

NESCAUM TESTIMONY

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U. S. Environmental Protection Agency's Hearing on the NPRM for Amendments to Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters, and Forced-Air Furnaces

June 8, 2020

- NESCAUM is the regional association of state air quality agencies in the six New England States, New Jersey, and New York. My testimony represents the majority view of NESCAUM member states.
- Residential wood heating represents a significant public health risk. Per EPA's analysis, it is responsible for 50% of all area source cancer risks. During this pandemic, studies have associated increased levels of particulate matter with increased COVID-19 death rates. Now, more than ever, it is irresponsible for EPA to release a rule that will increase PM emission levels for this source of pollution for the next twenty years.
- EPA states that the basis for this proposal is to provide the full 5-year compliance timeline afforded by the rule. EPA uses BSER as the basis for this statement, but the BSER is a technology development provision not related to retail sales. Sell-throughs address inventory management issues, and do not serve to advance technology development.
- EPA has failed to complete its due diligence to determine if this rule is needed.
 - EPA failed to document what states and retail outlets were closed due to the pandemic.
 - Many large retail outlets such as Home Depot, Lowes, and others were not closed, nor were hardware stores.
 - Stay at home measures were not implemented equally throughout the country.
 - EPA failed to document lost sales
 - Conversations with EPA indicate that they have historical sales data available for analysis. No analysis to calculate the range of impacts was completed using this data.
 - In fact, EPA completed no cost-benefit analysis to determine the impact of this rule. EPA assumes the additional sales period will not lead to more sales of dirtier Step 1 stoves than would have occurred by May 15th without the pandemic but offers no data to support this rationale.
 - EPA should have completed a Regulatory Impact Analysis to assess the impact of this rule.
- The proposed rule allows manufacturers to continue shipping Step 1 appliances to retailers. We find it highly unlikely that retailers would have ordered Step 1 appliances from manufacturers with only 60 days remaining before the Step 2 deadline.
- EPA again has failed to present a legal basis for allowing a sell-through. A plain reading of section 7411(e) of the CAA prohibits installation and operation of any appliance that doesn't meet Step 2 standards after the effective date of May 15, 2020.
- We recognize that COVID-19 might have adversely affected small specialty hearth retailers (defined as having less than ten retail outlets) in those states with strong health-protective closure and stay at home orders. Rather than EPA's overly broad sell-through proposal, however, a practical, straightforward, and narrowly tailored approach is to use enforcement discretion

through July 31, 2020 for small retailers who can show direct impacts from actual lost sales due to COVID-19 restrictions during the last two months of the five-year sell-through period.

- Most disturbing is the preamble's statement that enforcement activity for the sector will be a low priority. By combining the proposed rule with the statement regarding enforcement, EPA's proposal has, in effect, given all industry an additional six months of sales.
- EPA OECA's track record for enforcement has been questionable at best.
 - EPA test reports are required to be publicly available. In reviewing test reports, NESCAUM has yet to find a single failed stack test. Are we to believe that in a 30-year timeframe, every unit brought to the certification labs passed?
 - In the past five years of the rule, to the best of our knowledge, only one minor enforcement action has taken place, despite NESCAUM (and others) raising substantive issues and details on non-compliant manufacturers to the Agency.
 - NESCAUM's review of certification tests approved by EPA has found significant issues raising serious concerns about the efficacy of EPA's certification program.
 - Reviewing OECA's track record in this sector does not instill faith that its efforts have been effective in ensuring the development of cleaner appliances. To go on record to state that this will now become an even lower enforcement priority should raise serious questions about OECA's commitment to protect the public from this critical source of pollution.
- OECA staff in briefings have stated that they will use a common-sense approach for the use of enforcement discretion. We fail to see how providing enforcement discretion for companies who blatantly have and continue to violate the rule should be offered any form of enforcement discretion.
 - NESCAUM has identified numerous examples of manufacturing and sales of non-compliant units over the last five years, but to date, no enforcement actions have been taken.
- Manufacturer websites indicated that manufacturing operations continue to remain open, yet we are unaware of OECA efforts that will be or currently are underway to ensure that manufacturers have ceased production of Step 1 devices, or even uncertified models.

In summary:

- While these are unprecedented times, EPA's response to provide industry relief goes well beyond the burden COVID-19 placed on this sector.
- The proposed rule is completely absent of data supporting the need for this action, nor does it provide data to show that the remedy is appropriate.
- Manufacturers and retailers had 60 months to prepare for Step 2 implementation. With only two months left, this rule rewards those who failed to plan appropriately and punishes those who planned well.
- We urge EPA to withdraw this proposal as well as increase and improve OECA oversight to achieve the already too-long-delayed emission reductions that the public sorely needs.