

To: Dyke Messinger[dmessinger@powercurbers.com]
Cc: Stephen Bullock[sbullock@powercurbers.com]
From: Bunker, Byron
Sent: Mon 5/8/2017 7:05:15 PM
Subject: RE: Power Curbers/TPEM

Ex. 6 - Personal Privacy

Hi Dyke,

We are evaluating a potential policy change to re-interpret or offer an alternative interpretation of our regulations regarding mergers. The potential for such a change is under review now with our Office of General Counsel (OGC).

In concept, the change would allow a company that has participated in the small volume TPEM program to continue to operate as an independent TPEM participant when purchased or merged with another company provided the company limits its TPEM usage to equipment models that have used TPEM in previous years and with an annual cap on total TPEM allowances equal to the maximum TPEM usage by the company in previous reporting years. We think such an approach would allow Power Curbers to continue to operate as it has been under the TPEM program while preventing growth in the use of exempted engines (e.g., by preventing the company that purchases Power Curbers from using your unused TPEM allowances to expand their TPEM allowance use beyond the limitation in the regulations).

It was my understanding that such an approach would address your concerns. It would be helpful to me if you can confirm that understanding.

If OGC concludes that this new interpretation is permissible under our existing regulations, I expect that we would be able to issue this guidance to your company within the next couple of weeks. If OGC concludes that this interpretation is not available in the current regulation, then we are looking at a rulemaking activity that is unlikely to conclude in time to be helpful to you.

To be very clear, this is only an alternative that we are considering and does not reflect a final Agency decision. Hearing your reaction to this concept would be helpful to our deliberations.

Best regards,

Byron

Byron Bunker
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-----Original Message-----

From: Dyke Messinger [mailto:dmessinger@powercurbers.com]
Sent: Monday, May 08, 2017 12:56 PM
To: Bunker, Byron <bunker.byron@epa.gov>
Cc: Stephen Bullock <sbullock@powercurbers.com>;
Subject: Power Curbers/TPEM

Ex. 6 - Personal Privacy

Byron,

I hope you had a good weekend. Any news on our request ?
Best,
Dyke

Sent from my iPhone

To: Dyke.Messinger[dmessinger@powercurbers.com]
Cc: Ex. 6 - Personal Privacy; Stephen Bullock[sbullock@powercurbers.com]; tyler.haymore@mail.house.gov[tyler.haymore@mail.house.gov]; Towers_Mingledorff@tillis.senate.gov[Towers_Mingledorff@tillis.senate.gov]; Nolan, Joe (Tillis)[Joe_Nolan@tillis.senate.gov]; Hengst, Benjamin[Hengst.Benjamin@epa.gov]; Orlin, David[Orlin.David@epa.gov]
From: Bunker, Byron
Sent: Mon 5/15/2017 4:23:11 PM
Subject: Re: TPEM and Power Curbers
[image002.png](#)

Hi Dyke,

Thank you for your follow up note. As we discussed we are investigating alternate interpretations of the existing regulations, but it appears a rulemaking change may be the only approach that would satisfy your desired outcome.

I may not have well articulated the logic behind the existing regulations when we spoke. The regulations require that a manufacturer aggregate allowance engine use from all of its subsidiaries into a single compliance strategy. This is done to ensure all companies have equal use of TPEM allowances and to prevent companies from creating multiple subsidiaries for each product line for the simple purpose of creating more allowances.

When your company is bought the company that purchases your company will need to account for TPEM use for all of their products including your former products just as they do with all of their subsidiaries and product lines. They can't "grow" their TPEM allowance use by buying your company and your unused allowances. Otherwise, the company purchasing your company would get twice the number of allowances as a comparable company that already had a similarly diverse product line.

The regulatory history aside, we are investigating all options and will hope to have an answer to you by the end of the week.

Best regards,

Byron

Sent from my iPhone

On May 15, 2017, at 11:30 AM, Dyke Messinger <dmessinger@powercurbers.com> wrote:

Byron,

Our machinery has a global footprint. Adapting Tier 4 engines to select current

platforms is not technically practical. The major market for these products is offshore in Asia and the Pacific Rim countries. These countries have not made Tier 4 fuel available making it necessary to continue offering the Tier 3 engines in these models. A few of these machines are still requested in the US due to price and simplicity. We serve that market using the small volume allowance permitted by TPEM. We need to serve that market through the eligibility period for these customers. New models have been developed with more complexity due to the Tier 4 engine requirement for US directed sales. We have made a sincere effort to comply with the regulation and have remained well within the TPEM limits in each power category. We have no intent to increase the number of allowance only to preserve the use of the allowances entitled by the regulation.

The problem as I see it is we will lose our available allowances if an acquisition or merger is consummated. My sense is that you are eliminating the eligible allowances with an internal arbitrary opinion, and I fail to see the logic in that argument or in the rule itself.

Time is running out. I have copied Representative Budd and Senator Tillis's staff and hope that they, along with you and Administrator Pruitt will push for a resolution to this problem that is not of our making.

Best,

Dyke

Dyke Messinger

President

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