



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

**In the Matter of:** )  
 )  
**England’s Stove Works, Inc.,** ) **Docket No. CAA-HQ-2022-8422**  
 )  
**Respondent.** )

**NOTICE OF EX PARTE COMMUNICATION AND OPPORTUNITY TO RESPOND**

On September 30, 2021, Anthony J. Miller, Acting Director of the Monitoring, Assistance, and Media Programs Division, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency (“Complainant” or “the Agency”) issued to Respondent, England’s Stove Works, Inc., a Notice of Proposed Determination to Revoke Certificate of Compliance Number 193-19 for the 15-SSW01, 50-SHSSW01, 50-TRSSW01, 15-W03, 50-SHW03, and 50-TRW03 Wood Heater Models (“Notice”). The Notice states that it was issued in accordance with 40 C.F.R. § 60.533(l)(1)(ii) and (vii) based on findings that certification tests for the referenced heater models were invalid and that the laboratory approved to test the heaters failed to use the methods specified in 40 C.F.R. § 60.534.

On October 28, 2021, Respondent timely submitted an objection to the Notice and pursuant to 40 C.F.R. § 60.539(b), requested a hearing (“Hearing Request”) on the Agency’s revocation determination. On November 16, 2021, Complainant transmitted the Notice and Hearing Request to the undersigned and asked that an Administrative Law Judge be assigned to serve as presiding officer for a proceeding under 40 C.F.R. § 60.539.

I have been designated to serve as the presiding officer in this proceeding. *See* Order of Designation (Nov. 19, 2021). Prior to my designation, but after Respondent had requested a hearing, certain email communications occurred between Complainant and this Tribunal’s staff that are attached hereto as Attachment 1 and Attachment 2.

In Attachment 1, Complainant asserts that this proceeding is not governed by the 60-day timeline established in 40 C.F.R. § 60.539(h)(3), because the hearing request followed a notice of revocation issued under 40 C.F.R. § 60.539(l) and not a notice of revocation issued under 40 C.F.R. § 60.533(n)(3)(ii). After reviewing Attachment 1 and the regulations set forth at 40 C.F.R. pt. 60 subpt. AAA, I am inclined to agree that 40 C.F.R. § 60.539(h)(3) does not apply to this proceeding and that I am not required to render an initial decision within 60 days of the hearing request. However, if Respondent disagrees with this conclusion, it may submit a response setting forth a specific legal basis for the applicability of 40 C.F.R. § 60.539(h)(3) no

later than **Friday, November 26, 2021**. The response may be sent by email to [oaljfilings@epa.gov](mailto:oaljfilings@epa.gov).<sup>1</sup>

In Attachment 2, Complainant states that Respondent is engaged in additional testing of its wood heaters and, depending on the results, Complainant may issue a new Certificate of Compliance to Respondent. This issuance action by the Agency would appear to moot the need for this proceeding. Accordingly, if the parties have a position as to whether this matter should be stayed pending the outcome of the test results and the Agency's decision whether to issue a new Certificate of Compliance to Respondent, they should file statements asserting their positions no later than **Friday, November 26, 2021**. Responses may be sent by email to [oaljfilings@epa.gov](mailto:oaljfilings@epa.gov).

**SO ORDERED.**



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Susan L. Biro  
Chief Administrative Law Judge

Dated: November 19, 2021  
Washington, D.C.


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<sup>1</sup> The parties are advised that submission of filings by email is permitted only for the responses referenced in this Notice of Ex Parte Communication and Opportunity to Respond. All subsequent filings in this proceeding must be made in accordance with instructions in the Order of Designation and any forthcoming orders issued by this Tribunal.

In the Matter of *England's Stove Works, Inc.*, Respondent.  
Docket No. CAA-HQ-2022-8422

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Notice of Ex Parte Communication and Opportunity to Respond**, dated November 19, 2021, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

  
\_\_\_\_\_  
Matt Barnwell  
Attorney-Advisor

Original by Electronic Delivery to:

Mary Angeles, Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Ave., NW  
Washington, DC 20004

Copies by Electronic Mail to:

Anthony J. Miller  
Acting Director  
Monitoring, Assistance, and Media Programs Division  
Office of Compliance  
Office of Enforcement and Compliance Assurance  
Email: [miller.anthony@epa.gov](mailto:miller.anthony@epa.gov)  
*For Complainant*

Chris Terrell  
COO  
England's Stove Works, Inc.  
Email: [cterrell@englanderstoves.com](mailto:cterrell@englanderstoves.com)  
*For Respondent*

Dated: November 19, 2021  
Washington, D.C.

# **Attachment 1**

**From:** [Almase, Jennifer](#)  
**To:** [Barnwell, Matt](#)  
**Subject:** FW: England's Stove Works, Inc.  
**Date:** Wednesday, November 17, 2021 2:52:53 PM

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Jennifer Almase  
Attorney-Advisor | Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. | Mail Code 1900R  
Washington, D.C. 20460  
Telephone: 202-564-1170  
Email: [almase.jennifer@epa.gov](mailto:almase.jennifer@epa.gov)  
Pronouns: she/her/hers

---

**From:** Miller, Anthony <Miller.Anthony@epa.gov>  
**Sent:** Wednesday, November 17, 2021 1:15 PM  
**To:** Angeles, Mary <Angeles.Mary@epa.gov>; Sanchez, Rafael <Sanchez.Rafael@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>  
**Cc:** Wright, MichaelB <Wright.MichaelB@epa.gov>; Almase, Jennifer <Almase.Jennifer@epa.gov>; Vizard, Elizabeth <Vizard.Elizabeth@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>  
**Subject:** RE: England's Stove Works, Inc.

Mary et al,

We did a bit more digging into the regulation identifying the 60 day timeframe and believe it does **NOT** apply to this type of hearing. In particular,

40 CFR 60.539(h)(3) states:

(3) In any hearing requested under **paragraph (a)(2)** of this section the Presiding Officer must render the initial decision within 60 days of that request. Any appeal to the Administrator must be taken within 10 days of the initial decision, and the Administrator must render a decision in that appeal within 30 days of the filing of the appeal.

Paragraph (a)(2) states:

(2) In any case where the Administrator issues a notice of revocation **under § 60.533(n)(3)(ii)**, the manufacturer may request a hearing under this section with the time limits set out in § 60.533(n)(3)(ii).

§ 60.533(n)(3)(ii) states:

(n) **EPA compliance audit testing**, (n) Revocation of certification.

(ii)



(A) If emissions from a wood heater tested under paragraph (n)(2) of this section exceed the applicable emission limit, the Administrator will notify the manufacturer that certification is revoked for that model line.

(B) A revocation notice under paragraph (n)(3)(ii)(A) of this section will become final and effective 60 days after the date of written notification to the manufacturer, unless it is withdrawn, a hearing is requested under § 60.539(a)(2), or the deadline for requesting a hearing is extended.

(C) The Administrator may extend the deadline for requesting a hearing for up to 60 days for good cause.

(D) A manufacturer may extend the deadline for requesting a hearing for up to 6 months, by agreeing to a voluntary suspension of certification.

However, we did not issue a notice of revocation based on an EPA compliance Audit and therefore do not believe the 60 day timeframe applies.

*Bottom line* – We believe that 60 day requirement is solely based on revocations under the EPA compliance audit provision. However, the England’s revocation notice is under 60.539(a)(1)(iii) which does not fall into the EPA compliance audit provisions. Instead it falls under 60.533(l) (Note: I noticed the e-CFR says 60.533(1) so I hope that’s not correct. I did not check Westlaw to ensure it’s an “l” vs a “1”)

At this point, we believe there is no deadline on the Presiding Officer to make an initial determination under the provision for which we provided a notice of intent to revoke.

-

Please let us know if you have any thoughts or questions,  
Tony

Tony Miller, P.E.

Pronouns: he/him/his

Director (Acting), Monitoring, Assistance, and Media Programs Division  
Office of Compliance, Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Tel: 303-312-7161

Do you miss our interactions? Me too! Let's take the scheduling difficulties out of the equation - Sign up for us to have virtual coffee! <https://calendly.com/tmill/virtual-coffee>

**From:** Angeles, Mary <[Angeles.Mary@epa.gov](mailto:Angeles.Mary@epa.gov)>

**Sent:** Monday, November 15, 2021 8:47 AM

**To:** Sanchez, Rafael <[Sanchez.Rafael@epa.gov](mailto:Sanchez.Rafael@epa.gov)>; Miller, Anthony <[Miller.Anthony@epa.gov](mailto:Miller.Anthony@epa.gov)>; Scinta, Robert <[scinta.robert@epa.gov](mailto:scinta.robert@epa.gov)>

**Cc:** Wright, MichaelB <[Wright.MichaelB@epa.gov](mailto:Wright.MichaelB@epa.gov)>; Almase, Jennifer <[Almase.Jennifer@epa.gov](mailto:Almase.Jennifer@epa.gov)>

**Subject:** England's Stove Works, Inc.

Hi Rafael, Anthony: Any new developments re the transmittal of this case to the OALJ? As you indicated in our meeting Wed., the manufacturer will be re-testing emissions from its product today, November 15<sup>th</sup>, and submitting the results to EPA for consideration as soon as possible. Will that still proceed? At any rate, I think it's best the case be transmitted to us as soon as possible since the expedited 60-day turnaround would have started from the date of receipt of the request for hearing. I have copied Michael Wright, supervisory attorney, if he has any comments. Thank you all.

*Best,  
Mary Angeles (she/ella)  
Office of Administrative Law Judges*



**Be kind to the environment.  
Please do not print this email unless necessary.**

Standard USPS Mail:  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Mail Code 1900R  
Washington, DC 20460  
Direct: 202.564.6281  
Gen: 202.564.6255  
Cell: 202-809-6807  
Email: [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov)  
Electronic Filing: [https://yosemite.epa.gov/oa/eab/eab-alj\\_upload.nsf](https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf)

Overnight USPS/FedEx/UPS:  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Ronald Reagan Building  
1300 Pennsylvania Ave, NW  
Suite M1200  
Washington, DC 20004

## **Attachment 2**



**From:** [Almase, Jennifer](#)  
**To:** [Barnwell, Matt](#)  
**Subject:** FW: England's Stove Works, Inc.  
**Date:** Thursday, November 18, 2021 4:59:53 PM

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---

Jennifer Almase  
Attorney-Advisor | Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. | Mail Code 1900R  
Washington, D.C. 20460  
Telephone: 202-564-1170  
Email: [almase.jennifer@epa.gov](mailto:almase.jennifer@epa.gov)  
Pronouns: she/her/hers

---

**From:** Scinta, Robert <[scinta.robert@epa.gov](mailto:scinta.robert@epa.gov)>  
**Sent:** Monday, November 15, 2021 8:24 PM  
**To:** Wright, MichaelB <[Wright.MichaelB@epa.gov](mailto:Wright.MichaelB@epa.gov)>; Miller, Anthony <[Miller.Anthony@epa.gov](mailto:Miller.Anthony@epa.gov)>; Angeles, Mary <[Angeles.Mary@epa.gov](mailto:Angeles.Mary@epa.gov)>; Sanchez, Rafael <[Sanchez.Rafael@epa.gov](mailto:Sanchez.Rafael@epa.gov)>  
**Cc:** Almase, Jennifer <[Almase.Jennifer@epa.gov](mailto:Almase.Jennifer@epa.gov)>; Lischinsky, Robert <[Lischinsky.Robert@epa.gov](mailto:Lischinsky.Robert@epa.gov)>  
**Subject:** RE: England's Stove Works, Inc.

Hello Mike,

The company began testing today, so I believe it will take several days (this week) to complete the test. Rafael can correct me if I'm wrong but, after that, it typically takes at least a couple of weeks for the lab to complete the report and for the company to send the data to us. We would then need some time, probably a week, to review the data. Assuming they passed the test, we would issue a letter revoking the old certificate and issuing the company a new certificate. All things considered, it would probably take a month total to get to the point where we can issue the new certificate. That would be around mid-December.

Bob

Robert Scinta, P.E.  
Chief, Air Branch  
Monitoring, Assistance, and Media Programs Division  
Office of Compliance, Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Tel: 202-564-7171

**From:** Wright, MichaelB <[Wright.MichaelB@epa.gov](mailto:Wright.MichaelB@epa.gov)>  
**Sent:** Monday, November 15, 2021 11:06 AM  
**To:** Miller, Anthony <[Miller.Anthony@epa.gov](mailto:Miller.Anthony@epa.gov)>; Angeles, Mary <[Angeles.Mary@epa.gov](mailto:Angeles.Mary@epa.gov)>; Sanchez, Rafael <[Sanchez.Rafael@epa.gov](mailto:Sanchez.Rafael@epa.gov)>; Scinta, Robert <[scinta.robert@epa.gov](mailto:scinta.robert@epa.gov)>  
**Cc:** Almase, Jennifer <[Almase.Jennifer@epa.gov](mailto:Almase.Jennifer@epa.gov)>; Lischinsky, Robert <[Lischinsky.Robert@epa.gov](mailto:Lischinsky.Robert@epa.gov)>  
**Subject:** RE: England's Stove Works, Inc.

Hi Anthony,

If the company submits new test results today, what's the timeline for EPA's review and decision regarding that testing? If it is acceptable to EPA, what would be the next steps?

Kind regards,

Mike  
Michael B. Wright  
Supervisory Attorney-Advisor  
Office of Administrative Law Judges  
202-564-3247  
[wright.michaelb@epa.gov](mailto:wright.michaelb@epa.gov)

---

**From:** Miller, Anthony <[Miller.Anthony@epa.gov](mailto:Miller.Anthony@epa.gov)>  
**Sent:** Monday, November 15, 2021 10:57 AM  
**To:** Angeles, Mary <[Angeles.Mary@epa.gov](mailto:Angeles.Mary@epa.gov)>; Sanchez, Rafael <[Sanchez.Rafael@epa.gov](mailto:Sanchez.Rafael@epa.gov)>; Scinta, Robert <[scinta.robert@epa.gov](mailto:scinta.robert@epa.gov)>  
**Cc:** Wright, MichaelB <[Wright.MichaelB@epa.gov](mailto:Wright.MichaelB@epa.gov)>; Almase, Jennifer <[Almase.Jennifer@epa.gov](mailto:Almase.Jennifer@epa.gov)>; Lischinsky, Robert <[Lischinsky.Robert@epa.gov](mailto:Lischinsky.Robert@epa.gov)>  
**Subject:** RE: England's Stove Works, Inc.

Good morning Mary,

Yes, the team has drafted a letter. We are going through it this morning and hope to have it to you by end of the day or early tomorrow.

One question for you:

1. Is there a list of folks we should cc on the transmittal letter? In other words, should we include the manufacturer and any representation they have or just keep it to EPA internal?

Thank you,  
Tony

Tony Miller, P.E.  
Pronouns: he/him/his  
Director (Acting), Monitoring, Assistance, and Media Programs Division  
Office of Compliance, Office of Enforcement and Compliance Assurance



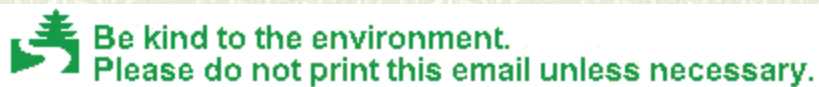
U.S. Environmental Protection Agency  
Tel: 303-312-7161

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**Cc:** Wright, MichaelB <[Wright.MichaelB@epa.gov](mailto:Wright.MichaelB@epa.gov)>; Almase, Jennifer <[Almase.Jennifer@epa.gov](mailto:Almase.Jennifer@epa.gov)>  
**Subject:** England's Stove Works, Inc.

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*Best,  
Mary Angeles (she/ella)  
Office of Administrative Law Judges*



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