No comment by ~~[illegible]~~ cleared 5/19/83 [illegible]

FILE

— (Power Lawn Mowers) S-211157

P & E

#290

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

13

23 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":

ADVISORY OPINION

1. The price ranges that you specify for these mowers are higher than the usual prices of typical comparable consumer mowers.

2. These mowers are low production items.

3. These mowers are not advertised.

4. 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, D.C. 20207

JUN 16 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.

Sincerely,

Stephen Lemberg

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 (813) 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

In Re: 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. 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 dealers. 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.

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,

RECEIVED
JUN 8 1982
Consumer Product Safety Commission
Office of the General Counsel

Joseph S. Clark

JSC:faj

P & E Machinery Co.
SINCE 1945
MANUFACTURERS OF THE "Blue Boy" POWER MOWER

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

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

APRIL 1, 1982 PRICES

Side Bag Mowers - Prices include bags

Model SP21 - 4 H.P. Recoil starter ----------$319.95

Model SP21 - 4 H.P. SPECIAL - Recoil starter ---------- 339.95

Model SP21 - 5 H.P. Commercial - B & S Engine - Recoil ---- 459.95

Model SP21 - 6 H.P. Commercial - Recoil ---------- 479.95

Rear Bag mowers - Prices include bags

Model SP21 - 4 H.P. Recoil starter ---------- 339.95

Push Mowers

20" cut 3½ 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 mowers ---------- 19.95 extra

Blue Boy Edgers

3 H.P. 10" blade B & S Engine or Tecumseh ---------- 229.95

3½ H.P. 10" blade Commercial - Honda Engine ---------- 349.95

Blue Boy Trimmer ---------- 229.95

FILE — Power Lawn Mowers #290

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION

DATE: JUN 16 1982

TO Carl Blechschmidt, OPM
Through: Martin Howard Katz, General Counsel
Through: Stephen Lemberg, Acting Deputy General Counsel
FROM Harleigh Ewell, Attorney, OGC HE

SUBJECT 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.
Initial pm Date 11/1/82

4-13 (7)

ADVISORY OPINION

Carl W. Blechschmidt, EX-P June 25, 1982

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 horsepower 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 mowers are not normally used by consumers and therefore should not be subject to the mower standard.

According to the information provided by the manufacturer these mowers are produced in very limited quantities for commercial use. There is no advertising for the mowers; sales are generated by word of mouth publicity and repeat business. The mowers are also clearly described on P & E's price list as commercial products.

P&E estimates that about 99 percent of these mowers 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 mowers directly to the final users (none are sold to retailers) it is in an excellent position to know exactly who purchases them.

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

cc: Subject File
Chron File
Official file
Harley Ewell, OSC
Hobby
Rodgers/es

P & E Machinery Co.
SINCE 1945
MANUFACTURERS OF THE "Blue Boy" POWER MOWER

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Clearwater, Florida 33516
PHONE 584-0061

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SINCE 1945
MANUFACTURERS OF THE "Blue Boy" POWER MOWER

1690 CLEARWATER-LARGO ROAD
Clearwater [illegible]
PHONE [illegible]

[illegible]
New Port [illegible] Florida 33552
PHONE [illegible]

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 mowers 6 H.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 sll sales are from work of mouth advertising or repeat business from commercial men.

We do not sell these to any retail dealers.

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. Earle, Pres.

RECEIVED
MAY
JOS
Attorn

Carl W. Blechschmidt, EX-P June 25, 1982

THROUGH: Walter R. Hobby, Acting AED, Economics

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Rodgers/es

FILE — Power Lawn Mowers

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U.S. CONSUMER PRODUCT SAFETY COMMISSION

DATE: JUN 16 1982

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Through: Martin Howard Katz, General Counsel
Through: Stephen Lemberg, Acting Deputy General Counsel
FROM Harleigh Ewell, Attorney, OGC

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RESTRICTION REMOVED-Available for public release.
Initial ___ Date ___

ADVISORY OPINION

P & P Machinery Co.
SINCE 1945
MANUFACTURERS OF THE "Blue Boy" POWER MOWER
[illegible] ROAD
Clearwater [illegible]
PHONE [illegible]
[illegible]
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Atto

LAW OFFICES
JOSEPH S. CLARK
ATTORNEY AT LAW

222 SOUTH GARDEN AVENUE
CORNER GARDEN & FRANKLIN
CLEARWATER, FLORIDA 33516
PHONE (813) 441-2621

June 4, 1982

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U.S. Consumer Product Safety Commission
Office of the General Counsel
Washington, D.C. 20207

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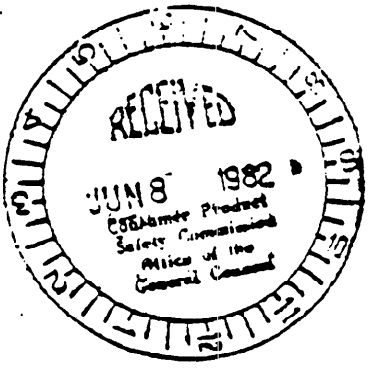

Joseph S. Clark

JSC:faj

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

JUN 16 1982

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