

Hearth Makers Get Hot Over Regulations

By **RYAN TRACY**

Rett Rasmussen sells gas-log sets, which use a "dancing flame" design that his father invented more than 50 years ago to replicate a cozy wood fire.

They are just for decoration, he says. But as the season approaches for families to gather around the hearth—real or fake—Mr. Rasmussen and other makers of hearth products are having a flare-up with the Department of Energy. The federal agency says it has the authority to regulate the log sets as heating equipment, though it isn't proposing any changes now.

The issue "just hit us out of left field," said Mr. Rasmussen. His company of about 50 employees—Rasmussen Iron Works Inc. of Whittier, Calif.—has spent at least \$20,000 to fight any regulatory change, he says.

The gas-log sets consist of gas burners buried under faux coals and fake wood. The gas shoots up and dissipates in a yellow flame that is supposed to look like real wood burning. The setup generates some heat, but less than a gas-fired heater designed for that purpose.

The faux-hearth makers claim they are victims of regulatory overreach, a theme among Republican candidates this year. The Hearth, Patio and Barbecue Association has spent millions of dollars on lobbyists and lawyers trying to block the effort.

Obama administration officials call industry complaints overheated. They say they have no current plans to impose energy-efficiency standards on the sets. And they say they gave other decorative-fireplace products an exemption from the standards—as long as the makers show consumers the products aren't designed as heaters.

"I'm not sure that we disagree that much," said an Energy Department official.

But before the industry raised objections, the department planned to impose a limit on the amount of natural gas each of the sets could use, and companies fear such regulation could re-emerge. Some also dislike having to ensure their products are eligible for the exemption.

"They've basically said, 'We're not going to kill you now, we're going to kill you later,'" said Jack Goldman, president of the Hearth, Patio and Barbecue Association.

Before three judges last month at the U.S. Court of Appeals in the District of Columbia, lawyers sparred over the 1987 National Appliance Energy Conservation Act, which gives the energy agency the power to order improved efficiency in home heaters that burn natural gas.

The department says the law allows it to regulate products that are "designed to furnish warm air." The industry concedes that some large gas fireplaces are designed to heat a home, but it says everything else should be permanently excluded from regulation under the law. Hearth products must conform to local fire codes, which are separate from federal regulation.

Judge A. Raymond Randolph expressed sympathy for the industry, saying that an object is not a heater simply "because it makes the air around it warm."

"I don't understand that as a matter of pure English," said Judge Randolph, who was appointed by President George H.W. Bush. He added: "That's like saying a match is designed to furnish warm air. It's designed to furnish a flame."

H. Thomas Byron, a Justice Department lawyer, said it was "rhetorical hyperbole" to suggest Washington wanted to regulate everything that's warm. He observed that decorative fireplaces, unlike matches, can provide backup heat in case of a power outage, and said manufacturers "don't actually suffer any injury" under the current rules because they are allowed an exception.

Mr. Rasmussen, who says the family business has struggled in the weak economy, monitors the case closely. "We're alive and kicking, but it's not what it used to be, and when you have to fight your government, it's hard to see where it's going to get back anywhere near where it has been," he said.

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