To: Dyke Messinger[dmessinger@powercurbers.com]
Cc: Ex. 6 - Personal Privacy Stephen Bullock[sbullock@powercurbers.com]; Towers_Mingledorff@tillis.senate.gov[Towers_Mingledorff@tillis.senate.gov]; tyler.haymore@mail.house.gov[tyler.haymore@mail.house.gov]; joe_nolan@tillis.senate.gov[joe_nolan@tillis.senate.gov]; Hengst, Benjamin[Hengst.Benjamin@epa.gov]; Orlin, David[Orlin.David@epa.gov]; Ross Eisenberg (REisenberg@nam.org)[REisenberg@nam.org]
From: Bunker, Byron
Sent: Wed 5/31/2017 4:45:28 PM
Subject: RE: Power Curbers Inc.

Dear Mr. Messinger,

This response is somewhat mooted by your e-mail earlier today, but I wanted to get to you the outcome from our work to evaluate a potential change to the program consistent with your request. In this way your request for another meeting is as well informed as possible. As we discussed during our call on April 28 and in our subsequent e-mail exchanges, we have been evaluating the potential to reinterpret the regulations defining the Transition Program for Equipment Manufacturers (TPEM) to address your concern. As I will explain in more detail below, we have determined that the regulations are too specific to allow an alternate interpretation from the interpretation applied in the program since its inception in the early 2000's and reaffirmed in my letter to the Association of Equipment Manufacturers (AEM) in 2014. The 2014 letter is the same one I provided to you after our phone call.

We evaluated two potential concepts to address your concern. Specifically, we considered the possibility of allowing Power Curbers to continue to participate in the TPEM program as an independent company post your company's purchase by another equipment manufacturer. We also considered the concept that the allotment of TPEM allowances would be increased for the purchasing company by an amount of allowances available to Power Curbers. Neither approach could be supported by our existing regulations, and therefore, would require a new notice and comment rulemaking process to put into effect.

The concept of allowing the purchasing company to ignore TPEM usage by its subsidiary, Power Curbers, is expressly and clearly not allowed under 1039.625(a) which states that a manufacturer must include "all U.S.-directed equipment sales in showing that you meet the requirements of this section, including those from any parent or subsidiary companies and those from any other companies you license to produce equipment for you." Likewise, the regulations provide only narrow and very specific conditions where a manufacturer can increase its volume of TPEM allowances in the case of technical or engineering hardship under 1039.625(m). The purchasing manufacturer could conceivably apply for increased allowances under those hardship provisions, but as described in the 2014 letter it is unlikely that such a manufacturer could make the necessary showing of hardship.

It may be helpful to apply the language from above to the information you provided. In the examples you have provided, Concrete Machinery's use of TPEM allowances would go from a planned 495 units (against a 525 allowance limit) to 729 units in total through the seven years for the 56 to 130kW power category. To accomplish that we would need to either increase Concrete Machinery's allowances to 729, or allow Power Curbers to continue to report as separate company. As described above, neither of those solutions can be fit within the existing regulations.

I recognize that I am repeating an answer that you received previously at a staff level, and that you were appealing this interpretation through your correspondence with the Agency. I can assure you that in response to your correspondence, we have carefully and thoroughly reevaluated how to apply these regulations in an effort to find an outcome that would be satisfactory to you. But as described above, the regulations are simply too specific to allow an alternate approach without changing the regulations through notice and comment rulemaking.

I appreciate your patient and thoughtful responses to my questions as we have worked through this issue.

Best regards,

Byron

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Byron Bunker

Director Compliance Division

Office of Transportation and Air Quality

Environmental Protection Agency

2000 Traverwood Drive