

Summary in Reaction to NOV dated 7/24/23 and Why We are Not Guilty

The recent Notice of Violation (NOV) does not mention the rule we are supposed to have violated. But the wording is less offensive - maybe more careful - than in the first NOV. "The District appreciates it can be challenging to understand regulatory requirements."

We sold the Certified Rumford only after it had been approved.

The District should understand that the Buckley Rumford Co. did not initiate this sale. We don't advertise in Placer County and we never claimed our Rumford fireplaces meet the Placer County Air District Rule 225. We only sold the fireplace after the homeowner got a permit to build it after submitting our test results that show that our "Certified Rumfords meet or exceed the US EPA Phase II emission standard as determined by the Washington State Fireplace Regulation - WAC 50-30-31200 - which has established 7.3 grams of particulate emissions per kilogram of fuel burned (g/k) as equivalent to the US EPA's limit of 7.5 grams of particulate per hour (g/hr)." We did think that was reasonable. Based on these tests the state Colorado also approved our Rumfords as meeting their Regulation #4 and several cities and counties in California, Colorado and Arizona have approved our Certified Rumfords. More recently the EPA developed a fireplace emission testing program establishing a g/kg factor as equivalent to the EPA Phase II stove emissions rate expressed in g/hr. We did check to confirm that the Building official reviewed our test results, including the equivalency. We had every reason to believe the Certified Rumford met the Placer County emission standards and was approved.

The Placer County Air District Weighs in.

After the fireplace was built the Placer County Air District decided it didn't meet their rules. After what I thought was a friendly discussion about EPA test methods and the difference between a g/hr rate and a g/kg standard the District sent us a Notice of Violation (NOV) threatening us with an outrageous and inappropriate fine of up to \$75,000 per day. That would put us out of business. We felt we had to get a lawyer.

Intent.

The NOV states that we "were told" in 2010 that our fireplace did not meet Rule 225 and backed up that claim with email messages. In that situation, like this one, a customer, an architect, applied for a permit to build a Certified Rumford. We did have an email conversation with Heather Kuklo of the District and we were unable to convince her that the fireplace standard expressed in g/kg showed compliance by a recognized alternative appropriate for fireplaces. The issue was unresolved, our customer did not get a permit and did not built the fireplace.

This time, in 2022, our customer applied for a permit without our knowledge and the permit was approved. It never occurred to us to second guess the Building Official. We thought his decision was perfectly reasonable.

Frankly we forgot about that discussion with Heather thirteen years ago but when you brought it up we still thought the Building Official decision was perfectly reasonable. It was a different model of the fireplace, the EPA had since come out with their Fireplace Program and we thought the Building Official, at least, was not so rigid as to require our fireplace to meet an inappropriate stove rate standard.

If your reason for raising the 2010 discussion is to show that we knew about Rule 225, I guess you are correct. We had forgotten about that 2010 situation but we at least had opportunity to know

about Rule 225. But we never resolved the argument about g/hr and g/kg, we still thought our Certified Rumford complied with the rules and that Heather was unreasonably ridged and literal in her interpretation of Rule 225. Our customer back then did not get a permit and did not build the fireplace. I don't see that that shows our "intent" to violate Rule 225 and since that fireplace was never built it certainly can't be considered our "first offense".

The District's idea of due process.

On 7/24/23 the District sent us a revised NOV. It outlines our position from the District's point of view but doesn't mention that we got involved and sold the Rumford only after our customer got a building permit to build it. Then Mr. Springsteen outlines the District's side that is basically that the Rumford doesn't literarily meet the inappropriate stove emission rate expressed in grams per hour and, not surprisingly, concludes that the District is right and we should pay a "reduced monetary payment" of \$3,575.

Mr. Springsteen mentioned that he was surprised that we hired a lawyer. The threatened fine of \$75,000 per day would put us out of business. We felt we had to defend ourselves in court if necessary.

What is the Issue?

The issue now is basically who decides whether or not the Certified Rumford meets the Placer county emissions standards. If it's the building official and he issues a permit, then the fireplace meets the standard. The other issues raised in the NOV are merely unresolved circular arguments - red herrings or non sequiturs.

The Building Department interprets and enforces the Air District rules.

It may not be clear in the General enforcement policy at <https://ww2.arb.ca.gov/resources/documents/enforcement-policy> but in practice those rules affecting masonry fireplaces are

interpreted and enforced by the Building Department. Why else would the plans examiner in the Building Department review our test results, including the equivalency part, and approve the Certified Rumford, going so far as to read the Certified Rumford Manual and pointing out that the label needs to be attached to the door? If he didn't have the authority to interpret and enforce the Air District rules why didn't he refer the builder or homeowner to the District?

It never occurred to us that the Building Department didn't have the authority to interpret and enforce the Air District rules. Back in 1999 the Bay Area Air Quality Management District (BAAQMD) sent a Model Ordinance to all the cities and counties in the Bay Area that stated:

ENFORCEMENT: Any person who plans to install a woodburning appliance must submit documentation to the [building department of city or county] demonstrating that the appliance is a pellet-fueled wood heater, an EPA certified wood heater, or a fireplace certified by EPA should EPA develop a fireplace certification program.

Since then the Buckley Rumford Co. has found that the building officials in Napa County, Northern Sonoma County, Nevada County, Mammoth Lake, Marine County, San Francisco, Alameda and many others think they enforce air district rules. The director of the California Green Building Code also said interpretation of the Green code's fairly ambiguous rules was "up to the local building official".

Does the Certified Rumford comply with Rule 225?

Whether or not the Certified Rumford actually complies with Rule 225 is an unresolved matter of opinion. The District maintains the Rumford does not meet the EPA Phase II (stove) emissions rate expressed in grams of pollutant per hour. That is a ridged interpretation and is literally true.

But the Certified Rumford does meet the EPA Phase II emissions standard by an equivalency determined by the states of Washington and Colorado and more importantly by the EPA itself in the EPA Voluntary Fireplace Program at <https://www.epa.gov/burnwise/voluntary-fireplace-program>

Stoves smolder. Fireplaces burn fast and clean. The stove standard is a smolder test expressed in g/hr and favors a slow burn. The fireplace standard expressed in g/kg favors a fast clean burn. They are completely different tests and the EPA equivalency, which took five years to develop, is way more than just recalculating the raw data to convert g/kg to g/hr. The fireplace, burning fast, would probably have a high g/hr result and the stove, burning at four or five low burn rates, would probably have a high g/kg result.

Rule 225 is not so clear that compliance is obvious. Masonry heaters and cookstoves are permitted and Section 302.2.2.4 invites alternatives. If the building department is not authorized to interpret and enforce the rules, there is no administrative procedure to discuss, interpret or approve individual building permit applications.

Why us?

Why has the District gone after the Buckley Rumford Co.? The building official, home owner, builder and mason are all local and more likely to know about Rule 225 than we are. If the Certified Rumford is determined not to meet the Rule 225, will the District go after the building official, home owner, builder and mason?

We think the Rule 225 ban on advertising and selling masonry fireplaces or components which are legal almost everywhere is an example of regulatory overreach.

Then there are the due process issues.

Determining after the fact and without any due process that we violated the rule and going straight from accusation to a penalty is a violation of our due process rights.

We are unwilling to pay the penalty, implying that we are guilty, for several reasons:

(1) If we are accused of violating the advertising and selling parts of Rule 225 then how can we avoid repeating that in future? We are not advertising or promoting in Placer County. We just have a website where a homeowner picked up our information about our testing and got a permit to build the Rumford. Anyone else could do the same tomorrow.

(2) If we are determined to be guilty, what's to prevent the District from going after the home owner, builder or mason? It's important to us that the Rumford in this case be considered approved as meeting the District rules.

(3) From our point of view being threatened with big fines for just discussing the issue or because a customer applies for a permit seems like harassment and intimidation. If the District (and other air districts) have harassed and intimidated our dealers and architect, builder and mason customers perhaps this is a much bigger issue affecting our whole industry.

Conclusion.

We did not intend to violate Placer County Air District Rule 225 and we don't think we did. Please withdraw the NOV. You may justify the withdrawal with the phrase: "Withdrawal of this NOV does not mean that Buckley Rumford Co. Certified Rumfords meet Rule 225."

Jim Buckley

Buckley Rumford Co.
1035 Monroe Street
Port Townsend WA 98368
360 385 9974 or 360 531 1081
buckley@rumford.com
<https://www.rumford.com>