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ATTACHMENT 4

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Wednesday, September 29, 2004 3:15 PM

To: 'James Abernathy'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: Leaf blowers

A copy of your email message has been forwarded to each Council Member.

*Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill*

From: James Abernathy [mailto:cheraber@chilitech.com]

Sent: Wednesday, September 29, 2004 8:54 AM

To: Manager

Subject: Leaf blowers

Mr. Horton: Please add my name to the list of opponents of the ridiculous Cam Hill proposal to ban leaf blowers in Chapel Hill. In the eyes of this voter, Mr. Hill is batting less than zero so far as a member of the Council. J. Abernathy

21

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Tuesday, September 28, 2004 9:41 AM

To: 'Nancy Cherry'

Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen comment RE: leaf blowers

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Nancy Cherry [mailto:ncherrynow@yahoo.com]

Sent: Tuesday, September 28, 2004 9:13 AM

To: Manager

Subject: leaf blowers

Please note my opposition to any banning of any leaf blowers in town.

Nancy Cherry

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around

<http://mail.yahoo.com>

22

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Tuesday, September 28, 2004 9:40 AM

To: 'Bobby Clapp'

Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: BANNING GAS POWERED LEAF BLOWERS

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Bobby Clapp [mailto:bclapp@nc.rr.com]

Sent: Tuesday, September 28, 2004 8:05 AM

To: Manager

Subject: BANNING GAS POWERED LEAF BLOWERS

I don't know where to begin with my comments on this issue. Suffice it to say that the strong words and reasons for opposing this cannot come fast enough from me. However, I will refrain, and just put on record this...STOP THE MADNESS! PLEASE!

I can list 100 issues requiring the attention of the Town Council that are more important than this one.

Bobby Clapp

Claude Snow-FW Citizen Comment RE Leaf blowers are needed. A ban is not required.

-----Original Message-----

From: Carol Abernethy On Behalf Of Cal Horton
Sent: Thursday, September 30, 2004 9:08 AM
To: 'Snow, Claude H'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)
Subject: Citizen Comment RE: Leaf blowers are needed. A ban is not required.

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill

-----Original Message-----

From: Snow, Claude H [mailto:claudio.snow@eds.com]
Sent: Wednesday, September 29, 2004 8:41 PM
To: Town Council
Cc: 'csnow1@nc.rr.com'
Subject: Leaf blowers are needed. A ban is not required.

Mayor Foy and Council Members-

I wish to take a brief moment and support the current policies in place for the use of leaf blowers. These policies seem to be sufficient to limit their noise and use during the day so that residents are not disturbed to any great degree.

I live downtown and occasionally I hear a blower for a few minutes in the distance and then it is gone. I have talked with many of my neighbors in the East Franklin area and NO ONE is disturbed by the noise. In fact, the 12 to 14 residents I asked all replied that the blowers were needed to handle the huge amount of leaves we have from our wonderful oak and sycamore trees.

If we are going to ban leaf blowers, then we should ban lawn mowers and motorcycles which tend to last longer and louder.

You get the idea - banning leaf blowers is un-needed and un-wanted legislation.

Please feel free to contact me if I may answer questions or clarify my comments. Thank you.

Claude Snow
405 North Street
Chapel Hill, NC 27514
919-960-7990

24

Cal Horton, Manager
Town of Chapel Hill
306 North Columbia Street
Chapel Hill, NC 27516

Dear Mr. Horton:

I am writing today to voice my objections to council member Cam Hill's proposal to prohibit citizens' from using their leaf blowers in Chapel Hill.

I have lived here all my life and do not recall a time when I felt as strongly about an issue. And, that issue is the rights of private citizens. The leaf blower is the tip of an iceberg trying to infringe on the rights of the citizens of Chapel Hill. If you recommend this proposal, what next will be outlawed at the whim of a council member with his own personal preferences?

Picking off our private rights one by one will lead to authoritarianism in this town.

As for leaf blowers, they are no more intrusive than lawn mowers. Will they be next?

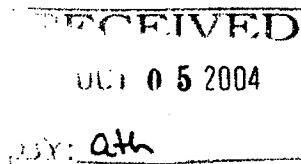
I ask you to recommend to the council that they consider not encroaching on the rights of its citizens. That is not what they were elected to do!

Sincerely,



Ernestine S. Pendergraft

(25)



1124 Sourwood Drive
Chapel Hill, NC 27517
October 3, 2004

Mr. Carl Horton
Town Manager
306 N Columbia
Chapel Hill, NC 27514

Dear Mr. Horton,

As a property owner I want to support the idea of banning gas powered leaf blowers. Since most of the properties in town are less than one acre in size, it should not be difficult to switch to electric blowers.

Sincerely,

Christoph E. Schweitzer

26

Fuchs 2-FW Citizen Comment RE Leaf blowers

-----Original Message-----

From: Carol Abernethy On Behalf Of Cal Horton
Sent: Thursday, September 30, 2004 2:24 PM
To: 'Ed Fuchs'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w); Kevin Foy; Mark Kleinschmidt; Sally Greene (w)
Subject: Citizen Comment RE: Leaf blowers

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill

-----Original Message-----

From: Ed Fuchs [mailto:edwardfuchs@fuchscentral.com]
Sent: Thursday, September 30, 2004 10:08 AM
To: hillcc
Cc: Town Council
Subject: RE: Leaf blowers

Thanks for your reply. The web site you include and much of the discussion is focussed on the problems with and needs of landscape contractors, and not on the needs of hard-working and especially older citizens. Furthermore, there are errors of fact. If you will go to the websites of manufacturers of yard care equipment, you will find that exactly the same Briggs and Stratton and Tecumseh engines are used in grass edgers and weed-whackers as are used in leaf blowers. Listening to them side by side, as I did this morning when my neighbor's landscape crew was operating them, one cannot tell the difference. And the edgers and weed-whackers have amuch longer season of use, from the beginning of the growing season to first frost.

Ed Fuchs

-----Original Message-----

From: hillcc [mailto:hillcc@nc.rr.com]
Sent: Thursday, September 30, 2004 3:52 AM
To: edwardfuchs@fuchscentral.com
Subject: Leaf blowers

9/30/04

I appreciate your interest in the new petition to consider banning gasoline powered leaf blowers. Chapel Hill is initiating a discussion to consider banning or restricting the use of gasoline powered leaf blowers.

Some seventy plus communities throughout the US have banned or restricted leaf blower use since 1975.

I have found the following website to be quite helpful:

<http://www.nonoise.org/quietnet/cqs/home.htm>

Thanks for your concerns about Chapel Hill.

Sincerely,

Cam Hill
hillcc@nc.rr.com

(27)

Fuchs-FW Citizen Comment RE Leaf Blowers and Lawn Mowers

-----Original Message-----

From: Carol Abernethy On Behalf Of Cal Horton
Sent: Wednesday, September 29, 2004 9:18 AM
To: 'Ed Fuchs'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)
Subject: Citizen Comment RE: Leaf Blowers and Lawn Mowers

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill

-----Original Message-----

From: Ed Fuchs [mailto:edwardfuchs@fuchscentral.com]
Sent: Tuesday, September 28, 2004 11:17 AM
To: Town Council
Subject: Leaf Blowers and Lawn Mowers

Dear Mayor and Council,

I listened with disbelief to the proposal that the Council should ban leaf blowers. Clearly this has not yet been thought through by anyone with a sound mind. I live in a very heavily treed area. To save as many old trees as possible, I allowed them to remain standing right up to my house foundation. In the fall, I rake the fallen leaves endlessly, but still must rely on a leaf blower to finish the job. I use an attachment to the blower to clean the house gutters, lest they become clogged and cause water damage to the building. At age 70, I could not deal with the leaves any other way.

Furthermore, please take the following into consideration. With the long growing season in central NC, considerably more noise, air and particulate pollution, over a much longer period of time, are created by lawn mowers, garden tractors, lawn edgers, and weed whackers. Therefore, it is illogical to single out leaf blowers. An equitable approach would require you to ban them all. To supplement leaf rakes, there are push mowers, hand edgers and manual weed pulling tools. Chapel Hill would become shaggier, more costly, somewhat unkempt, but somewhat quieter. The quiet will allow us to better hear the noisy, polluting trucks and buses traversing our streets.

And then there is the question of enforcement. Will the tree police come to my house and say "Oh, I thought you were using a leaf blower, but that's only a weed whacker, so go ahead and make all of the noise that you want." I'm sure that you are aware that new standards for noise and pollution will take affect next year for garden and landscaping tools, which will substantially reduce the noise and other pollutants.

Should your follow through with the proposal to ban only leaf blowers, some of us may consider cutting down our trees to eliminate the intractible leaves. Then we could plant lawns where the trees were, and from spring to fall make use of permitted lawn mowers, edgers and weed whackers instead of leaf blowers.

Respectfully,

Ed Fuchs

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From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Tuesday, September 28, 2004 3:14 PM

To: 'Laura Clapp'

Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: Cam Hill - proposal of banning blowers

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Laura Clapp [mailto:lclapp@nc.rr.com]

Sent: Tuesday, September 28, 2004 12:21 PM

To: Manager

Subject: Cam Hill - proposal of banning blowers

Mr. Manager,

A mass transit bus just passed by with squealing brakes and a big black puff of exhaust. Let's ban those mass transit buses, I don't like the noise or the smell and the pollution.

Please do not take me seriously, as I will not Mr. Hill.

Laura Clapp

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FW Pendergraft-citizen Comment RE Cam Hill's proposal to ban leaf blowers

-----Original Message-----

From: Carol Abernethy On Behalf Of Cal Horton
Sent: Wednesday, September 29, 2004 3:05 PM
To: 'steve pendergraft'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens;
Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill;
Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin
Foy; Mark Kleinschmidt ; Sally Greene (w)
Subject: Citizen Comment RE: Cam Hill's proposal to ban leaf blowers

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Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill

-----Original Message-----

From: steve pendergraft [mailto:stevependergraft@hotmail.com]
Sent: Tuesday, September 28, 2004 7:46 PM
To: Manager
Subject: Cam Hill's proposal to ban leaf blowers

while you are at it please add lawn mowers, weed eaters, chainsaws, tractors, jack hammers, air compressors, cars, trucks; well I think you get my point. I am a fourth generation Chapel Hillian, and I believe this might take the cake. I hope Cam doesn't find out about what vacuum cleaners do in our homes.

Steve Pendergraft
401 Nottingham Drive
Chapel Hill
919-408-3443

Don't just search. Find. Check out the new MSN Search!
<http://search.msn.click-url.com/go/onm00200636ave/direct/01/>

30

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Friday, September 24, 2004 5:07 PM

To: 'Gary Hill'

Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: Leaf Blowers

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Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Gary Hill [mailto:ghill@morriscommercial.com]

Sent: Friday, September 24, 2004 3:02 PM

To: Town Council

Subject: Leaf Blowers

Dear Mayor and Town Council,

I find it very disturbing that leaders of the community of Chapel Hill are wasting time worrying about LEAF BLOWERS when there are so many other more important issues to be dealt with in this community. I disapprove of the Leaf Blowers being outlawed in Chapel Hill and want that put on your list of "Disapprovals" for this absurd amendment.

Sincerely,
Gary Hill

(31)

From: Carol Abernethy **On Behalf Of** Cal Horton
Sent: Friday, September 24, 2004 5:06 PM
To: 'Harris, Christopher'
Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)
Subject: Citizen Comment RE: No leaf blower ban

A copy of your email message has been forwarded to each Council Member.

*Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill*

From: Harris, Christopher [mailto:charris@unc.edu]
Sent: Friday, September 24, 2004 3:00 PM
To: Town Council
Subject: No leaf blower ban

This is the most ridiculous ban I've ever heard of...

While I, too, am sometimes awakened or disturbed in my neighborhood by the loud cacophony of noises made by gas leaf-blowers, I understand that this is just a fleeting noise that will soon subside. To ban them all??? This is just plain ridiculous and makes me realize that Chapel Hill is trying every way possible to ensure that the rest of the state will continue to consider us as the craziest and most liberal people in the South.

Please vote NO!

Christopher M. Harris
Director of Major Gifts
Kenan-Flagler Business School
The University of North Carolina at Chapel Hill
CB#3490, McColl Building
Chapel Hill, NC 27599-3490 USA
Phone: 919.962.5458
Fax: 919.962.6037
E-mail: charris@unc.edu
www.kenan-flagler.unc.edu

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32

From: Cal Horton
Sent: Monday, September 27, 2004 8:30 AM
To: Council Member Bill Strom ; Council Member Cam Hill; Council Member Dorothy Verkerk ; Council Member Ed Harrison ; Council Member Jim Ward ; Council Member Jim Ward (W) ; Council Member Mark Kleinschmidt ; Council Member Sally Greene ; Mayor Kevin C. Foy (TCH) ; Mayor pro tem Edith Wiggins
Cc: Bruce Heflin; Carol Abernethy; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Owen Franklin; Ralph Karpinos; Sonna Loewenthal ; Toni Pendergraph
Subject: FW: support ban on leaf blowers

FYI

W. Calvin Horton, Town Manager
306 North Columbia Street
Chapel Hill, North Carolina 27516
919-968-2744
919-969-2063 FAX
919-967-2626 Home
calhorton@townofchapelhill.org

Note: Mail sent to or received from the Town Manager is subject to publication under the provisions of the North Carolina open records law.

From: Rogerhart@aol.com [mailto:Rogerhart@aol.com]
Sent: Friday, September 24, 2004 9:07 PM
To: Town Council
Subject: support ban on leaf blowers

To the Mayor and Town Council:

Please ban leaf blowers. Their pollution and noise are obnoxious.

Thank you,
Roger Hart
128 Gristmill Lane
Chapel Hill

Jack Scarborough-FW Citizen Comment RE Leaf Blowers

-----Original Message-----

From: Carol Abernethy On Behalf Of Cal Horton
Sent: Tuesday, September 28, 2004 3:19 PM
To: 'jackscar@bellsouth.net'
Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)
Subject: Citizen Comment RE: Leaf Blowers

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Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill

-----Original Message-----

From: Jack Scarborough [mailto:jackscar@bellsouth.net]
Sent: Tuesday, September 28, 2004 2:12 PM
To: Manager
Subject: Leaf Blowers

Cal, my 3/4 acre lot in Oaks III contains many trees which generate a large number of leaves especially in the Fall. I easily dispense with leaves on our sidewalk and driveway by using my gasoline-powered leaf blower. This operation consumes at most 15 to 20 minutes. I believe that the orderliness and improved appearance of our property outweighs the few minutes of blower 'noise' involved. The blown leaves are gathered and put around shrubs and trees as mulch, thus providing environmental enhancement. I would hope that Cam Hill and his supporters would recognize the values of improved lawn and sidewalk appearance as well as environmental value of shrub and tree mulching.

Jack & Jacquie Scarborough
100 St. Andrews Place

(34)

From: Carol Abernethy **On Behalf Of** Cal Horton**Sent:** Tuesday, September 28, 2004 10:31 AM**To:** 'Robert C. Klatt'**Cc:** Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)**Subject:** Citizen Comment RE: Leaf Blowers

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Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Robert C. Klatt [mailto:bnklatt@sprynet.com]**Sent:** Monday, September 27, 2004 4:52 PM**To:** Town Council**Cc:** Cal Horton**Subject:** Leaf Blowers

Dear Mayor Foy, members of the Council, Mr. Horton, et al:

I am unable to attend the town meeting tonight due to a prior obligation but wish to express my feelings regarding the recent news item in both the *News and Observer*, and the *Chapel Hill News* concerning a serious effort afoot to ban leaf blowers!

I have been a tax-paying citizen and property owner of this town for over thirty-eight (38) years. In all of these years I have never been so incensed or incredulous over such a ridiculous suggestion! Are we trying to out-Carrboro Carrboro?

Do any of you use a lawn mower, weed eater, skil saw, chain saw, edger, log splitter, stump grinder, etc.? Do you, (or someone you know), own a motorcycle, motorbike, moped, or rec-vechicle? Does the town not use jack hammers, bull dozers, and some of the aforementioned?

In a town with probably more trees than most...what are you people thinking?

With respect to noise pollution, why not ban dogs from barking...require muzzles. They bark 24/7, (year 'round), pollute and damage my property with their droppings while the majority of their owners fail to collect their droppings and many allow their animals to run loose, and unleashed. I may use my leaf blower twice a month on a Saturday during the months of Oct.-Nov. I find it hard to believe that I'm melting a glacier when empty buses roam the streets damaging the pavement and certainly polluting the air, etc.

Or...why not do something proactive about the ever-increasing deer population that is not only destroying property, but taking lives, inflating insurance premiums, etc.? Or, enforce penalties on those who insist on installing these "bunker-busting" boom speakers in their automobiles. They're certainly more annoying and offer no useful purpose than a lowly leaf blower.

Is this the kind of nonsense we elect you people for?

As John Stossel says..."Give me a break"!

35

Incredulously,

Robert C. Klatt
605 Arlington Street
Chapel Hill, NC 27514-6701
942-5318
bnklatt@sprynet.com

(36)

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Monday, October 04, 2004 8:50 AM

To: 'Arthur Laube'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: No Leaf Blowers

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Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Arthur Laube [mailto:ALAUBE@nc.rr.com]

Sent: Saturday, October 02, 2004 4:02 PM

To: Manager; letterch@heraldsun.com

Subject: No Leaf Blowers

Chapel Hill Town Manager

When you consider the resolution proposed by Cam Hill to outlaw leaf blowers please keep in mind the following:

Smog pollutants will be greatly reduced - so we can again drive our autos downtown without feeling so guilty - and that will be good for downtown business.

There will no more unemployed in Chapel Hill. They will be raking and sweeping leaves. Think of the good the Town Council will do with just this one action!

And most important fact is: We will be saving precious oil - and that will send a signal to those greedy profiteers who are forcing up the price of oil. And we will be doing our part in reducing the world usage of petroleum, which is going up faster than can be supplied. And with the Chinese switching from bicycles and rickshaws to autos and with our very real need for two or three autos in every garage - every barrel or two of oil saved will help reduce this shortfall. (We should also outlaw all plastic products in Chapel Hill, but we can get to that later.)

There will be some who object. Probably a few heartless, insensitive right-wingers. But this is not a political issue. This is for the Greater Good. So our ministers will be free to speak up from their pulpits and the selfish will soon be brought to see the great good that can be accomplished by this single action.

The landscape people need to understand that this will be an even playing field. That is:

(37)

There competitors will also have to raise rates - so they will all merely hire enough labor to get the raking/sweeping done and pass on the cost. This has long been understood by corporate America. They have quietly accepted the costs imposed on them by numerous Federal Regulations without protest because they have understood this principal - everyone passes along the cost.

A tip to the wise - as this catches on through-out the lower 48 there be a boom in rake manufacturing that will for awhile outpace manufacturing capacity. There will be those who profit from this windfall and no doubt some greedy capitalist will corner the rake market, but we shall not let this stand in the way of the Greater Good.

There will be those who want to substitute electric blowers - this must not be allowed to happen. There would be no energy or pollution reduction and we would be committing a great sin by transferring our energy requirements and pollution to another location - the electrical generating plant.

I have no vested interest in this matter. I am over 85-years-old and I expect everyone over 85 to be allowed to keep their leaf-blowers.

Arthur H. Laube

23 Clover Dr, Chapel Hill,NC

967-5484

38

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Tuesday, September 28, 2004 3:15 PM

To: 'LURandLEN@aol.com'

Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: Power Blowers

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*Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill*

From: LURandLEN@aol.com [mailto:LURandLEN@aol.com]

Sent: Tuesday, September 28, 2004 1:15 PM

To: Manager

Subject: Power Blowers

It is a known fact that we are told by doctors and other medical staff members that the two worse things that we can do is to shovel snow and to rake leaves, yards, etc. when we reach an age of 40's and 50's? Is it now the Town of Chapel that is to tell us what is medically best for us to do? Will the Town now purchase liability insurance to cover these suits which you know will come up?

I think that your Cam Hill should get his own house in order before he tries to tell others what to do. Let him pay his real estate bills he owes. Then he can rake yards for senior citizens free of charge and save them the costs of paying for this service or buying their gas for doing it themselves.

(39)

From: Carol Abernethy **On Behalf Of** Cal Horton**Sent:** Tuesday, September 28, 2004 9:41 AM**To:** 'Lyda Mihalyi'**Cc:** Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)**Subject:** Citizen Comment RE: leaf blowers

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Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Lyda Mihalyi [mailto:mihalyi@intrex.net]**Sent:** Tuesday, September 28, 2004 9:04 AM**To:** Manager**Subject:** leaf blowers

Dear Mr. Horton,

I just wanted you to know that I totally agree with Mr. Doak about Cam Hill and his "activists" trying to outlaw leaf blowers. If our town council doesn't have anything really important to do, I might have a few suggestions. Please let common sense prevail and don't let a few loud voices affect the council's decision. The fact that it is even being discussed is absolutely ridiculous.

Thank you for your time,

Lyda Mihalyi

902 Bayberry Drive

Chapel Hill, N.C. 27517

40

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Wednesday, October 06, 2004 9:03 AM

To: 'PROFUNLIM@aol.com'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: Beware the tyranny of "blower" activists!!!

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: PROFUNLIM@aol.com [mailto:PROFUNLIM@aol.com]

Sent: Tuesday, October 05, 2004 12:55 AM

To: Manager

Subject: Beware the tyranny of "blower" activists!!!

Dear Cal,

"Trey" Doak certainly hit the nail on the head in his letter to the editor of the Chapel Hill Newspaper. Three cheers for C.S. Lewis, also!

Have the "do gooders" even considered the effect that banning gas leaf blowers would have on our low income citizens and those on fixed incomes? Many of our citizens are not physically able to manually rake their leaves and cannot afford to pay to have them manually raked. Those in the yard maintenance business would have to greatly increase the cost of their services if they had to replace gas leaf blowing with manual raking and clean up. Home owners dues in condos would have to be increased significantly, perhaps to the point that many would be forced to sell their homes and leave the Southern Part of Heaven (could be that the "land of fruits and nuts" really is more accurate!).

Please add our name to the long list of those who are against this latest attempted intrusion in the private lives of Chapel Hill citizens. Surely, this attempt to foster the feelings of few on many will awaken the complacent majority. What's next? Outlawing internal combustion engines for any use what so ever?

There must be enough normal intelligent members of the Town Council to defeat this ridiculous effort to ban gas leaf blowers!

Jane and Roy Mitchell

41

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Tuesday, September 28, 2004 3:18 PM

To: 'NCSong@aol.com'

Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: No more leaf blowers

A copy of your email message has been forwarded to each Council Member.

*Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill*

From: NCSong@aol.com [mailto:NCSong@aol.com]

Sent: Tuesday, September 28, 2004 1:47 PM

To: Manager

Subject: No more leaf blowers

Dear Mr. Horton,

I wholeheartedly support the ban on leaf blowers. Please add my name to those who have had enough of these noisy, polluting machines.

Sincerely,

Sharon Ochsman

1921 S. Lakeshore Dr
Chapel Hill, NC 27514

42

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Friday, September 24, 2004 5:07 PM

To: 'Paliouras, Niko'

Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: Leaf Blowers

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Paliouras, Niko [mailto:Nicholas.Paliouras@PacificLife.com]

Sent: Friday, September 24, 2004 3:03 PM

To: Town Council

Subject: Leaf Blowers

Importance: High

I just want to know if you are serious about this issue. I seriously doubt it, but you never know. I mean, given all the other issues you could be trying to resolve, you will actually consider wasting time talking about banning gas-powered leaf blowers. Have you considered this issue? How would you enforce it? Here's what I envision... "9-1-1, what's your emergency?" "Uh, yes, my neighbor just finished mowing his lawn with a gas-powered lawn mower, which is absolutely fine, and now he has the audacity to blow his sidewalk with that horrid blower." "Yes sir. We will have the authorities out there momentarily. Thank you for being such a responsible citizen." Please, this is a complete joke and a bit embarrassing. Even if every citizen "used a rake," what would it mean to the all the commercial yard service providers. It would raise their labor costs astronomically, putting many of them out of business.

Hey, while we're at it, would you consider banning the garbage trucks, the recycling trucks, the vacuum leaf-collecting machines, etc. They tend to make quite a ruckus as well. I mean, the garbage collectors can easily haul all the trash containers, by hand, to a central dumping spot. Certainly, the garbage trucks must create more pollution than the dreaded leaf blowers!

Sincerely,

Niko J. Paliouras

Lifetime resident of Chapel Hill

The information in this e-mail and any attachments are for the sole use of the intended recipient and may contain privileged and confidential information. If you are not the intended recipient, any use, disclosure, copying or distribution of this message or attachment is strictly prohibited. If you believe that you have received this e-mail in error, please contact the sender immediately and delete the e-mail and all of its attachments.

43

Pauwels 2-FW Citizen Comments RE leaf blowers

-----Original Message-----

From: Carol Abernethy On Behalf Of Cal Horton
Sent: Thursday, September 30, 2004 4:27 PM
To: 'Marie Pauwels'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)
Subject: RE: Citizen Comments RE: leaf blowers

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill

-----Original Message-----

From: Marie Pauwels [mailto:marie_pauwels@mindspring.com]
Sent: Thursday, September 30, 2004 11:43 AM
To: Cal Horton
Subject: Re: Citizen Comments RE: leaf blowers

Well, if my email is being read by all, I regret not putting more thought into my words. By "laid-back" I mean letting special interest groups monopolize the Council's time and influence decisions. Sign of the times, I guess, but a waste of Council time and taxpayers' money, which too many Chapel Hillians seem to have too much of to be sensible about. Seems like the line of "your rights end where my nose begins" (or whatever the phrase is) has gotten very messed up in Chapel Hill, and every special interest gets its way with the Council, to the inconvenience of others. And we get surcharges and special fees added onto our taxes. We're into a generation of "basic" town services meaning everything under the sun.

I can see the result of Cam's agenda meaning that users of gas blowers will have to go through committee in a permit application process, minimum six months wait, of course, and a fee, of course, and must be renewed annually, of course, and the creation of a leaf blower affairs staff, of course. Then there's the emissions tests.....

Well, I'm beginning to sound as ridiculous as Diana.

I wish we could get back to a Council whose business is basic services.

At 09:50 AM 9/30/04 -0400, you wrote:

>A copy of your email message has been forwarded to each Council Member.

>

>Carol Abernethy
>Exec. Asst., Manager's Office
>Town of Chapel Hill

>

> -----Original Message-----

>From: Marie Pauwels [mailto:marie_pauwels@mindspring.com]
>Sent: Wednesday, September 29, 2004 8:52 AM
>To: Manager
>Subject: leaf blowers

>

44

Pauwels 2-FW Citizen Comments RE leaf blowers

- >Please tell Cam Hill to go get a life and stop wasting your time and
- >our money with nitwit schemes. The disheveled appearance of his
- >property back on Cameron Avenue shows how much he cares about
- >maintenance. Chapel Hill, for an affluent community, is too unkempt as
- >it is. What are town employees and landscapers supposed to do? Switch
- >to electric blowers and attach them with long cords to a generator on a
- >truck? What does Cam think generators use for fuel?
- >
- >I'm so sick of this laid-back Council letting everyone stick their
- >noses into other peoples' business and waste taxpayers' money and patience.
- >Cam
- >has a responsibility to stick to serious business.
- >
- >

45

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Tuesday, October 12, 2004 1:58 PM

To: 'Diana Perkins'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: RE: enthusiastic support for a ban on leaf blowers

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Diana Perkins [mailto:Diana_Perkins@med.unc.edu]

Sent: Tuesday, October 12, 2004 7:14 AM

To: Town Council

Cc: clark_jeffries@med.unc.edu

Subject: enthusiastic support for a ban on leaf blowers

I recently became aware about a proposal to ban leaf blowers in Chapel Hill. I am a Chapel Hill resident, and I would like you to know that I enthusiastically support such a ban. Too many a quiet mornings have been ruined by the roar of a leaf blower!

Regards,

Diana Perkins
116 Porter Place
Chapel Hill, NC 27514

967-1095

46

From: Emily Dickens
Sent: Monday, September 27, 2004 1:46 PM
To: Bill Strom; Cam Hill; Dorothy Verkerk (dverkerk@nc.rr.com); Ed Harrison; Edith Wiggins; Jim Ward; Kevin Foy; Mark Kleinschmidt; Sally Greene (sally@ibiblio.org); Bruce Heflin; Cal Horton (E-mail); Carol Abernethy; Flo Miller (E-mail); Joyce Smith (E-mail); Ralph Karpinos (E-mail); Toni Pendergraph (E-mail)
Subject: FW: leaf blowers

Emily M. Dickens, Esq.

Mayoral Aide

Town of Chapel Hill

919-968-2888 ext. 225

From: aldo rustioni [mailto:rustioni@med.unc.edu]
Sent: Monday, September 27, 2004 1:31 PM
To: Kevin Foy
Subject: leaf blowers

From: "aldo rustioni" <rustioni@med.unc.edu>
 To: <hillcc@nc.rr.com>
 Cc: "Otey, Carol" <Carol_Otey@med.unc.edu>
 Subject: leaf blowers
 Date: Monday, September 27, 2004 1:29 PM

Dear Mr. Hill,

I just read your proposal to ban leaf blowers in Chapel Hill. Like you and, I am sure, many others, I am vehemently opposed to the use of gas-powered leaf blowers. They are useless and pernicious gadgets, easily turned into an instrument of torture for all those who find a rake a perfectly good way to dispose of their leaves and, yet, have to suffer the noise, dirt and pollution of hundreds of citizens and public workers. Leaf blowers should not be used in private gardens nor for public works. Throughout Fall, we have to suffer from the dusty and stinky air stirred up by leaf blowers used mindlessly and, often, without clear purpose, or, at least, without really accomplishing what they are supposed to do.

Please, do not listen to those who claim that leaf blowers are money savers. They are a big waste of money and one other way by which the industry claims to produce something of use to the consumer. Chapel Hill deserves enviable living conditions, unspoiled by the hordes of uncaring individuals or misdirected public workers.

Thank you so much for raising an issue that is worth fighting for. I shall make sure to vote for you at the next election.

Best regards.

Aldo Rustioni

519 Dogwood Drive
 Chapel Hill NC 27516

47

From: Carol Abernethy **On Behalf Of** Cal Horton
Sent: Monday, October 04, 2004 1:03 PM
To: 'Vsaam@aol.com'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)
Subject: Citien Comment RE: Leaf blowers

A copy of your email message has been forwarded to each Council Member.

*Carol Abernethy
Exec. Asst., Manager's Office
Town of Chapel Hill*

From: Vsaam@aol.com [mailto:Vsaam@aol.com]
Sent: Monday, October 04, 2004 1:00 PM
To: Manager
Subject: Leaf blowers

I find it appalling that city officials waste our money and their time on issues such as outlawing leaf blowers. The letterwriter in yesterday's Chapel Hill News has it right. Are we going to outlaw lawnmowers next?

I hope you will encourage our elected officials to focus on serving tax payers in ways that will improve service and cut costs, which are completely out of control and which became obvious when I received my most recent tax bill.

Thank you,
Virginia S. Saam
100 Ironwoods Drive
Chapel Hill, NC 27516

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Sam Jordan-FW Leaf blower ban petition

-----Original Message-----

From: sam.jordan@stihl.de [mailto:sam.jordan@stihl.de]
Sent: Monday, September 27, 2004 2:36 PM
To: Joyce Smith
Subject: Leaf blower ban petition

Joyce,

I got your name from Ken Robinson this morning in a discussion regarding Cam Hill's proposal. Please forward this website information to council members. The booklet entitled "Leaf Blowers: A Guide to Safe & Courteous Use" would provide relevant information. It can be downloaded. In addition, they would most likely find the information very pertinent that is contained in the "Leaf Blower Presentation: Concerns, Perceptions, Facts and Solutions".

Please note that our company, Mid-Atlantic Stihl, is located in Hillsborough. We are the regional distributor for Stihl, Inc., a leading manufacturer of outdoor power equipment - including a broad line of leaf blowers.

Please do not hesitate to contact me if I can provide any further industry or product information.

Sincerely,

Sam Jordan
Branch Manager

<http://www.opei.org/guide/leafblower/index.asp>

From: Ken Robinson [mailto:wkrofws@nc.rr.com]

Sent: Monday, September 27, 2004 3:59 PM

To: Joyce Smith

Subject: ~~Blower Information for Council~~

Joyce:

Attached is the position of the Professional Lawn Care Association of America concerning regulating the use of leaf blowers.

Please distribute this to the Council members and the staff members for tonight's meeting.

Regards,
Ken Robinson

P O S I T I O N

PLCAA' s Position on Leaf Blowers

The Professional Lawn Care Association of America (PLCAA) acknowledges and understands that public opposition to the use of gasoline-powered leaf blowers is based upon concerns about noise, dust, and air emissions. However, an outright ban on this equipment would be the severest of all possible remedies and one that would eliminate its many benefits. A ban should be a last resort and enacted only after exhausting all other alternatives.

It is PLCAA' s position that many such alternatives currently exist. They would alleviate the public' s concern about gasoline-powered leaf blowers without depriving the lawn and landscape maintenance contractor of this extremely efficient and safe tool. We wish to help find a solution to this issue that is fair and equitable to both the public and the leaf blower user. Therefore, we respectfully offer the following information for consideration:

- X PLCAA opposes across-the-board bans on gasoline-powered leaf blowers. PLCAA believes these bans are unnecessary, bad public policy, and extremely harmful to the lawn and landscape industry.
- X Leaf blowers are essential for lawn and landscape maintenance professionals. This is because these machines are very efficient tools for cleaning up leaves, grass, fertilizer granules and other small debris from lawn and landscape sites. Since their development in the 1970s, leaf blowers to a large extent have supplanted brooms, hoses, and rakes. Leaf blowers even perform functions that no other tool can handle effectively, such as cleaning areas covered by rock, gravel, bark or mulch.
- X Leaf blowers save enormous amounts of time. Most lawn and landscape industry estimates suggest that it takes at least five times as long to clean a typical landscape site

with a broom and rake than it does with a power leaf blower. A similar estimate was prepared by a city for its parks and public buildings. The city's maintenance supervisors estimated that their crews would take 50 hours to do work that took 10 hours with leaf blowers and that much work would require the use of water. In a 1992 labor efficiency comparison the report of another city concluded that a job that took 2.25 labor hours with a backpack leaf blower to 76 labor hours with a hose and 282 with a broom! The bottom line is that without leaf blowers, public agencies and private owners would have to spend more time on outdoor work or accept a lower level of upkeep.

- X Time is money. It is estimated that landscape costs (and therefore charges) would increase from 20 to 40 percent if operators must perform the same functions without the leaf blower.

- X PLCAA believes many clients cannot afford nor are they willing to pay for the additional costs of performing lawn and landscape maintenance without the leaf blower. Either they would allow their landscapes to deteriorate, do the work themselves, or find companies willing to violate the law. This last option is a real possibility because leaf blower bans have been difficult to enforce in municipalities that have passed an ordinance. That option would adversely affect our members because they play by the rules by the very nature of the way their businesses are organized. PLCAA members are all state-licensed, if required. They pay workers compensation as well as liability insurance. They deduct and pay federal and state income taxes from payrolls. Many of our members offer health insurance for employees and their families. Unfortunately, they compete against a vast underground economy of unlicensed people and companies who do not play by the rules. We believe these unlicensed operators would flaunt a leaf blower ban if given the chance. Consequently, they would underbid our members for lawn and landscape maintenance contracts. Legitimate lawn and landscape contractors could go out of business and their employees would lose good paying jobs.

- X The leaf blower is an alternative to using water to hose down walks and driveways. Using water in this manner is an unreasonable waste of a precious natural resource. The reality is that people will always take the next easiest course of action when another course of action is closed to them. Hosing down walkways and driveways is much easier, quicker, and more efficient than broom-cleaning those surfaces.

- X Leaf blowers make no more noise than many other types of power equipment.

- X High decibel noise exposure can be damaging to hearing. However, to provide some perspective on this issue, note that the U.S. Department of Labor, Occupational Safety & Health Administration (OSHA) does not require a hearing protection program for employees unless noise exposure equals or exceeds an eight-hour, time weighted average sound level of 85 decibels. Although this regulation should not be taken to imply that lower decibels are always safe, compare it with the noise from the more advanced leaf blowers. Some of the newer machines are rated at, or less than, 70 decibels at 50 feet at full throttle. Unlike lawn and landscape maintenance personnel who use hearing protection because of hours of exposure to noise from a machine close to their ears, customers and bystanders are exposed to leaf blower noise for only a few minutes a week

from much farther away.

- X PLCAA acknowledges that leaf blowers can be a nuisance. However, we believe the culprits are old technology and improper use. Both problems can be remedied by means other than indiscriminate bans.

- X PLCAA strongly encourages leaf blower manufacturers to place a high priority on noise reduction improvements. However, credit should go where credit is due. Today's leaf blowers are significantly quieter than their predecessors of 10 years ago. Manufacturers have steadily reduced noise levels, and in recent years, one manufacturer has voluntarily adhered to a maximum of 70 decibels (dBa) at full-throttle at 50 feet from the source. In 1996 this manufacturer introduced a revolutionary leaf blower that generated a mere 65 dBa at full throttle at 50 feet from the source - without sacrificing performance. Manufacturers can be expected to make future noise reduction improvements, if given the chance.

- X PLCAA believes that lawn and landscape maintenance professionals and homeowners should be informed about the noise levels of leaf blower equipment before purchase. We believe that most buyers, if properly informed, would opt for the quietest equipment with all other factors being equal. Unfortunately, some manufacturers do not disclose this information. Therefore, PLCAA calls upon all manufacturers to comply with the provisions of the American National Standards Institute (ANSI) Standard B 175.2, Hand-Held and Backpack Gasoline-Engine-Powered Blowers. In particular we urge all manufacturers to do the following: adhere to the ANSI 175.2 sound-level test procedure, clearly and durably mark equipment and packaging with the decibel rating and establish a certification program to identify products that comply with the ANSI standard. Furthermore, we encourage manufacturers to amend the standard to establish maximum sound levels.

- X Although PLCAA prefers other methods of dealing with leaf blower noise, the association does not oppose efforts to prohibit the use of outmoded equipment—as long as the standards are not unreasonable in light of the existing technology available. We suggest that efforts to prohibit outmoded equipment be accompanied by buy-back programs. At a minimum, bans on outmoded equipment should not go into effect for one year or more after a ban is enacted. This would give users crucial lead-time to phase out their old equipment and purchase the new.

- X PLCAA believes the vast majority of commercial operators use leaf blowers responsibly. Nevertheless, we acknowledge that improper use can be a problem. It is caused chiefly by lack of knowledge. Regrettably, sometimes it is a result of a lack of courtesy for others.

- X Cities, municipalities, and PLCAA should partner together to educate the public and the lawn and landscape industry about proper use of leaf blowers. Educational programs should include the following information:

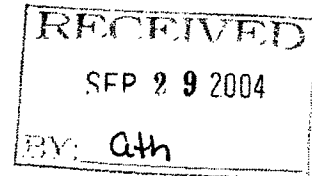
- Generally speaking, leaf blowers should be run at part throttle most of the time. Lower throttle speeds not only significantly reduce noise, they also provide the operator with more control. Full throttle is seldom necessary.
 - Leaf blowers should not be used in residential areas at unreasonable hours such as early in the morning or late at night when people are likely to be disturbed.
 - Debris should never be blown onto adjacent property, the street, vehicles, people or pets.
 - Leaf blowers should not be used within 10 feet of doors or windows.
 - Crews should operate only one leaf blower at a time on small residential sites.
 - Rakes or brooms should be used to loosen heavier debris.
 - The full nozzle extension should be used so the air stream can work close to the ground.
 - The muffler, air intake, and air filter should be routinely checked to make sure they are working properly.
 - Leaf blowers should not be used to move large debris piles from one spot to another.
- X PLCAA believes that informed citizens and lawn and landscape maintenance workers are likely to be more considerate. For the few who may lack common courtesy even with increased knowledge, city ordinances mandating proper use under penalty of a steep fine may be necessary. PLCAA does not oppose ordinances that mandate common sense rules of leaf blower courtesy.
- X PLCAA does not oppose an ordinance requiring a governor attachment to leaf blowers to limit throttle speed to meet local dBA requirements. Such an ordinance would address the noise problem from outmoded equipment without going so far as to remove that equipment from the market. On the negative side, however, this solution would prevent users from switching to a higher throttle speed on the few occasions when it may be appropriate to do so, such as when they are doing their work at a substantial distance away from other people.
- X Electric-powered leaf blowers are not an acceptable substitute for gas-powered machines. Most lawn and landscape maintenance professionals estimate that electrical leaf blowers reduce efficiency by 50 percent. Electric blowers tend to be less powerful than gas leaf blowers, and they are limited by the need for an extension cord that must be continually plugged in and unplugged. In addition, they can be hazardous to operators. Swimming pools, spas, garden ponds, and moisture from lawn and landscape irrigation make for a potential electric shock problem. Finally, the heavier duty electric leaf blowers, which

are comparable in power to gas leaf blowers, do not reduce noise significantly. Plus, the electric leaf blower's noise is compounded by the noise produced by a generator if electrical outlets are not available.

- X The air emission issue is a spurious issue when applied to local leaf blower regulations. For example, standards that were put in place by the California Air Resources Board (CARB) for 1995 have been met, and in most cases, exceeded by all leaf blowers sold in that state today. Air pollution issues are being addressed, and should be addressed, by CARB, the federal Environmental Protection Agency (EPA), and the regional air quality districts – not by cities and counties. Moreover, the frequently used criticism that leaf blowers produce emissions greater than automobiles should be placed in proper perspective. Actual emissions from leaf blowers are few because of the equipment's intermittent use. For example, one year of volatile organic compound (VOC) emissions from automobiles compares to 21 years of emissions from portable lawn and garden products. Portable lawn and garden equipment contributes only 0.8 percent of all U.S. VOC emissions, 0.6 percent of carbon monoxide emissions, and no nitrogen oxide emissions. (This comparison comes from an analysis of EPA emissions inventory data prepared for the Portable Power Equipment Manufacturers Association by Heiden & Associates of Washington, D.C.)

- X PLCAA members are always willing to work constructively with city and county public officials to develop win-win solutions to this increasingly prominent issue.

(54)
Bruce Sampsell
109 Sierra Drive
Chapel Hill, NC 27514



September 28, 2004

Mr. Cal Horton
Town Manager
Town Hall
306 N. Columbia St.
Chapel Hill, NC 27516

Re: 9/27/04 Council Meeting Agenda Item 13a(1), Cam Hill's leaf blower petition

Dear Mr. Horton:

I feel that the enclosed documents provide persuasive support for not enacting a ban on leaf blowers in Chapel Hill. Perhaps you would be willing to forward them to the staff members who are now studying this issue at the request of the Town Council.

The key points are:

1. Leaf blowers are a trivial contributor to air pollution. ALL spark ignition lawn and garden equipment combined (lawn tractors, lawn mowers, hedge trimmers, chain saws, edgers, string trimmers, and leaf blowers) produce only .8% of all US VOC emissions. Leaf blowers are a very small part of that .8%.
2. The EPA has in place comprehensive rules for reducing emissions from all nonroad spark ignition engines under 25 horsepower (19 Kilowatts) that will reduce undesirable emissions by 70% by 2007 compared to levels in 2002.
3. Electric leaf blowers are not a satisfactory substitute in many cases. They present a shock hazard to the operator in damp or wet outdoor conditions. Units that produce comparable air volumes and velocities also produce comparable noise. Manufacturers continue to develop quieter designs.
4. Rakes and brooms are not practical substitutes for leaf blowers in many applications such as blowing debris off of mulched areas.

I appreciate the opportunity to bring these thoughts before the Town staff.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Sampsell".

Enclosures:

Brief from the California Landscape Contractors Association, 3/25/99
40 CFR Part 90 EPA rulemaking on spark ignition nonroad engines under 19 kilowatts

65



Positions on Leaf Blowers

• September 24, 2004 •

Approved by the CLCA Board of Directors on March 25, 1999

Member Login:

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- What's New
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 - » Fact Sheet
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- Elite Partners

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- Scholarships
- Certification

- Summer Family Extravaganza
- Annual Convention

- Hiring A Licensed Landscape Contractor
- Unlicensed Operators
- Issues
 - » Water
 - » Leaf Blowers

The California Landscape Contractors Association acknowledges and understands that public opposition to the use of gasoline-powered leaf blowers is based upon concerns about sound, dust, and air emissions. However, an outright ban of this valuable equipment would be the severest of all possible remedies and one that would eliminate its many benefits. A ban should be a last resort and enacted only after exhausting all other alternatives.

It is CLCA's position that many such alternatives currently exist. They would alleviate the public's concerns about gasoline-powered leaf blowers without depriving the landscape maintenance contractor of this extremely efficient and safe tool. We wish to help find a solution to this issue that is fair and equitable to both the public and the leaf blower user. Therefore, we respectfully offer the following information for consideration. CLCA opposes across-the-board bans on gasoline-powered leaf blowers, such as the Los Angeles ordinance that prohibits their use within 500 feet of a residence. CLCA believes these bans are unnecessary, bad public policy, and extremely harmful to the landscape industry.

Leaf blowers are essential for landscape maintenance professionals. This is because these machines are very efficient tools for cleaning up leaves and other small debris from landscape sites. Since their development in the 1970s, leaf blowers to a large extent have supplanted brooms, hoses, and rakes. Leaf blowers even perform functions that no other tool can handle effectively, such as cleaning areas covered by rock, gravel, bark, or mulch – with minimal disturbance.

Leaf blowers save enormous amounts of time. Most landscape industry estimates suggest that it takes at least five times as long to clean a typical landscape site with a broom and rake than it does with a power leaf blower. A similar estimate was provided in 1994 by the City of San Luis Obispo for its parks and public buildings; the city's maintenance supervisors estimated that their crews would take 50 hours to do work that took 10 hours with leaf blowers, and that much of the work would require the use of water. Some estimates substantially exceed the five times one rule-of-thumb: in a 1992 labor efficiency comparison report, the City of Whittier concluded that a job that took 2.25 labor hours with a backpack leaf blower took 76 labor hours with a hose and 282 with a broom! The bottom line is that without leaf blowers, public agencies and private owners would have to spend more time on outdoor work or accept a lower level of upkeep.

Time is money. CLCA members servicing landscape maintenance accounts estimate that their costs would increase an average of 20.7 percent if they had to perform the same functions without the leaf blower. This estimate comes from a survey that CLCA sent its members in late 1998.

CLCA believes many clients can't afford or are not willing to pay for the additional costs of performing landscape maintenance without the leaf blower. In fact, CLCA members servicing landscape maintenance accounts believe they could pass along less than a third (31.6 percent) of their increased costs through increased landscape maintenance fees. This information also comes from CLCA's 1998 membership survey.



Most clients would do one of the following in the case of a ban: (1) expect their landscape maintenance firm to provide the same standard of care as before without paying more money for the service, (2) allow their landscapes to deteriorate, (3) do the work themselves, or (4) flaunt the law by using leaf blowers or hiring gardeners willing to do so. The last option is a possibility because leaf blower bans have been difficult to enforce in municipalities that have passed an ordinance to date. That option would adversely affect our members because we play by the rules by the very nature of the way our businesses are organized. CLCA members are all state-licensed contractors. We have a license bond on file with the Contractors State License Board, and we pay workers' compensation as well as liability insurance. We deduct federal and state income taxes from payrolls. Many of our members offer health insurance for employees and their families. Unfortunately, we compete against a vast underground economy of unlicensed operators that does not play by the rules. We believe these unlicensed operators would flaunt a leaf blower ban if given the chance, and consequently they would be able to underbid our members for landscape maintenance contracts. Legitimate landscape contractors could go out of business and their employees would lose good paying jobs.

Most landscape maintenance clients are not rich. They are more likely to be middle income homeowners. Also, many are elderly and some are disabled. To ask these homeowners to pay more or do the work themselves is unrealistic and unfair.

The leaf blower is an alternative to hosing down walks and driveways with water. Using water in this manner is unreasonable in drought-prone California. The reality is that people will always take the next easiest course of action when one course of action is closed to them. Hosing down walkways and driveways is much easier, quicker, and more efficient than broom cleaning those surfaces.

Leaf blowers are no louder than many other types of power equipment. Some of the newer model leaf blowers are actually more quiet than many other types of lawn and garden power equipment.

High decibel sound exposure can be severely damaging to hearing. The U.S. Department of Labor Occupational Safety & Health Administration (OSHA) requires a hearing protection program for employees when sound exposures equal or exceed an eight-hour, time-weighted average sound level of 85 decibels. CLCA members typically require their employees to use hearing protection whenever power equipment is used. Although OSHA's regulation should not be taken to imply that lower decibels are always safe, compare it with the sound from the more advanced leaf blowers. Most of the newer machines are rated at, or less than, 70 decibels at 50 feet at full throttle. And, unlike landscape maintenance personnel, who need hearing protection because of their long hours of exposure to sound coming from a machine a few feet away from their ears, residents and homeowners are exposed to leaf blower sound for only a few minutes a week at much greater distances.

CLCA acknowledges that leaf blowers can be a nuisance. However, we believe the culprits are old technology and improper use. Both problems can be remedied by means other than indiscriminate bans.

CLCA strongly encourages leaf blower manufacturers to place a high priority on sound reduction improvements. However, credit should go where credit is due. Today's leaf blowers are significantly more quiet than their predecessors of 10 years ago. Manufacturers have steadily reduced sound levels in response to customer need. As of January 1999 at least two manufacturers had introduced

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revolutionary leaf blowers that generate a mere 62 dBa at full throttle at fifty feet from the source -- without sacrificing performance. Manufacturers can be expected to make future sound reduction improvements, if given the chance.

CLCA believes that landscape maintenance professionals and homeowners should be informed about the sound levels of leaf blower equipment before purchase. We believe that most buyers, if properly informed, would opt for the most quiet equipment, all other factors being equal. Unfortunately, some manufacturers do not disclose this information. CLCA, therefore, would support a state mandate that required all manufacturers to test the sound levels of their gas-powered leaf blower models according to the provisions of the American National Standards Institute (ANSI) B 175.2 Standard for Hand-Held and Backpack Gasoline-Engine-Powered Blowers. We also would support a state law that required all equipment and packaging to be clearly and durably marked with the decibel rating.

Although CLCA prefers other methods of dealing with leaf blower sound, our association does not oppose efforts to prohibit outmoded equipment -- as long as the standards are not unreasonable in light of the existing technology on the market. We suggest that efforts to prohibit outmoded equipment be accompanied by buy-back programs that permanently remove the equipment from service. At a minimum, bans on outmoded equipment should go into effect at least one year after a decision is made. This would give users crucial lead time to phase out their equipment.

CLCA believes the vast majority of commercial operators use their leaf blowers responsibly. Nevertheless, we acknowledge that improper use is a problem. It is caused chiefly by lack of knowledge, but, regrettably, it is sometimes a result of lack of courtesy for others.

Cities, municipalities, and the CLCA should partner together to educate the public as well as the landscape industry about proper use of leaf blower equipment. Educational programs should include the following information:

Generally speaking, leaf blowers should be run at half throttle most of the time. Low throttle speeds not only significantly reduce sound, but they also provide the operator with maximum control. Full throttle is seldom necessary.

Leaf blowers should not be used in residential areas at unreasonable hours -- early in the morning or late at night when people are likely to be disturbed.

Debris should never be blown onto adjacent property, the street, vehicles, people, or pets.

Crews should operate only one leaf blower at a time on small residential sites.

Rakes or brooms should be used to loosen heavier debris.

The full nozzle extension should be used so the air stream can work close to the ground.

The muffler, air intakes, and air filters should be routinely checked to make sure they are working properly.

Leaf blowers should not be used to move large debris piles from one spot to another.

If conditions are very dry, mister attachments should be used. They suppress

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dust.

CLCA believes that informed citizens and landscape maintenance workers are likely to be more considerate. For the few bad apples who may lack common courtesy even with increased knowledge, city ordinances to require proper use under penalty of a steep fine may be necessary. CLCA does not oppose ordinances that mandate common sense rules of leaf blower courtesy.

Nor would CLCA oppose an ordinance requiring a governor attachment to leaf blowers that limited their throttle speed in order to meet local dba requirements. Such an ordinance would address the sound problem from outmoded equipment without going so far as to remove that equipment from the market. On the negative side, however, this solution would prevent users from switching to a higher throttle speed on the few occasions when it may be appropriate to do so, such as when they are doing their work at a substantial distance away from other people.

Electric-powered leaf blowers are not an acceptable substitute for gas-powered machines. Most landscape maintenance professionals estimate that electric leaf blowers reduce efficiency by 50 percent. They tend to be less powerful than gas leaf blowers, and they are limited by the need for an extension cord that must be continually plugged in and unplugged. In addition, they can be hazardous to operators. Swimming pools, spas, garden ponds, and moisture from landscape irrigation make for a potential electric shock problem. Finally, the heavier duty electric leaf blowers, which are comparable in power to gas leaf blowers, do not reduce sound that significantly. Plus, the electric leaf blower's sound is compounded by the noise produced by a generator if electrical outlets aren't available. According to the results of a survey sent to CLCA members in late 1998, more landscape contractors would resort to brooms and rakes than electric leaf blowers if they were prevented from using gas-powered equipment.

As manufacturers have steadily lowered the decibel levels of leaf blowers in recent years, criticism of the machines has to some extent shifted away from sound and towards dust and air emissions concerns. As far as dust is concerned, it should be pointed out that brooms create dust too. So does the wind for that matter. Properly used leaf blowers do not raise inordinate amounts of dust. Rule 403 of the South Coast Air Quality Management District states that " a person shall not cause or allow the emissions of fugitive dust from any active operation, open storage pile, or disturbed surface area such that the presence of such dust remains visible in the atmosphere beyond the property line of the emission source." Blower users can and should follow this rule.

The air emissions issue is a spurious issue when applied to local leaf blower regulations. In 1995 the California Air Resources Board (CARB) put in place Tier I Standards that by 1998 had reduced air emissions from two-stroke engines by 30 to 70 percent. CARB Tier II Standards, which go into place on January 1, 2000, will cut emissions from handheld equipment by 74 percent by 2010. The Tier II Standards are stringent – so stringent that many manufactures initially asserted they would be unable to meet them. Air pollution issues are being addressed, and should be addressed, by CARB, the federal Environmental Protection Agency (EPA), and the regional air quality districts – not individual cities and counties. Moreover, the frequently used criticism that leaf blowers produce emissions greater than automobiles should be placed in proper perspective. Actual emissions from leaf blowers are few because of the equipment's intermittent use. For example, one year of volatile organic compound (VOC) emissions from automobiles compares to 21 years of emissions from portable lawn and garden products. Portable lawn and garden equipment contributes only 0.8 percent of all U.S. VOC emissions, 0.6 percent of carbon monoxide emissions, and no nitrogen oxide emissions. (This comparison comes from an analysis of EPA emissions

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inventory data prepared for the Portable Power Equipment Manufacturers Association by Heiden & Associates of Washington, DC.)

CLCA members are always willing to work constructively with city, county, and state public officials to develop win-win solutions to this increasingly prominent issue.

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Federal Register

Monday,
January 12, 2004

Part III

Environmental Protection Agency

40 CFR Part 90

Amendments to the Phase 2
Requirements for Spark-Ignition Nonroad
Engines at or Below 19 Kilowatts; Direct
Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[AMS-FRL-7606-1]

RIN 2060-AL88

Amendments to the Phase 2 Requirements for Spark-Ignition Nonroad Engines at or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA adopted Phase 2 requirements for spark-ignition nonroad handheld engines at or below 19 kilowatts in April 2000. The Phase 2 requirements are being phased-in between 2002 and 2007. Based on initial experience with the Phase 2 program for handheld engines, we are adopting several amendments intended to provide additional compliance flexibility to engine manufacturers to smooth the transition to the Phase 2 requirements. The amendments contain two revisions intended to increase flexibility in the averaging, banking, and trading program as it applies to handheld engines. First, the credit discounts and credit bonuses will be eliminated from the program. Second, manufacturers will be allowed to carry

limited credit deficits during the phase-in period (through 2007) provided the deficits are made up within a set period of time. The amendments also contain minor changes to the certification requirements intended to help manufacturers respond in a more efficient manner to unexpected variations in the emission levels from production engines while still achieving the required emission objectives.

DATES: This direct final rule is effective on March 12, 2004 without further notice, unless we receive adverse comments by February 11, 2004 or receive a request for a public hearing by January 27, 2004. We are also publishing a notice of proposed rulemaking in the "Proposed Rules" section of today's **Federal Register**, which matches the substance of this direct final rule. If we receive any adverse comments on this direct final rule or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. We will then take final action to amend the Phase 2 requirements for spark-ignition nonroad engines at or below 19 kilowatts in a final rule based on the accompanying proposal. We will not institute a second comment period.

ADDRESSES: *Comments:* All comments and materials relevant to this action

should be submitted to Public Docket No. OAR-2003-0195 at the following address by the date indicated under **DATES** above.

Docket: Materials relevant to this rulemaking are in Public Dockets A-96-55 and OAR-2003-0195 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566-1742 and by facsimile at (202) 566-1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Phil Carlson, Assessment and Standards Division, e-mail carlson.philip@epa.gov, voice-mail (734) 214-4636.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action will affect companies and persons that manufacture, sell, or import into the United States spark-ignition nonroad handheld engines at or below 19 kilowatts. Affected categories and entities include the following:

Category	NAICS Code ¹	Examples of potentially affected entities
Industry	333112	Lawn & Garden Equipment Manufacturers.
Industry	336618	Other Engine Equipment Manufacturers.

¹ North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document?

1. **Docket.** EPA has established an official public docket for this action under Air Docket Number OAR-2003-0195. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

2. **Electronic Access.** This direct final rule is available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also

publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. <http://www.epa.gov/docs/fedrgstr/EPA-AIR> (either select desired date or use Search features).

2. <http://www.epa.gov/otaq> (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure

that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OAR-2003-0195. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to a-and-r-docket@epa.gov Attention Air Docket ID No. OAR-2003-0195. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address

identified in ADDRESSES above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR-2003-0195.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. OAR-2003-0195. Such deliveries are only accepted during the Docket's normal hours of operation as identified in ADDRESSES above.

4. *By Facsimile.* Fax your comments to: (202) 566-1741, Attention Docket ID No. OAR-2003-0195.

II. Summary of Rule

A. What Is the History of the Phase 2 Handheld Engine Rule?

The development of the Phase 2 regulations for handheld nonroad spark-ignition (SI) engines at or below 19 kilowatts (kW) started in 1992 while the Phase 1 standards were also being developed. Initially, a formal regulatory negotiation process was attempted.

After it became clear that the disparate interests of the multiple parties would not result in an agreement, the regulatory negotiation process concluded without reaching consensus in February 1996. Thereafter, EPA developed the framework for a Phase 2 handheld rule which was described in a Statement of Principles signed by manufacturers representing a significant portion of the United States handheld equipment market and by other stakeholders. The Statement of Principles was issued as part of an Advance Notice of Proposed Rulemaking on March 27, 1997 (see 62 FR 14740). The Statement of Principles for handheld engines formed the basis of requirements proposed in the Phase 2 Notice of Proposed Rulemaking (NPRM) on January 27, 1998 (see 63 FR 3950). (The January 1998 NPRM proposed standards for both handheld and nonhandheld nonroad SI engines at or below 19 kW. We finalized Phase 2 standards and compliance program requirements for Class I and Class II nonhandheld nonroad SI engines at or below 19 kW in a separate final rulemaking on March 30, 1999 (see 64 FR 15208).)

The January 1998 NPRM contained a lengthy discussion of the proposed

Phase 2 standards for handheld engines, the expected costs of their implementation, and the technologies that we expected manufacturers would use to meet the standards. The January 1998 NPRM also discussed the potential costs and benefits of adopting more stringent standards such as the second phase of standards that were under consideration by the California Air Resources Board (ARB) at that time.

Upon reviewing information supplied during and after the comment period for the January 1998 NPRM, we determined that it was desirable to get further details regarding the technological feasibility, cost and lead time implications of meeting handheld engine standards more stringent than those contained in the January 1998 NPRM. For the purpose of gaining additional information on feasibility, cost and lead time implications of more stringent standards, we had several meetings, phone conversations, and written correspondence with specific engine manufacturers, with industry associations representing engine and equipment manufacturers, with developers of emission control technologies and suppliers of emission control hardware, with representatives of state regulatory associations, and with members of Congress. We published a Notice of Availability on December 1, 1998 (see 63 FR 66081) highlighting the additional information gathered in response to the January 1998 NPRM and continued having discussions with various parties regarding low emission technologies for the small SI handheld engine market.

After the publication of the Phase 2 NPRM in January 1998, members of the industry provided data to EPA which indicated that rapid advances in emission reduction technologies for handheld engines were in the offing. After having reviewed the most up-to-date information available on these new technologies, we believed the information supported Phase 2 standards for handheld engines that were significantly more stringent than those proposed in the January 1998 NPRM and even more stringent than the second phase of standards that, by that time, had been adopted by the California ARB. In light of this new information, and in the interest of providing an opportunity for public comment on the stringent levels being considered for the Phase 2 handheld engine emission standards and the potential technologies available for meeting such standards, we repropose Phase 2 regulations for handheld engines in a July 28, 1999 Supplemental NPRM (see 64 FR 40940). The July 1999

Supplemental NPRM proposed Phase 2 hydrocarbon plus oxides of nitrogen (HC+NO_x) standards of 50 grams per kilowatt-hour (g/kW-hr) for Class III and Class IV engines and of 72 g/kW-hr for Class V engines, phased in over several years. The reproposal also proposed to include handheld engines in an averaging, banking, and trading program for all nonroad small SI engines that had been adopted in the separate March 1999 final rule for nonhandheld engines. The July 1999 Supplemental NPRM also proposed revised compliance program requirements for handheld engines, including

requirements for a production line testing program. Most of the proposed compliance program changes were intended to make the handheld engine compliance program the same as the requirements finalized for nonhandheld engines in March 1999 and to establish a consistent approach to compliance for all nonroad small SI engines.

The Phase 2 final rule for Class III, Class IV, and Class V handheld engines was finalized on April 25, 2000 (see 65 FR 24268). Table 1 summarizes the Phase 2 HC+NO_x emission standards adopted for Class III, Class IV, and Class V handheld engines and when the

standards are scheduled to take effect. In response to comments submitted on the July 1999 Supplemental NPRM, the standards and implementation schedule contained in the Phase 2 final rule for handheld engines reflected a four year phase in schedule instead of a five year phase in schedule as proposed in the Supplemental NPRM. When fully phased in, these Phase 2 standards were projected to result in an estimated 70 percent annual reduction in combined HC+NO_x emissions from small SI handheld engines compared to the Phase 1 emission requirements for such engines.

TABLE 1.—PHASE 2 HC+NO_x EMISSION STANDARDS FOR HANDHELD ENGINES

Engine class	HC+NO _x standards (g/kW-hr) by model year					
	2002	2003	2004	2005	2006	2007 and later
Class III	238	175	113	50	50	50
Class IV	196	148	99	50	50	50
Class V			143	119	96	72

Table 2 summarizes the technologies we concluded were capable of meeting the newly adopted Phase 2 standards for handheld engines by engine class. The

compression wave technology and the stratified scavenging with lean combustion design are based on 2-stroke engine designs which are used to power

the great majority handheld applications.

TABLE 2.—POTENTIAL TECHNOLOGIES FOR MEETING THE PHASE 2 STANDARDS FOR HANDHELD ENGINES

Engine class	Technologies
III	<ul style="list-style-type: none"> —Compression wave technology + low-medium efficiency catalyst. —Stratified scavenging with lean combustion + medium-high efficiency catalyst. —4-Stroke.
IV	<ul style="list-style-type: none"> —Compression wave technology. —Compression wave technology + low efficiency catalyst. —Stratified scavenging with lean combustion + medium efficiency catalyst. —4-Stroke.
V	<ul style="list-style-type: none"> —Compression wave technology. —Stratified scavenging with lean combustion. —4-Stroke (on certain applications).

To help engine manufacturers meet the Phase 2 HC+NO_x standards, we adopted provisions to include Phase 2 handheld engines in the averaging, banking and trading (ABT) program, previously adopted in the March 1999 final rule for Phase 2 nonhandheld engines. The combination of the declining Phase 2 handheld standards and the ABT program were intended to help manufacturers make an orderly and efficient transition from their existing Phase 1 engine designs and technologies to those able to meet the Phase 2 requirements and to provide an incentive for the early introduction of clean engines. The basic framework of the ABT program adopted for handheld engines is the same as the program previously adopted for nonhandheld

engines. However, to address comments submitted on the July 1999 Supplemental NPRM relating to the stringency of the phase-in standards and the periods, we adopted a number of unique provisions for handheld engines.

The ABT program is an integral part of the Phase 2 HC+NO_x standards adopted for handheld engines. Averaging means the exchange of emission credits among engine families within a given engine manufacturer's product line. Averaging allows a manufacturer to certify one or more engine families to Family Emissions Limits (FELs) above the applicable emission standard. However, the increased emissions have to be offset by one or more engine families certified to FELs below the same emission standard,

such that the average emissions in a given model year from all of the manufacturer's families (weighted by various parameters including engine power, useful life, and number of engines produced) are at or below the level of the emission standard. Banking means the retention of emission credits by the engine manufacturer generating the credits for use in future model year averaging or trading. Trading means the exchange of emission credits between engine manufacturers which then can be used for averaging purposes, banked for future use, or traded to another engine manufacturer.

Under the April 2000 rule's ABT provisions for handheld engines (those promulgated in §§ 90.201 through 90.220), manufacturers are able to select

from two options for the purpose of generating credits. One we refer to as the "Normal" program, the second as the "Optional Transition Year Program." These two programs have some significantly different design parameters, so credits from the two programs may be used only in the program in which they are generated.

Under the "Normal" credit program of the April 2000 rule, manufacturers certifying Class III or IV engine families with FELs at or below 72 g/kW-hr and Class V engine families with FELs at or below 87 g/kW-hr may generate credits that have an unlimited credit life. Such credits are available to the manufacturer for the duration of the Phase 2 program and are not discounted in any manner. Under the "Normal Credit" program, credits generated by Class III or IV engine families certified with FELs above 72 g/kW-hr and Class V engine families with FELs above 87 g/kW-hr can be used by a manufacturer in the model year in which they are generated for its own averaging purposes, or traded to another manufacturer to be used for averaging purposes in that model year. However, such credits may not be carried over to the next model year (i.e., the credits cannot be banked), including when traded to another manufacturer.

Alternatively under the April 2000 regulations, a manufacturer may choose to have a family participate in the "Optional Transition Year" credit program. Under this program, any family with FELs below the applicable phase-in standards shown in Table 1 is eligible to generate credits. However, these credits are progressively discounted the higher the family's FEL is compared to the final standards for that class. For example, in Class IV, a family with an FEL of 87 g/kW-hr or higher in model year 2002 would have its credits discounted by 75 percent if they are to be banked for use in future model years. If the family's FEL was equal to 72 g/kW-hr but less than 87 g/kW-hr, its credits would be discounted by 50 percent before being banked for use in future model years. This combination of ability to generate credits with families of higher emission levels but discounting the credits for these higher-emitting engines was intended to provide an increased incentive for manufacturers to make interim emission improvements while preserving the environmental benefits of the Phase 2 program. The "Optional Transition Year" program also provides an additional incentive for manufacturers to produce especially clean equipment by providing a 25 percent credit bonus for engines

certified with an FEL below specified levels in the first two years of the phase-in period.

"Optional Transition Year" credits have a limited life and application under the April 2000 regulations. They may be used without limitation through the 2007 model year. For model years 2008 through 2010, they may also be used, but only if the manufacturer's production- and power-weighted average HC+NO_x emission level is below an emission level determined by production-weighting the manufacturer's product line assuming emission levels of 72 g/kW-hr for Class III and IV engines and 87 g/kW-hr for Class V engines. The "Optional Transition Year" program expires at the end of the 2010 model year, under the April 2000 rules.

The provisions related to credit generation in these two programs were revised in the April 2000 final rule in response to comments on the Supplemental NPRM. At the time, we believed the approach adopted in the final rule was necessary to ensure that the ABT program did not contribute to a significant delay in implementation of the low-emitting technologies envisioned under the Phase 2 program, a risk under the proposed program which commenters raised to us in comments on the Supplemental NPRM. Without the limitations on credit generation, we were concerned that manufacturers could certify marginally cleaner engines, especially during the first years of the phase in period when the fleet average standards were the highest, and generate enough credits to significantly delay implementation of technologies meeting the long term standards (i.e., 50 g/kW-hr for Classes III and IV and 72 g/kW-hr for Class V) for a significant portion of the fleet. We noted that generation of a significant amount of credits through short-term engine improvements that would not result in compliance with either California's standards or the final Phase 2 standards was an unacceptable outcome if it caused delay of the ultimate transition to cleaner technology.

We also adopted a Production Line Testing (PLT) program for Phase 2 handheld engines. The intent of the PLT program is to require a sample of production line engines to be tested for emission performance to assure that the certified emissions levels demonstrated on production prototypes are being achieved in mass production. The amount of PLT testing required by the manufacturer depends on how close the test results from the initial engines tested are to the applicable standards. If

the initial test results indicate the design is well below the applicable standards, few engines need to be tested. For those designs where the test results indicate emission levels are very close to the applicable standards, additional tests are required to make sure the design is being produced with acceptable emission performance. The PLT program requires manufacturers to conduct testing on each of their engine families (unless they have been relieved of this requirement under a small-volume flexibility provision). The maximum sample size required for each engine family is 30 engines or 1 percent of a family's projected production, whichever is smaller. However, the actual number of tests ultimately required is determined by the testing results.

In adopting the Phase 2 standards for handheld engines, we concluded that the standards adopted, considering the lead time provided and other flexibility provisions such as averaging, banking, and trading, were technologically feasible for the handheld industry and appropriate under section 213 of the Clean Air Act. At the same time, we recognized that certain manufacturers who would be subject to the Phase 2 provisions believed that the standards may not be technologically feasible for them. This issue was most clearly raised with respect to the Class V standards. While EPA's adoption of the standards reflected our view that the Class V standards were achievable, we also believed that it was appropriate in responding to the manufacturers' comments and concerns to invite all members of the regulated industry as well as other interested parties to continue to explore the issue of technological feasibility of the Class V standards as industry made progress in moving towards implementation of the Phase 2 program. Therefore, in the April 2000 final rule, we stated our intent to perform a study of the technological feasibility of the Phase 2 Class V standards, to be completed by the end of 2002. We noted that the intent of the technology study was to focus on availability of technology, certification data, in-use performance, and other factors of interest.

Shortly after the April 2000 final rule was published, two members of the industry sued EPA over the Phase 2 handheld engine requirements. There were three main points in the lawsuit. First, they claimed that the Phase 2 standards did not meet the Clean Air Act requirement to provide the best balance of factors. Second, they claimed the standards were not supported by substantial evidence in the record. Last,

they claimed that we did not follow proper procedural requirements of the Clean Air Act with regard to changes made between the Supplemental NPRM and the FRM, specifically citing the 4-year phase-in period and the significantly revised ABT programs. In June, 2001, the United States Court of Appeals for the District of Columbia Circuit rejected all of industry's substantive and procedural challenges to the Phase 2 rule, and upheld EPA's rules as reasonably supported by substantial evidence. *Husqvarna AB v. EPA*, 254 F.3d 195 (DC Cir. 2001).

In the Fall of 2001, EPA began preliminary investigation of industry's progress in complying with the fully phased-in Class V emission standard of 72 g/kW-hr HC+NO_x. (As noted earlier, as part of the April 2000 FRM we committed to perform a study of the technological feasibility of the Phase 2 Class V standards.) The investigation focused on certification information for engines currently certified to meet the Phase 2 standards and on discussions with certain manufacturers regarding promising Phase 2 technologies.

The results of the preliminary investigation showed that manufacturers were focusing their Phase 2 development efforts primarily on Class IV engines. (As noted earlier in Table 1, the Phase 2 standards for Class IV engines took effect in 2002—two years before the Class V standards—and become more stringent each year until 2005.) The investigation also showed that while a small number of Class V engine families were certified with HC+NO_x levels below 72 g/kW-hr, little work had been done with regard to the majority of Class V engines. Given the limited information available on Class V engines, we drafted a memorandum and placed it in the small engine Phase 2 docket (EPA Air Docket A-96-55) in early 2002 noting that it would be premature to initiate the Class V feasibility study described in the April 2000 final rule. We also noted that we would continue to monitor the status of technology development for handheld engines and make further progress in conducting the Class V technology review during 2002.

Beginning in 2002, the Phase 2 requirements for Classes III and IV began to take effect. As noted earlier in Table 1, the Phase 2 standards are based on a declining average over four years in each class. (The Phase 2 standards for Class V engines do not start until 2004.) As expected, manufacturers have certified a number of different technologies with a wide range in emission levels with certification levels ranging from 16 g/kW-hr HC+NO_x on a

4-stroke engine to 245 g/kW-hr HC+NO_x on a 2-stroke engine. (This range is based on Class IV certification information; for Classes III-V, most industry sales are in Class IV.) The technologies being used currently are mostly 2-stroke engines with a limited number of 4-stroke engines as well. For the 2-stroke engines, there are a number of stratified scavenging designs as well as a number of engines equipped with catalysts.

With regard to the ABT program, manufacturers are using the program primarily for averaging purposes. Contrary to our earlier concerns about manufacturers certifying marginally-cleaner engines and earning significant credits which could delay the transition to the final Phase 2 standards, the sales-weighted certification levels for individual manufacturers in model year 2002 and 2003 have been near the required average standard. Because most manufacturer's average emission are near the phase-in standards, there has been only limited use of the banking provisions.

In April and November of 2002, the Outdoor Power Equipment Institute (OPEI), a trade organization that represents most of the manufacturers of handheld engines in the United States, met with EPA to raise concerns about a number of the Phase 2 provisions for handheld engines. EUROMOT, a trade organization that represents European handheld engine manufacturers also met with EPA in August 2002 to discuss their concerns with the Phase 2 program for handheld engines. OPEI and EUROMOT highlighted similar areas of concern in the meetings. First, they noted concerns over the Class V schedule of emission standards, indicating that the Phase II standards were more challenging than first thought and that they were pushing hard to meet the Class III and IV requirements with the hope and expectation that this experience would enhance their Class V compliance. Second, they noted their desire to revise the two ABT programs for handheld engines into one program without the discounting provisions of the current programs. They provided data which showed that there were relatively few credits being generated (compared to EPA's original concern) and they claimed that in some cases the provisions of the two ABT programs created a disincentive to introduce clean technology as soon as otherwise possible. Finally, they noted their interest in gaining some flexibility in the PLT program, especially with regard to the procedure for revising Family Emission Limits (FELs).

In follow-up to the meetings with OPEI and EUROMOT, we held individual discussions with eight handheld engine manufacturers to explore the status of each manufacturer's progress on the Phase 2 program and to better understand each manufacturer's perspective on the issues highlighted by OPEI and EUROMOT. The eight manufacturers represent over 90 percent of total handheld engine sales in the United States. Although each manufacturer's situation is different, there were several common themes raised during our discussions about the Phase 2 program. A summary of our findings is presented below.

With regard to the Phase 2 standards, we found that all of the manufacturers expect to be able to comply with the ultimate standards of 50/50/72 g/kW-hr HC+NO_x for Classes III/IV/V, respectively, although, as noted below, several raised concerns about being able to comply with the timing of the phase-in. Manufacturers view the emission standards and ABT program as an inter-related package. Since the declining average emission standard is expected to be met on a power/life/sales weighted average basis for all families in Classes III-V, it is important that the ABT program be structured such that it maximizes the opportunity to gain extra and early emission reductions. The manufacturers stressed the technological and practical challenges of meeting the emission standards in all of their different engines/equipment and emphasized the need for an ABT program which functioned as intended in order to meet the declining average emission standards.

It appears that the technology to be used most widely for complying with the final Phase 2 standards will be the stratified scavenging 2-stroke design, with or without a catalyst. There will also be a number of 4-stroke engine designs and limited engines equipped with the compression wave technology. While the compression wave technology was touted by some as a simple solution to meeting the Phase 2 standards during the rulemaking, it is not expected to see widespread use.

Based on their experience to date in developing technologies for Phase 2, manufacturers raised concerns about their ability to comply with the set of declining average phase-in standards, especially in the later years of the phase in and in Class V. Manufacturers have been focusing their design efforts on Class III and IV engines because the Phase 2 standards for those classes took effect first. Manufacturers are finding it more challenging than expected to develop their Phase 2 designs for all of

their engine families across the wide range of applications in which they are used. Many engines are used in multiple types of equipment applications, resulting in significant design challenges as the manufacturers need to ensure compliance with the emission standards while maintaining acceptable operating characteristics, including temperature issues and the need for additional cooling associated with the use of catalysts. There are approximately 275 Class III-V engine families and many of these are used in multiple equipment designs and cover both residential and commercial applications.

Because of the need to focus on Class III and IV engines and the challenges of applying new designs across their entire product mix, manufacturers of Class V engines (all of which are heavily involved in Class III and IV as well) have not focused as much effort on their Class V engines designs which are scheduled to begin to phase in during 2004. While Class V manufacturers expect to use the same basic technologies as they are employing in Class III and IV, they are still addressing the technical challenges facing Class V engines.

Unlike most Class III and IV engines which are used primarily in residential applications, Class V engines are used almost exclusively in commercial applications. Commercial equipment is operated under much more rigorous conditions than residential equipment and is operated for much longer periods of time by professionals in forestry and lawn care operations. Class V engines, which have the largest displacement of all handheld engines, also have the largest volume of exhaust. Manufacturers expect to use catalysts on at least some of their Class V designs. Manufacturers are still working to address the best way to incorporate catalysts on such large engines, while maintaining current levels of performance and addressing weight concerns and temperature issues with the need for upgraded cooling.

With regard to ABT, we found that manufacturers are using the current ABT programs primarily for averaging purposes and are not significantly below the fleet average levels required in Class III and IV in the first two years of the Phase 2 program. There is some banking of credits taking place, but at relatively low levels. This is in stark contrast to the concerns cited in the April 2000 final rule over the potential for significant levels of "windfall" credits from marginally cleaner engines. Manufacturers believe the current ABT programs have discouraged the pull

ahead of clean technologies because of the steep discounts placed on credits in the program. Because of the high level of competition in the marketplace, especially for residential equipment which makes up the large majority of equipment in Classes III and IV, the incentive to pull ahead cleaner, more expensive engine designs has been removed by applying such high levels of discounting for any engines not meeting very low emission levels. Because most of the residential equipment is sold to large retailers, small differences in price between manufacturers, can result in lost sales. Manufacturers have been unwilling to take the business risk to pull ahead the introduction of any significant number of clean engines especially whenever the ABT program heavily discounts the value of credits that might be earned from these engines. In addition, because of the continuing efforts to address Class V engines discussed above, manufacturers are less certain regarding the ability to rely on the April 2000 rule's ABT programs for help in complying with the Phase 2 standards in Class V.

One final issue raised by manufacturers was related to the production line testing program required under the Phase 2 rules. Manufacturers believe they need additional flexibility beyond that currently allowed in the event that they need to revise the FEL limits because of unexpected variations in production engine emission levels. Manufacturers are allowed to make such changes under the current rules, but must notify EPA and await approval before continuing production of the engine. If approval is not received quickly, a manufacturer is forced to stop production. As manufacturers are making the transition to new technologies to comply with the Phase 2 standards, the potential for producing new designs on an assembly line where the emission levels of production engines (which are tested under the PLT program) are not at the levels expected is increased. Manufacturers would like to be able to revise their FELs, provided they have data to support their changes, without prior EPA approval so that the production of engines is not interrupted.

Shortly after completing our discussions with engine manufacturers, OPEI, on behalf of their members, submitted an administrative "Petition for Reopening" the Phase 2 handheld rules to EPA in February 2003. The petition contained a request to modify the Phase 2 program for handheld engines in three areas. First, OPEI requested a delay in the Class V implementation schedule (citing either a

one year delay in the phase-in schedule or a change in the level of the standards during the phase-in). Second, OPEI requested that the "Optional Transition Year" credit program be eliminated, and that FEL caps that apply for banking credits in the "Normal Credit" program be dropped. Finally, OPEI requested that manufacturers be allowed to generate and use credits for averaging purposes in the PLT program in a given model year. A copy of the petition has been placed in the public docket for this rulemaking.

This action is a fulfillment of the technology review concerning the Class V standards and also is responsive to OPEI's request that we reopen the Phase 2 handheld rule. We believe that these amendments sufficiently resolve all issues related to these matters, and expect to take no further action in response to OPEI's petition or in relation to the technology review beyond that in this final rule.

We also note that while OPEI in its petition relied upon section 307(c) of the Clean Air Act, 42 U.S.C. 7607(c), as a basis for its requests, we do not agree that section 307(c) has any applicability to either OPEI's petition or to our action in response. Nor are EPA's rulemakings regarding nonroad engines under CAA section 213 subject to section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), another provision relied upon by OPEI in its request. See CAA section 307(d)(1), 42 U.S.C. 7607(d)(1). Finally, we disagree with OPEI's suggestion that, pursuant to section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), OPEI has presented "grounds arising after [the] sixtieth day" following publication of the April 2000 final Phase 2 rule, such that a new petition for judicial review of that rule could be filed in the DC Circuit Court of Appeals in the absence of further final regulatory action on EPA's part. As OPEI is aware, in the face of a challenge by one of OPEI's member companies that court has already fully affirmed EPA's Phase 2 handheld regulations, and the court did not retain jurisdiction of the case pending any possible ongoing technology review or discussions with industry. *Husqvarna AB v. EPA*, 254 F.3d 195 (D.C. Cir. 2001).

B. What Amendments Are We Adopting Today?

Based on our analysis of the information gathered under the Class V technology review and our assessment of the petition presented by industry, we do not believe it is necessary to revise our April 2000 final rule determination that the Phase II

handheld standards are technologically feasible and otherwise appropriate under the Act. Thus, we are not taking action to revise the standards and phase-in schedule of the Phase II handheld program (Classes III–V) and they remain as promulgated. However, we also believe that several relatively modest changes to the rule are appropriate to ensure an orderly transition to compliance with the Phase 2 standards for the industry as a whole. Toward that end, we are promulgating three changes to the Phase II program. These changes facilitate transition to the Phase 2 standards while retaining all of the long term emission control benefits of the program. Each of these changes is discussed below.

Because EPA views the provisions of the action as noncontroversial and does not expect adverse comment, it is appropriate to proceed by direct final rulemaking. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

1. Averaging Banking, and Trading (ABT)

The first set of changes is related to the certification ABT programs. As discussed above, the April 2000 final rule for handheld engines contained two ABT programs, referred to as the "Normal" credit program and the "Optional Transition Year" credit program.

Under the "Normal" credit program, manufacturers certifying Class III or IV engine families with FELs at or below 72 g/kW-hr and Class V engine families with FELs at or below 87 g/kW-hr may generate credits that have an unlimited credit life and are not discounted in any manner. (We refer to these as the "credit program trigger levels.") Under the "Normal Credit" program, credits generated by handheld engine families certified with FELs above the credit program trigger levels can be used by a manufacturer in the model year in which they are generated for its own averaging purposes, or traded to another manufacturer to be used for averaging purposes in that model year. However, such credits may not be carried over to

the next model year (*i.e.*, banked), including when traded to another manufacturer.

Alternatively under the April 2000 final regulations, a manufacturer may choose to have a family participate in what is referred to as the "Optional Transition Year" credit program. Under this program, any engine family with FELs below the applicable phase-in standards shown in Table 1 is eligible to generate credits. However, as is described in 40 CFR 90.216, these credits are progressively discounted or in some cases multiplied depending on the certification FEL. This combination of ability to generate credits with families of higher emission levels for current year averaging but adjusting the credits for these higher/lower-emitting engines for purposes of banking was intended to provide an increased incentive for manufacturers to make interim emission improvements while preserving the environmental benefits of the Phase 2 program. "Optional Transition Year" credits have a limited life and application under the April 2000 final regulations. They may be used without limitation through the 2007 model year. For model years 2008 through 2010, they may also be used, but only if, prior to the use of any credits, the manufacturer's production- and power-weighted average emission level is below a level determined by production-weighting the manufacturer's product line by emission levels of 72/72/87 g/kW-hr for Classes III/IV/V. The "Optional Transition Year" credit program expires at the end of the 2010 model year, under the April 2000 final rule.

When we adopted the April 2000 final rule, we believed the ABT provisions contained therein were necessary to ensure that neither the "Normal" credit program nor the "Optional Transition Year" credit program would contribute to a significant delay in implementation of the low-emitting technologies envisioned under the Phase 2 program. Without the limitations on credit generation, we were concerned that manufacturers could certify marginally cleaner engines, especially during the first years of the phase in period when the new equipment standards are the highest, and generate enough credits to significantly delay implementation of technologies meeting the long term standards shown in Table 1 for a significant portion of the equipment population.

There have now been several model years of experience with certifying Class III and IV Phase 2 engines. The results indicate that the manufacturers have been able to comply with the declining

average HC+NO_x standards, but the certification compliance margins have generally not been large and there have not been a large number of credits generated. The "windfall" credit generation concern discussed in the April 2000 final rule has not occurred and would not have occurred even if the "credit program trigger level" provisions of the Normal ABT program and the discount and multiplier provisions of the Optional Transition Year program were not in place. Thus, to enable the ABT program to better fulfill its intended purpose and avoid maintaining unnecessary restrictions, EPA is revising the ABT program for 2003 and later model years: ABT credit program trigger levels are eliminated as are the credit discount and multipliers and limits on credit life. Essentially, the program is being revised to follow a simple ABT program such as was discussed in the July 1999

Supplemental NPRM. Provisions related to credits generated in model year 2002 and earlier would not be changed. In assessing the appropriateness of this change, EPA examined the potential future emissions impact of the removing the discounts and multipliers as part of the ABT program changes for 2003 and later. Using 2003 certification information, we have estimated that these ABT changes could potentially result in about 3,000 tons of future new ABT program credits in 2003 and 2004 with the in-use emissions impact spread out over the next five to seven years. This represents less than one percent of the emission reductions from the Phase 2 standards over these years. EPA expects these credits will be used to comply with the Class V standards during the transition years.

2. Class V Credit Deficit Carryforward

Several manufacturers have indicated that the engines used in Class V present the biggest technological challenge and assert that progress in Class V has been slowed by the need to meet the standards in Classes III and IV in earlier model years. Manufacturers are likely to adapt the technologies used in Class IV engines into Class V. They have indicated that they are confident that the long-term standards are feasible for Class V, but that they may need additional transition flexibility. Even with the cross class averaging and the ABT program changes made above, compliance during the transition years may depend on the expected success of technological progress, meeting expected sales goals in other Classes for purposes of credit generation, and a favorable sales mix among the products and Classes. Toward that end, as a

transition tool, we are revising the certification provisions to facilitate compliance for Class V.

Specifically, and only for Class V, we are revising the certification and compliance provisions to allow for credit deficit carryforward flexibility for model years 2004 through 2007. Under these provisions, a manufacturer who certifies Class V equipment during the transition period (model years 2004 through 2007) may run a net accumulated credit deficit within its three Class average (III–V) for a given model year if the deficit is attributable to negative credits from Class V engine families. Such credit deficits are permitted in any model year of the transition, but cannot occur for more than two consecutive model years. Once a deficit occurs, a manufacturer could, in the first subsequent model year, cover it at a 1:1 rate with credits from any or all of the handheld or non-handheld equipment classes. In the second and third following model years the deficit payback rate would be 1.1:1. In the fourth following model year, the deficit payback rate would be 1.2:1. Manufacturers with a credit deficit are prohibited from trading credits to other manufacturers (although manufacturers would be allowed to purchase credits from other manufacturers in trading), and from banking credits for future use. Any positive credit balance must be applied to that deficit. A manufacturer can use banked or traded credits to cover deficits.

As with the April 2000 regulations, two groups of engines are excluded from the ABT program. California certified sales in non pre-empted classes would not be included in the program in any way. Small volume manufacturers and small volume families which have extended compliance dates under the April 2000 final rule (an extra three years beyond the last of the transition years) would not be included, unless the manufacturer opted to pull-ahead certification of such engines for the purpose of generating credits.

EPA implemented a deficit carryforward provision in its Tier 2 automotive rule (65 FR 6867, February 10, 2002) and its recreational vehicle rule (67 FR 68389, November 8, 2002) to address similar concerns in the affected industries. This approach has the benefits of assuring the expected emission reductions are achieved while providing both the industry and EPA the flexibility to attain an orderly transition to the new standards.

3. Production Year FEL Changes

The implementation of new technology often brings with it

unexpected emissions variability and performance shortfalls during the transition from prototype to mass production. Manufacturers account for this in setting their FELs, but even so there are times when an FEL adjustment is needed. Under the April 2000 final rule, manufacturers identifying an emissions problem with its production engines must contact EPA to get approval to change its FEL upward and subsequently to implement a certification running change to fix the problem and reduce the FEL. This process is time consuming for EPA and the industry and can result in production line slowdowns and stoppages as manufacturers await EPA approvals. In this rule, we are revising the process to adjust FELs upward and downward during the production year. Specifically, we are streamlining the certification FEL change process (up or down) through a regulatory revision to permit changes without pre-approval. Any changes to FELs must be based on engineering evaluation and emission test data which justifies the new FEL and be submitted to EPA within three working days. Failure to meet these requirements would be a violation of the certificate for any engines produced during the interim period. EPA believes such a provision streamlines both its internal processes and those of the manufacturers without compromising the emission reductions associated with the standards.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This direct final rule is not a significant regulatory action as it merely amends previously adopted requirements for handheld engines to provide additional compliance flexibility to manufacturers in meeting the Phase 2 requirements. There are no new costs associated with this rule. A Final Regulatory Support Document was prepared in connection with the original Phase 2 regulations for handheld engines as promulgated on April 25, 2000 (65 FR 24268) and we have no reason to believe that our analysis in the original rulemaking is inadequate. The relevant analysis is available in the docket for the Phase 2 rulemaking (A-96-55) and at the following Internet address: <http://www.epa.gov/otaq/equip-ld.htm>. The original action was submitted to the Office of Management and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

This direct final rule does not include any new collection requirements. The information collection requirements (ICR) for the original Phase 2 rulemaking (65 FR 24268, April 25, 2000) were approved on September 21, 2001 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meets the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize the

significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. This direct final rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers, including small entities, and will reduce regulatory burden.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates for State, local, or tribal

governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no Federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers. The requirements of UMRA therefore do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory

authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5-501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers. Thus, we have determined that the requirements of the NTTAA do not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule is effective on March 12, 2004.

K. Statutory Authority

The statutory authority for this action comes from sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1).

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties.

Dated: December 23, 2003

Michael O. Leavitt,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS

■ 1. The authority citation for part 90 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart B—Emission Standards and Certification Provisions

■ 2. Section 90.122 is amended by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 90.122 Amending the application and certificate of conformity.

* * * * *

(e)(1) Alternatively, an engine manufacturer may make changes in or additions to production engines concurrently with amending the application for an engine family as set forth in paragraph (a) and (b) of this section. In these circumstances the manufacturer may implement the production change without EPA pre-approval provided the request for change together with all supporting emission test data, related engineering evaluations, and other supporting documentation is received at EPA within three working days of implementing the change. Such changes are ultimately still subject to the provisions of paragraphs (c) and (d) of this section.

(2) If, after a review, the Administrator determines that additional testing or information is required, the engine manufacturer must provide required test data or information within 30 days or cease production of the affected engines.

* * * * *

Subpart C—Certification Averaging, Banking, and Trading Provisions

■ 3. Section 90.203 is amended by revising paragraphs (e)(1), (e)(5), (g)(1), and the second sentence of paragraph (h) to read as follows:

§ 90.203 General provisions.

* * * * *

(e) (1) A manufacturer may certify engine families at Family Emission Limits (FELs) above or below the applicable emission standard subject to the limitation in paragraph (f) of this section, provided the summation of the manufacturer's projected balance of credits from all calculations and credit transactions for all engine classes in a given model year is greater than or equal to zero, as determined under § 90.207. Notwithstanding the previous sentence, a manufacturer may project a negative balance of credits as allowed under § 90.207(c)(2).

* * * * *

(5) In the case of a production line testing (PLT) failure pursuant to subpart H of this part, a manufacturer may revise the FEL based upon production line testing results obtained under

subpart H of this part and upon Administrator approval pursuant to § 90.122(d). The manufacturer may use credits to cover both past production and subsequent production of the engines as needed as allowed under § 90.207(c)(1).

(g)(1) Credits generated in a given model year by an engine family subject to the Phase 2 emission requirements may only be used in averaging, banking or trading, as appropriate, for any other engine family for which the Phase 2 requirements are applicable. Credits generated in one model year may not be used for prior model years, except as allowed under § 90.207(c).

(h) Except as provided in § 90.207(c), an engine family generating negative credits for which the manufacturer does not obtain or generate an adequate number of positive credits by that date from the same or previous model year engines will violate the conditions of the certificate of conformity.

4. Section 90.204 is amended by adding a sentence to the end of paragraph (a) and adding a sentence to paragraph (c) immediately after the first sentence to read as follows:

§ 90.204 Averaging.

(a) A manufacturer may have a negative balance of credits as allowed under § 90.207(c)(2).

(c) Credits generated under the previously available "Optional transition year averaging, banking, and trading program for Phase 2 handheld engines" of §§ 90.212 through 90.220, since repealed, may also be used in averaging.

5. Section 90.205 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 90.205 Banking.

(4) For the 2002 model year, a manufacturer of a Class III or Class IV engine family may bank credits for use in future model year averaging and trading from only those Class III or Class IV engine families with an FEL at or below 72 g/kW-hr. Beginning with the 2003 model year, a manufacturer of a Class III or Class IV engine family with an FEL below the applicable emission standard may generate credits for use in future model year averaging and trading.

(5) Beginning with the 2004 model year, a manufacturer of a Class V engine

family with an FEL below the applicable emission standard may generate credits for use in future model year averaging and trading.

6. Section 90.206 is amended by revising paragraph (a) to read as follows:

§ 90.206 Trading.

(a) An engine manufacturer may exchange emission credits with other engine manufacturers in trading, subject to the trading restriction specified in § 90.207(c)(2).

7. Section 90.207 is amended by redesignating paragraph (c) as paragraph (c)(1), adding a new paragraph (c)(2), and adding a new paragraph (g) to read as follows:

§ 90.207 Credit calculation and manufacturer compliance with emission standards.

(c)(2) For model years 2004 through 2007, an engine manufacturer who certifies in a given model year may carry forward a credit deficit for four model years, but must not carry such deficit into the fifth year, provided the deficit is attributable to negative credits from its Class V engine families, subject to the following provisions:

(i) Credit deficits are permitted for model years 2004 through 2007 but cannot occur for more than two consecutive model years for a given manufacturer;

(ii)(A) If an engine manufacturer calculates that it has a credit deficit for a given model year, it must obtain sufficient credits from engine families produced by itself or another manufacturer in a model year no later than the fourth model year following the model year for which it calculated the credit deficit. (Example: if a manufacturer calculates that it has a credit deficit for the 2004 model year, it must obtain sufficient credits to offset that deficit from its own production or that of other manufacturers' 2008 or earlier model year engine families.);

(B) An engine manufacturer carrying the deficit into the first model year following the year in which it was generated must generate or obtain credits to offset that deficit and apply them to the deficit at a rate of 1:1. An engine manufacturer carrying the deficit into the second and third model years must generate or obtain credits to offset that deficit and apply them to the deficit at a rate of 1.1:1 (i.e., deficits carried into the second and third model year must be repaid with credits equal to 110

percent of the deficit). Deficits carried into the fourth model year must be offset by credits at a rate of 1.2:1 (i.e., 120 percent of the deficit);

(iii) An engine manufacturer who has a credit deficit may use credits from any class of spark-ignition nonroad engines at or below 19 kilowatts generated or obtained through averaging, banking or trading to offset the credit deficit; and,

(iv) An engine manufacturer must not bank credits for future use or trade credits to another engine manufacturer during a model year in which it has generated a deficit or into which it has carried a deficit.

(g) Credit deficits. (1) Manufacturers must offset any deficits for a given model year by the reporting deadline for the fourth model year following the model year in which the deficits were generated as required in paragraph (c)(2) of this section. Manufacturers may offset deficits by generating credits or acquiring credits generated by another manufacturer.

(2)(i) Failure to meet the requirements of paragraph (c)(2) of this section within the required timeframe for offsetting deficits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying engines not covered by the certificate must be determined according to this section.

(ii) If deficits are not offset within the specified time period, the number of engines which could not be covered in the calculation to show compliance with the fleet average HC+NOx standard in the model year in which the deficit occurred and thus are not covered by the certificate must be calculated using the methodology described in paragraph (g)(2)(iii) of this section.

(iii) EPA will determine the engines for which the condition on the certificate was not satisfied by designating engines in the Class V engine family with the highest HC+NOx FELs first and continuing progressively downward through the Class V engine families until a number of engines having a credit need, as calculated under paragraph (a) of this section, equal to the remaining deficit is reached. If this calculation determines that only a portion of engines in a Class V engine family contribute to the deficit situation, then EPA will designate a subset of actual engines in that engine family as not covered by the certificate, starting with the last engine produced and counting backwards. EPA may request additional information from the manufacturer that would help identify the actual engine not covered by the certificate.

(iv) In determining the engine count, EPA will calculate the mass of credits based on the factors identified in paragraph (a) of this section.

(3) If a manufacturer is purchased by, merges with or otherwise combines with another manufacturer, the manufacturer continues to be responsible for offsetting any deficits outstanding within the required time period. Any failure to offset the deficits will be considered to be a violation of paragraph (g)(1) of this section and may subject the manufacturer to an enforcement action

for sale of engines not covered by a certificate, pursuant to paragraph (g)(2) of this section.

(4) If a manufacturer that has a deficit ceases production of handheld engines, the manufacturer will be considered immediately in violation of paragraph (g)(1) of this section and may be subject to an enforcement action for sale of engines not covered by a certificate, pursuant to paragraph (g)(2) of this section

(5) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (g)(1) of this

section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of engines not covered by the certificate, all occur upon the expiration of the deadline for offsetting deficits specified in paragraph (g)(1) of this section.

§§90.212, 90.213, 90.214, 90.215, 90.216, 90.217, 90.218, 90.219, 90.220 [REMOVED]

■ 8. Sections 90.212 through 90.220 are removed.

[FR Doc. 04-458 Filed 1-9-04; 8:45 am]

BILLING CODE 6590-50-P

(73)

From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Tuesday, October 05, 2004 4:42 PM

To: 'John Scott'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comments RE: Leaf Blowers

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: John Scott [mailto:pelorus@bellsouth.net]

Sent: Tuesday, October 05, 2004 4:43 PM

To: Manager

Subject: Leaf Blowers

Dear Mr. Horton,

Anticipating that you will be besieged with communiqués from hand wringing activists supporting Cam Hill's proposed ban on leaf blowers (gasoline powered now, electric later), I would like to weigh in on the side of reason.

In the developed world of today we have all sorts of appliances which make life easier or more enjoyable, but which have the potential to disturb the peace of our neighbors if used carelessly or at inappropriate times. Among these devices are lawn mowers, motorcycles, chain saws, boom boxes, power saws, sanders, and either type of leaf blower. Common sense and basic courtesy serve to guide most folks as to reasonable times to use these machines if their noise carries, but I believe the town has noise ordinances for those lacking such judgement. As to a dust nuisance, it is difficult to imagine the localized and sporadic use of a leaf blower causing a problem wider than a several yards' radius, but a person so sensitive to such slight irritants would be well advised to wear a dust mask as a normal piece of his garb about town.

I used to rake and sweep the leaves on my wooded and steeply sloping in-town property. The process took a full two hours, and in the Fall months needs doing twice weekly, which time I rarely have available. I eventually saw the light and followed the example of my neighbors, buying an electric blower. As I aged, and ran through a couple of electrics, it became a physical burden to lug 100' of heavy drop cord behind, constantly rewinding as I shifted from driveway to walkways to decks. For the past several years I have used a gasoline model, and find that the job now gets done, and gets done in a half hour or less. It is noisy, and so were the electric models. But my decks, walkway, stairs, and steep driveway remain clean and safe from slippery, wet leaves.

This town is no doubt full of folks with similar viewpoints on this "issue". However, most will judge the subject too picayune and will therefore not take the time to share their opinions with you. Instead, you will receive a broadside from a well-meaning minority of utopians who take this up as their cause du jour, and make more noise than a squadron of leaf blowers. I trust you will will not be influenced by that noise.

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Incidentally, I hear there are presently some excellent land opportunities up in Amish country, where leaf blowers are scarce.

John M. Scott
Chapel Hill

(75)

From: Carol Abernethy **On Behalf Of** Cal Horton**Sent:** Tuesday, September 28, 2004 10:33 AM**To:** 'Rick Smathers'**Cc:** Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)**Subject:** Citizen Comment RE: Leaf Blower Ban.

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Rick Smathers [mailto:smathers@io.com]**Sent:** Monday, September 27, 2004 1:28 PM**To:** hillcc@nc.rr.com**Cc:** Town Council**Subject:** Leaf Blower Ban.

Dear Mr. Hill,

I am writing to you today regarding the following article which I read on the News and Observer website:

[Chapel Hill Town Council To Consider Blower Ban](#)

First of all, I would like to say that I live in Raleigh, not in Chapel Hill, so I am not one of your constituents and have no say in this matter. If I did live in Chapel Hill, I would oppose a leaf blower ban as unnecessary and intrusive regulation.

Additionally, I would like to address your specific reasons for supporting a leaf blower ban and explain why I don't find them persuasive.

Your first quote says: "They're incredibly noisy and irritating."

Yes, leaf blowers are somewhat noisy. However, they are no more noisy than lawn mowers, motorcycles, car stereos, outdoor parties, and many other things which you might hear outside or through an open window. You can't ban reasonable noise without impacting the rights of others. If someone were blowing leaves at 4am, then I'd agree this was unreasonable, but leaf blower noise on a Saturday afternoon should be something you accept by deciding to live in a suburban community. May I suggest that if this is unacceptable, then this is your problem, and not the fault of the user of the leaf blower?

Your second quote says: "All they do is move leaves, dirt and dust from one place to another. They don't subtract it from the environment; they just move it around."

Technically this is true. Just like a yard rake, leaf blowers are for gathering leaves, grass, and other yard waste into easily managed piles. Of course, a responsible home owner would then bag and remove the piles to eliminate the waste. Your argument here doesn't make sense because you HAVE to gather the leaves into a pile to dispose of them. I'm sure you don't expect people to gather leaves from their yards one leaf at a time by hand. Why should they have to use a yard rake if a leaf blower can do the job better and faster?

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Your third quote says: "We've got the 11th worst air quality in the nation, and leaf blowers are inordinately large producers of pollution."

I'm sorry sir, but unless you can provide solid evidence that leaf blowers are a significant source of pollution, then I can only consider this argument as spurious and ill considered. There are so many things which cause much more pollution than to even suggest banning leaf blowers for this reason seems like little more than grasping at straws to justify a policy that doesn't make sense.

In closing, I would like to say that I don't find your arguments persuasive. If I did live in Chapel Hill, I would not vote for someone who made it a habit to propose this type of freedom restricting, autocratic legislation.

Rick Smathers
Consulting Engineer
Opware Inc.
Office: 919-653-1281
Cellular: 919-272-1907

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From: Cal Horton
Sent: Monday, October 11, 2004 7:59 AM
To: Council Member Bill Strom ; Council Member Cam Hill; Council Member Dorothy Verkerk ; Council Member Ed Harrison ; Council Member Jim Ward ; Council Member Jim Ward (W) ; Council Member Mark Kleinschmidt ; Council Member Sally Greene ; Mayor Kevin C. Foy (TCH) ; Mayor pro tem Edith Wiggins
Cc: Bruce Heflin; Carol Abernethy; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Owen Franklin; Ralph Karpinos; Sonna Loewenthal ; Toni Pendergraph
Subject: FW: PLEASE: BAN LEAF BLOWERS!!!
Importance: High

W. Calvin Horton, Town Manager
306 North Columbia Street
Chapel Hill, North Carolina 27516
919-968-2744
919-969-2063 FAX
919-967-2626 Home
calhorton@townofchapelhill.org

Note: Mail sent to or received from the Town Manager is subject to publication under the provisions of the North Carolina open records law.

From: finest1 [mailto:finest1@earthlink.net]
Sent: Sunday, October 10, 2004 6:03 PM
To: Cal Horton
Subject: PLEASE: BAN LEAF BLOWERS!!!
Importance: High

Dear Town Council Members,

Please ban leaf blowers in Chapel Hill. The noise and pollution they spew make it impossible for me to sit outside on most fall days and sometimes I can't even open the windows of my home because the exhaust wafts in. Additionally, there is probably a correlation between the size of a person's girth and whether they own a leaf blower. Banning leaf blowers would encourage people to rake leaves, which is excellent exercise.

Thank you for your attention,

Tracey Fine
116 Hampton Court
Chapel Hill, NC 27514
967-8287

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From: Carol Abernethy **On Behalf Of** Cal Horton

Sent: Tuesday, September 28, 2004 10:30 AM

To: 'Julie Vann'

Cc: Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)

Subject: Citizen Comment RE: leaf blower proposal

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

Town of Chapel Hill

From: Julie Vann [mailto:jvann5@nc.rr.com]

Sent: Monday, September 27, 2004 6:20 PM

To: Town Council

Subject: leaf blower proposal

Dear Council Members:

I was thrilled to hear the news this evening that the Town of Chapel Hill may consider banning the use of leaf blowers within Chapel Hill. This would be a great achievement for Chapel Hill. I agree that this leaf blowers are not only a huge source of noise pollution, but they contribute to the extremely high levels of air pollution in this region of the state, and are known to blow up harmful spores into the air that have the potential to cause disease. It would be a pleasure to no longer watch the employees of Cordell Landscaping blowing their leftover mulch into the storm drains in Southern Village (at neighbors' houses).

Thanks for your thoughtful consideration of this issue. I would love to attend the meeting to support this initiative, but as a single parent am unable to attend evening meetings.

Thanks again.

Julie Jacobson Vann
122 Hillspring Lane
Chapel Hill, NC 27516

(7)

From: Carol Abernethy **On Behalf Of** Cal Horton**Sent:** Tuesday, October 12, 2004 1:56 PM**To:** 'Suzanne Vredenburg'; Bruce Heflin; Cal Horton; Catherine Lazorko; Emily Dickens; Flo Miller; Joyce Smith; Ralph Karpinos; Toni Pendergraph; Bill Strom; Cam Hill; Dorothy Verkerk ; Ed Harrison; 'Edith Wiggins'; 'Jim Ward'; Jim Ward (w) ; Kevin Foy; Mark Kleinschmidt ; Sally Greene (w)**Subject:** Citizen Comment RE: leaf blower ban

A copy of your email message has been forwarded to each Council Member.

Carol Abernethy

Exec. Asst., Manager's Office

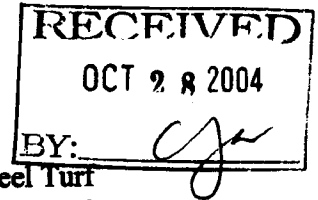
Town of Chapel Hill

From: Suzanne Vredenburg [mailto:vrede001@mindspring.com]
Sent: Monday, October 11, 2004 6:18 PM**To:** Town Council**Subject:** leaf blower ban

I'm appalled that a leaf blower ban is even up for discussion. Berkeley, Ca. does not have the number of pine trees and hardwoods that Chapel Hill has, so there is no justifiable comparison there. Many homeowners will use their lawn tractors to collect leaves, which are just as loud and polluting. The miles of greenway trails cannot be swept. As a runner for 20 years I can tell you that leaf and debris covered trails are hazardous to runners and cyclists, especially when wet. I moved here from Hillsborough 6 years ago. I knew that I would have to trade the peace and quiet of the country for a populated suburban town with great town services, greenways, convenience of shopping nearby, etc. Chapel Hill does a great job of maintaining these greenways! I use my gas blower to maintain my hardscape areas including a sidewalk to be free of leaves, debris and pine pollen. I don't use it excessively, and rake the leaves off my lawn. Instead of complaining about noise why don't we commend the town grounds employees who work so hard to keep Chapel Hill looking it's best. I can tell you if a preposterous ban like this were to be implemented there will be many homeowners like me who won't bother to keep up their properties. I don't have an extension cord long enough and don't have the time to sweep it. I think a more important issue is how the town can expedite it's street leaf removal so it won't be so much of a hazard to pedestrian and vehicular traffic flow. My gas blower is as useful to me as my vacuum and other household appliances. It seems very selfish to me for a town council member to use his appointment to serve his own personal agenda. Most of my neighbors and others I come in contact with feel the same about this issue.

Sincerely, Sue Vredenburg

(80)



Mr. Horton,

Hello. My name is Eric Vickers (933-1797), and I have owned Tarheel Turf Services, a general maintenance landscaping company, since 1998. I would appreciate the opportunity to explain to you why I think a ban on leaf blowers is a bad idea.

Tarheel Turf has over 100 regular customers in Chapel Hill. A ban on leaf blowers would dramatically increase the amount of time and labor needed to accomplish certain jobs, especially leaf cleanup and clearing walks, drives, and streets. This would not only result in significant increases in our customer's bills; it would cause significant difficulties for my business.

According to Cam Hill, "a leaf blower doesn't do any real work." Is he serious? Without leaf blowers, Tarheel Turf would have to hire, if possible, additional labor for the fall leaf cleanup. This would cause us to charge, at least, 3 times the amount to cleanup leaves, because it would take that much extra time. Our customers want clean yards. The blowers help cleanup bulk and the detailed work, such as: around bushes and on the sidewalks, for which a rake will not suffice! No blowers would cause us to have to hire temporary workers, costing my business time (finding and training good temporary workers) and money (for labor, additional insurance, additional workers comp, additional transportation and equipment.) All this to have to let them go 3 months later and repeat the process every year.

Without blowers, we would not be able to blow the fertilizer, grass clippings, and debris from the streets. This debris would lie in the streets until it is washed away down the drains.

Cleaning roofs and gutters without a leaf blower would not only take more time, costing our customers more money, but would also dramatically increase the danger of falling. Without blowers we would have to rake the roof and clean the gutters by hand, which makes us lean over the edge or reach from the top of a ladder.

Again without blowers, we would not be able to clean the driveways and sidewalks of our customers as well. Can you imagine mowing a yard in an hour and then charging as much or more to sweep their driveway?

In response to Mr. Hill's comment, "All it does is move dust from my yard to your yard." I wish he were being sarcastic. How can he expect to be taken seriously on a topic, that based on his comments, he doesn't have a clue? I suspect he does have a clue when it comes to appealing to the whimsical mindsets of some of the Chapel Hill voters. Let us hope in this case this type of oppression is not rewarded or exchanged for a couple of publicity articles in the paper.

Tarheel Turf's working hours are from 8 to 4. We do not work on most holidays and very seldom on Saturdays. We adjust the throttle of our blowers to the appropriate level needed to clear what we are blowing. We are very respectful of our customers and their neighbors. In six years, I have never been told our blowers were disturbing anyone.

The blower manufacturers are working on creating more environmentally friendly and quieter machines. Blowers, just like mowers, cars, and other tools significantly improve work production. The chagrin expressing Diana Steele's comment on a team of UNC employees chasing, "a single leaf," across campus is another sign of the exaggerations of the elitist and, to themselves only, the superior intellects of Chapel Hill's finest looking after us poor, pitiful, and hopelessly hapless souls. What would we do without them?

1400 Mt. Carmel Church Rd.
Chapel Hill, NC 27517