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From: Timothy Ballo [tballo@earthjustice.org]
Sent: Thursday, August 01, 2013 5:44 PM
To: Mccarthy, Gina
Cc: Mallory, Brenda; Goffman, Joseph; David Baron; Paul Billings (Paul.Billings@lung.org); Janice.Nolen@lung.org; Tomas Carbonell (tcarbonell@edf.org); David Presley (dpresley@cleanair.org); nancy.alderman@ehhi.org
Subject: Notice of Intent Letter re: Wood Heaters NSPS
Attachments: Wood Heaters NOI FINAL 8-1-13.pdf

Dear Administrator McCarthy:

I am writing to provide you with a courtesy copy of the attached letter, which the American Lung Association, Clean Air Council, Environmental Defense Fund, and Environment and Human Health, Inc. sent to you today via certified mail. The letter provides notice of the groups' intent to sue to enforce EPA's nondiscretionary duty to review and appropriately revise the New Source Performance Standards for residential wood heaters. Please do not hesitate to contact me if you have any problems viewing the attachment or would like to discuss this matter with the four groups.

Sincerely,

Timothy Ballo

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**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

August 1, 2013

Regina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code: 4101M
Washington, DC 20460

Re: Notice of Intent to Sue the Environmental Protection Agency for Failure to Timely Review and Appropriately Revise the New Source Performance Standards (NSPS) for Residential Wood Heaters

Dear Administrator McCarthy:

Pursuant to section 304 of the Clean Air Act (CAA)¹ and Title 40, Part 54 of the Code of Federal Regulations,² the American Lung Association, Clean Air Council, Environmental Defense Fund, and Environment and Human Health, Inc. (collectively, "Public Health and Environmental NGOs") write to notify the Administrator of the Environmental Protection Agency ("Administrator" or "EPA") of our intent to sue to enforce EPA's nondiscretionary duty to review and appropriately revise the New Source Performance Standards (NSPS) for Residential Wood Heaters (Part 60, Subpart AAA of EPA's regulations).

Subpart AAA was promulgated twenty-five years ago and has not been reviewed or revised since, despite EPA's nondiscretionary duty under section 111 of the Clean Air Act to "review and, if appropriate, revise" each NSPS at least once every eight years.³ EPA's unlawful failure to carry out this review and revision is imposing a severe and ongoing toll on public health and the environment, as explained in further detail below. Residential wood smoke contains a vast array of dangerous pollutants including particulate matter (PM), carbon monoxide

¹ 42 U.S.C. § 7604(b)(2).

² 40 C.F.R. §§ 54.1-54.3.

³ 42 U.S.C. § 7411(b)(1)(B).

Now in its second century, the American Lung Association is the leading organization working to save lives, improve lung health and prevent lung disease. Core to that mission is the Lung Association's commitment to protect the public from unhealthy air pollution. The Lung Association acts to defend and enforce the Clean Air Act to ensure that all Americans can have air that is safe and healthy to breathe. The Lung Association also works to protect the public from harmful indoor air pollution, including woodsmoke.

Clean Air Council is a non-profit environmental organization headquartered in Philadelphia, Pennsylvania. For more than 40 years, the Council has fought to improve the air quality across Pennsylvania. The Council's mission is to protect everyone's right to breathe clean air, and the Council has members across the Commonwealth.

Environmental Defense Fund (EDF) works to link science, economics, and law to create innovative, equitable, and cost-effective solutions to the most urgent environmental problems. Protecting public health and the environment from harmful airborne pollutants, such as those emitted from wood heaters, is a core organizational mission, and EDF regularly participates in regulatory and judicial proceedings on air pollution policy at the federal and state level.

Environment and Human Health, Inc. (EHHI) is a non-profit organization composed of physicians, public health professionals and policy experts dedicated to protecting human health from environmental harms. Wood smoke is an air pollutant that is making many people in this country sick, and is therefore a focus of EHHI's research and advocacy.

II. The Need for Rigorous and Health-Protective Revisions to Subpart AAA

As EPA recognized when it first acted to regulate wood heaters under section 111(b), wood heaters are a potent source of fine PM, CO, NOx, VOCs and air toxics that significantly endanger public health and welfare.⁶ Twenty-five years later, wood smoke remains an urgent threat – in part due to the proliferation of new forms of wood heaters, such as OWBs, that are unregulated under the current Subpart AAA. Given the harm wood smoke poses and the ready availability of technologies to reduce emissions from regulated and unregulated wood heaters, revision of Subpart AAA is appropriate and, indeed, required under section 111.

A. Wood Smoke Pollution is a Pressing Public Health Problem

Wood heaters are a diverse class of sources that include OWBs and IWBs (also known as hydronic heaters), furnaces, masonry heaters, and wood stoves; of these, only a subset of wood stoves are currently covered by Subpart AAA. Approximately 14 to 17 million such devices

⁶ See Standards of Performance for New Stationary Sources; Listing of Residential Wood Heaters for Development of New Source Performance Standards, 52 Fed. Reg. 5,065 (Feb. 18, 1987) (noting increasing quantities of PM emissions from wood heaters, presence of CO and carcinogens in wood smoke, and that these pollutants "are released at low heights in residential areas (resulting in relatively high levels of exposure to human populations) . . .").

wood combustion devices are associated with increased worsening of asthma and other respiratory problems, especially in young children.¹⁵

The EPA recognized wood smoke, including residential wood burning, as a source of nitrogen oxides in the 2008 *Integrated Science Assessment of Oxides of Nitrogen—Health Criteria*.¹⁶ The NOx ISA estimated that residential wood burning produced 40,000 metric tons of nitrogen oxides in 2002 (Table 2.2-1). The NOx ISA identified residential wood burning as a source of indoor air levels of nitrogen oxides. As discussed in the NOx ISA, the Yale Childhood Asthma Study measured indoor levels of NOx by heat source in homes of 888 nonsmoking mothers in Connecticut and Virginia. Homes with fireplaces had two-week average concentrations of 80 ppb NOx and homes with wood stoves had two-week average concentrations of 52 ppb NOx.¹⁷

Wood smoke is a primary source of carbon monoxide, as identified in both the EPA's 2010 *Integrated Science Assessment for Carbon Monoxide*¹⁸ and the Agency for Toxic Substances and Disease Registry (ATSDR) 2012 *Toxicological Profile of Carbon Monoxide*.¹⁹ Carbon monoxide emissions from woodsmoke add to the outdoor levels of carbon monoxide, as well as increasing indoor concentrations.²⁰

EPA has also concluded that smoke from high-emission wood combustion devices accounts for a significant proportion of nationwide emissions of certain air toxics – including 44% of total stationary and mobile emissions of polycyclic organic matter, and 62% of total PAH emissions,²¹ many of which are known or probable human carcinogens.²²

B. Substantial Emission Reductions From New Wood Heaters Are Achievable

¹⁵ See, e.g., Luke P. Naeher et al., *Woodsmoke Health Effects: A Review*, 19 *Inhalation Toxicology* 67, 82-87 (2006) (reviewing studies of wood smoke exposure and health impacts) (Naeher 2006); Johnson 2006, 1154 (“Numerous studies have found that exposure to the concentrations and durations of wood smoke associated with residential wood burning can cause a variety of adverse respiratory effects. These include increases in respiratory symptoms, decreases in lung function, visits to emergency departments, and hospitalizations”); Pernille Høgh Danielsen et al., *Oxidative Stress, DNA Damage, and Inflammation Induced by Ambient Air and Wood Smoke Particulate Matter in Human A549 and THP-1 Cell Lines*, 24 *Chem. Res. Toxicol.* 168 (2011).

¹⁶ U.S. EPA, *Integrated Science Assessment for Oxides of Nitrogen-Health Criteria (Final Report)* EPA/600/R-08/071, 2008.

¹⁷ Triche EW, et al. 2005. Indoor heating sources and respiratory symptoms in nonsmoking women. *Epidemiology*. 16(3): 377-384.

¹⁸ U.S. EPA, *Integrated Science Assessment for Carbon Monoxide (Final Report)* EPA/600/R-09/019F, 2010.

¹⁹ Agency for Toxic Substances and Disease Registry (ATSDR). 2012. *Toxicological profile for Carbon Monoxide*. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. Web link: <http://www.atsdr.cdc.gov/ToxProfiles/tp201.pdf> [Accessed: July 31, 2013].

²⁰ Naeher 2006, 82-87.

²¹ Wood 2011, Slide 4.

²² EPA, Technology Transfer Network Air Toxics Website, *Polycyclic Organic Matter (POM)*. Available at: <http://www.epa.gov/ttn/atw/hlthef/polycycl.html> Center for Disease Control, *Toxic Substances Portal: Polycyclic Aromatic Hydrocarbons (PAH)*. Available at: <http://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=121&tid=25>

Rybicki BA, et al. 2006. Prostate cancer risk from occupational exposure to polycyclic aromatic hydrocarbons interacting with the GSTP1 Ile105Val polymorphism. *Cancer Detect Prev.* 30:412-422.

comment rulemaking to “review and, if appropriate, revise” each NSPS.²⁸ Such review must take into account “emission limitations and percent reductions achieved in practice,” in cases where such emission reductions exceed those required by NSPS regulations.²⁹ EPA may only avoid regular review of a NSPS if it determines that review is not appropriate “in light of readily available information on the efficacy of such standard.”³⁰

Subpart AAA was promulgated in February 1988.³¹ Under the CAA, EPA was required to have reviewed and revised Subpart AAA in 1996, 2004, and 2012. Yet in the twenty-five years since promulgating Subpart AAA, EPA has not undertaken any notice-and-comment proceeding to review the scope or stringency of this NSPS.³² Neither has EPA determined that review is not appropriate – a conclusion that, in any event, EPA could not reasonably reach given the evidence recited above. EPA’s performance of its nondiscretionary duty to review and appropriately revise Subpart AAA is long overdue, and therefore proper grounds exist for a citizen suit under section 304(a)(2) of the CAA.³³

III. Conclusion

The Public Health and Environmental NGOs urge EPA to fulfill its mandatory duty under section 111(b) of the CAA by proposing and finalizing appropriate revisions to Subpart AAA without delay. If EPA fails to do so, we will file a complaint in United States District Court after the 60-day notice period provided in section 304(b)(2). In addition, we may – in the alternative – file a complaint alleging that EPA has unreasonably delayed the required completion of the review and revision of the NSPS (after the 180-day notice period provided in section 304(a)). As required by 40 C.F.R. § 54.3(a), the names and addresses of the parties serving this Notice are set forth below:

²⁸ 42 U.S.C. § 7411(b)(1)(B) (requiring that review and revision follow the same procedure “required by this subsection for promulgation of such standards”); *see also id.* § 7607(d)(1)(C) (requiring full notice and comment for “promulgation or revision of any standard of performance under section 7411 of this title . . .”).

²⁹ *Id.* § 7411(b)(1)(B).

³⁰ *Id.*

³¹ Standards of Performance for New Stationary Sources; New Residential Wood Heaters, 53 Fed. Reg. 5,860 (Feb. 26, 1988).

³² In a 2011 notice in the *Federal Register*, EPA indicated that it last took action with respect to Subpart AAA on October 17, 2000. *See* New Source Performance Standards (NSPS) Review, 76 Fed. Reg. 65653, 65656 (Advance Notice of Proposed Rulemaking, Oct. 24, 2011). However, this action was a generic package of amendments to test methods referenced in multiple NSPS regulations, including Subpart AAA, and did not constitute a “review” of Subpart AAA under any reasonable construction of section 111(b)(1). *See generally* Amendments for Testing and Monitoring Provisions, 65 Fed. Reg. 61,744 (Oct. 17, 2000). Even if it were, EPA’s duty to review and, if appropriate, revise Subpart AAA would still be nearly five years overdue.

³³ 42 U.S.C. § 7604(a)(2).