

**To:** Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]  
**Cc:** Jackson, Ryan[jackson.ryan@epa.gov]  
**From:** Chris Sarley  
**Sent:** Tue 10/10/2017 4:45:12 PM  
**Subject:** RE: Circling Back - Help connecting me with the right EPA Staff?  
[Kirby Engine Issue Summary.pdf](#)

Hi Mandy! Ryan thanks for looping us all in.

Kirby stands ready to file the application, we just want to make sure we were sequencing things correctly. The hesitation stems from EPA career staff previously taking a position with Kirby that an acquisition cannot be the primary reason for hardship relief, although there is no statutory prohibition for using an acquisition as the basis of hardship relief. Before just submitting the application to flow through those channels again we wanted to ensure they were presenting their legal justification in the correct manner to the right EPA personnel.

Mandy – more information below and attached. Let me know what you think is best and we will heed your advice on how best to proceed.

Thanks – Chris

**From:** Jackson, Ryan [mailto:jackson.ryan@epa.gov]  
**Sent:** Tuesday, October 10, 2017 12:10 PM  
**To:** Chris Sarley <csarley@cgagroup.com>  
**Cc:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>  
**Subject:** Re: Circling Back - Help connecting me with the right EPA Staff?

Mandy is the best person and maybe daubs Harlow can now be read into this.

However, I think if they can submit their application it will help us to refine that further to get it permitted.

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Ryan Jackson

Chief of Staff

U.S. EPA

Ex. 6 - Personal Privacy

On Oct 10, 2017, at 11:50 AM, Chris Sarley <[csarley@cgagroup.com](mailto:csarley@cgagroup.com)> wrote:

Hey man – circling back on the Kirby issue from a few weeks ago. I think by now you have probably heard from Culberson and Flores folks on the House side and Cornyn’s staff on the Senate looking into this a little more. Unfortunately there is a bit of a time crunch to have this resolved by the end of the month in order for Kirby to build and deliver units by the end of the year. The final application is prepared and will be ready to file with EPA. That being said, before Kirby sends the application to EPA I wanted to get some feedback and direction from you to help us figure out who to discuss with on your team and determine how best to proceed before entering into that formal process.

Appreciate any guidance you can provide to steer us toward the right discussion. – Sarley

**From:** Chris Sarley  
**Sent:** Tuesday, September 26, 2017 10:55 AM  
**To:** [jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)  
**Subject:** Help connecting me with the right EPA Staff?

Ryan – hope all is well my man. Been a long time since we've been able to catch up, I'm sure you're in a constant state of busy but hopefully we can all find some time soon. I work with your former colleague at EPW, Lazer (great guy) and he said he caught up with you out a couple times with some of team Inhofe so I know we can make it happen. That aside, I had an EPA related issue I was hoping you could connect me with the right people on your team to discuss with. I've attached a full summary of the situation but briefly:

Kirby Corporation has a waiver issue arising from a recent acquisition of a company Stewart and Stevenson (S&S). Both companies participate in the EPA "Transition Program for Engine Manufacturers" using the "single family compliance option." This allows each company to use a certain number of Tier 2 engines from a single manufacturer during the period of the program, which expires at the end of 2017. S&S entered into contracts before the Kirby acquisition to produce equipment using engines it obtained under the program. EPA regulations stipulate that post-acquisition, S&S must use engines that are the same as Kirby's other engine subsidiaries. Problem arising in S&S cannot satisfy its existing contractual obligations using the other engine. Reasoning being, this is the only engine in their frac fleet so their entire maintenance and parts system is built around supporting this engine. The engines are in S&S's inventory and ready to be installed as the units are constructed. Kirby cannot meet its acquired contractual obligations except by using these engines.

We were seeking a dialogue with EPA staff you have brought in on the team about a hardship provision that currently exists giving EPA the discretion to allow relief. It is my understanding that EPA career staff has previously taken a position that an acquisition cannot be the primary reason for hardship relief, although there is no statutory prohibition for using an acquisition as the basis of hardship relief. Kirby maintains that the law allows the hardship exception in this case which in turn will mean contractual obligations can be met and keep workers employed building products that customers need.

Appreciate it if you can help me identify the right folks at EPA to engage on this with. Kirby is positions to submit their application on a rapid timeline so we can make any in person or conference call happen immediately. As a head's up they are also getting in touch with Culberson and Cornyn to engage on the issue so you might get some inquires coming your way from the hill as well.

Thanks in advance – I really appreciate it – and let me know if there is anything else you need from my end to set something up with Kirby.

- Chris

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**Chris Sarley** | Vice President

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Annapolis | Atlanta | Austin | Baton Rouge | Chicago | Des Moines

Houston | Jackson | Richmond | Springfield | **Washington**

202.448.9511 Direct | 202.494.0960 Mobile | 202.448.9500 Office

300 Independence Avenue, SE

Washington, DC 20003

[www.cgagroup.com](http://www.cgagroup.com) | @CGAGroup

<Kirby Engine Issue Summary.pdf>



## Kirby/Stewart and Stevenson EPA Hardship Request

**What is the problem?** Both Kirby's existing diesel businesses and Stewart and Stevenson (S&S), recently acquired by Kirby, participate in the EPA "Transition Program for Engine Manufacturers" using the "single family compliance option." This allows each company to use a certain number of Tier 2 engines from a single manufacturer during the period of the program, which expires at the end of 2017. S&S entered into contracts before the Kirby acquisition to produce equipment using engines it obtained under the program. In particular, S&S has two contracts totaling \$43 million to produce 40 pressure pumping units before year end, using its designated MTU 12V4000 engines. EPA regulations stipulate that post-acquisition, S&S must use engines that are the same as Kirby's other engine subsidiaries. S&S cannot satisfy its existing contractual obligations using the other engine.

**Why do you have to use these engines?** With this purchase, the customer will have purchased 119 of these engines. It is the only engine in their frac fleet. This means their entire maintenance and parts system is built around supporting this engine, not another one. Asking them to support another engine would be like asking Southwest airlines to add in a few Airbus models to its fleet of all Boeing 737 aircraft. The engines are in S&S's inventory and ready to be installed as the units are constructed. MTU does not currently offer a Tier 4 compliant engine. Kirby cannot meet its acquired contractual obligations except by using these engines.

**What is the remedy?** There is a hardship provision that gives EPA the discretion to allow relief, but EPA takes the position that an acquisition cannot be the primary reason for hardship relief, although there is no statutory prohibition for using an acquisition as the basis of hardship relief. The law allows the hardship exception in this case, and a hardship exception is necessary to allow justice to be done, contractual obligations to be met, and keep workers employed building products that customers need.

**What is Kirby asking for?** Kirby wants to comply with the contractual obligation it acquired with S&S to install 40 MTU engines into equipment designed to receive those engines. Kirby is not asking to sell additional MTU engines in 2017 under this hardship waiver, just those needed to meet the acquired obligation. Kirby will count those engines against its 2017 corporate engine allowance, thus the total number of engines that can be placed in service as a result of the acquisition will be smaller than if the two companies continued separately. There is no environmental harm in this request.

**What is the process for solving this problem?** Kirby wants the policymakers at EPA to understand that this relief would in no way allow Kirby an undue advantage or increase the number of Tier 2 engines that could be sold under this transition program. In fact, it will decrease them. Kirby will file the appropriate application and requests due consideration of the unusual circumstances presented rather than an automatic response based on a prior policy position that is not statutorily required and simply does not make sense in this situation.

**Who gets hurt if no waiver is granted?** The 220 employees at the S&S Telge Road facility, for whom this order represents their work for the next few months. The customer, who needs this equipment for its hydraulic fracturing operations and needs it to match all of its other equipment. Kirby, who has a contractual obligation to meet, as well as customers and engine manufacturers who depend on Kirby as a distributor.