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**From:** Michael J. Myers [Michael.Myers@ag.ny.gov]  
**Sent:** Thursday, August 01, 2013 5:07 PM  
**To:** Mccarthy, Gina  
**Cc:** Goffman, Joseph  
**Subject:** Notice of Intent to Sue re. Wood Heater NSPS  
**Attachments:** States' Final NOI letter Signed.pdf

**Categories:** Red Category

Dear Administrator McCarthy—

Please find attached a notice of intent to sue EPA pursuant to section 304(a)(2) of the Clean Air Act regarding wood heaters and outdoor wood boilers. The original notice is being sent today by certified mail, return receipt requested.

Respectfully,

Michael J. Myers  
Chief, Affirmative Litigation Section  
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EXECUTIVE SECRETARIAT

**Attorneys General of New York, Connecticut, Maryland,  
Massachusetts, Oregon, Rhode Island, and Vermont  
and the Puget Sound Clean Air Agency**

August 1, 2013

By Certified Mail, Return Receipt Requested

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Bldg.  
1200 Pennsylvania Ave., N.W., Mail Code 1101A  
Washington, DC 20460

Re: New Source Performance Standards for Residential Wood Burning  
Heaters - Notice of Intent to Sue Pursuant to 42 U.S.C. § 7604(b)(2)

Dear Administrator McCarthy:

The Attorneys General of New York, Connecticut, Maryland, Massachusetts, Oregon, Rhode Island, and Vermont and the Puget Sound Clean Air Agency (together, "States") hereby provide notice of their intent to sue the Environmental Protection Agency for failing to timely review and revise the New Source Performance Standards (NSPS) for Residential Wood Heaters under the Clean Air Act (Act). EPA's 25-year old standards are outdated, and do not cover outdoor wood boilers, a major source of air pollution in many communities. This letter is to provide 60 days' notice pursuant to section 304(a)(2) of the Act of the States' intent to file a lawsuit for EPA's failure to perform a mandatory duty under the statute.

***1. Background***

Section 111(b)(1)(A) of the Act requires EPA to list categories of stationary sources that "cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health and welfare." 42 U.S.C. § 7411(b)(1)(A). EPA must review and, as appropriate, revise, the standards for stationary sources at least every eight years based on the best technological system of continuous emission reduction. *Id.* § 7411(b)(1)(B).

In 1988, EPA issued emission standards for particulate matter (PM) from new residential wood heaters. 40 C.F.R. Part 60, Subpart AAA. In the intervening 25 years, use of residential wood heaters covered by the standards has greatly expanded. In addition, there has been a dramatic increase in use of residential wood heaters under the category of "boilers," which EPA exempted from the standards. 40 C.F.R. § 60.530(h)(2). These include outdoor wood boilers, indoor wood boilers, and hydronic heaters (collectively, "unregulated boilers"). Also during

establish that emissions from highly-polluting wood combustion devices are associated with increased incidence of asthma and other respiratory problems, especially in young children.<sup>6</sup>

According to EPA, fine particulate matter emitted from wood-burning devices comprised 13 percent of all PM<sub>2.5</sub> pollution in the U.S. in 2008. EPA has also estimated that smoke from these devices can represent a large percentage of this pollution regionally, including 25 percent of wintertime PM<sub>2.5</sub> pollution in parts of New Hampshire and Wisconsin, and more than 50 percent of wintertime PM<sub>2.5</sub> in Tacoma, WA and Sacramento, CA.<sup>7</sup>

### 3. *The Growing Problem of Emissions from Unregulated Boilers*

The popularity and use of unregulated boilers, such as outdoor wood boilers, has grown since 1988, and their emissions are of particular concern to the Northeast, Midwest and Northwest. *Black Carbon Report to Congress*, § 10.3.1.

In 2006, the Northeast States for Coordinated Air Use Management (NESCAUM) issued a report documenting the severe health effects associated with residential wood smoke inhalation and also documented the inordinate quantity of emissions from outdoor wood boilers. NESCAUM, *Assessment of Outdoor Wood-fired Boilers* (2006).<sup>8</sup>

In 2008, the New York Attorney General's Office issued a report finding that outdoor wood boilers were becoming increasingly common and can emit far more PM<sub>2.5</sub> than other types of residential heaters -- about 12 times as much as EPA certified wood stoves, 1,000 times as much as oil furnaces, and 1,800 times as much as gas furnaces. NYS Attorney General, Environmental Protection Bureau, *Smoke*

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PM<sub>2.5</sub> concentrations exceeded the 24-hour NAAQS, and finding that wood smoke contributed as much as 63% of elevated PM<sub>2.5</sub> concentrations), available at: [http://www.ladco.org/reports/wood smoke/grand rapids wood smoke case study final report 8 31 2012.pdf](http://www.ladco.org/reports/wood%20smoke/grand%20rapids%20wood%20smoke%20case%20study%20final%20report%208%2031%202012.pdf).

<sup>6</sup> 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); 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).

<sup>7</sup> EPA, *Residential Wood Heaters New Source Performance Standards (NSPS) Current Draft Revisions*; Slide 5; available at: <http://www.epa.gov/burnwise/pdfs/CommunityOutreachWoodHeatersNSPS03-09-11.pdf>

<sup>8</sup> <http://www.nescaum.org/documents/assessment-of-outdoor-wood-fired-boilers>.

EPA's emission standards and from unregulated boilers. Regarding the former category, EPA's website lists dozens of available residential wood heaters that emit less than half of the current emission standards.<sup>11</sup> Several states have regulations requiring residential wood heaters to achieve these more stringent standards. For example, Washington's standard limiting PM<sub>2.5</sub> from these devices is 40 percent more stringent than the current EPA standards.

With respect to unregulated outdoor wood boilers, there are a number of opportunities to achieve substantial air pollution reductions from the current level that qualifies for EPA's "Phase 2" outdoor wood boiler voluntary program, 0.32 pounds per million British thermal units (lb/mmBTU).<sup>12</sup> EPA's website lists 11 devices that emit less than half the Phase 2 standard, and another seven emit between 0.04 to 0.08 lbs/mmBTU. Furthermore, a June 2012 EPA study found that a pellet-fired hydronic heater compliant with European emission standards significantly outperformed outdoor wood boilers manufactured in the U.S., emitting approximately 94 percent less PM<sub>2.5</sub>, 92-93 percent less CO and 89-99% less polycyclic aromatic hydrocarbons than the *cleanest* outdoor wood boiler, while using about 33-45 percent less fuel.<sup>13</sup>

Starting in the 1990s, the European Union placed more stringent limits on wood-burning devices. As a result, average heating efficiency has increased from 55 percent to more than 90 percent. These stricter standards did not hurt the market in Europe, which has seen sales of cordwood stoves, furnaces, and boilers increase by 100 percent and pellet stoves, furnaces, and boilers increase by 1500 percent.

## 5. *Notice of Intent to Sue*

As discussed above, section 111(b)(1)(B) of the Act requires EPA to undertake a notice-and-comment rulemaking to "review and, if appropriate, revise" each NSPS at least once every eight years, and take into account "emission limitations and percent reductions achieved in practice," in cases where those emission reductions exceed those required by existing NSPS regulations. Although the current emission standards for residential wood heaters have been in place since February 1988, EPA

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<sup>11</sup> See EPA List of EPA Certified Wood Stoves, available at: <http://www.epa.gov/compliance/resources/publications/monitoring/caa/woodstoves/certifiedwood.pdf>

<sup>12</sup> See generally EPA, Partners – Program Participation – List of Cleaner Hydronic Heaters, available at: <http://www.epa.gov/burnwise/owhlist.html>

<sup>13</sup> EPA, Environmental, Energy Market, and Health Characterization of Wood-Fired Hydronic Heater Technologies S-11 to S-13, S-18 (NYSERDA, June 2012).

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