

**XAVIER BECERRA**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



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June 17, 2020

Jack Goldman  
Hearth, Patio, and Barbecue Association  
1901 North Moore Street, Suite 600  
Arlington, VA 22209  
[goldman@hpba.org](mailto:goldman@hpba.org)

RE: Members' Illegal Sales of "Step 1" Residential Wood Heaters  
**IMMEDIATE ACTION REQUESTED**

Dear Mr. Goldman:

As you know, United States Environmental Protection Agency (U.S. EPA) New Source Performance Standards (NSPS) prohibit the sale of higher-emitting "Step 1" residential wood heaters (RWH) after May 15, 2020. (40 C.F.R. §§ 60.532, 60.5474 (2020); 80 Fed. Reg. 13,672 (March 16, 2015).) On May 22, 2020, U.S. EPA published a proposal to amend the NSPS to reopen the legal sales period for Step 1 devices from the date of rule finalization through November 30, 2020, termed a "sell-through." (85 Fed. Reg. 31124.) U.S. EPA also announced in the proposal preamble that Step 1 RWH sales from May 15, 2020, to the finalization of the new sell-through would be a low U.S. EPA enforcement priority. (85 Fed. Reg. 31,128 (May 22, 2020).) CARB understands that retailers, including HPBA members, may have incorrectly interpreted this recent announcement as effectively allowing a six-month sell-through, from May 16 through November 30, 2020. However, the NSPS remains in place unless and until U.S. EPA finalizes a sell-through.

Today, I sent letters on behalf of the California Air Resources Board (CARB) to almost 20 home improvement stores, big box stores, and large internet retailers (including HPBA members) whose websites, as of June, 2020, offer Step 1 RWHs for illegal sale, including in California. One of these letters is attached, for your information. The letters note that: the legal deadline to sell these devices passed on May 15, 2020; that the Clean Air Act allows enforcement of U.S. EPA regulations by CARB via citizen suit in federal district court (42 U.S.C. §§ 7604, 7602(d)); and that the penalty for sales in violation of the NSPS can be tens of thousands of dollars per violation (42 U.S.C. § 7413(b); 40 C.F.R. § 19.4 (2020)).

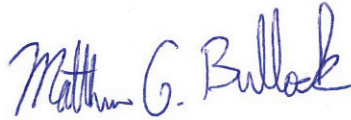
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Californians use approximately 1 million RWHs, 30 percent of which are a home's primary heating source. Many parts of California also have fine particulate (PM2.5) pollution issues from RWH emissions, with impacts to the health of citizens of this State, particularly during a pandemic affecting respiratory function. Almost 1000 premature deaths in California have been attributed to fine particulate from residential combustion, which overwhelmingly comes from wood-heating devices.<sup>1</sup>

CARB applauds HPBA for accurately informing your members, via blog post, that U.S. EPA must finalize NSPS amendments before any sell-through is certain.<sup>2</sup> CARB encourages you to additionally alert your members (that did not receive letters directly from us today) to the serious penalties they may face, from entities other than U.S. EPA, for illegal Step 1 device sales in the interim.

Please feel free to contact me at the above phone number or email address, and please extend this invitation to your members as well.

Sincerely,



MATTHEW G. BULLOCK  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

MGB:

CC: Susan Bodine, Assistant Administrator, U.S. EPA Office of Enforcement and Compliance Assurance

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<sup>1</sup> Penn SL, Arunachalam S, Woody M, Heiger-Bernays W, Tripodis Y, Levy JI. 2017. Estimating state-specific contributions to PM2.5- and O3-related health burden from residential combustion and electricity generating unit emissions in the United States. *Environ Health Perspect* 125:324–332; <http://dx.doi.org/10.1289/EHP550>.

<sup>2</sup> Rachel Feinstein, “Sell Through for Step 1 Products: NOT a Done Deal” (May 6, 2020), <https://www.hpba.org/Resources/HPBA-Blog/ID/1920/Sell-Through-for-Step-1-Products-NOT-a-Done-Deal>.

Attachment

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June 17, 2020

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8151 Airline Hwy  
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[customerservice@bbqguys.com](mailto:customerservice@bbqguys.com)  
[chase@bbqguys.com](mailto:chase@bbqguys.com)  
[by overnight mail and email]

Shoppers Choice  
10920 Coursey Blvd.  
Baton Rouge, LA 70816  
[rebecca@shopperschoice.com](mailto:rebecca@shopperschoice.com)  
[mike@shopperschoice.com](mailto:mike@shopperschoice.com)  
[showroom@shopperschoice.com](mailto:showroom@shopperschoice.com)  
[by overnight mail and email]

RE: Illegal sale of "Step 1" Residential Wood Heaters  
**IMMEDIATE RESPONSE REQUESTED TO AVOID LEGAL ACTION**

Dear Sir or Madam:

This letter is to inform you that, as of June 2020, your website is advertising the illegal sale of higher-emitting "Step 1" residential wood heaters (RWH). The legal deadline to sell these devices passed on May 15, 2020. Continued sale of these devices violates United States Environmental Protection Agency (U.S. EPA) New Source Performance Standards (NSPS). The penalty for sales in violation of the NSPS can be tens of thousands of dollars per violation. (42 U.S.C. 7413(b); 40 C.F.R. § 19.4 (2020).)

On behalf of the California Air Resources Board (CARB), I request your response by June 24 confirming you have ceased and desisted from advertising or selling Step 1 devices. Failure to do so may result in legal action against you.

By way of history, in 2015, U.S. EPA finalized a RWH NSPS that permitted the sale of higher-emitting Step 1 devices through May 15, 2020, and permitted only the sale of lower-emitting

Step 2 devices thereafter. (40 C.F.R. §§ 60.532, 60.5474 (2020); 80 Fed.Reg. 13672 (March 16, 2015).)

On May 22, 2020, U.S. EPA published a proposal to amend the NSPS to reopen the legal sales period for Step 1 devices from the date of rule finalization through November 30, 2020, termed a “sell-through.” (85 Fed.Reg. 31124.) U.S. EPA also announced in the proposal preamble that Step 1 RWH sales from May 15, 2020, to the finalization of the new sell-through would be a low U.S. EPA enforcement priority. (85 Fed.Reg. 31128 (May 22, 2020).)

CARB understands that you may have incorrectly interpreted this recent announcement as effectively allowing a six-month sell-through, from May 16 through November 30, 2020. However, the NSPS remains in place unless and until U.S. EPA finalizes a sell-through.

While U.S. EPA may not be prioritizing enforcement, CARB can pursue civil penalties for violations of the NSPS.<sup>1</sup> Californians use approximately 1 million RWHs, 30 percent of which are a home’s primary heating source. Many parts of California also have fine particulate (PM2.5) pollution issues from RWH emissions, with impacts to the health of citizens of this state, particularly during a pandemic affecting respiratory function. There are hundreds of legal, cleaner, Step 2 devices available to sell.<sup>2</sup>

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<sup>1</sup> Section 304 of the Clean Air Act allows enforcement of U.S. EPA regulations by CARB via a citizen suit in federal district court. (42 U.S.C. §§ 7604, 7602(d).)

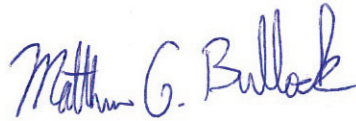
<sup>2</sup> U.S. EPA’s Certified Wood Heater Database is available at <https://cfpub.epa.gov/oarweb/woodstove/index.cfm?fuseaction>. Select the type of device (room heaters or central heaters); click “change to advanced search”; select the desired device type; check the box for “Only Show 2020 NSPS Compliant Models”; and click “do search.” As of June 12, 2020, U.S. EPA lists 95 pellet stoves, 121 wood heaters; 2 forced air furnaces; and 22 hydronic heaters that meet Step 2 standards.

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From May 16, 2020, your sale of Step 1 RWHs is illegal. To avoid the need for CARB to pursue legal action, please confirm by June 24 that you have ceased advertising and selling these devices. You may contact me with this information at [Matthew.Bullock@doj.ca.gov](mailto:Matthew.Bullock@doj.ca.gov), with copy to [Jessica.Gordon@arb.ca.gov](mailto:Jessica.Gordon@arb.ca.gov). If you have any questions, I can be reached by email or at the above phone number.

Sincerely,

A handwritten signature in blue ink that reads "Matthew G. Bullock". The signature is written in a cursive style with a large, stylized "M" and "B".

MATTHEW G. BULLOCK  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

MGB:

CC: Susan Bodine, Assistant Administrator, U.S. EPA Office of Enforcement and Compliance Assurance

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