



# Department of Justice

FOR IMMEDIATE RELEASE  
TUESDAY, AUGUST 5, 1980

AT  
202-633-2014

The Department of Justice today announced that it does not intend to challenge a proposal by the Outdoor Power Equipment Institute, Inc. to establish a voluntary noise level disclosure program.

The Department's position was stated in a letter signed by Richard J. Favretto, Acting Assistant Attorney General in charge of the Antitrust Division, on August 1, 1980, to Mac S. Dunaway, counsel for the Outdoor Power Equipment Institute, which proposes to establish the program.

Under the proposed program, the Outdoor Power Equipment Institute will establish a voluntary noise level program to promote disclosure of noise levels for the operation of power lawn mowers.

Disclosure of the noise levels would be made by a tag attached to the equipment. The program would be open to all power lawn mower manufacturers, whether or not they are members of the Outdoor Power Equipment Institute.

Under the Department's Business Review Procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division would challenge that action under the antitrust laws.

A file containing the Business Review request and the Department's response will be made available to the public immediately and may be examined in the Legal Procedure Unit, Antitrust Division, Room 7416, Department of Justice, Washington, D. C. 20530. After a 30-day waiting period, the documents supporting the Business Review will be added to the file.

# # #



United States Department of Justice

WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL  
ANTITRUST DIVISION

August 1, 1980

Mac S. Dunaway, Esquire  
Dunaway, McCarthy & Dye  
1835 K Street, N. W.  
Washington, D. C. 20006

Dear Mr. Dunaway:

This is in response to your request of May 5, 1980 for an expression of the present enforcement intentions of the Department of Justice with respect to the voluntary noise level program of the Outdoor Power Equipment Institute (OPEI). We understand that the program grew out of discussions with, and is supported by, the Office of Noise Abatement and Control of the Environmental Protection Agency.

The program will consist of placing a hang tag on the equipment that will disclose its decibel level measured at the operating position. The level is determined by the manufacturer subject to independent verification. The program is voluntary and is open to all manufacturers whether or not they are members of the OPEI. While a high percentage of industry participation is desired and anticipated, the decision to participate is an individual one for each manufacturer.

On the basis of the information you have submitted, the Department of Justice does not presently intend to bring an enforcement action under the antitrust laws challenging the OPEI noise level hang tag program.

This statement of our present enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. 50.6, a copy of which is enclosed. Your business review request and this letter will be made available



to the public immediately. Your supporting documents will be made publicly available within 30 days of the date of this letter unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely yours,



Richard J. Favretto  
Acting Assistant Attorney General  
Antitrust Division

Attachment

DUNAWAY, MCCARTHY & DYE

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
NINTH FLOOR  
1835 K STREET, N.W.  
WASHINGTON, D.C. 20006

MAC S. DUNAWAY  
CHARLES R. MCCARTHY, JR.  
STUART S. DYE  
JOE A. SHULL  
GEORGE D. BILLOCK, JR.  
JEFFREY D. KNOWLES  
RICHARD G. HOEFLING  
DANIEL J. DUGAN  
KENNETH G. HURWITZ  
JAMES E. MEYERS  
GARY E. CROSS

ARTHUR C. KREUTZER\*  
OF COUNSEL

May 5, 1980

\*ADMITTED IN ILLINOIS ONLY

Sanford M. Litvack, Esquire  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
Washington, D.C. 20530

Re: Request for Business Review

Dear Mr. Litvack:

On behalf of the Outdoor Power Equipment Institute, Inc. (OPEI), I request that the Antitrust Division, pursuant to 28 C.F.R. § 50.6, undertake a business review of OPEI's proposed voluntary noise hand-tag program for power lawn mowers and to state the Division's present enforcement intentions with respect thereto.

Although the substance of the program which OPEI proposes to implement is fully described in the enclosed document, a few supplemental facts for the Division's consideration are in order.

OPEI is the national trade association representing manufacturers of about 90 percent of the domestic sales volume of consumer walk-behind and riding lawn mowers, lawn and garden tractors, tillers, and snow throwers and their major components. Membership in OPEI is open to all domestic manufacturers of any of the foregoing equipment as well as their major OEM suppliers.

60-261-0  
38  
MAY 7 1980  
R.F.D.  
ANTITRUST

*Clark 9/12/07*  
*[Signature]*

(202) 857-0577

MESSAGE LINE  
(202) 293-1830

CABLE ADDRESS  
DMDLAW

Sanford M. Litvack, Esquire  
May 5, 1980  
Page Two

The noise labelling program grows out of extensive discussions with the chief and key staff officers of the Office of Noise Abatement and Control, U.S. Environmental Protection Agency (EPA). While EPA has the authority under section 8 of the Noise Control Act of 1972, 42 U.S.C. § 4907, to require mandatory product labelling concerning noise-emission levels of designated products or product classes, the agency is of the view, and OPEI agrees, that a comprehensive voluntary effort that achieves a high degree of voluntary compliance is a preferable course of action for power lawn mowers. The enclosed program, accordingly, has been prepared at the instruction of OPEI's Board of Directors by representatives of OPEI member companies and by OPEI staff officers, and upon close consultation with EPA. EPA has not yet expressed formal concurrence or approval of the OPEI program, although we fully anticipate such approval in the near future and will forward a copy of EPA's written response to the Division as soon as it is received.

Let me stress that this proposed consumer-information program is entirely voluntary in nature, that participation is open to all manufacturers and private labellers of power lawn mowers without regard to OPEI membership, and that the program is nondiscriminatory by design and operation. Certification of program compliance is left to the discretion of the participants, subject to verification by an independent testing laboratory. In order to insure a high degree of participation, the program requires that a participating manufacturer include all models of consumer mowers in the program. In order to insure that the accuracy and reliability of the noise levels on the hang-tags, a participating manufacturer agrees to undertake certain remedial action if incorrectly labelled products are distributed. OPEI performs no certification functions with respect to this program; indeed, its chief role is to aggregate data for annual reports to EPA, to encourage and expand voluntary participation, and to oversee the smooth functioning of the program.

Should OPEI receive a favorable review from the Division, the association intends to implement the program immediately for the 1981 model year. You can therefore appreciate our interest in the soonest possible response from the Division. If I can provide further information or otherwise aid in an expeditious determination, please write or call at your earliest convenience.

Very truly yours,

DUNAWAY, MCCARTHY & DYE

By: 

Mac S. Dunaway

MSD:brd  
Enclosures