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(Submitted electronically via email to pubcomment-ees.enrd@usdoj.gov)

RE: Comments of the Hearth, Patio & Barbecue Association in Response to “Notice of Lodging of Proposed Consent Decree Under the Clean Air Act” (82 FR 34977 (July 27, 2017))

The Hearth, Patio & Barbecue Association (HPBA) appreciates the opportunity to comment on the Department of Justice’s (“DOJ” or “the Department”) request for comment on a proposed Consent Decree in the lawsuit entitled *United States v. Harley-Davidson, Inc., et al.*, D.J. Ref. No. 90-5-2-1-11333.

Based in Arlington, Virginia, HPBA is the principal national industry association representing manufacturers, retailers, distributors, representatives, service firms, and allied associates for all types of hearth, barbecue, and patio appliances, fuels, and accessories, including solid fuel-fired home heating appliances (e.g., woodstoves, pellet stoves, hydronic heaters, and warm air furnaces). The 2,200-member association provides professional member services and industry support in education, statistics, government relations, marketing, advertising, and consumer education. Furthermore, since the late 1990s, HPBA has partnered with the Environmental Protection Agency (EPA), local governments, and industry partners in planning and conducting woodstove changeout programs across the United States.

These comments address the exclusion of the \$3 million environmental mitigation project from the newly-proposed consent decree. The project would have funded a woodstove changeout program in the northeastern U.S. that would have replaced older, uncontrolled woodstoves¹ with much cleaner EPA-certified woodstoves in the homes of regional residents. A woodstove changeout program is a voluntary program initiated at the local, state, or regional level and provides eligible communities with incentives to remove a non EPA-certified wood heating appliance (typically a woodstove) and replace it with something cleaner, such as an EPA-certified woodstove. Not only would funding of the program lessen emissions of hydrocarbons and oxides of nitrogen by replacing older stoves, it would have helped residents to afford more efficient, safe, and independent sources of heat.

The Department explains that the mitigation project was removed from the new consent decree because of a new DOJ policy (“Prohibition on Settlement Payments to Third Parties,” June 5, 2017) and that “the United States and Harley-Davidson attempted to negotiate a substitute mitigation project, but were unable to reach timely agreement on a suitable alternative.”² The June 5, 2017

¹ An uncontrolled woodstove is a wood-burning stove manufactured and sold before 1990 which is not certified by the EPA.

² Notice of Lodging of Proposed Consent Decree Under the Clean Air Act. 82 Fed. Reg. 34977 (proposed July 27, 2017).

memo does prohibit payments to third-party organizations who are neither victims nor parties to the lawsuits, but it does specify an exemption to this policy for a “lawful payment or loan that provides restitution to a victim or that otherwise directly remedies the harm that is sought to be redressed, including, for example, harm to the environment...”³ A woodstove changeout program such as the one included in the original consent decree is an environmental mitigation project and would meet the exemption conditions outlined in the June 2017 memo if it were structured differently in the consent decree.

We recommend that the Department include a requirement in the consent decree for Harley-Davidson, Inc. to pay a civil penalty of \$3 million that would be applied to EPA’s Targeted Air Shed Grant Program for fiscal year 2017 or fiscal year 2018.

Harley-Davidson, Inc.’s Clean Air Act violation impacted the entire United States, not just one region or locality. As such, this nation-wide violation makes every U.S. resident a victim of this violation. It would be impractical to compensate each victim, but directing funds from this settlement to the Targeted Air Shed Grant Program would sufficiently redress the harm.

The Targeted Air Shed Grant Program’s goal “is to reduce air pollution in the Nation’s areas with the highest levels of ozone and PM_{2.5} ambient air concentrations.”⁴ It empowers local, state, and tribal governments to develop and implement projects that reduce air pollution in the top five nonattainment areas in the country. Portions of states such as Alaska, California, Idaho, New York, and Utah would greatly benefit from a well-funded Targeted Air Shed Grant Program. Most recently, a grant of \$2.5 million was awarded to the Idaho Department of Environmental Quality to administer a changeout program in Cache Valley, which covers parts of both Idaho and Utah.⁵ The program is in line with the principles and goals of the Administration to strengthen and empower local and state governments to find simple solutions to national policy problems.

HPBA appreciates the opportunity to provide input on this proposed consent decree and looks forward to seeing it finalized.

Respectfully Submitted,



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Jack Goldman, HPBA, President & CEO

³ U.S. Department of Justice (2017, June). Prohibition on Settlement Payments to Third Parties. Washington, DC: U.S. Attorney General.

⁴ U.S. EPA. 2017 Targeted Air Shed Grant Program. Retrieved from <https://www.epa.gov/grants/2017-targeted-air-shed-grant-program>

⁵ U.S. Environmental Protection Agency. (2017). *Idaho Selected to Receive \$2.5 Million EPA Grant to Improve Air Quality in Cache Valley* [Press release]. Retrieved from <https://www.epa.gov/newsreleases/idaho-selected-receive-25-million-epa-grant-improve-air-quality-cache-valley>