

**ENGLAND’S STOVE WORKS, INC.  
BEFORE THE ADMINISTRATOR**

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

**RESPONDENT’S PREHEARING EXCHANGE**

Pursuant to the hearing and appeal procedures set forth in 40 C.F.R. Part 60 Subpart AAA (“Rules of Practice” or “Rules”) and pursuant to Chief Administrative Law Judge Susan L. Biro’s December 2, 2021 Prehearing Order (“Prehearing Order”), Respondent, England’s Stove Works, Inc. (“ESW”), hereby sets forth its Prehearing Exchange. ESW respectfully reserves its right to supplement this Prehearing Exchange if ESW learns that the information is incomplete, inaccurate, outdated.

**1(A). POTENTIAL WITNESSES**

ESW may call any or all of the following witnesses at the evidentiary hearing in this matter. ESW may supplement this list with additional fact witnesses and/or expert witnesses, upon adequate notice to the Tribunal and to Complainant, U.S. Environmental Protection Agency (“EPA” or “Agency”), should EPA’s Rebuttal Prehearing Exchange or other information reveal the need for additional or alternative witnesses. *See* Prehearing Order at 4. ESW reserves the right to call any witnesses identified in EPA’s Prehearing Exchange.

1. **Chris Terrell, ESW**. Mr. Terrell is the Chief Operating Officer (“COO”) of ESW. He may testify as a **fact witness** regarding his work overseeing operations at ESW generally, as well as his work overseeing EPA’s certification of ESW products including ESW’s 15-SSWS01, 50-SHSSW01, 50-TRSSW01, 15-W03, 50-SHW03, and 50-TRW03 model wood heaters (“Subject Products”).
2. **John Wray, ESW**. Mr. Wray is the Research and Development Technician at ESW. He may testify as a **fact witness** regarding his work conducting in-house testing of ESW products, ESW’s coordination of testing with outside laboratories of ESW products for EPA certification, as well as his knowledge of the design and testing of the Subject Products.
3. **Michael Speight, ESW**. Mr. Speight is the former Director of Purchasing and Procurement for ESW. He may testify as a **fact witness** regarding his work supervising ESW’s in-house laboratory, as well as his work to obtain EPA certification for the Subject Products.
4. **Brian Ziegler, Intertek**. Mr. Ziegler is the Hearth Technical Team Leader at Intertek, the outside laboratory that conducted testing of the Subject Products for EPA certification. He

has worked at Intertek for twenty years and has been in the fire products industry for over twenty-five years. Mr. Ziegler may testify as a **fact witness** regarding his work on supervising stove testing, which includes reviewing test reports prior to issuing them to clients, as well as on the testing of the Subject Products.

#### **1(B). RESPONDENT’S EXHIBITS**

Below is a list of the exhibits that ESW may introduce at the hearing. Copies of the exhibits are provided in tandem with this Prehearing Exchange. Exhibits are labeled and paginated as prescribed by the Prehearing Order. *See* Prehearing Order at 2. ESW may supplement this list, upon adequate notice to the Tribunal and to EPA, should EPA’s Rebuttal Prehearing Exchange or other information reveal the need for additional or alternative exhibits. *See* Prehearing Order at 4.

- RX 1. American Society for Testing and Materials (“ASTM”) E2515, Standard Test Method for Determination of Particulate Matter Emissions Collected by a Dilution Tunnel
- RX 2. ASTM E2780, Standard Test Method for Determining Particulate Matter Emissions from Wood Heaters
- RX 3. Test Method 28, Certification and Auditing of Wood Heaters
- RX 4. Text Method 28R, Certification and Auditing of Wood Heaters
- RX 5. Intertek Test Report of Subject Products (15-SSWS01, 50-SHSSW01, 50-TRSSW01) with Certificate of Conformity (Apr. 5, 2019)
- RX 6. Intertek Inspection Supplement to Wood Heaters Periodic Inspection Report for Subject Products (15-SSWS01, 50-SHSSW01, 50-TRSSW01) (Apr. 4, 2019)
- RX 7. ESW Letter to EPA re Notification of Request for Certificate of Compliance for Subject Products (15-SSWS01, 50-SHSSW01, 50-TRSSW01) (Apr. 5, 2019)
- RX 8. EPA Letter to ESW re Approving Subject Products (15-SSWS01, 50-SHSSW01, 50-TRSSW01) for Certification (May 15, 2019)
- RX 9. Intertek Product Evaluation of Subject Products (15-W03, 50-SHW03, 50-TRW03) (Jul. 15, 2020)
- RX 10. EPA Letter to ESW re Waiving Certification Testing for Subject Products (15-W03, 50-SHW03, 50-TRW03) and Updating Existing Certification to these Subject Products (Aug. 5, 2020)
- RX 11. EPA Letter to Intertek re Independent Review of Compliance Tests for Wood Heater Appliances (Feb. 3, 2021)
- RX 12. EPA List of Approved Test Laboratories and Third-Party Certifiers (Apr. 7, 2021)

- RX 13. Measurement Technology Group Review of Intertek Test Report (Apr. 7, 2021)
- RX 14. EPA Letter to ESW re Post-Certification Review (Aug. 2, 2021)
- RX 15. EPA Letter to ESW re Proposed Determination to Revoke Certificate of Compliance (Sept. 30, 2021)
- RX 16. ESW Letter to EPA re Request for Hearing (Oct. 28, 2021)
- RX 17. ESW 30-Day Notification of Residential Wood Heater Certification Testing (Dec. 13, 2021)
- RX 18. Intertek Project Change Order for ESW re EPA Testing (Dec. 29, 2021)
- RX 19. EPA Webpage for EPA-Approved Test Labs and Third-Party Certifiers for Residential Wood Heaters, <https://www.epa.gov/burnwise/epa-approved-test-labs-and-third-party-certifiers-residential-wood-heaters> (last accessed Jan. 21, 2022)
- RX 20. Attachment 2 to Notice of Ex Parte Communication and Opportunity to Respond (Nov. 19, 2021)

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

At this time, ESW estimates that the time needed to present its case-in-chief will be approximately two days. ESW does not anticipate that translation services will be necessary for the testimony of any of its witnesses.

### **3(A). OBJECTIONS TO PROPOSED REVOCATION**

A copy of documents in support of the assertions made in ESW's hearing request objecting to EPA's proposed revocation of its certificate of compliance and/or any supporting data submitted with its hearing request are included in the exhibits filed. *See* Prehearing Order at 3.

### **3(B). AFFIRMATIVE DEFENSES**

A copy of documents in support of ESW's affirmative defenses are included in the exhibits filed. *See* Prehearing Order at 3. ESW may supplement the following affirmative defenses upon adequate notice to the Tribunal and to Complainant, should EPA's Rebuttal Prehearing Exchange or other information reveal the need for additional or alternative affirmative defenses.

#### **i. ESW complied with the requirements for obtaining its certification of compliance.**

ESW complied with all requirements in 40 C.F.R. Part 60 Subpart AAA for the Subject Products, which include (i) contracting with an EPA-approved third party to perform certification testing of the Subject Products; (ii) obtaining a certificate of conformity from an EPA-approved third party for the Subject Products; and (iii) submitting to EPA required documentation for issuance of a certificate of compliance. 40 C.F.R. § 60.533. ESW's third-party provider, Intertek,

remains on EPA's approved list of third-party labs and certifiers. *See* RX 12, RX 19. As acknowledged by EPA, ESW "had a reasonable expectation that the information needed" to make decisions "could be found in the test report and certification documentation." RX 11 at 2.

**ii. ESW should not suffer harm from EPA's failure to conduct a rigorous review of the initial certification application.**

It would be unfair and detrimental to ESW's small business to lose the ability to sell the Subject Products because EPA failed to conduct a sufficiently "rigorous review of the test reports" when issuing the Certificate of Compliance. *See* RX 11 at 1. ESW is a family-owned business in Monroe, Virginia that was started by Bob England and his son, Ron, in their family backyard. ESW manufactures pellet, multi-fuel, and wood stoves and pellet grills at their local facility in nearby Madison Heights, Virginia. In proposing to revoke the Certificate of Compliance for the Subject Products, EPA is unreasonably harming ESW's ability to continue to operate as a small business.

EPA first granted ESW's certificate of compliance for the Subject Products in May 2019. It was nearly two years later when EPA acknowledged in February 2021 that it received information identifying potential problems with over 200 compliance tests submitted to support certification applications for wood heater appliances. The Agency recognized "serious and systematic problems . . . in the testing and third-party certification processes" — including a lack of rigor in EPA's own review of the test reports submitted. *See* RX 11 at 1.

EPA's regulations require that the Agency's issuance of a certificate of compliance be "based on all of the information submitted in the application for certification and any other relevant information." 40 C.F.R. § 60.533(f)(2). EPA's certificate for the Subject Products was based on this information. RX 8. *See also* RX 10. EPA's subsequent proposal to revoke the certification is based on the same information it had when it initially issued the certification, meaning that EPA simply overlooked information in the application that it now claims is determinative. *See* RX 14, RX 15. This about-face harms ESW. Manufacturers like ESW count on EPA to oversee the certification process and reasonably rely on EPA's final issuance of certifications before devoting millions of dollars to produce, advertise, and sell newer, cleaner burning appliances. EPA's proposed revocation of ESW's certification is an *ex post facto* decision that is financially devastating to small businesses like ESW, for whom the Subject Products constitute approximately 30% of sales.

As explained in Section 3(C) below, ESW has agreed to retest the Subject Products and will notify EPA when testing is completed. RX 17. ESW respectfully requests that the hearing in this proceeding be calendared for a date that will allow sufficient time for test results to be obtained, as such results could moot the need for this proceeding.

**3(C). FACTUAL INFORMATION RELEVANT TO PROPOSED REVOCATION**

The Prehearing Order calls for ESW to provide as part of its Prehearing Exchange "all factual information Respondent considers relevant to the proposed revocation of its certificate of compliance and any supporting document." *See* Prehearing Order at 3. Below is Respondent's

statement of such factual information, as supported by the same documents included in the exhibit list. ESW may supplement the following factual information upon adequate notice to the Tribunal and to EPA, should EPA's Rebuttal Prehearing Exchange or other information reveal the need for updated or additional information.

ESW contracted with Intertek to perform certification testing of the Subject Products and issue a certificate of conformity in early 2019. This information was provided to EPA on April 5, 2019. RX 5, RX 7. In May 2019, EPA issued a Certificate of Compliance for the Subject Products 15-SSWS01, 50-SHSSW01, 50-TRSSW0. *See* RX 8. The Agency determined that “[u]nder the 2015 NSPS [New Source Performance Standard] and based on Intertek Testing Services NA, Inc.’s April 5, 2019 certification of conformity, the models’ emission rate of 1.9 g/hr meets the 2020 NSPS particular matter emissions limits of 2.0 g/hr.” *Id.* at 1.

In August 2020, the Certificate of Compliance was updated to include Subject Products 15-W03, 50-SHW03, 50-TRW03 after Intertek completed a product evaluation and determined that they are identical, aside from cosmetic design changes, to Subject Products 15-SSWS01, 50-SHSSW01, 50-TRSSW0. *See* RX 9, 10. EPA waived certification testing for Subject Products 15-W03, 50-SHW03, 50-TRW03 because the Agency determined that the “proposed design changes are unlikely to cause the model line to exceed the emission rate of 1.9 g/hr.” RX 10 at 1.

The Certificate of Compliance allows ESW to manufacture and sell the Subject Products through May 28, 2024. *Id.* at 2. The Subject Products accounted for approximately 30% of ESW’s sales.

In February 2021, EPA notified Intertek that the Agency was reviewing over 200 compliance test reports for certified appliances and stated that “there are serious and systematic problems to be addressed in testing and third-party certification processes.” EPA stated that it was reviewing tests for already certified appliances, as well as providing “a more rigorous review of the test reports and other information that accompany all new applications for certification submitted to the agency.” RX 11 at 1.

On April 7, 2021, EPA released on its website a list of “approved test labs and third party certifiers.” RX 12, RX 19. This list includes Intertek as an approved test lab and third-party certifier, with EPA’s approval valid until October 30, 2025. RX 12.

On August 2, 2021, EPA notified ESW that it determined that the certification test conducted by Intertek for the Subject Products “was not conducted in accordance with the 2015 Wood Heater Rule and applicable test method.” RX 14 at 1. EPA claimed that its post-certification review determined that the primary problem with the certification testing was that it did not use fuel pieces within the allowable moisture range. *Id.* at 2. The Agency also alleged other problems, such as missing information, in the test report prepared by Intertek that should be addressed in subsequent reports submitted to EPA. *Id.* EPA provided ESW the opportunity to conduct retesting. *Id.*

On September 30, 2021, EPA notified ESW of its proposed determination to revoke the Certificate of Compliance. RX 15. ESW objected to EPA's proposed determination, "contend[ing] that the certification test was performed by a EPA-certified laboratory, was then reviewed by a EPA-certified third party, and finally was reviewed and approved by EPA itself," and requested a hearing pursuant to 40 C.F.R. § 60.539. RX 16.

ESW notified EPA that it intends to retest the Subject Products. RX 17. ESW is currently working with Intertek on retesting. See RX 18. ESW reached out to EPA on January 17, 2022 for guidance on retesting procedures and is awaiting a final decision from the Agency. Retesting is anticipated to take approximately one or two weeks and should be completed by February 4, 2022, assuming that it can commence on January 24, 2022.

### CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Respondent's Prehearing Exchange**, dated January 21, 2022, was sent this day to the following parties in the manner indicated below.



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Dated: January 21, 2022  
Washington, DC