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October 4, 2022

Joseph J Dudley Jr
jdudley@dudleyandsmith.com

VIA E-MAIL

Garrett Lamppa and Daryl Lamppa
Lamppa Manufacturing Inc.
9501 MN-135
Tower, MN 55790

Re: Summary of the Issues with EPA and Future Courses of Action

Dear Mr. Garrett Lamppa and Mr. Daryl Lamppa:

Pursuant to our communications, we have been hired to represent Lamppa Manufacturing Inc. (“Lamppa”), relating to the issues that it has been having with the EPA for one of its products, the Vapor Fire 100 (“VF 100”) air furnace, a wood-burning home furnace. Pursuant to administrative regulations for the Clean Air Act, Lamppa has filed a renewal application for a certification of compliance with the EPA’s requirements for forced-air furnaces. *See* 40 C.F.R. 60.5475 (providing the compliance and certification requirements for forced-air furnaces). Due to issues that will be explained below, there is a high probability that Lamppa’s renewal application will be denied due to actions of other entities beyond Lamppa’s control, which can have a devastating effect on the company and the city of Tower, MN. Our firm is writing to provide a summary of our understanding of the facts of this case.

History of Lamppa Manufacturing

Lamppa has been a pioneer in the industry of wood-fire furnaces and stoves that has existed for over 90 years. The company’s current owner, Daryl Lamppa, is a third-generation owner of the business. Upon information and belief, Lamppa is one of three manufacturers in the country for wood-burn forced-air furnaces. Throughout its history, the company has developed a respected business reputation for the quality of its wood-burning stoves and furnaces. Furthermore, Lamppa has repeatedly been proactive in designing its products to reduce any smoke productions, mitigating any environmental damage. In fact, Daryl Lamppa has even written to the EPA to oppose any change or delay in emission rules that affected their products. Overall, Lamppa is a small but respected company that has demonstrated commitment to producing high-quality products that pose the most diminished threat to the environment as possible. The company has also been an instrumental presence in Tower, MN.

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Lamppa has its roots in Tower, MN, having been created in an old creamery within the city. In 2019, the city of Tower developed and leased a new industrial facility to Lamppa. The city of Tower, which has a population of less than 500 citizens, invested in Lamppa hoping that the company could help boost its economy and improve the city's infrastructure and recreation. In other words, the health of the city of Tower hinges greatly on the success of Lamppa. Any threat to the company is a threat to Tower itself. Overall, not only Lamppa but also the city of Tower is threatened by the company's problems with the EPA. The problems with the EPA are provided in further detail below.

Issues with the EPA

In 2015, the EPA released the New Source Performance Standards (NSPS) for residential wood heaters, residential hydronic heaters, and forced-air furnaces. *See* 40 C.F.R. 60, Subpart QQQQ. However, during this time, the EPA did not release a testing protocol for the forced-air furnaces. As a result, Lamppa Manufacturing was initially instructed to use the protocol designed for hydronic heaters for the VF 100 air furnace, which resulted in difficulties in obtaining certification. After receiving permission to utilize an alternative test method, *see* CSA Method B415.1-10, § 7.2.1, Lamppa obtained a certificate of compliance on August 16, 2017, which expired on September 1, 2022. Upon expiration, Lamppa applied for renewal with the hopes that it would not have to retest the air furnace. However, the EPA informed Lamppa that retesting would be required due to two issues as explained below.

The "Category 3" Issue

The first issue that the EPA has raised is what it has dubbed the "Category 3" issue. The EPA's position is that the alternative test method that Lamppa was subjected to required, the VF 100 to have a "Category 3" burn rate between 53-76% of the maximum output. The EPA now claims that the original certification testing for the VF 100 exceeded this allowable range. Therefore, the EPA is claiming that Lamppa must retest to ensure that its burn rate is in fact within this range. However, there are two counterarguments to the EPA's complaint.

First, if this is the EPA's position, it raises the confusing question of how the VF 100 obtained an original certificate of compliance and why the EPA is allowing Lamppa to proceed with a renewal application as opposed to requiring them to submit a new application to begin with. This is merely one example of the confusing positions and statements that the EPA has provided to Lamppa.

Second, it was a lack of communication between the EPA and its certified test lab regarding the appropriate testing procedures for the lab to use which resulted in an error in the lab's calculations for this test. Specifically, our client believes that the lab added up to 10% to the maximum output when such an addition is inappropriate for forced-air furnaces. Therefore, it

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appears that the EPA itself and its certified-testing lab are the culpable parties for this failed test, not Lamppa.

The “Category 1” Issue

The second issue that the EPA has raised is what it has dubbed the “Category 1” issue. Pursuant to the regulations, the VF 100 must comply with an emission limit of .15 pounds per million for particulate matter (0.15 lb/mmBTU). In its original test, Lamppa met this standard. However, this was not good enough for the EPA. The EPA is requiring a measurement of 0.14 lb/mmBTU to avoid retesting. This number does not come from any regulation. Instead, it is an internal policy from the EPA’s Office of Enforcement and Compliance Assurance (the “Enforcement Division”).

As its name suggests, the Enforcement Division’s role is monitoring compliance with the EPA regulations. It is the Office of Air Quality Planning and Standards (the “Measurement Division”) that compiles and reviews air pollution data and develops regulations to limit and reduce air pollution. Therefore, although it is the Measurement Division’s role to collect air pollution data and design the appropriate regulations and standards, the Enforcement Division has used its “discretion” to create a rigid requirement for retesting. Furthermore, how the Enforcement Division devised the 0.14 lb/mmBTU number is uncertain.

To this date, Lamppa has not received any information on how the Enforcement Division developed the 0.14 lb/mmBTU requirement. This number does not appear to be justified by any air pollution data or formula within the Clean Air Act. In response to our firm’s inquiry into how the Enforcement Division developed this number, the Enforcement Division simply reiterated that they had the discretion to do so.¹ Therefore, it appears that this number was randomly and arbitrarily selected by the Enforcement Division. Furthermore, this policy was not posted on EPA’s website until June 2, 2022. Therefore, until mere months before it had to apply for renewal, Lamppa had no knowledge of this policy and its effect of increasing the probability that they would have to retest. Overall, despite meeting the standard, the EPA is going to require Lamppa to retest because of the Enforcement Division’s arbitrary internal policy.

No Notice Was Provided to Lamppa About the Probability of Retesting Until Two Days Before the Expiration of its Certificate

It is also worth mentioning that Lamppa was not provided with any notice from the EPA that it would likely have to retest the VF100 until two days before the expiration of its original certificate of compliance. Given the sparsity of manufacturers for this type of product, and the fact that Lamppa appears to be the only wood burn, forced-air furnace manufacturer that is

¹ The attached email is a response that our firm received from the EPA regarding our question on how the Enforcement Division developed the 0.14 lb/mmBTU number.

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adversely affected by the Enforcement Division's internal policy, we believe that an informal notice to Lamppa would have been appropriate.

Detrimental Effects of Denial By the EPA

Lamppa is currently scheduled for a retest in mid-October. Because it was not expecting to have to retest, Lamppa is skeptical about its prospects given the short window that it has to prepare the VF 100. Unless there is a miracle, Lamppa will be denied renewal and will be unable to sell its products until it can retest again in November, which imposes a severe danger for Lamppa's business and the city of Tower.

Multiple entities have invested in Lamppa's success including Tower and even the Department of Iron Range Resources and Rehabilitation ("IRRR"). If Lamppa goes out of business, Tower's economy will plummet, at the cost of hundreds of the city's residents and the IRRR will lose all of its financial investments.

Please reach out to me if either of you would like our firm to review any additional information in this matter.

Thank you.

Very truly yours,

DUDLEY AND SMITH, P.A.

Joseph J. Dudley, Jr.

JDJ:
Enclosures

Law Clerk

From: Schefski, Melissa <Schefski.Melissa@epa.gov>
Sent: Thursday, September 29, 2022 3:49 PM
To: Law Clerk
Cc: Joe Dudley
Subject: RE: Dudley and Smith P.A.: Question About EPA's .14 lb/mmBTU Policy

Categories: Red Category

Dear Mr. Benson,

Thank you for informing me that Lamppa Manufacturing, Inc. (Lamppa) has hired Dudley and Smith, P.A. to represent them in the certification renewal process for the Vapor Fire 100 (VF 100). I will direct all further EPA Office of Enforcement and Compliance Assurance (OECA) communication related to certification renewal to your law firm. Please note that Lamppa is also currently working with EPA's Office of Air and Radiation (OAR) for approval on an alternative test method (ATM) for the re-testing of the VF 100. While I am being copied on emails and OECA is coordinating with OAR on Lamppa's request for an ATM, any decisions related to ATM approval rest with OAR. Accordingly, OAR technical staff has been communicating directly (as opposed to going through me) to Lamppa.

Regarding your specific question, EPA regulations at 40 CFR 60.5475(i) lay out the requirements for certification renewal. The regulations provide that a manufacturer may apply to EPA for potential renewal of its certificate of compliance by (1) submitting the material that is specified at 40 CFR 60.5475(b) and following the procedures at 40 CFR 60.5475(f), or (2) affirming in writing that wood heaters in the model line continue to be similar in all material respects that would affect emissions to the representative wood heater submitted for testing on which the original certificate of compliance was based and requesting a potential waiver from certification testing. While a manufacturer may prefer the latter option and may request a potential waiver from certification testing, whether EPA provides the waiver is entirely within the Agency's discretion.

To put it another way, EPA has the authority to require manufacturers to retest before EPA grants any requests for renewal. That said, EPA recognizes the time and resources involved with retesting, for both manufacturers and the Agency, and has thought hard about when retesting is needed to confirm compliance with the particulate emissions standards at 40 CFR 60.5474. One of the situations where the Agency decided that retesting is necessary is when the original test report demonstrates that the particulate emissions values are close (e.g., 5-10%) to the emissions standards. Retesting is necessary in these situations due to the variability of compliance test method results. This is why EPA chose at or above 0.14 lb/mmBTU as the emissions level where forced-air furnace retesting is required. Please note that because forced-air furnaces must meet the emissions standards for each of the four burn rate categories, a furnace must have tested below 0.14 lb/mmBTU in each category to be eligible for a waiver from retesting at renewal.

Please do not hesitate to reach out to me if you have any questions or would like to discuss this matter in more detail over the phone.

Best,

Melissa Schefski
Pronouns: she/her/hers
Attorney-Adviser
Air Enforcement Division
U.S. Environmental Protection Agency

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Denver, Colorado 80202

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From: Law Clerk <lawclerk@dudleyandsmith.com>
Sent: Wednesday, September 28, 2022 10:17 AM
To: Schefski, Melissa <Schefski.Melissa@epa.gov>
Cc: Joe Dudley <jdudley@dudleyandsmith.com>; Lamppa Manufacturing <lamppmfg@gmail.com>
Subject: Dudley and Smith P.A.: Question About EPA's .14 1b/mmBTU Policy

Dear Ms. Schefski,

I hope this email finds you well. My name is Cole Benson, and I am a law clerk for Joseph J. Dudley at Dudley and Smith, P.A. Our firm has been hired to represent Lamppa Manufacturing Inc. for its issues with the renewal process for the Vapor Fire 100 (VF 100). Our firm has a question about the EPA's .14 1b/mmBTU policy. It is our understanding that this policy was developed by the Air Enforcement Division to determine whether a manufacturer is eligible for a waiver from retesting. However, our firm has not seen any information from the EPA regarding how the Air Enforcement Division developed the .14 number as the appropriate line for when a manufacturer will have to retest. For instance, is there any language from the Clean Air Act that the Air Enforcement Division used to derive this number? Please direct your response to Dudley and Smith, P.A at one of the following email addresses: lawclerk@dudleyandsmith.com; jdudley@dudleyandsmith.com.

Sincerely,

Cole Benson
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