

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

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

COMPLAINANT’S INITIAL PREHEARING EXCHANGE

Pursuant to the hearing and appeal procedures set forth in 40 C.F.R. pt. 60 subpt. AAA (“Rules of Practice” or “Rules”) and pursuant to Chief Administrative Law Judge Susan L. Biro’s December 2, 2021 Prehearing Order (“Prehearing Order”), Complainant, the United States Environmental Protection Agency (“EPA”), hereby sets forth its Initial Prehearing Exchange. Complainant respectfully reserves its right to supplement this Initial Prehearing Exchange if Complainant learns that the information is incomplete, inaccurate or outdated.

1(A). POTENTIAL WITNESSES

Complainant may call any or all of the following witnesses at the evidentiary hearing in this matter. Complainant may supplement this list, upon adequate notice to the Tribunal and to Respondent, should Respondent’s Prehearing Exchange or other information reveal the need for additional or alternative witnesses.

1. Rafael Sanchez, EPA, Office of Enforcement and Compliance Assurance (“OECA”), Office of Compliance (“OC”), Monitoring, Assistance, and Media Programs Division (“MAMPD”), Air Branch (“AB”). Dr. Sanchez is a Senior Environmental Engineer with EPA’s Air Branch. He holds a Ph.D. in Environmental Science and Public Policy, from George Mason University; a Master Degree in Technology Management - Environmental & Waste Management, from the University of Maryland; and two Bachelor of Science degrees in Chemistry and Chemical Engineering, from the University of Maryland. Dr. Sanchez manages EPA’s Federal Wood Heater Program; issued the certification for England’s 15-SSWS01, 50-SHSSW01, 50-TRSSW01, 15-W03, 50-SHW03, and 50-TRW03 model wood heaters (Subject Products); and issued the 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 (Revocation Notice). He will testify as a FACT WITNESS regarding his work in EPA’s Federal Wood Heater Program, generally, as well as his work relating to the Subject Products.
2. Robert Scinta, EPA, Office of Enforcement and Compliance Assurance (“OECA”), Office of Compliance (“OC”), Monitoring, Assistance, and Media Programs Division (“MAMPD”), Air Branch (“AB”). Mr. Scinta is a Supervisory Environmental

Engineer and the Chief of the Air Branch. He holds a Master's Degree in Environmental Engineering, from Northeastern University; and a Bachelor of Science in Interdisciplinary Engineering Management, from Clarkson University. Mr. Scinta has overseen and will testify as a FACT WITNESS regarding the Agency's review of the certificate held by England's for the Subject Products; the process by which England's was issued the Major Deficiency Letter; and the Agency's interest in enforcing the regulations and revoking England's certification for the Subject Products.

3. Steffan Johnson, EPA, Office of Air and Radiation ("OAR"), Office of Air Quality Planning and Standards ("OAQPS"), ("AQAD"), Air Branch ("MTG"). Mr. Johnson is a Supervisory Environmental Scientist and the Leader of the Measurement Technology Group. He is the Administrator's delegated official for approving alternate test methods for compliance with regulations in subpart 59, 60, 61, 63, and 65. He holds a Bachelor of Science in Natural Science/Earth Science from Western Oregon University. Mr. Johnson will testify as a FACT AND EXPERT WITNESS regarding EPA's certification process, generally, and the certification of the Subject Products, specifically; the Agency's review of the Subject Product certification and identification of deficiencies; the wood heater test methods, generally, and the testing of the Subject Products, specifically, including the retesting following the Revocation Notice; and the general emissions implication of the deficiencies.

1(B). COMPLAINANT'S EXHIBITS

See below for a list of the exhibits that Complainant may introduce at hearing. Copies of the exhibits are provided in tandem with this Initial Prehearing Exchange. Each exhibit is labeled as prescribed by the Prehearing Order, and the pages of each exhibit are numbered in the manner prescribed by the Prehearing Order.

1. Resume of Dr. Rafael Sanchez
2. Resume of Mr. Robert Scinta
3. Resume of Mr. Steffan Johnson
4. ASTM E2515: Standard Test Method for Determination of Particulate Matter Emissions Collected by a Dilution Tunnel
5. ASTM E2780: Standard Test Method for Determining Particulate Matter Emissions from Wood Heaters
6. Test Method 28
7. Test Method 28r
8. England Stove Works. Inc. Test Report, 5/10/17, prepared by Ken Slater for Inertek
9. Run 4: category 2 Test Data
10. Run 6: category 4 Test Data
11. Run 9: category 1 Test Data
12. Test run - ASTM E2780 4
13. Test run - ASTM E2780 6
14. Test run - ASTM E2780 9
15. MTG Report Review Findings

16. August 2, 2021 email from R Sanchez to Respondent
17. August 2, 2021 Major Deficiency Letter
18. September 30, 2021 email from R Sanchez to Respondent
19. September 30, 2021 Revocation Notice
20. EPA Wood Heater Program, 2020 Certification Checklist for Wood/Pellet Stoves, Hydronic Heaters and Forced-Air Furnaces - Part A (New Certifications)
21. Comprehensive Certification Test Review Checklist - Part B (New Certifications and ADEC)

1(C). TIME NEEDED FOR HEARING AND TRANSLATION SERVICE NEEDS

At this time, Counsel for Complainant estimates that the time needed to present Complainant's case in chief will require approximately 2 days. Complainant does not anticipate that translation services will be necessary in regard to the testimony of any of its witnesses.

2(A). SERVICE OF THE REVOCATION NOTICE AND OTHER DOCUMENTS

The Revocation Notice was emailed to Respondent by Mr. Sanchez on September 30, 2021. A copy of both the transmittal email and the Revocation Notice are included in the exhibits filed as an attachment hereto (Complainant's Exhibits 17 and 18). The Revocation Notice did not itself include any attachments or appendices.

2(B). BASES FOR FACTUAL ALLEGATIONS DENIED/NOT ADMITTED

The Prehearing Order calls for Complainant to provide as part of its Initial Prehearing Exchange "a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the Revocation Notice." Prehearing Order at 3. Below is Complainant's brief narrative statement. It is supported by the same documents included as exhibits above.

A post-certification review conducted by EPA's Office of Air Quality Planning and Standards found that the certification test submitted for the Subject Products was invalid because it was not conducted in accordance with the 2015 Wood Heater Rule, 40 C.F.R. § 60.539, and the applicable test method.

Specifically, the Primary Identified Problem or Irregularity was that the certification test used test fuel pieces that were not within the allowable moisture range. The American Society for Testing and Materials (ASTM) Test Method E2780, Section 9.4.1.2(1), states that the average fuel moisture content for each test fuel piece used to construct the test fuel cribs (excluding test fuel spacers) must be between 19 and 25 percent dry basis. However, the Subject Products' certification test was conducted using five test fuel pieces with moisture contents between 18.07 and 18.47 percent (Runs 4, 6, and 9). Moisture content outside the specified range can make a significant difference in emissions and efficiency. Drier wood tends to lead to cleaner emissions. Therefore, because the certification test did not use test fuel pieces within the allowable moisture content range, EPA has determined that the certification test is invalid.

In a letter dated August 2, 2021, EPA notified Respondent and offered Respondent an opportunity to retest the Subject Products without a formal revocation, if Respondent agreed to cease advertisement and sale and notify distributors and retailers to cease sales. Respondent conveyed that it did wish to retest the Subject Products (and has since begun to do so) but did not agree to cease sales or notify distributors and retailers or submit a written statement of such a commitment by the date specified.

Therefore, on September 30, 2021, the United States Environmental Protection Agency (EPA or Agency) formally notified Respondent of its proposed determination and initiated the revocation of the Certificate of Compliance for the Subject Products. See 2015 Wood Heater Rule at 40 C.F.R. § 60.533(l)(1)(ii) and (vii).

Respondent has requested this hearing, pursuant to the 2015 Wood Heater Rule, 40 C.F.R. § 60.539.

Complainant seeks to revoke this certification based on its determined that the Subject Products do not comply with the requirements of 40 C.F.R. § 60, subpart 60. This determination is based on all available evidence, including a finding that the certification test was not valid and the failure of the laboratory to test the Subject Products using the specified methods. See 40 CFR 60.533(l)(1)(ii) and (vii).

Respectfully submitted,

Caitlin Meisenbach

Caitlin Kelleher Meisenbach
Attorney Advisor
Monitoring, Assistance, and Media Programs
Division
Office of Compliance
Office of Enforcement and Compliance Assurance

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 Complainant's Initial Prehearing Exchange, dated January 7, 2021, was sent this day to the following parties in the manner indicated below.

Caitlin Meisenbach

Caitlin Kelleher Meisenbach
Attorney Advisor
Monitoring, Assistance, and Media Programs
Division
Office of Compliance
Office of Enforcement and Compliance Assurance
Email: meisenbach.caitlin@epa.gov

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
oaljfilng@epa.gov

Copies by Electronic Mail to:

Chris Terrell
COO
England's Stove Works, Inc.
Email: cterrell@englanderstoves.com
For Respondent

Dated: January 7, 2021
Washington, D.C.