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U.S. EPA REGION 5

January 11, 2018

Ed Nam, Director Air and Radiation Division
US EPA Region 5 (A-18J)
77 West Jackson Boulevard
Chicago, IL 60604-3507

RE: Applicability Determination Request – Exclusion of Nonroad Engine Testing Installed in Final Products

Dear Mr. Nam:

Briggs & Stratton Corporation (Briggs & Stratton) operates a manufacturing facility for engines, generators, and power equipment located in Wauwatosa, Wisconsin. The Wauwatosa Plant is a Part 70 Source because potential carbon monoxide (CO) emissions for the facility exceed 100 tons per year pursuant to NR 407.02, Wisconsin Administrative Code (WAC). The facility is also a major source under NR 405, WAC. The source is a minor source of federal hazardous air pollutants (HAPs) with emissions restricted to less than 10 tons per year for any single HAP and less than 25 tons per year for all federal HAPs combined. The facility currently operates under WDNR Operation Permit No. 241011870-P20.

Emission sources at this facility include boilers, miscellaneous natural gas combustion sources, cold cleaning, engineering engine testing, endurance engine testing, assembly, and assorted support activities. Based on discussions with Wisconsin Department of Natural Resources, TRC, on behalf of Briggs & Stratton, is requesting an applicability determination from the Agency with respect to final product testing activities associated with assembly operations. It is our opinion that emissions from final product testing are excluded from stationary source regulation and permitting.

Assembly operations at Briggs & Stratton include those for the Legacy XL™ tractor and those associated with Process P200. The Legacy tractor uses a platform station for assembly and is produced in very low volumes. P200 is a much higher volume production operation and consists of four assembly and testing lines (two lines for pressure washers and two lines for tractors/lawn equipment and snow removal equipment). Emissions are captured through snorkels and vented out stationary building stacks.

The engines in these products (lawn tractors/equipment, snow removal equipment and power washers) are gasoline engines, ranging in size from 3.5 horsepower (small pressure washers) to 33 hp (larger tractors). All of these products are designed and intended to be portable and transportable

and thus, the product engines meet the definition of a non-road engine as discussed in the paragraphs to follow. The purpose of the final product testing is not for the engine but of the final product. These end-of-line quality tests include, but are not limited to, safety features, lights, forward and reverse speed, hydraulic leak checks, deck engagement and function, brake checks, turn functions, pressure system checks, and auger operation.

It is our understanding, based on a review of EPA determinations in Region 7 (to MDEQ November 27, 2012 & to IDNR November 10, 2016) and Region 5 (to Professional Power Products Inc.; May 11, 2017), that testing of final mobile products which contain a certified non-road engine is excluded from the definition of stationary source, and therefore emissions associated with these activities are not regulated under provisions applicable to stationary sources.

> *Under the Clean Air Act (CAA) Section 302(z) [42 USC §7602], a Stationary Source is defined as "...any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216." As stated, the two exceptions from the definition of a stationary source are (1) direct emissions from (an) internal combustion engine used for transportation purposes; and (2) emissions from a non-road engine or non-road vehicle. CAA 216(10) [42 USC §7550] defines a "non-road engine" as an "internal combustion engine that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 [CAA § 111] of this title or section 7521 [CAA § 202] of this title." In addition, EPA's regulations for Highway, Stationary and Nonroad Programs, 40 C.F.R. 1068.30, defines a nonroad engine as an internal combustion (engine) that meets any of the following criteria:*
>
> > *It is (or will be) used in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers).*
> >
> > *It is (or will be) used in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers).*
> >
> > *By itself or in or on a piece of equipment, it is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Examples of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.*
>
> *This definition relies on the end use of the engine to classify it as a non-road engine.*
>
> (John Mooney, Chief, Air Programs Branch USEPA Region 5, May 11, 2017 letter to Mr. Duane Maves, Safety Coordinator, Professional Power Products Inc.)

The nonroad equipment operated by Briggs & Stratton during assembly and discussed above, meet one or more of the criteria identified to qualify as mobile sources and as such, the emissions occurring during the final quality checks should be considered as resulting from the operation of mobile, not stationary sources, and therefore not subject to permitting under the Clean Air Act.

Wisconsin requirements closely follow the federal provisions with respect to defining a "stationary source."

The general definition of "stationary source" used throughout Chapters NR 400 to 499, WAC, except when defined specifically within a chapter or section, is as follows:

> ***NR400.02 (153)*** *"Stationary source" has the meaning given in s. 285.01 (41), Stats.*
>
> ***285.01(41) Wis Stats.*** *"Stationary source" means any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. A stationary source includes an air contaminant source that is capable of being transported to a different location. A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant. A stationary source does not include a motor vehicle or equipment which is capable of emitting an air contaminant while moving.*

Additional pertinent definitions are as follows:

> ***NR400.02 (98)*** *"Mobile source" means any motor vehicle, vessel, aircraft or equipment other than a semistationary source which is capable of emitting any air contaminant while moving or idling on the ground or in the water. Mobile sources include automobiles, motorcycles, trucks, buses, snowmobiles, motorboats, steamships, earthmoving equipment, locomotives and aircraft.*
>
> ***NR400.02 (143)*** *"Semistationary source" means any facility, operation or equipment that has the capability of emitting any air contaminant while moving, but generally does not emit while moving. Note: Examples are diesel cranes, air compressors and electric generators such as those used at construction sites.*
>
> ***NR400.02 (85)*** *"Indirect source" means any stationary source which attracts or may attract mobile source activity or on which mobile source activity is conducted, thus resulting in the indirect emissions of any air contaminant, at or on the indirect source itself, attributable to the motor vehicles or the mobile source activity. Such indirect sources include, but are not limited to highways and roads; parking facilities; retail, commercial and industrial facilities; recreation, amusement, sports and entertainment facilities; airports, bus terminals and train stations; office and government buildings; and educational facilities.*

Under these definitions, we conclude that the tractors, lawn equipment, snow removal equipment, and pressure washers are not stationary sources because they do not emit "only from a fixed location." The tractors, lawn equipment, and snow removal equipment are almost always mobile when in operation and the pressure washers are frequently moved (generally many times each day when in use) to accommodate their operation. In fact, currently all pressure washers are equipped with wheels to allow them to be pulled along as they operate.

The operation permit program under Chapter NR 407, WAC, applies to "stationary sources" and the above definition of "stationary source" is applicable.

> ***NR 407.01 Applicability; purpose.*** *(1) APPLICABILITY. This chapter applies to all direct stationary sources which are required under s. 285.60, Stats., to obtain an operation permit. In accordance with s. 285.60 (6), Stats., sources of certain sizes and types are exempt under s. 407.03 from the requirement to obtain an operation permit.*

The construction permit program under Chapter NR 406, WAC, applies to "stationary sources" and the above definition of "stationary source" is applicable.

> ***NR 406.03 Permit requirements and exemptions for construction permits. (1)*** *PERMIT REQUIREMENT. Except as provided in sub. (2), no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under s. 285.60 (5), Stats., or under this chapter.*

Under the state regulation for the Prevention of Significant Deterioration (PSD), found in Chapter NR 405, WAC, the following definitions are found, which closely follow the federal definitions applicable to the PSD regulations:

> ***NR405.02(28)*** *"Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant subject to regulation under the act.*
>
> ***NR 405.02(8)*** *"Building, structure, facility or installation" or "facility, building, structure, equipment, vehicle or action" means all of the activities which emit or may emit a regulated NSR air contaminant, belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, except the activities of any vessel. Regulated NSR air contaminant emitting activities shall be considered as part of the same industrial grouping if they are classified under the same 2–digit major group as described in the Standard Industrial Classification Manual, 1987, incorporated by reference in s. NR 484.05.*
>
> ***NR 405.02(28m)*** *"Subject to regulation under the Act" means, for any air contaminant, that the contaminant is subject to either a provision of the Act, or a nationally applicable regulation codified by*

> *the administrator in title 40, chapter I, subchapter C of the CFR, that requires actual control of the quantity of air emissions of the contaminant, and that the control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of the contaminant released from the regulated activity.*

The definitions under provisions of 40 CFR 51.166(b) are similar:

> ***(5) Stationary source*** *means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.*
>
> ***(6)(i) Building, structure, facility, or installation*** *means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).*

In a response to Ms. Catherine Fitzsimmons, Iowa Department of Natural Resources, regarding permitting requirements for a similar matter, Mark A. Smith, Chief, Air Permitting and Compliance Branch, USEPA Region 7, made the following comments:

> *Under Clean Air Act (CAA section 302(z), a "stationary source" is defined as "...any source of air pollution except those emission resulting directly form an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216." As stated, the two exceptions from the definition of a stationary source are (1) direct emissions from internal combustion engines for transportation purposes; and (2) direct emission from nonroad vehicles or engines.*
>
> ... ...
>
> *We note that, as similarly stated in the GM memo, while these emissions may not be subject to stationary source permitting, unless otherwise preempted by CAA section 209, the State of Iowa retains authority to use other means to control pollution from these sources should the state have a need to in the future.*
>
> ... ...
>
> *The fact that the equipment is only partially or fully assembled has no bearing on EPA's view that these emissions are not stationary source emissions. The emissions here are emission from certified nonroad engines, regardless of whether the engines are installed in a partially or fully assembled piece of equipment (e.g., a nonroad vehicle).*

(Mark A. Smith, Chief, Air Permitting and Compliance Branch USEPA Region 7, November 10, 2016 letter to Ms. Catharine Fitzsimmons, Air Quality Bureau, IDNR)

Here, the exhaust emission from John Deere's assembly line testing are not stationary source emissions because the direct emissions at issue are from certified nonroad engines and nonroad engines are categorically excluded from the stationary source definition.

In addition, it is our understanding that WDNR removed several similar processes from the operation permit for Toro Co. as noted the preliminary determination excerpt shown below:

> *PD 642028970-F30*
> *During the review of this operation permit renewal, US EPA Region 7 issued an applicability determination dated November 10, 2016, related to the engine testing operations at John Deere Dubuque Works in Dubuque, Iowa. After consultation with EPA's Office of Air Quality Planning and Standards and the Office of General Counsel, US EPA Region 7 provided guidance to the Iowa Department of Natural Resources which stated that direct emissions from a certified nonroad engine do not constitute a "stationary source" as defined under the Clean Air Act. The term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 (of the Clean Air Act).*
>
> *All of the engines tested at Processes P84, P106, and P107 are considered nonroad engines. Toro has requested that Processes P84, P106, and P107 be removed from their operation permit, consistent with this publication. The renewed permit will require the permittee to document that the engines tested on these stands are nonroad engines. Furthermore, Toro is an area source for Federal HAPs and is not subject to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Engine Test Cells/Stands in 40 CFR Subpart PPPPP. Therefore, all specific permit language, applicable requirements, and emissions estimates pertaining to Processes P84, P106, and P107 will be removed in this operation permit renewal.*

As we understand the state construction, PSD, and operation regulations, they are consistent with the federal program with respect to defining applicability to stationary sources and the resulting exclusion of nonroad engines. Therefore, we conclude that emissions from the engines in question are not subject to construction or operation permits under the state or federal rules and thus can be removed from the Facility's operation permit.

We appreciate your time and consideration of this request. Please feel free to contact us, JoAnna Perdzock, TRC 262-901-2138 or John Mourand, Briggs & Stratton Corporation 414-256-5181, should you have any questions or need further information to make this determination.

Sincerely,

TRC Environmental Corporation

JoAnna M. Perdzock, CHMM
Senior Project Manager

cc: John Mourand, Briggs & Stratton Corporation
Daniel Jensen WDNR
Kristin Hart, WDNR
Radhica Kanniganti, EPA (involved in the applicability determination for 3PI)