

Air Pollution

Pellet Fuel, Masonry Heater Provisions Highlighted in Lawsuits Over Wood Stove Rule



By Patrick Ambrosio

June 16 — Federal requirements for pellet fuels used in new wood-burning stoves and the Environmental Protection Agency's decision to not set standards for new residential masonry heaters are among the issues that industry groups plan to raise in litigation against the agency's first revisions to federal emissions standards for residential wood-burning stoves and heaters in 27 years (*Hearth, Patio and Barbecue Ass'n v. EPA*, D.C. Cir., No. 15-1056, *statement of issues filed 6/15/15*).

The Pellet Fuels Institute, in a statement of issues, said it intends to ask the U.S. Court of Appeals for the District of Columbia Circuit to consider whether the EPA violated Section 111 of the Clean Air Act when it set requirements on the content and composition of pellet fuels used in new pellet stoves covered by the EPA standards.

That section of the Clean Air Act doesn't explicitly grant the EPA that authority, and the agency failed to demonstrate that those requirements reflect the "best system of emission reduction" for new pellet stoves, the trade group said.

Tulikivi U.S., a manufacturer of masonry heaters and other appliances, said in its statement of issues that it intends to ask the court to review whether the EPA illegally declined to set emissions standards for new residential masonry heaters.

The agency initially proposed to set such standards, but it decided against doing so in order to provide industry with additional time to develop the emissions testing methods that would be used to determine compliance.

Concerns Raised Over Revised Heater Standards

Those two organizations, along with the Hearth, Patio and Barbecue Association, are the petitioners in consolidated litigation over the revised wood-burning heater standards (RIN 2060-AP93), which were released in February.

The standards, which don't apply to existing devices, are estimated to reduce emissions of fine particulate matter and volatile organic compounds by about 70 percent at a cost of about \$45.7 million per year.

The Hearth, Patio and Barbecue Association previously informed the court that it intends to challenge whether the EPA's "Step Two" emissions standards for wood-burning heaters, residential hydronic heaters and residential forced-air furnaces are illegal (113 DEN A-6, 6/12/15).

The EPA took a phased approach to setting new emissions standards, establishing an initial "Step One" goal that many appliances on the market already meet and a more-stringent standard that manufacturers aren't required to meet until 2020.

Masonry Heaters Banned in Some Locales

Tulikivi's statement of issues doesn't raise any specific legal arguments, but the company previously said in comments on the wood-burning stove rule that masonry heaters are banned in many areas of the U.S., because they are not certified to meet federal emissions standards.

The agency declined to set masonry heater standards in its rule but said it will consider setting standards for them in the future.

The D.C. Circuit June 15 issued an order to allow several public health groups to intervene in the litigation on behalf of the EPA.

The American Lung Association, the Clean Air Council and Environment and Human Health Inc. all were granted intervenor status in the litigation.

The groups requested intervenor status because the revised air pollution standards provide crucial health and environmental protection to members of those groups, which therefore have a "demonstrable interest" in defending the rule.

Wood-burning stoves and other appliances emit particulate matter and other pollutants that have been linked to asthma, heart attacks, premature deaths and other adverse health effects. The EPA estimates the fully implemented standards will provide more than \$100 in public health benefits for every dollar spent on compliance.

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BNA Snapshot

Hearth, Patio and Barbecue Ass'n v. EPA, D.C. Cir., No. 15-1056, *statement of issues filed 6/15/15*

Issues at Stake: Industry groups intend to challenge the following aspects of the EPA's revised performance standards for wood-burning stoves and heaters:

- **Pellet Fuels Institute:** Requirements on the content and composition of pellet fuels used in new pellet stoves;

- **Tulikivi U.S.:** The agency's decision to not issue emissions standards for new residential masonry heaters; and

- **Hearth, Patio and Barbecue Association:** "Step Two" performance standards for various new appliances that go into effect in 2020.

For More Information

The Pellet Fuels Institute's statement of issues is available at

http://www.bloomberglaw.com/public/document/Hearth_Patio__Barbecue_Assoc_v_EPA_et_al_Docket_No_1501056_DC_Cir.

Tulikivi's statement of issues is available at

http://www.bloomberglaw.com/public/document/Hearth_Patio__Barbecue_Assoc_v_EPA_et_al_Docket_No_1501056_DC_Cir/1.

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