

June 19, 2015

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VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Re: EPA Wood Heater NSPS, EPA-HQ-OAR-2009-0734

Dear Administrator McCarthy:

Enclosed please find a Petition for Reconsideration of EPA's Final Rule, *Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces*, 80 Fed. Reg. 13672 (March 16, 2015) EPA Docket No. EPA-HQ-OAR-2009-0734. Please let me know if you or your staff have any questions.

Sincerely,

William Pedersen /KH

William F. Pedersen

cc: Janet McCabe, Esq.
Acting Assistant Administrator
EPA Office of Air and Radiation
(via electronic mail)

Ms. Amanda Aldridge
EPA Office of Air Quality Planning and Standards
(via electronic mail)

Scott Jordan, Esq.
EPA Office of General Counsel
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U.S. Department of Justice
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EPA Rulemaking Docket, EPA-HQ-OAR-2009-0734
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BEFORE THE ADMINISTRATOR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced Air Furnaces, 80 Fed. Reg. 13672 (March 16, 2015) EPA Docket No. EPA-HQ-OAR-2009-0734

PETITION FOR RECONSIDERATION

I. Introduction

Tulikivi U.S., Inc. is a subsidiary of Tulikivi Corporation, an international company based in Finland. We will refer to them both as Tulikivi. Tulikivi is the world's largest manufacturer of wood-fired masonry heaters.

On February 3, 2014 the Environmental Protection Agency ("EPA") proposed to establish new or revised emissions standards for a wide range of new wood heating devices. In particular, EPA proposed to set emissions standards for the first time for masonry heaters. 79 Fed. Reg. 6330 (Feb. 3, 2014).

However, in March 2015 EPA reversed its proposed position and decided **not** to establish emission standards for masonry heaters. 80 Fed. Reg. 13672 (March 16, 2015).

Tulikivi believes this decision was legally unjustified, and that it will be damaging both to the environment and to the masonry heater industry. Tulikivi has filed a petition for judicial review of this decision.

EPA has acknowledged that by their design, most masonry heaters are inherently low emitting and very generally have lower emissions than the heat sources that would otherwise have been used.

EPA is also aware that many States and local jurisdictions forbid the installation of new wood heaters that do not comply with EPA emission standards.

Yet by failing to establish emission standards for masonry heaters, EPA has left masonry heaters subject to those bans, despite their low emissions.

EPA's justifications for this failure do not even mention such installation bans, and are unpersuasive even taken on their own terms.

Accordingly, Tulikivi hereby petitions the Administrator to reverse this decision, and announce her intention to promulgate masonry heater emission standards as soon as practicable.

Tulikivi understands that this will take time. To avoid having masonry heaters shut out of the market in the meanwhile, Tulikivi therefore also petitions the Administrator to issue guidance to States and local jurisdictions explaining that since masonry heaters are inherently clean-burning, they should not be subject to installation bans even in areas where wood smoke emissions

present an air pollution concern. In appropriate cases, emission reduction credits should be awarded for the use of masonry heaters instead of dirtier older appliances.

Our discussion follows.

II. Why This Petition is Justified

A. The Law Grants Tulikivi the Right to File this Petition

The United States Constitution specifically grants “the people” the right to “petition the government for the redress of grievances.” U.S. Constitution, Amendment 1, clause 6.

Similarly, the Administrative Procedure Act states: “Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. §553(e).

Finally, the Clean Air Act (CAA) in effect **requires** a petition for reconsideration before a litigant challenging an EPA decision in court can raise arguments that were not raised before the agency. That petition must show that raising those issues earlier would have been “impracticable”, or that the grounds for raising them arose after the comment period on the proposed rule had closed. CAA §307(d)(7)(B).

Those conditions are indisputably met here, since EPA’s proposed rule did not even hint that the Agency would decline to regulate masonry heaters. That decision became known only after the final rule itself had been issued.

B. EPA’s Decision was Arbitrary and Capricious

1. Masonry Heaters are Inherently Clean

Masonry heaters are clean burning by design. The hot gases from the firebox are ducted through a large surrounding thermal mass, typically masonry. The heated mass then re-radiates that heat into the surrounding building for many hours after the fire has gone out. This design feature allows the fire to burn hot and clean for a relatively short time while providing many more hours of heat. A fire lasting two hours can heat a house for a full day.

The preambles to EPA’s rulemakings show that EPA fully understood these advantages.

Most notably, in responding to pre-proposal comments from the Small Business Administration that masonry heaters should not be regulated, EPA said, in part:

Most masonry heaters are effective heaters and relatively clean and efficient, especially compared to pre-NSPS wood stoves....masonry heaters can be an excellent emission reduction choice for replacing higher emission pre-NSPS wood stoves and should be encouraged over old wood stoves in most air sheds.

79 Fed. Reg. 6370-71. See also *id.* at 6347

2. *Despite Being Clean, Unregulated Masonry Heaters Are Threatened With Installation Bans*

The rulemaking preambles also show that EPA fully understood that unregulated masonry heaters were in danger of being barred from the market despite their emissions advantages.

In defending its decision to regulate these devices, the Agency said that masonry heaters “are even banned by some air districts because masonry heaters are not EPA- certified.” 79 Fed. Reg. 6370, and, elsewhere, that “[s]ome states and local areas do not allow any residential wood heaters that are not certified to meet the current residential wood heater NSPS.” 79 Fed. Reg. 6361.

In EPA’s opinion, which Tulikivi shares, EPA could relieve masonry heaters of this burden by establishing emission standards for them.

3. *EPA’s Reasons for Not Taking Action are Unpersuasive Even on Their Own Terms*

The impact of installation bans was central to EPA’s defense of its proposal to regulate masonry heaters. Yet EPA did not even mention the possible impact of such bans in defending its decision **not** to regulate.

Instead, EPA said it was declining to regulate

in order to allow additional time for the Masonry Heater Association to finish their efforts to develop revised test methods, an emissions calculation program and an alternative dimensioning standard.

80 Fed. Reg. 13672, see also 13677

This passage can be read to say either (a) that the Masonry Heater Association (MHA) had asked for this deferral or (b) that the deferral was advisable because EPA had identified technical barriers to promulgation and was relying on MHA to remove them.

Neither reading can be defended.

The MHA comments begin by stating that “MHA welcomes the EPA’s decision to add masonry heaters to the appliances regulated in the NSPS.” NSPS Comments of the Masonry Heater Association, May 5, 2014 (henceforth “MHA comments”).

Although MHA also “offer[ed] to assist the EPA in adapting the regulatory program so it better takes into account the masonry heater industry’s unique characteristics”, nowhere in these comments, or in any other docket document we have found, did MHA even suggest that EPA should defer regulation until MHA’s technical concerns were all met. EPA is well aware that such statements offering assistance are completely standard in rulemaking comments.

Turning to the specific issues pointed out by EPA, MHA in its comments specifically endorsed “the use of g/kg as an emission reporting format until an efficiency testing method is specified for masonry heaters.” MHA comments p. 10. Although MHA claimed to be “actively developing” a computer program that could be used to streamline certification, MHA comments p. 12, MHA did not suggest that EPA should defer regulating until this program was ready. This is also true for the MHA comments on firebox dimensions, see MHA comments pp. 11-12.

Similarly, nowhere in its proposal did EPA suggest that any of these issues presented difficulties that needed to be resolved, much less resolved by someone other than EPA, before a final rule could be issued.

4. In Short, EPA’s Action Was Arbitrary and Capricious

An agency decision that fails to take account of the major relevant factors - indeed, factors whose central importance that agency has previously conceded - is arbitrary almost by definition.

If an agency instead offers transparently weak and insupportable grounds for its decision, that further confirms its arbitrary nature.

Such a decision requires reconsideration.

III. Relief Requested

A. EPA Should Commit to Promulgating Emission Standards for Masonry Heaters

For the reasons set forth above, EPA should reverse its decision not to regulate masonry heaters.

Tulikivi believes that the existing record provides an adequate basis for EPA to issue such regulations. However, we understand that a formal notice of EPA’s changed position might be appropriate.

Accordingly, we recommend that EPA simply issue a short Federal Register notice announcing its changed position, with perhaps a list of particular issues of concern, provide a short comment period, and then proceed to a final decision.

B. EPA Should Issue Guidance to States Confirming the Acceptability of Masonry Heaters as Low-Emission Heat Sources

Tulikivi believes that EPA should also do what it can to grant the masonry heater industry relief from de facto installation bans during the time that will inevitably be required to include masonry heaters in the NSPS.

EPA could do this by issuing guidance to State and local air pollution control agencies telling them that since it is clear from the facts that most masonry heaters are clean burning even in the absence of EPA certification, there is no justification for banning the installation of these heaters. On the contrary, not only should such heaters be permitted, but in appropriate circumstances their installation in place of alternative heating approaches could be approved as part of an emission reduction strategy.

EPA has long accepted the basic premise of relieving uncertified, but clean-burning wood heating appliances from state construction bans. See memorandum, "Interpretation of EPA's Guidance for Residential Wood Combustion Emission Control Measures", Renner to Air Branch Chiefs, September 23, 1991.

Tulikivi understands that the exact contents of such guidance will be for EPA to determine. We look forward to working with the Agency on that topic. Here are some principles that we believe the guidance should reflect:

1. Masonry heaters certified by Colorado or Washington should be automatically exempted from installation bans. Such heaters have already qualified as low emissions under a regulatory regime that EPA itself has recognized as only slightly less stringent than its proposed standard. 79 Fed. Reg. 6361.
2. Masonry heaters qualified under the new European Union testing standard (EN 15250) would be accepted. As EPA knows, masonry heaters are far more widely used in Europe than in the United States and are subject to tight regulation there.
3. As EPA has recognized, it may not be possible to apply the NSPS certification scheme to manufacturers of custom built masonry heaters. EPA has explored approving such heaters by use of a computer model that would define the key parameters affecting emissions and the permissible variations in them. EPA has also recognized that such heaters are in general inherently clean. 79 Fed. Reg. 6347. Tulikivi believes EPA should explore defining "good construction" principles that could help assure the emissions performance of such heaters and relieve them of construction bans even in the absence of a fully developed computer model.

IV. Conclusion

Tulikivi looks forward to further discussion of these issues with EPA.