,520

In light of BI's lack of cooperation in correcting the Heat Jet violations, EPA decides to increase the gravity component by 75%. Therefore, the gravity component becomes $\$24,520 \times 175\% = \$42,910$.

The adjusted preliminary deterrence amount is \$52,012 [$\$1,002$ (BEN penalty) + $\$8,100$ (ICA penalty) + $\$42,910$ (adjusted gravity component)].

BI's ability-to-pay is calculated using the ABEL computer model and data from tax forms provided by BI. At the 70 percent payment probability level, ABEL indicates that BI can afford to pay the entire adjusted preliminary deterrence amount. If ABEL had indicated a probability of less than 70%, then additional funding sources for payment of the penalty would have to be evaluated. Examples of such funding sources include monies set aside for entertainment, advertising, professional dues, compensation of corporate officers, certificates of deposit and money market funds.

Minimum Penalty = \$52,012