

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

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

**MEMORANDUM OF LAW IN SUPPORT OF COMPLAINANT’S MOTION FOR
ACCELERATED DECISION**

I. INTRODUCTION

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 February 16, 2022 Hearing Order (“Hearing Order”), Complainant, the United States Environmental Protection Agency (“EPA”), hereby submits this Memorandum of Law in support of its Motion for Accelerated Decision.

This memorandum will establish that an accelerated decision is appropriate in this case. The only material fact is that the certification testing was invalid. There is no genuine dispute as to that fact. Respondent has not met its burden for any affirmative defense.

It is not necessary to wait for the retesting results before revoking the certificate, and prompt revocation is necessary to halt the sales of the Subject Products and safeguard public health. Without revocation, if retesting fails there will be no recourse for the units sold in the interim. Retesting has failed twice so far. If retesting succeeds after revocation, a new certificate will be issued, and sales may resume.

II. STATUTORY AND REGULATORY BACKGROUND

Through the Clean Air Act, Congress charged the EPA “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). Promulgated under Clean Air Act section 111, the Wood Heater Rule is aimed at achieving that purpose:

[P]articulate pollution from wood heaters is a significant national air pollution problem and human health issue. Residential wood smoke contains fine particles with an aerodynamic diameter of 2.5 micrometers or less (PM2.5), carbon monoxide (CO), volatile organic compounds (VOC), toxic air pollutants (e.g., benzene and formaldehyde), and climate-forcing emissions (e.g., methane and black carbon). Residential wood smoke can contribute to unhealthy levels of PM2.5 in many

neighborhoods nationwide, including in minority and low-income neighborhoods, and impact people in their homes.

See 80 Fed. Reg. 13672, 13673 (Mar. 16, 2015). Under 40 C.F.R. § 60.533(a), each affected wood heater must be certified to comply with the applicable emission standards and other requirements. For each model line, compliance with applicable emission standards of § 60.532 must be determined based on testing of representative affected wood heaters within the model line.

Further, § 60.533(b) provides that any manufacturer of an affected wood heater must apply to the Administrator for a certificate of compliance for each model line. The application must be signed by a responsible representative and must contain, according to § 60.533(b)(5), “all documentation pertaining to a valid certification test,” including the complete test report and, for all test runs, raw data sheets, laboratory technician notes, calculations and test results.

The regulations define “valid certification test” as one that “was conducted in accordance with the test methods and procedures specified in § 60.534.” 40 C.F.R. § 60.531(4). Respondent opted to use the crib wood test in § 60.534(a)(1)(i), which specifies that EPA Method 28R is to be used. Method 28R indicates that ASTM Test Method 2780 applies. CX 07. And ASTM Test Method 2780 requires that “the average fuel moisture for each test fuel piece used to construct the test fuel cribs (excluding test fuel spacers) shall be between 19 and 25 % dry basis.” CX 05.

The regulations specify that it is the “manufacturer,” not the test lab or third-party certifier, that must meet the requirements for certification. 40 C.F.R. § 60.533(f). Indeed, the regulations explicitly state that the manufacturer remains responsible for compliance despite any errors by the test lab or third-party certifier.¹

The Wood Heater Rule establishes the various bases upon which a certificate may be revoked. See 40 C.F.R. § 60.533(l). One of these bases for revocation is “A finding that the certification test was not valid”. 40 C.F.R. § 60.533(l)(1)(ii). Revoking invalid certificates is an important part of EPA’s responsibilities under the Clean Air Act and is necessary for fulfilling Congress’s intent of protecting public health.

III. STANDARD OF REVIEW FOR ACCELERATED DECISION

In keeping with the Hearing Order, EPA is titling this motion a “Motion for Accelerated Decision”, as is common under the proceedings before the Office of Administrative Law Judges pursuant to 40 C.F.R. § 22; such motions are analogous to motions for summary judgement

¹ 40 C.F.R. § 60.533(f)(1)(v) (“The submission [referring to the manufacturer’s application for certification] also must include a statement signed by a responsible official of the manufacturer or authorized representative that the manufacturer has complied with and will continue to comply with all requirements of this subpart for certificate of compliance and that **the manufacturer remains responsible for compliance regardless of any error by the test laboratory or third-party certifier.**”) (Emphasis added.)

under the Federal Rules of Civil Procedure.² The Rules of Practice for this hearing do not address motions for accelerated decision or summary judgment. However, the Federal Rules of Civil Procedure (FRCP) may serve as a guide, as endorsed by Federal courts. Order on Complainant's Motion for Partial Accelerated Decision at 2, In the Matter of Great Lakes Dredge, LLC (2021) (No. MPRSA-04-2019-7500), citing *Puerto Rico Aqueduct & Sewer Auth. v. EPA*, 35 F.3d 600, 607 (1st Cir. 1994), *cert. denied*, 513 U.S. 1148 (1995) (rejecting the argument that federal court rulings on motions for summary judgment are “inapposite” to administrative proceedings).

The standard for motions for summary judgment under Fed. R. Civ. P. 56 states that “the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(A).

As to materiality, the substantive law will identify which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Disputes over facts “that might affect the outcome of the suit under the governing law” will preclude the entry of summary judgment. *Id.* Essentially, this materiality inquiry is governed by “the substantive law’s identification of which facts are critical and which facts are irrelevant.” *Id.*

Summary judgment will be not entered if the dispute about a material fact is “genuine,” that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* In other words, the genuine inquiry only requires “that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judgment to resolve the parties’ differing versions of the truth at trial.” *Id.* at 248-49.

The burden of showing that no genuine issue of material fact exists falls to the party moving for summary judgment. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). In considering a motion for summary judgment, the court must draw all justifiable inferences in favor of the nonmoving party. *See Anderson*, 477 U.S. at 255; *see also Adickes*, 398 U.S. at 158-59. Summary judgment is inappropriate “when contradictory inferences may be drawn from the evidence.” *Rogers Corp. v. EPA*, 275 F.3d 1096, 1103 (D.C. Cir. 2002), However, the nonmoving party cannot defeat the motion without offering “any significant probative evidence tending to support” its position. *See Anderson*, 477 U.S. at 256; *see also First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968).

In responding to a pleading, a party must “affirmatively state any avoidance or affirmative defense” enumerated in Fed. R. Civ. P. 8(c)(1). In pleading an affirmative defense, a defendant must comply with Rule 8(a)’s “short and plain” statement requirement to give the opposing party notice of the affirmative defense and a chance to rebut it. *Brent v. Wayne Cnty. Dep’t. of Hum. Servs.*, 901 F.3d 656, 680 (6th Cir. 2018). “The burden of persuasion as to certain elements of a plaintiff’s claim may be shifted to defendants, when such elements can be fairly characterized as affirmative defenses or exemption.” *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 57 (2005). Moreover, the defendant may establish an affirmative defense “when it has produced credible

² Under 40 C.F.R. § 22.20(a), an accelerated decision may be rendered where “no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.”

evidence--using any of the materials specified in Rule 56(c)--that would entitle it to a directed verdict if not controverted at trial." *Brinkley v. Harbour Recreation Club*, 180 F.3d 598, 614 (4th Cir. 1999).

IV. FACTUAL BACKGROUND

In its September 30, 2021 Notice of Proposed Determination to Revoke Certificate of Compliance Number 193-19 (Revocation Notice), EPA asserted that (1) a post-certification review found the certification test submitted for the 15-SSW01, 50-SHSSW01, 50-TRSSW01, 15-W03, 50-SHW03, and 50-TRW03 Wood Heater Models (Subject Products) was not conducted in accordance with the Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (Wood Heater Rule) and the applicable test method; (2) as a result, EPA found both the certification test and the Certification of Compliance to be invalid; and (3) therefore EPA was initiating revocation of the Certificate of Compliance for the Subject Products. Respondent requested this hearing, under 40 C.F.R. § 60.539(a)(1)(iii).

A. CERTIFICATION TESTING WAS INVALID

The test report for the Subject Products shows that the average moisture level for at least five pieces of fuel³ used across three different test runs was outside of the allowable range, as follows:

1. Piece 6 from Test Run 4:⁴ average fuel moisture of 18.37%
2. Piece 3 from Test Run 6:⁵ average fuel moisture of 18.13%
3. Piece 2 from Test Run 9:⁶ average fuel moisture of 18.47%
4. Piece 3 from Test Run 9: average fuel moisture of 18.30%
5. Piece 7 from Test Run 9: average fuel moisture of 18.07%

In rounding these measurements, EPA follows its “Clean Air Act National Stack Testing Guidance” (April 27, 2009).⁷ Under that guidance, all 5 of those measurements round down to 18% and so are outside the allowable range. Therefore, Respondent failed to submit documentation pertaining to a valid certification test, as required by § 60.533(b)(5).

³ The average fuel moisture for Piece 6 in Run 6 was 18.87%, and for Piece 4 in Run 9 it was 18.57%. See CX 13 and 14. Under EPA’s National Stack Testing Guidance, those will round up to 19%.

⁴ CX 12.

⁵ CX 13.

⁶ CX 14.

⁷ Available at: https://www.epa.gov/sites/default/files/2013-09/documents/stacktesting_1.pdf

B. SUBSEQUENT TESTING HAS REPEATEDLY FAILED

Furthermore, subsequent testing of the original test unit and of a unit that is similar in all material respects both failed to produce test data demonstrating compliance. Testing of a new unit from this model line in September through November of 2021 failed to demonstrate compliance because of problems with the bimetal spring. CX 23.⁸ Following that testing failure, Respondent requested permission to unseal and retest the original unit. CX 24. EPA granted permission to unseal the original unit, and the testing of the original unit in January 2022 also failed to demonstrate compliance because it did not operate correctly, potentially because of rusted components.⁹

V. COMPLAINANT IS ENTITLED TO ACCELERATED DECISION

A. Invalid Certification Test is an Identified and Sufficient Basis for Revocation under 40 C.F.R. § 60.533(l).

Under 40 C.F.R. § 60.533(l), there are a number of identified bases for revocation, which are to be considered with “all available evidence.”¹⁰ One of the identified criteria is “a finding that the certification test was invalid,” and that criterion should be evaluated with “all available evidence.” (emphasis added) 40 C.F.R. § 60.533(l). EPA is not required await additional evidence where it has sufficient basis for revocation. There is no need to wait for the company to conduct yet another round of retesting before concluding that the original certification test was invalid.

B. Uncontroverted Facts Establish that the Certification Test was Invalid

It is undisputed that the moisture levels for the pieces of crib wood used for the certification testing were outside of the specified moisture range. That undisputed fact is enough to establish the criterion for revocation in 40 C.F.R. § 60.533(l)(1)(ii). No other evidence is available to weigh against revocation and the regulations do not require that revocation be delayed (allowing sale of additional units under an invalid certificate) while additional data is generated.

C. Respondent’s Affirmative Defenses Fail as a Matter of Law

⁸ Additional information regarding the November testing has been received since the date of EPA’s Rebuttal Prehearing Exchange. See Attachment 3.

⁹ Notice that the second retesting attempt was being discontinued was received too late on January 28 for inclusion in EPA’s Rebuttal Prehearing Exchange. See Attachments 1 and 2 for background.

¹⁰ The list of criteria in § 60.533(l)(1)(i-vii) are joined with the word “or”, indicating that they are alternatives. They also must be read as alternatives, not a list of simultaneous requirements, because requiring them all (reading the list with an “and” instead of an “or”) would be to require an illogically unlikely confluence of circumstances. EPA is not required to satisfy all of the listed criteria. I.e., the inclusion of retesting data in § 60.533(l)(1)(i) does not indicate that retesting data is necessary for revocation.

Respondent has failed to properly plead any affirmative defenses enumerated in Fed. R. Civ. P. 8(c) with particularity.

Respondent claims to have complied with all regulatory requirements. This is not an affirmative defense. This is an ordinary defense, and it is also not supported by the facts. The undisputed fact of the moisture levels of the pieces of crib wood used in the certification testing establish that the certification test was invalid, and so Respondent failed to submit documentation pertaining to a valid certification test, as required by 40 C.F.R. § 60.533(b)(5). The Clean Air Act is a strict liability statute. A violator's state of mind can be considered in setting a penalty, but not in determining compliance. Initial Decision at 35, In the Matter of Taotao USA Inc., Taotao Group Co., Ltd. and Jinyun Cnty. Xiangyuan Indus. Co., Ltd. (2018) (No. CAA-HQ-2015-8065).

Respondent also claims that revocation would be "unfair." It is unclear what affirmative defense this is. Equitable estoppel will not apply here, because Respondent has failed to provide evidence showing or even to make any claim of affirmative misconduct by EPA, which is required to prevail on an estoppel defense against the government. Initial Decision, In the Matter of Morton Friedman & Schmitt Construction Co. (2002) (No. CAA-09-99-0004), citing *Yerger v. Robertson*, 981 F.2d 460, 466 (9th Cir. 1992). Respondent did not produce "credible evidence" that would entitle it to a directed verdict if not controverted at trial. *See Brinkley*, 180 F.3d at 614.

Therefore, Respondent has failed to make any assertion that can be "fairly characterized" as an affirmative defense enumerated in Rule 8(c)(1) and thus has failed to meet the "short and plain" statement requirement that would provide the government with fair notice of a defense. *See Fed. R. Civ. P. 8(a); see also Schaffer*, 546 U.S. at 57.

D. Delaying a Decision to Wait for Additional Testing is Neither Required by Law nor Justified by the Facts

1. Delaying a Decision on Revocation is Not Necessary Under the Law

The Wood Heater Rule does not require any delays to revocation for additional testing. As soon as the Administrator finds that the certification test was not valid, he may revoke certification. See above in section V. A. for further discussion.

2. Delaying a Decision on Revocation is Not Justified by the Facts

Here, the uncontroverted facts establish that the certification test was not conducted in accordance with the test method and so was invalid. Furthermore, testing since the Revocation Notice has failed to demonstrate compliance. There is no factual basis to allow continued sales of the Subject Products.

3. Delaying a Decision on Revocation may Cause Irrevocable Harm to the Environment

The Wood Heater Rule recognizes that the industry is comprised of primarily small businesses, yet finds that the costs are greatly outweighed by the public health benefits:

The potential impact on this industry that is comprised of over 90 percent small businesses was a concern to the EPA, and we have minimized these potential impacts to the degree possible while still achieving significant emission reductions...The health benefits associated with these regulations are substantially greater than the cost to manufacture cleaner, lower-emitting appliances. In fact, the public health benefits of this rule outweigh the costs by more than 100 times.

See 80 Fed. Reg 13672, 13673 (Mar. 16, 2015). The environmental consequences of residential woodsmoke are significant:

Nationally, residential wood combustion accounts for 44 percent of total stationary and mobile polycyclic organic matter (POM) emissions, which accounts for nearly 25 percent of all area source air toxics cancer risks and 15 percent of noncancer respiratory effects. Residential wood smoke causes many counties in the U.S. to either exceed the EPA's health-based NAAQS for fine particles or places them on the cusp of exceeding those standards. For example, in places such as Keene, New Hampshire; Sacramento, California; Tacoma, Washington; and Fairbanks, Alaska; wood combustion can contribute over 50 percent of daily wintertime fine particle emissions. The concerns are heightened because wood stoves, hydronic heaters, and other heaters are often used around the clock in many residential areas.

See 80 Fed. Reg 13672, 13675 (Mar. 16, 2015). EPA is responsible for preventing sales of noncompliant products in order to safeguard the environment. Revocation of invalid certificates is a necessary component of that responsibility.

To allow sales to continue in the interim is to allow additional units to be placed into service with no recourse for their removal if their emissions levels are never demonstrated to be compliant. In 2020 and 2021, Respondent sold an average of 279 Subject Products per month. Revocation is the only option to halt sales of the Subject Products. There is no regulatory mechanism to undo sales made to homeowners while revocation is pending, and, once sold, units will operate for decades to come. Any delay to the revocation of an invalid certificate has the potential to cause decades of impermissible particulate matter pollution and its associated health impacts. Halting the sales of the Subject Products is a matter of urgency, and revocation is the only path to do so.

Even if retesting eventually succeeds, prompt revocation will have been the correct choice. In all other circumstances, regulated wood heaters are not allowed to be sold while they await valid certification testing. There is no legal basis for allowing the Subject Products to be sold while Respondent makes a fourth attempt at obtaining a valid certification test result.

VI. CONCLUSION

There are no genuine issues of material facts to prevent the prompt revocation of the certificate for the Subject Products. Prompt revocation is necessary to halt sales, even during any future testing. Complainant respectfully requests that the court issue an accelerated decision in favor of revocation based on the uncontroverted facts establishing the invalidity of the certification testing and the urgent need to prevent additional wood heaters to be placed into service, where they will remain for decades, emitting unknown levels of pollution.

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 Memorandum of Law, dated February 28, 2022, 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:

Allison Watkins Mallick
Counsel for England's Stove Works, Inc.
Email: allison.mallick@bakerbotts.com
For Respondent

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

Dated: February 28, 2022
Estero, Fla.

ATTACHMENT 1:

January 24, 2022 Email from Brian Ziegler, Inertek

From: [Brian Ziegler Intertek](#)
To: [Johnson, Steffan](#); [Sanchez, Rafael](#); [Brashear, Angelina](#); [Chris Terrell](#); [Toney, Mike](#)
Cc: [Scinta, Robert](#); [Meisenbach, Caitlin](#); [Kenneth Slater Intertek](#); [Brian Brunson Intertek](#); [Justin Buck Intertek](#); ["John Wray"](#)
Subject: RE: England's Stove Video
Date: Monday, January 24, 2022 4:15:44 PM
Attachments: [image001.png](#)
[image004.jpg](#)

Hello All,

The test is complete and the air shutter spring did not activate, so the air shutter never fully closed. The final burn rate was 1.94 kg/hr and the emissions after the test was 4.3 g/hr.

England's Stove is planning to run another Cat 1 test tomorrow on the unsealed stove.

I did solve our computer issues, so you should be able to see the video feed tomorrow.

Same plan for the video, I will notify you about a half hour before the test. You should see an icon pop up for Teams when I start the video. That would let you know the video has started. I will try and send an email out as well to let everyone know the video has started. Sorry again for the video today.

Please let me know if there are any questions or concerns.

Thank you,

Brian Ziegler
**Technical Team Leader - Hearth
Building & Construction**

Direct 608-824-7425
Office 608-836-4400 ext. 7425
Email brian.ziegler@intertek.com
www.intertek.com

Intertek, 8431 Murphy Drive, Middleton, WI 53562



From: Brian Ziegler Intertek
Sent: Monday, January 24, 2022 12:13 PM
To: Johnson, Steffan <johnson.steffan@epa.gov>; Sanchez, Rafael <sanchez.rafael@epa.gov>; Brashear, Angelina <Brashear.Angelina@epa.gov>; Chris Terrell <cterrell@englanderstoves.com>; Toney, Mike <Toney.Mike@epa.gov>
Cc: Scinta, Robert <scinta.robert@epa.gov>; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>
Subject: RE: England's Stove Video

Hi Stef and Angelina,

I was told that if I sign-in to two different computers, that I can still control the video, but that doesn't seem to be true. The person who knows how this works is out of the office today, so I'm not sure if I'm going to be able to get the video feed working before the end of the test.

To give an update on the test running now, this was set-up to be a Cat 1 test, the spring did not trip the air shutter, so the stove did not go to the needed Cat 1 air setting. We are about 1.5 hours into the test and the test load is nearly fully burned. It might last another hour, which is a Cat 4 burn rate.

I will try and get the video working properly for the next test runs.

I apologize for the disruption.

Thank you,

Brian Ziegler
Technical Team Leader - Hearth
Building & Construction

Direct 608-824-7425
Office 608-836-4400 ext. 7425
Email brian.ziegler@intertek.com
www.intertek.com

Intertek, 8431 Murphy Drive, Middleton, WI 53562



From: Johnson, Steffan <johnson.steffan@epa.gov>
Sent: Monday, January 24, 2022 11:46 AM
To: Brian Ziegler Intertek <brian.ziegler@intertek.com>; Sanchez, Rafael <sanchez.rafael@epa.gov>;
Brashear, Angelina <Brashear.Angelina@epa.gov>; Chris Terrell <cterrell@englanderstoves.com>; Toney,
Mike <Toney.Mike@epa.gov>
Cc: Scinta, Robert <scinta.robert@epa.gov>; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>
Subject: [External] RE: England's Stove Video

Brian,

Are you still intending to send out a link today?

Thank you,

Stef

From: Brian Ziegler Intertek <brian.ziegler@intertek.com>
Sent: Monday, January 24, 2022 11:07 AM
To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>; Johnson, Steffan <johnson.steffan@epa.gov>; Brashear, Angelina <Brashear.Angelina@epa.gov>; Chris Terrell <cterrell@englanderstoves.com>; Toney, Mike <Toney.Mike@epa.gov>
Cc: Scinta, Robert <scinta.robert@epa.gov>; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>
Subject: England's Stove Video

Hello All,

We are about a half an hour from starting the test for England's Stove model 15-SSW01.

I will start the video right before we add the test load to the stove.

Thank you,

Brian Ziegler
Technical Team Leader - Hearth
Building & Construction

Direct 608-824-7425
Office 608-836-4400 ext. 7425
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[http://www.intertek.com \[gcc02.safelinks.protection.outlook.com\]](http://www.intertek.com [gcc02.safelinks.protection.outlook.com])

This message is from an EXTERNAL SENDER - please be CAUTIOUS, particularly with links and attachments.

ATTACHMENT 2:

January 28, 2022 Email from Chris Terrell, for Respondent

From: [Chris Terrell](#)
To: [Sanchez, Rafael](#); "[John Wray](#)"
Cc: "[Brian Ziegler Intertek](#)"; "[Kenneth Slater Intertek](#)"; [Johnson, Steffan](#); [Scinta, Robert](#); [Lischinsky, Robert](#); "[Brian Brunson Intertek](#)"; [Cheung, Tiffany](#); allison.mallick@bakerbotts.com; [Meisenbach, Caitlin](#)
Subject: RE: Follow up -15-SSW01- Resealing of Test Heater and Performance Data Submission to EPA
Date: Friday, January 28, 2022 4:50:14 PM
Attachments: [104805205MID-006 15-SSW01 Emissions Report - Non-Compliance - Signed.pdf](#)

Dr. Sanchez,

As requested, attached is the testing results from the W01 retest dated 11/16/21 through 11/23/21. The test run earlier this week is not included as according to Intertek the filters have not dried sufficiently to create final numbers. That testing was discontinued because a component of the stove (the trigger) was not performing as designed due to rust on the part. We are working with the lab to determine the next steps and testing dates.

Included in the test report attached are runs 9 through 12 that were different damper controls from the original W01 that was approved by the EPA. These tests were run to see what the difference was between the bimetal spring coil damper control and just using a manual damper control, not for the purposes of certification.

Please let me know if you need anything further.

Regards,

Chris

From: Sanchez, Rafael <Sanchez.Rafael@epa.gov>
Sent: Friday, January 28, 2022 2:42 PM
To: John Wray <jwray@englanderstoves.com>
Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>; Cheung, Tiffany <tiffany.cheung@bakerbotts.com>; allison.mallick@bakerbotts.com; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>; 'Chris Terrell' <cterrell@englanderstoves.com>
Subject: RE: Follow up -15-SSW01- Resealing of Test Heater and Performance Data Submission to EPA
Importance: High

Mr. Wray,

Thank you for your email. We are looking forward to seeing the performance test data and reasoning for stopping the certification test this afternoon.

Rafael Sanchez, Ph.D.
Wood Heater Program Manager
Air Branch
Monitoring, Assistance, and Media Programs Division
Office of Compliance
U.S. Environmental Protection Agency (EPA)
Room 7149-D
1200 Pennsylvania Ave., NW
MS:2227A
Washington, DC 20460
Ph. 202-564-7028
Teleworking on Mondays, Wednesdays, and Fridays, ph. 703-389-6568

Questions about Wood Heaters or Certifications? Please send them to WoodHeaterReports@epa.gov

Are you looking for a wood heater or central heater? Please try our fully searchable [EPA Certified Wood Heater Database \(https://www.epa.gov/compliance/epa-certified-wood-heater-database\)](https://www.epa.gov/compliance/epa-certified-wood-heater-database).

From: John Wray <jwray@englanderstoves.com>
Sent: Thursday, January 27, 2022 9:31 AM
To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>
Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>; Cheung, Tiffany <tiffany.cheung@bakerbotts.com>; allison.mallick@bakerbotts.com; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>; 'Chris Terrell' <cterrell@englanderstoves.com>
Subject: RE: Follow up -15-SSW01- Resealing of Test Heater and Performance Data Submission to EPA

Rafael,

You're welcome for the update. Intertek is going to wrap up the stove in accordance to what you sent me.

I see that you want the information sent to you today, I am at Intertek so I can't do any of that, Chris is getting all of this together and will try to get this to you today, but he is out of the office and if not I know he said he will definitely be able to get it all to you by end of day tomorrow if that is okay.

Let us know if this will be okay

Thanks

John Wray

From: Sanchez, Rafael [<mailto:Sanchez.Rafael@epa.gov>]

Sent: Wednesday, January 26, 2022 5:35 PM

To: John Wray <jwray@englanderstoves.com>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>; Cheung, Tiffany <tiffany.cheung@bakerbotts.com>; allison.mallick@bakerbotts.com; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>; 'Chris Terrell' <cterrell@englanderstoves.com>

Subject: RE: Follow up -15-SSW01- Resealing of Test Heater and Performance Data Submission to EPA

Importance: High

Mr. Wray,

Thank you for the update on the certification test. The original test heater must be resealed in accordance with 40CFR Part 60.535(a)(2)(vii). See below:

Agree to seal any wood heater on which it performed certification tests, immediately upon completion or suspension of certification testing, by using a laboratory-specific seal.

In addition, England's is required to:

1. Explain why the current certification test was suspended/aborted, which resulted in switching to another device.
2. Submit all performance test data derived from the suspended/aborted certification test, including the performance test data from the initial certification test in November 2021. This request is consistent with 40CFR Part 60.535(a)(2)(viii). See below:

Agree to immediately notify the Administrator of any suspended tests through email and in writing, giving the date suspended, the reason(s) why, and the projected date for restarting. The laboratory must submit the operation and test data obtained, even if the test is not completed.

Please submit the above-referenced information to the EPA by COB tomorrow, January 27. If you have questions, please let me know.

Rafael Sanchez, Ph.D.
Wood Heater Program Manager
Air Branch
Monitoring, Assistance, and Media Programs Division
Office of Compliance
U.S. Environmental Protection Agency (EPA)
Room 7149-D
1200 Pennsylvania Ave., NW
MS:2227A
Washington, DC 20460
Ph. 202-564-7028
Teleworking on Mondays, Wednesdays, and Fridays, ph. 703-389-6568

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From: John Wray <jwray@englanderstoves.com>
Sent: Wednesday, January 26, 2022 8:59 AM
To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>; 'Chris Terrell' <cterrell@englanderstoves.com>
Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>
Subject: RE: Follow up -15-SSW01

Rafael,

We will be switching to the Manual Damper Stove to test and will be taking the EPA Test Stove off of the test stand here at Intertek, should Intertek re-wrap and crate this stove as it was when it came here or does that not matter now since we are switching stoves? I know we discussed, but I want to make sure one last time before we move forward

Thanks

John Wray

From: Sanchez, Rafael [<mailto:Sanchez.Rafael@epa.gov>]

Sent: Friday, January 21, 2022 11:08 AM

To: Chris Terrell <cterrell@englanderstoves.com>; 'John Wray' <jwray@englanderstoves.com>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>

Subject: RE: Follow up -15-SSW01

Importance: High

Chris,

Thank you for the information. We would like to convey additional information to England's if you choose to test a brand new appliance w/o a spring-damper. To that end, we will set up a call today, if available. Please provide me with your availability. Thanks.

Rafael Sanchez, Ph.D.
Wood Heater Program Manager
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From: Chris Terrell <cterrell@englanderstoves.com>

Sent: Thursday, January 20, 2022 12:23 PM

To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>; 'John Wray' <jwray@englanderstoves.com>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>

Subject: RE: Follow up -15-SSW01

Yes, that is correct.

Regards,

Chris

From: Sanchez, Rafael <Sanchez.Rafael@epa.gov>
Sent: Thursday, January 20, 2022 12:18 PM
To: Chris Terrell <cterrell@englanderstoves.com>; 'John Wray' <jwray@englanderstoves.com>
Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>
Subject: RE: Follow up -15-SSW01
Importance: High

Chris,

Thanks for the information. To be clear, the original tested heater did have a spring damper, but the new unit will be tested without one?

Rafael Sanchez, Ph.D.
Wood Heater Program Manager
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From: Chris Terrell <cterrell@englanderstoves.com>
Sent: Thursday, January 20, 2022 11:54 AM
To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>; 'John Wray' <jwray@englanderstoves.com>
Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek'

<ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>

Subject: RE: Follow up -15-SSW01

Dr. Sanchez,

I want to clarify the email below; the unit will be tested without the spring damper. Please see below, the not in red should not have been there. The new unit will not have a spring damper.

Regards,

Chris

From: Chris Terrell <cterrell@englanderstoves.com>

Sent: Thursday, January 20, 2022 11:23 AM

To: 'Sanchez, Rafael' <Sanchez.Rafael@epa.gov>; 'John Wray' <jwray@englanderstoves.com>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; 'Johnson, Steffan' <johnson.steffan@epa.gov>; 'Scinta, Robert' <scinta.robert@epa.gov>; 'Lischinsky, Robert' <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>

Subject: RE: Follow up -15-SSW01

Dr. Sanchez,

We will test the EPA sealed unit on Monday and Tuesday. If the damper mechanism is frozen because of the rust, we will be removing the unit and replacing it with a new unit to test. This new unit will **not** be tested without the spring damper. This unit will have a manual damper. We are not changing the firebox of any of the other specs to the approved unit. We are removing the spring damper and replacing the damper with a manual damper for the unit. We will provide Intertek with the modified instructions on operating the unit.

Regards,

Chris

From: Sanchez, Rafael <Sanchez.Rafael@epa.gov>

Sent: Wednesday, January 19, 2022 4:50 PM

To: John Wray <jwray@englanderstoves.com>; 'Chris Terrell' <Cterrell@englanderstoves.com>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>

Subject: RE: Follow up -15-SSW01

Importance: High

Mr. Wray,

Thank you for your email with the attached pictures. After evaluating the information you have provided, we have determined that England's may not replace the affected (rusty) parts as requested. Therefore, England's may use the original test heater without any changes or employ a brand new device as initially intended. In addition, England's must submit to the EPA the following:

1. Partial test results from the suspended or aborted certification test per 60.535(a)(2)(viii).
2. A statement describing why the original device failed during the recent certification test and corrective actions taken.

Please submit the above-referenced information within ten business days of receiving this email. If you have any questions, please let me know.

Rafael Sanchez, Ph.D.
Wood Heater Program Manager
Air Branch
Monitoring, Assistance, and Media Programs Division
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U.S. Environmental Protection Agency (EPA)
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From: John Wray <jwray@englanderstoves.com>

Sent: Wednesday, January 19, 2022 2:12 PM

To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>; 'Chris Terrell' <Cterrell@englanderstoves.com>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; 'Brian Brunson Intertek' <brian.brunson@intertek.com>

Subject: RE: 15-SSW01

Rafael,

Here are the two pictures that you have asked for, the trigger is rusted which will not drop (ssw01-3) and the bimetal coil (ssw01-2) is pointed around the 2 o'clock as you can see in the picture, that needs to be around 3 to 4 o'clock

These will be replaced with the exact same part and nothing will be different about the stove, it will be the exact same.

Now, As you know I am in Wisconsin to test this stove, but due to the fact that we have had a lack of responses on what to do and lost 3 days of testing, we have decided not to test this week and I am going to fly home and come back on Sunday, we will now be testing on the week of the 24th and the week of the 31st which will also be the first week of February, I am hoping to have an answer by then and would like the 30 day notice to be change to the 17th.

Thanks

John Wray

From: Sanchez, Rafael [<mailto:Sanchez.Rafael@epa.gov>]
Sent: Wednesday, January 19, 2022 1:50 PM
To: Chris Terrell <Cterrell@englanderstoves.com>; John Wray <jwray@englanderstoves.com>
Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>
Subject: RE: 15-SSW01
Importance: High

Thank you, Chris.

Please send us a few pictures of the rusted parts. Also, are the adjustments you have mentioned related to the installation of those parts or something else?

Rafael Sanchez, Ph.D.
Wood Heater Program Manager
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From: Chris Terrell <Cterrell@englanderstoves.com>

Sent: Tuesday, January 18, 2022 6:30 PM

To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>; John Wray <jwray@englanderstoves.com>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; Johnson, Steffan <johnson.steffan@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>

Subject: RE: 15-SSW01

Dr Sanchez,

Once the unit was unsealed it was discovered that the spring for the damper control and the damper were both rusted. The replacement will be the exact same components that were originally used. All specs will be the same.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Sanchez, Rafael" <Sanchez.Rafael@epa.gov>

Date: 1/18/22 5:54 PM (GMT-05:00)

To: John Wray <jwray@englanderstoves.com>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>, 'Kenneth Slater Intertek' <ken.slater@intertek.com>, 'Chris Terrell' <cterrell@englanderstoves.com>, "Johnson, Steffan" <johnson.steffan@epa.gov>, "Scinta, Robert" <scinta.robert@epa.gov>, "Lischinsky, Robert" <Lischinsky.Robert@epa.gov>

Subject: RE: 15-SSW01

Hi John,

Before we can answer, we need additional information about your request. Please describe in detail what parts require replacement and why they need replacing. Also, describe the type of adjustments you expect to make on the appliance. Replaced parts must be the same and be

consistent with the original engineering diagrams submitted for the original certification.

Rafael Sanchez, Ph.D.
Wood Heater Program Manager
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From: John Wray <jwray@englanderstoves.com>
Sent: Monday, January 17, 2022 9:13 AM
To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>
Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; 'Kenneth Slater Intertek' <ken.slater@intertek.com>; 'Chris Terrell' <cterrell@englanderstoves.com>; Johnson, Steffan <johnson.steffan@epa.gov>
Subject: 15-SSW01

Dr. Sanchez,

Good Morning! We have the EPA Test Stove here at Intertek that we tested back in 2018 and I am emailing because this stove has been sitting for a few years and I was looking at some of the parts on the stove and seen that they might need to either be switched out (with the same exact part, no new part) or either adjusted so that it will work, can I do this? I know that I am not supposed to touch this stove and I have not and this is why I am emailing you to find out what I can do. If you or Stef could let me know ASAP so we can get started on testing that would be great

Thanks

John Wray



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ATTACHMENT 3:

February 4, 2022 Email from Chris Terrell, for Respondent

From: [Chris Terrell](#)
To: [Sanchez, Rafael](#)
Cc: ["Brian Ziegler Intertek"; jwray@englanderstoves.com; Scinta, Robert; Lischinsky, Robert; Meisenbach, Caitlin; Cheung, Tiffany; allison.mallick@bakerbotts.com; WoodHeaterReports; Johnson, Steffan](#)
Subject: RE: Suspended Certification
Date: Friday, February 4, 2022 4:54:12 PM

Dr. Sanchez,

Please see the requested answers below.

1. Describe in detail why England's suspended the certification test that began on January 31 for the 15-W01M Model.

England's Stove Works suspended the certification testing of the 15-W01M due to the fact that we were not able to achieve CAT 1 on the test. It is our thought that if we could get a CAT 1 test, we may have met the standard. The reports submitted were the initial same day readings. The filters had not dried to get the final grams per hour. After reviewing the final grams per hour of the testing, we will look at ways to slow the burn with only altering the damper control and rescheduling the test.

2. Performance test data from the January 31 test.

Sent through dropbox link

3. Performance test data from the 15-SSW01 model certification test on January 24.

Sent through dropbox link

4. Explain why the certification test held in November failed and describe corrective actions taken.

The certification testing done on or about November 24th was not successful for recertification. During the testing, the automatic air control did not operate properly. The unit is designed to close the damper to the desired location once the unit reaches the proper temperature. If the automatic air control does not close, then the burn rate is much too fast. The burn rate was too fast and the grams per hour were over the limit. Once we returned the unit to our facility, we went over the unit to try to determine the cause of the automatic air control to not work properly. The automatic air control is released by a bi-metal coil. We have contacted and we are working with the bi-metal supplier and the vendor that actual coils the bi-metal as this is manufactured by an outside source to verify that all of the coils England's Stove Works received were within required specs. If the material was thicker than spec calls for it can and will affect the heat conductivity which would cause the automatic damper control to not operate.

<https://www.dropbox.com/scl/fo/unpn6zwwiask78uvgiv1/h?dl=0&rlkey=ft0zfeudjh5otay48pmsiwqbt>

Regards,

Chris

From: Sanchez, Rafael <Sanchez.Rafael@epa.gov>
Sent: Thursday, February 3, 2022 10:56 AM
To: Chris Terrell <cterrell@englanderstoves.com>
Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; jwray@englanderstoves.com; Scinta, Robert <scinta.robert@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; Meisenbach, Caitlin <Meisenbach.Caitlin@epa.gov>; Cheung, Tiffany <tiffany.cheung@bakerbotts.com>; allison.mallick@bakerbotts.com; WoodHeaterReports <WoodHeaterReports@epa.gov>; Johnson, Steffan <johnson.steffan@epa.gov>
Subject: RE: Suspended Certification
Importance: High

Good Morning, Mr. Terrell,

Thank you for your email concerning the suspension of the certification test. As a follow-up to several emails sent, please provide the following by COB tomorrow, February 4:

1. Describe in detail why England's suspended the certification test that began on January 31 for the 15-W01M Model.
2. Performance test data from the January 31 test.
3. Performance test data from the 15-SSW01 model certification test on January 24.
4. Explain why the certification test held in November failed and describe corrective actions taken.

Rafael Sanchez, Ph.D.
Wood Heater Program Manager
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Certified Wood Heater Database (<https://www.epa.gov/compliance/epa-certified-wood-heater-database>).

From: Chris Terrell <cterrell@englanderstoves.com>

Sent: Wednesday, February 2, 2022 2:53 PM

To: Sanchez, Rafael <Sanchez.Rafael@epa.gov>

Cc: 'Brian Ziegler Intertek' <brian.ziegler@intertek.com>; jwray@englanderstoves.com

Subject: Suspended Certification

Dr. Sanchez,

We did suspend the testing as you are aware. John is returning today with the units. We will be meeting internally either tomorrow or Friday to discuss next steps and timing/scheduling of resumption of the test. During this test we were not able to achieve CAT 1 burn rate.

Regards,

Chris Terrell

Chris Terrell
England's Stove Works

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