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## Memorandum

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Date: May 17, 2019

To: Jon Passe, Environmental Protection Agency

From: Steve Saunders, Tempo, Inc. (TexEnergy and US-EcoLogic)

Re: Commentary on EPA 17065 Implementation

The 17065-action plan as outlined by EPA is a step in the right direction. It is good progress and opens the Rating Industry to appropriate competition that should push all organizations to deliver better services and increased value. There are three suggestions:

**Suggestions for improvement in the 17065 Process:**

Problem 1: At present RESNET is working to limit access to the intellectual property developed by the industry. RESNET has aggressively tried to limit Rating Providers from working with anyone other than RESNET. They have made significant efforts to limit Software Providers ability to offer ERI to anyone other than a HERS Rating Provider. They have claimed in emails and in a lawsuit against Triconic that their Trademark on the MINHERS and on the ANSI Standards developed through the RESNET Process all belongs to RESNET. To my knowledge, RESNET has made no provision for industry access to the intellectual property developed by the industry and entrusted to RESNET. Without arguing the legal merits of their position, we suggest the EPA and RESNET work to find a negotiated solution to the all current and future intellectual property questions. For things that are owed a legitimate fee, negotiate a fair fee and allow the industry to move forward. For items that have questionable legal standing, negotiate a solution or negotiate a truce that allows open industry access now and in the future. If “the industry” cannot come to a solution, the EPA must allow the 17065 Agencies to offer competitive equivalents to all the required elements as part of the submission process to implement a 17065 plan for ENERGY STAR Homes.

Problem 2: EPA must allow reasonable process for Software Accreditation for validation of ERI Ratings. There are a couple of reasonable solutions. Either, EPA can mandate that 17065 Software

Providers mirror the Process for Accreditation that RESNET has utilized in recent years ... using ASHRAE Standard 152. Or, even better, EPA can ask the Department of Energy if it will accredit ERI Software. For now, we do not propose limiting software to only DOE Accreditation. We only propose adding the capability for DOE accreditation.

Problem 3: Smart use of 17065 Accreditation. At present, EPA is requiring early accreditation of the 17065 process to enable access to the ENERGY STAR label. A better solution would be as follows:

- Require a firm timeline from the 17065 Application to all the steps leading up to receiving 17065 Accreditation with final process of accreditation being completed no more than 30 months after application date to EPA.
- Have a substantial list of milestones that demonstrate progress along the timeline that includes enough 'in process' notification to demonstrate that an organization is on or off the path to successful implementation of 17065.
- Successful 17065 Agencies will submit (at least) a 6-month, 12-month, 24-month and 36-month plan (and subsequent reports) showing progress against the core objectives of the ENERGY STAR Program and delivering industry value on 17065 for overall ratings.
- This has the following important benefits:
  - Since no one fully understands the full impact of the implementation of 17065 / 17020 on the Rating Industry, this implementation strategy keeps the Implementation Agency from making a startup error that permanently causes an increase in costs for little to no value. I.e. Reduce the negative impact of our collective ignorance on 17065. Or ... put another way ... don't permanently increase costs by adding elements that turn out not to be core to any long term quality objective or ENERGY STAR for Homes. Let's take 17065 out for some test runs before we finalize the "process".
  - It will allow a 17065 Agency with a comprehensive plan to move forward with a full program and allow Rating Companies who have large and small ENERGY STAR project portfolios to switch to the new platform. Dividing time and effort between two very dissimilar platforms is costly and challenging and sure to negatively impact new 17065

organizations. This gives everyone room to successfully understand all the elements in the process of ramping up

- EPA has another issue with regard to Ratings delivered with ERI and / or HERS. Today, those numbers are different. In the future, they are likely to diverge more. Smart 17065 organizations are likely to develop adaptations to ERI that adjust more frequently than the Code Driven model ... creating additional number diffusion and Rating Number Confusion. EPA can negotiate an industry solution to this problem, or it can tie its program to programs with different numbers. This is an opportunity for levelheaded consideration and forward thinking on the part of the industry. Poor decisions on behalf of the industry by EPA and / or RESNET can add difficulty to the industry's challenges.

Just for the record, I am now and have always been a big proponent of RESNET. Our company is and has been a part of RESNET for almost 20 years. RESNET is the sum of the Rating Companies, individual Raters, non-rating company participants and sponsors and the staff of the organization. It is the sum of the collective people and the collective effort of those people ... who over the last 25 years or so ... have poured their heart and soul to create the industry that can support more energy efficient and environmentally friendly homes.

- Collectively, we have accomplished a lot.
- Collectively, we have fallen short of our potential.
- The fact that we have fallen short falls on all of us.