

April 7, 2017

Senator Richard Burr  
217 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Burr:

Further to my letter of March 30, 2017 which is attached, I want to give you more specifics on the EPA's TPEM program with respect to acquisitions/merger of non-road equipment manufacturers.

Internal policy interpretation of Section 1039.625 (TPEM) has ignored the practical aspect of manufacturer acquisition/merger. The intent of this section is to provide relief for manufacturers to implement design changes to reach final compliance with Tier 4 final emission limits for nonroad diesel powered machines allowing a limited number of exemptions to use Tier 2/3 compliant engines for up to 7 years based on power category and engine families. The internal EPA policy has imposed a reduction on the number of TPEM allowances if two companies are combined. Prior to the combining of the companies each company volume allowance limits were based on that company power categories and engine family use. After combining the companies the limits for remaining allowances are reduced sharply for the combined company if two or more engine families are used in machinery in a power category. Under the EPA interpretation the allowance will be reduced from the original allowances of the separate company. This can result in the combined company TPEM allowance exceeding the EPA interpreted allowance volume, but not exceeding the original total allowances of each company separately. Hence, the acquisition/merger cannot proceed since the new company will be noncompliant with the EPA TPEM flexibility allowance regulation.

EPA recognized that acquisition/merger of companies was not adequately addressed by the original Tier 4 regulation. An amendment was proposed in the Federal Register / Vol. 78, No. 116 / Monday, June 17, 2013 / Proposed Rules. The language is imbedded in III B. *Nonroad Diesel Engine Technology Hardship Program*, paragraphs 4, 5, 6 and 7. Paragraph 4 and 5 state the problem clearly and propose 3 possible solutions. A thirty day public review time limit was set and no industry company found the amendment until November 2013 and commented favorably to adopt the amendment preserving allowances. Only comments from CARB were received in the 30 day limit. The CARB comments were negative, essentially supporting the EPA reduction in allowance internal policy operating procedure. An additional comment to the process was submitted by Dennis Slater, President of AEM (Association of Equipment Manufacturers) dated September 24, 2013.

April 7, 2017

Page 2

The EPA internal policy that reduces the number of TPEM allowances available to companies that result from acquisition/merger has a negative impact on attractiveness to complete an acquisition/merger. A significant price discount will be experienced by the company being acquired or merged.

Let me be specific on what would happen when we sell to another manufacturer that is in the TPEM program. First, you should know that manufacturers in our industry are the most suitable acquirers of our company for obvious reasons. The TPEM allowances would immediately cease which would mean that our current manufacturing of products in Salisbury and Iowa would cease production. This would be economically debilitating to our company. Our sales would decrease from \$35 million to less than \$4 million which is the value of parts and service support. In addition, employment would fall from 110 to about 10 people. Essentially, our company would only be worth the value of our parts and service volume because we would be out of business for the time it would take to engineer our products for the new engines. At a minimum, this would be six months. Of course, we would not have the revenue coming in to pay for the redesign of the products which is another challenge. Our payroll would fall from \$6,500,000 per year to approximately \$700,000. Other economic impacts would be the loss of federal, state and local taxes which total approximately \$1,400,000.

Power Curbers & Power Pavers is not an attractive acquisition for a nonroad equipment manufacturer under the current circumstances due to the economic penalties of the EPA internal policy interpretation. A nonmanufacturing, financial buyer with no prior history of using Tier 4 TPEM can heavily discount an offer knowing that a nonroad equipment manufacturing cannot consider an acquisition due to economic penalties. The EPA actions interfere with value based commerce in the nonroad equipment manufacturing sector causing economic stress to the company, employees and community economy. The action reduces the tax revenue at all levels of government within the United States.

I ask for your consideration of this issue and welcome an opportunity to provide additional details of TPEM and its related rules and interpretations. I would welcome your support and influence to facilitate access for an immediate meeting with Mr. Pruitt of the EPA to discuss my concerns.

Sincerely,

Dwight F. Messinger  
President & CEO

CC: Senator Tillis  
Representative Budd

March 30, 2017

Senator Richard Burr  
217 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Burr:

RE: EPA picking winners and losers -- Confidential

I want to share with you a real frustration I have with a regulation of the Environmental Protection Agency (EPA). It affects the owners and the employees of our company, and I would like to have your assistance in resolving it.

My family has decided to sell our company in Salisbury, Power Curbers, Inc. We have been through a number of meetings and met many different potential acquirers. As you probably know, the choice generally comes down to a strategic buyer or a financial buyer. For me and my management team, strategic buyers are preferable because they're in our industry, have established distribution channels, and are the best long-term fit for our product line, and most importantly, our employees.

However, in discussions with strategic buyers, we have learned that there is an EPA regulation that actually favors financial buyers over strategic buyers. How could this be!?

It is a little complicated but essentially, manufacturers of machinery like ourselves (and any off-road equipment manufacturer) are required to install clean burning diesel engines on our machinery. This is long running program that has been in place for about seven years. Under the government regulations, all manufacturers are required to convert to "Tier 4 final engines" over the next two years through the TPEM program (Transition Program for Equipment Manufacturers)<sup>1</sup>. There are a lot of details surrounding the horsepower range and the schedule for introduction of these super-clean diesels; but the issue is not about installing cleaner engines, it's about our ability to sell our company to the company we choose.

If we sell to a strategic buyer that is already in the TPEM program, and that potential acquirer has maximized his engines in the program, then we must convert immediately, the next day, to the latest technology. This is because the regulation (40 CFR 1039.625) does not allow a company or its subsidiaries to exceed the engine limit. It doesn't matter that Power Curbers has already been approved for the program. Now, these cleaner diesels cost us \$15 – \$20,000 more than the prior generation of diesels, and it takes months to engineer and install them in our machinery; therefore, that is not a viable option.

Page 2

March 30, 2017

If we sell to a financial buyer who is not a manufacturer of machinery this is not an issue, because they are not in TPEM, and the “Power Curber allotment” continues.

The affect of this regulation is that the EPA says that if we wanted to sell our business, then it should be to a financial buyer, not a strategic buyer, because it is impossible to convert our engines in one day! I have spoken Allen Duncan with the EPA, and he has been very helpful in providing me information on the program, and suggesting that I contact my representatives.

I want to meet with Administrator Pruitt to discuss this with him and find a way that our company is not penalized by having to choose one type of acquirer over another. I would like for you, Senator Thom Tillis and Congressman Ted Budd to write a letter and arrange a meeting where I can discuss this with Administrator Pruitt and seek a positive outcome for our company.

I look forward to hearing from you or a senior member of your staff.

Sincerely,

Dwight F. Messinger  
President & CEO

<sup>1</sup> The Transition Program for Equipment Manufacturers, better known as “TPEM” or “flexibility program,” is a temporary exemption that allows diesel equipment manufacturers to delay installing Tier 4-compliant engines in their products for up to seven years.

CC: Senator Tillis  
Representative Budd