

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, et al.)	
)	
Plaintiffs,)	
)	
and)	
)	
HEARTH, PATIO & BARBECUE)	
ASSOCIATION,)	
)	
Proposed Plaintiff-Intervenor,)	No. 13-cv-1553 (GK)
)	
v.)	
)	
GINA MCCARTHY, in her official capacity as)	
Administrator, U.S. Environmental Protection)	
Agency, and)	
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Defendants.)	

DECLARATION OF TIMOTHY N. SEATON

I, Timothy N. Seaton, declare under penalty of perjury as follows:

1. I am the founder and owner of Timely Construction, Inc. (“Timely Construction”), an Oregon corporation based in Washington and established in 1990. I also have a financial interest in and work regularly with Empire Masonry Heaters, Inc. of Scottsville, NY (“Empire”). I make this Declaration based on my personal knowledge in support of the Hearth, Patio & Barbecue Association’s (“HPBA”) Motion to Intervene as a Plaintiff in this litigation.

2. My company, Timely Construction, is a member of HPBA through its regional affiliate the Northwest Hearth Patio & Barbecue Association (“NWHPBA”), having first joined in May 2005. For the 2012 calendar year only, this membership was transferred to Western Masonry Heater and Oven LLC, a masonry heater retail business I started with a partner but

which is no longer in existence. From March 2008 until March 2013, I served as chair of what was then known as the “Masonry Heater Caucus” within HPBA, now called the “Masonry Heater Sub-Section” of HPBA’s Wood & Pellet Hearth Appliance Section. Timely Construction is currently a member of HPBA’s Masonry Heater Sub-Section, and I am also an active member of NWHPBA’s board.

3. I am a third-generation masonry contractor with a degree in civil engineering and professional training in healthy home construction. Timely Construction has two primary product offerings: high-efficiency masonry heaters and wood-fired bake ovens. Masonry heaters are residential wood-burning appliances derivative of a type of traditional European fireplace technology, and are known for their high efficiency and clean-burning qualities. As owner and founder of Timely Construction, I am involved in every aspect of the business, including the day-to-day work to design and build masonry heater products. I also run the business-side of the company, and have closely followed economic and regulatory developments that might affect my business and the industry in which Timely Construction competes.

4. Given my education and engineering background, I also have a strong interest and significant experience in efforts related to the development of test methods for masonry heaters. Since 2005, I have been an active member of the ASTM E06.54.05 Masonry Heater Task Group (serving as Secretary over much of this period) and remain directly involved in ongoing work to develop masonry heater test methods.

5. When EPA established existing New Source Performance Standards (“NSPS”) for residential wood heaters in 1988, masonry heaters were exempt from regulation by virtue of the NSPS’s exclusion of appliances that weigh over 800 kilograms. This exemption was carved into the NSPS because EPA lacked a workable method for testing particulate matter emissions from

appliances of such size and weight. An unintended result of this exemption has been a tendency by state and local jurisdictions to assume that the absence of NSPS coverage means that masonry heaters are not clean-burning, a perception that could not be further from the truth.

6. As a result of this misperception, states and localities have made it increasingly difficult for masonry heaters to be installed in and sold to customers in their jurisdiction. As indicated in the attached timeline tracking industry's advocacy efforts ("Exhibit 1"), by 2003, a number of state air quality jurisdictions, including jurisdictions in California and Montana, began to require that appliances be "EPA-certified," something which was impossible for masonry heaters in light of the NSPS's exemption. As the years have gone by, masonry heaters continue to be marched out of one jurisdiction after another based on rules requiring EPA certification.

7. A non-exclusive list of jurisdictions that, to the best of my knowledge and belief, do not allow or heavily (and non-uniformly) regulate masonry heaters is attached ("Exhibit 2"). My knowledge of these jurisdictions derives from my own personal experiences, including multiple occasions on which Timely Construction attempted to sell a masonry heater but was precluded from doing so. Being located in the West, I am especially familiar and affected by with those jurisdictions in California which currently ban masonry heaters. New restrictions continue to be proposed and implemented in other locations.

8. In those jurisdictions where masonry heaters have been allowed to be sold and installed, such permission has often come at a substantial cost. In many instances, a jurisdiction's allowance of masonry heaters has been the result of hundreds of hours of time and significant financial resources spent meeting with regulators in person to prevent them from taking action that would either expressly or indirectly bar masonry heaters. In particular, I and my employees have frequently attended hearings in California, Oregon, and Washington, as well

as at least once in Colorado. The time, travel, and work in connection with such advocacy efforts alone have cost me an estimated \$8,000 to \$10,000 per year.

9. State-by-state testing requirements imposed in the absence of federal regulation result in additional costs to my business. In Washington and Colorado, for example, I am required to have my products tested in accordance with each jurisdiction's own distinct set of requirements. Such testing is both time- and cost-intensive. These expenses would be significantly diminished by the existence of EPA-issued, national test methods which would steer states and localities toward more uniform requirements and eliminate the need for repetitive and expensive state-by-state testing.

10. In addition, EPA's continued delay in issuing final standards for masonry heaters impedes my ability and the ability of others in the industry to plan over the long-term. While it is clear that EPA now intends to include masonry heaters in its eventual NSPS, until EPA issues a rule indicating what standards, rules, and test methods will apply, I am unable to invest in and move forward with new product testing and other projects.

11. By 2008, the masonry heater industry had grown increasingly aware that more formal EPA recognition of masonry heaters as clean-burning devices was needed in order to address the issues described above. A voluntary EPA program for masonry heaters (like that in place for fireplaces) was considered for a time, but for a variety of reasons, such a program did not come to fruition. Since then, many within the industry have concluded that the only way to secure wide recognition for masonry heaters, foster greater uniformity in requirements, and escape the growing number of state and local bans or non-uniform state and local requirements is for masonry heaters to become regulated under the NSPS. As a result, both I personally and others in the industry have urged EPA to include masonry heaters in a revised NSPS. In light of

such discussions, EPA made the decision to include masonry heaters in its forthcoming NSPS in June 2009.

12. Over four years have passed since that decision was made. EPA's continuing delay in completing its revision of the NSPS and issuing a rule extending to masonry heaters results in continuing injury to my business. Timely Construction continues to be limited in its ability to sell to customers in areas where masonry heaters are banned. In addition, where masonry heaters are allowed, Timely Construction must continue to comply with a patchwork of state and local requirements with regard to testing and other issues. If EPA were to complete its revision process and establish clear standards for masonry heaters, the EPA regulations could preclude new bans and non-uniform requirements, and provide the predicate for the masonry heater industry to reopen the debate about appropriate regulation of this appliance category with the many jurisdictions that now ban or unduly restrict them. These developments could free Timely Construction from many of the regulatory constraints now in place, and would permit sales to a much wider market. In addition, EPA regulations would provide the benefits and cost savings of increased certainty and national uniformity.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 31, 2013.

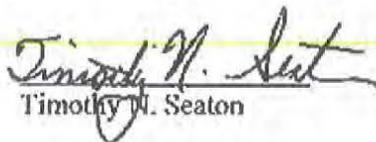

Timothy N. Seaton

EXHIBIT 1

SHORT TIMELINE OF MASONRY HEATER INDUSTRY EFFORTS WITH EPA:

- 1989-1990 Efforts to develop a masonry heater emissions test begin with a series of tests performed at Virginia Polytechnic Institute's lab.
- 1991-1992 EPA audits in home testing of five masonry heaters by EPA accredited OMNI Labs using their AWES field testing equipment developed for EPA research.
- 1992 EPA includes masonry heaters in its Best Available Control Methodology document AP42.
- 1993-2004 Washington State rules for fireplaces begin; testing method written by OMNI Labs. Washington eventually extends to masonry heaters although test method is not adequate. Colorado commissions Tiegs of OMNI to develop its test method and begins regulation. State air quality jurisdictions begin to enforce "EPA certified" only including California and Montana jurisdictions.
- 2003-2004 HPBA begins work with EPA on developing a voluntary fireplace agreement including developing test methods in ASTM. Masonry heater members participate recognizing the potential for expanding any program developed to masonry heaters.
- 2005 At meeting in EPA's Triangle Park, NC, EPA accepts HPBA's fireplace test method, is receptive to masonry heaters and asks for more masonry heater data, HPBA works with the industry to develop a strategy as part of its fireplace work. Test method development moves to ASTM task groups.
- 2006-2007 Testing of masonry heaters is done in EPA accredited labs with support from MHA, HPBA, and individual manufacturers.
- 2008 HPBA summarizes all masonry heater testing data test data in a white paper submitted to EPA (Bob Ferguson authors).
- 2009 EPA and portion of the industry consider a voluntary program for masonry heaters. EPA ultimately backs away. HPBA Masonry Heater Caucus urges EPA to include masonry heaters in its revised NSPS.
- 2009-2010 Ultimately EPA decides to include masonry heaters as part of NSPS process. HPBA works with MHA and AMHOP to develop NSPS proposal.
- 2011 ASTM masonry heater testing standard completed with EPA participation. Masonry Heater Caucus tasked by HPBA to develop a final NSPS proposal as part of overall strategy.
- June 2012 HPBA submits masonry heater NSPS proposal to EPA.

Jurisdictions Restricting Masonry Heaters

A non-exclusive list of jurisdictions that prohibit masonry heaters includes:

California

1. Bay Area Air Quality Management District (“BAAQMD”) (San Francisco and environs): Allows only EPA certified appliances.
2. Kern County: Allows only pellet and EPA certified appliances.
3. City of Los Altos: Allows only pellet stoves and EPA certified appliances.
4. Marin County: Defers to the BAAQMD, and allows only pellet and EPA certified appliances.
5. San Joaquin Valley Unified Air Pollution Control District: Allows only pellet and EPA certified appliances.
6. Tahoe Regional Planning Agency (Lake Tahoe and environs): Exempts pellet stoves but otherwise allows only EPA certified appliances.

Other

1. Jackson, Wyoming
2. Numerous jurisdictions in, among other places, Colorado, Arizona, Utah, Idaho, and Montana.

A non-exclusive list of other jurisdictions that heavily and non-uniformly regulate masonry heaters includes:

1. Maricopa County Air Pollution Control District: Allows masonry heaters and other devices only which meet “performance standards that are equivalent to the standards in 40 CFR 60, Subpart AAA as amended through July 1, 1998, and that is approved by the Control Officer and the Administrator of EPA”.
2. Mendocino County Air Quality Management District: Allows masonry heaters, but requires a 10” veneer which essentially makes any masonry heater built in conformity to be unable to perform its function.
3. San Luis Obispo County Air Pollution Control District: Has approved four masonry heater models (based on Washington and Colorado testing), but refuses to approve any more.
4. Northern Sonoma Air Pollution Control District (Napa and environs): Formally allows EPA certified or District-approved masonry heaters, but the district has refused to approve any masonry heater.
5. Missoula City/County Health Department in Montana: Allows only pellet stoves inside the city limits. Outside the city limits, only one masonry heater model by the largest manufacturer Tulikivi has been approved, after petitioning based on the model’s Washington testing.