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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

2.3 JUL 1982

OFFICE OF THE GENERAL COUNSEL

Joseph S. Clark, Esq. 222 South Garden Avenue Clearwater, Florida 33516

Dear Mr. Clark:

This letter responds to your letter of June 4, 1982, in which you request a determination of whether the 5 and 6 H.P. Commercial Blue Boy lawn mowers manufactured by P & E Machinery Co. are consumer products and thus subject to the Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205. The data you have submitted indicate that this mower is not a consumer product because consumers do not appear to "customarily" use it.

As you know, the term "consumer product" is defined in 15 U.S.C. §2052(a)(1), and the term does not include "any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer." The legislative history of this section indicates that products that are not used more than occasionally by consumers are not consumer products. H.R. Rep. No. 92-1153, 92d. Cong., 2d. Sess. 27 (1972).

In general, we have established no specific criteria to determine whether consumers use a product more than occasionally. Instead, we review all available information relevant to a particular determination.

In the case of these P & E Machinery Co. mowers, you have submitted the following data which indicate that the current use and distribution patterns of those mowers are such that these mowers do not fall within the definition of the term "consumer product":

Mr. Joseph S. Clark Page 2

- 1. The price ranges that you specify for these mowers are higher than the usual prices of typical comparable consumer mowers.
 - These mowers are Tow production items.
 - These mowers are not advertised.
- The mowers are described on your price list as commercial mowers.
- 5. You estimate that 99 percent of these mowers are sold to commercial users in the Tampa Bay area. Since you sell these mowers directly to the final users and not to retailers, you should be in an excellent position to know who purchases them.

Our technical staff has reviewed the information which you submitted, and no information that would contradict any of the factors mentioned above has been brought to our attention. Therefore, based on all of these factors, we reached our conclusion that, at the present time, the use and distribution patterns of these mowers are such that they are not consumer products.

We wish to stress, however, that this determination is based primarily on the information supplied by you, and, if data showing different use of distribution patterns become available, our determination could change. For example, if consumer use patterns were to change in the future so that these mowers would be used more than occasionally by consumers, they could then be considered subject to the standard.

Sincerely,

Martin Howard Katz

General Counsel



U.S. CONSUMER PRODUCT SAFETY COMMISSION WASHINGTON, Q.C. 20207

JUN 1 6 1982

OFFICE OF THE GENERAL COUNSEL

Mr. Joseph S. Clark Attorney at Law 222 South Garden Avenue Corner, Garden & Franklin Clearwater, Florida 33516

Dear Mr. Clark:

I have received your letter of June 4, 1982, concerning whether the commercial models in the SP21 line manufactured by P & E Machinery Co. are "consumer products" as defined in 15 U.S.C. § 2052(a)(1). I have forwarded this material to our technical staff for their comments. When I have received their comment, we will write you concerning our determination.

Singerely,

Stephen Lemberg

Acting Deputy General Counsel

Law Offices JOSEPH S. CLARK ATTORNEY AT LAW

> 222 SOUTH GARDEN AVENUE CORNER GARDEN & FRANKLIN CLEARWATER, FLORIDA 33516 PHONE '8131 441-2621

June 4, 1982

Mr. Stephen Lemberg Acting Deputy General Counsel U.S. Consumer Product Safety Commission Office of the General Counsel Washington, D.C. 20207

Blue Boy Power Mower Standard Exemption

Dear Mr. Lemberg:

I wish to thank you for your letter of April 14, 1982, in regards to the above captioned matter.

Immediately upon receipt of your letter I forwarded a copy of it to my client, P & E Machinery Company, so that they could get all of the information together so that I could forward it back to you. Enclosed and attached you will find the original and one copy of the letter from my client, P & E Machinery Company, of Clearwater, Florida. believe that the information contained therein is self-explanatory. Attached to the letter is also a price list of the different mowers which they manufacture and sell. I also enclose and attach colored photographs of the five and six horsepower mowers which my client manufactures and sells to commercial dealers. Based upon the information in my client's lettere I would deeply appreciate it if you would review this matter and possibly consider granting them a determination that these mowers are not consumer products and thus are not within the scope of the standards.

If you need any additional information please advise me and I'll be most happy to forward it to you immediately.

Thanking you for your immediate attention to this matter and awaiting

your reply, I am,

Very truly yours,

Joseph S. Clark

JSC: faj

P & E Machinery Co. SINCE 1945

MANUFACTURERS "Blue Boy"

1690 CLEARWATER-LARGO ROAD Clearwater, Florida 33516 PHONE 584-0061

New Port Richey, Florida 33552 PHONE 849-2483

AFRIL 1, 1982 PRICES

Side Bag Mowers - Prices include bags		
Model SP21 - 4 F.P. Recoil starter	319.95	
Model SP21 - 4 H.P. SPECIAL - Recoil startera	339.95	
Model SP21 - 5 H.P. Commercial - B & S Engine - Recoil	459.95	78 280
Model SP21 - 6 H.P. Commercial - Recoil	479.95	
Rear Bag mowers - Prices include bags		#2 Tak
Model SP21 - 4 H.P. Recoil starter	339.95	
Push Mowers	32	
20" cut 3 H.P. 7" wheels	149.95	
20" cut 3½ H.P. 8" Wheels	159.95	
21" cut 3½ H.P. Rear bag, includes bag	229.95	
Grass catchers for 20" push mowerse	19.95	extra
Blue Boy Edgers		596
3 H.P. 10" blade B & S Engine or Tecursek	229.95	
31 H.P. 10" blade Commercial - Honda Engine	349.95	
Blue Boy Trimmer	229.95	

TO

E - Pour hours #290

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Carl Blechschmidt. OPM

Through: Martin Howard Katz, General Counsel Through: Stephen Lemberg, Acting Deputy General Counsel

Harleigh Ewell, Attorney, OGC 49

Jurisdictional Determination for P & E Machinery Mowers

Attached is a request for a jurisdictional determination that the 5 and 6 HP versions of the Model SP21 mowers made by P & E Machinery Co. are not consumer products and thus are not subject to the lawn mower standard. Please furnish us with any information that the staff may have that would help determine the use and distribution patterns for these mowers.

If the staff wishes to contact the manufacturer, the contact should be cleared through their attorney, Mr. Clark.

Attachment

RESTRICTION REMOVED-Available

for public release,

Carl W. Blechschmidt, EX-P

THROUGH: Walter R. Hobby, Acting AED, Economics

Greener B. Rodgers, ECCP

Commercial Exemptions to the Mover Standard for the P & E Machinery Company

This is in response to your request for comments concerning the exemption of the five and six becomes recisions of the P & E Machinery Company's Model SP21. Based upon the information provided in the exemption request, it is our opinion that these moviers are not normally used by consumers and therefore should not be subject to the mover standard.

According to the information provided by the manufacturer these movers are produced in very limited quantities for commercial use. There is no selve tising for the movern sales are generated by word of mouth publicity and repeat beings. The movers are also clearly described on P & E's price list as commercial produces.

P&E extinates that about 99 percent of these movers are sold to commercial users who are located in the Tampa Bay area. We have no reason to doubt the accuracy of this estimate. In fact, since P & E sells these movers directly to the final users (none are sold to retailers) it is in an excellent position to know exactly who parchases them.

Given the low sales volume of the movers, and the overwhelming proportion of commercial sales, commerc

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Harley Ewell, OSC
Hobby
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P & E Machinery Co. SINCE 1945

MANUFACTURERS "Blue Boy" POWER MOWER

1690 CLEARWATER-LARGO ROAD Clearwater, Florida 33516 PHONE 584-0061

3201 U.S. 19 SOUTH New Post Richey, Florida 33552 PHONE 849-2483

APRIL 1, 1982 PRICES

Side Bag Mowers - Prices include bags	
Model SP21 - 4 E.P. Recoil starter\$319.95	
Model SF21 - 4 H.P. SFECIAL - Recoil starter 339.95	
Model SP21 - 5 H.P. Commercial - B & S Engine - Recoil 459.95	M M
Model SP21 - 6 H.P. Commercial - Recoil 479.95	
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Rear Bag mowers - Prices include bags	59
Model SP21 - 4 H.P. Recoil starter 339.95	
Push Mowers	
20" cut 32 H.P. 7" wheels 149.95	
20" cut 3½ H.F. 8" Wheels 159.95	
21" cut 3½ H.P. Rear bag, includes bag 229.95	
Grass catchers for 20" push mowersa 19.95	extra
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3 H.P. 10" blade Commercial - Honda Engine 349.95	
3lue Boy Trimmer 229.95	

P & 2 Machinery Co.

3: NCZ 1045

MANUFACTURERS "Blue Boy" ROWER)=

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1227 (L. 1911), Turner New Port Turner Funds 12552 RHGNC 34342413

May 18, 1982

Mr. Joseph Clark 222 S. Garden Ave Clearwater, Fla 33516

Dear Sir:

Reference your letter of 3/19/82 with enclosed copy of Consumer Products Safety Commission letter enclosed are pictures and price sheet on our commercial mowers.

The 5 H.p. Commercial Blue Boy Mower weighs 116 lbs. The 6 H.P. Commercial Blue Boy Mower weighs 118 lbs.

Present price on the commercial nowers 6 E.P. 479.95 5 H.P. 459.95

We manufacture from 200 to 300 of these models per year. Approximately 99% are sold to commercial landscapers in the Tampa Bay Area.

We do not advertise the commercial models as all sales are from work of mouth advertising or repeat business from commercial men.

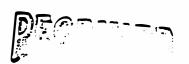
We do not sell these to any retail lealers.

We sold approximately 10 of the 5 H.P.Model to the U.S. Post Office Department, Jacksonville jurisdiction last year.

Sincerely,

P & E Machinery Co Inc

T. G. Eatle, Fres.



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IC:

Carl W. Blechschmidt, EX-P

THROUGH: Walter R. Hobby, Acting AED, Economics

Gregory B. Rodgers, ECCP

Commercial Exemptions to the Mower Standard for the P & E Machinery Company

This is in response to your request for comments concerning the exemption of the five and six borsepower versions of the P & E Machinery Company's Model SP21. Based upon the information provided in the exemption request, it is our opinion that these movees are not normally used by consumers and therefore should not be subject to the moven standard.

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Given the low sales volume of the movers, and the overwhelming proportion of commercial sales, consumer exposure to these movers is minimal.

Ca Subject File
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Harley Ewell, OSC
Hobby
Rodgers/es

TO

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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Carl Blechschmidt, OPM

Through: Martin Howard Katz, General Counsel Through: Stephen Lemberg, Acting Deputy General Counsel

Harleigh Ewell, Attorney, OGC 49

Subject Jurisdictional Determination for P & E Machinery Mowers

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If the staff wishes to contact the manufacturer, the contact should be cleared through their attorney, Mr. Clark.

Attachment

RESTRICTION RELIGIED Available

for public release,

P & 2 Markinery Co.

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MANUFACTURERS "Bluz Boy" ROWER)

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May 13, 1982

Er. Joseph Clark 222 S. Garden Ave Clearwater, Fla 33516

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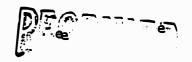
We do not sell these to any retail lealers.

We sold approximately 10 of the 5 H.P.Model to the J.S. Post Office Department, Jacksonville jurisdiction last year.

Sincerely,

P & E Machinery Co Inc

T. G. Eafle. Fres.



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105 -A-c-- Law Offices
JOSEPH S. CLARK
ATTORNEY AT LAW

222 SOUTH SARDEN AVENUE CORNER GARDEN & FRANKLIN CLEARWATER, PLORIDA 33SI6 PHONE '8131 441-2621

June 4, 1982

Mr. Stephen Lemberg
Acting Deputy General Counsel
U.6. Consumer Product Safety Commission
Office of the General Counsel
Washington, D.C. 20207

In Re: Blue Boy Power Mower Standard Exemption

Dear Mr. Lemberg:

I wish to thank you for your letter of April 14,e1982, in regards to the above captioned matter.

Immediately upon receipt of your letter I forwarded a copy of it to my client, P & E Machinery Company, so that they could get all of the information together so that I could forward it back to youe Enclosed and attached you will find the original and one copy of the letter from my client, P & E Machinery Company, of Clearwater, Florida. I believe that the information contained therein is self-explanatory. Attached to the letter is also a price list of the different mowers which they manufacture and sell. I also enclose and attach colored photographs of the five and six horsepower mowers which my client manufactures and sells to commercial dealerse Based upon the information in my client's letter I would deeply appreciate it if you would review this matter and possibly consider granting them a determination that these mowers are not consumer products and thus are not within the scope of the standards.

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JSC: faj

Very truly yourse

Joseph S. Clark



U.S. CONSUMER PRODUCT SAFETY COMMISSION WASHINGTON, D.C. 20207

JUN 1 6 1987

OFFICE OF THE GENERAL COUNSEL

Mr. Joseph S. Clark Attorney at Law 222 South Garden Avenue Corner, Garden & Franklin Clearwater, Florida 33516

Dear Mr. Clark:

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Stephen Lemberg

Acting Deputy General Counsel