

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

In the Matter of:	)	
	)	
Marathon Motors Corporation	)	ADMINISTRATIVE
	)	SETTLEMENT AGREEMENT
Respondent	)	AED/MSEB -7263

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Marathon Motors Corporation, 1714 North Goldenrod Road, Building D, Suite 5, Orlando, FL 32807 (Respondent or Marathon).

**Purpose**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve eight alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and the implementing small spark-ignition (SI) nonroad engine regulations, 40 C.F.R. Part 90 or 40 C.F.R. Part 1048 as applicable (SI Nonroad Regulations).

**Statutory Authority**

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit any person from importing any new nonroad vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued and in effect (EPA-COC), and bears the required EPA emissions information label.

**Regulatory Authority - SI Nonroad Regulations**

3. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad SI engine manufactured after the effective dates of the regulations, unless such engine is covered by an EPA-COC.
4. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI engine manufactured after the effective dates of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 90.114.

5. 40 C.F.R. § 90.3 defines an engine manufacturer as any person who, among other things, imports nonroad SI engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
6. 40 C.F.R. § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad SI engine, a permanent and legible label identifying each nonroad engine and containing certain information (EPA-label).

### **Definitions**

7. For the purposes of this Agreement, the following definitions apply:
  - a. *Applicable regulation and dates:* 40 C.F.R. Part 90 is applicable to nonroad SI engines at or below 19 kilowatts (kW) built after the applicable dates in 40 C.F.R. Part 90. 40 C.F.R. Part 90 is also applicable to engines that have a total engine displacement at or below 1,000 cubic centimeters, a maximum power at or below 30 kilowatts (kW), and the engine is in an engine family that has a valid certificate of conformity showing that it meets emission standards for Class II engines under 40 C.F.R. Part 90 for the appropriate model year.
  - b. *Certified engine:* A nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
  - c. *Certificate of Conformity:* The document issued by EPA to a manufacturer under 40 C.F.R. § 90.106, as applicable, after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Part 90 and the CAA.
  - d. *Uncertified engine:* A nonroad engine built after the applicable dates of the regulations but that is not covered by an EPA-COC.
  - e. *Observer:* A U.S. Customs and Border Protection (U.S. Customs) representative or an independent board-certified licensed professional engineer.

- f. *Export*: To transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy*: The complete destruction of the engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.
- h. *This matter*: Respondent's importation of the nonroad engines as described in Paragraph 8 of this Agreement (Subject Engines), the corrective action, and civil penalty that may apply to such alleged violations.

### **Alleged Violations**

- 8. On or about August 5 and September 25, 2007, Respondent imported into the Port of Jacksonville, Florida, eight mini-vehicles that contained nonroad SI engines (Subject Engines). The Subject Engines are described in Appendix A to this Agreement. Three of the Subject Engines did not bear or bore an EPA-label that was not readily visible, in violation of 40 C.F.R. § 90.114(a). The remaining five Subject Engines bore an EPA-label that was not permanently affixed and could be removed without destroying or defacing the label, in violation of 40 C.F.R. § 90.114(a)(1). In addition, these EPA-labels were not readily visible, in violation of 40 C.F.R. § 90.114(a)(5); did not identify the Exhaust Emission Control System, in violation of 40 C.F.R. § 90.114(c)(4); and did not specify the engine lubricant, in violation of 40 C.F.R. § 90.114(c)(5).
- 9. Based on the foregoing, EPA alleges that Respondent committed eight violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the small SI Nonroad Regulations, 40 C.F.R. § 90.1003(a).
- 10. By entering into this Agreement, Respondent does not admit that it has committed any violations of the CAA or its implementing regulations, including any of the violations alleged in Paragraph 9 of this Agreement.

## **Corrective Action**

11. No later than thirty days from the effective date of this Agreement, or such longer period of time as required by U.S. Customs, Respondent shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of U.S. Customs. Respondent shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.
12. In lieu of exporting or destroying the Subject Engines, Respondent, who is the Certificate Holder for the Subject Engines, shall:
  - a. Affix a complying EPA-label to each of the Subject Engines. The label shall be permanently affixed and incapable of being removed without destroying or defacing the label. In addition, the label shall be readily visible and contain all of the specified information, as required by 40 C.F.R. §§ 90.114(a)(5) and 90.114(c), respectively.
  - b. Provide to EPA, in advance of executing this Agreement, a sample label and technical description of the method and procedures that Respondent shall use to affix the label to the Subject Engines. A copy of the sample label and instructions for applying the label shall be attached by Respondent as Appendix B to this Agreement.
  - c. Establish and fully document a chain of custody for the labels from the time of production until the time of installation on the Subject Engines, and destruction of any unused labels.
  - d. Perform this corrective action under the direction of the Observer. The corrective action shall be completed no later than thirty days from the effective date of this Agreement, or such longer period of time if requested by Respondent and approved by EPA for good cause shown.
  - e. Make available to the Observer all eight Subject Engines after the label has been affixed to such engines, and have the Observer randomly select one of each model Subject Engines (the Test Sample Engine (s)) to determine whether or not the label is

permanently affixed to each Test Sample Engine and cannot be removed without destroying or defacing the label. Any Test Sample Engine whose label is destroyed or defaced during this test must be relabeled by Respondent.

13. Where the label on the Test Sample Engine contains all the specified information, is permanently affixed and cannot be removed without destroying or defacing the label, the Test Subject Engine and the related model Subject Engines may be deemed to comply with 40 C.F.R. § 90.114 and may be released by U.S. Customs. However, where the label on the Test Sample Engine can be removed without destroying or defacing the label, the Test Sample Engine and the related model Subject Engines shall be either exported or destroyed.
14. No later than thirty (30) days from the effective date of this Agreement (or such longer period of time if requested by Respondent and approved by EPA for good cause shown), Respondent shall provide EPA with a written report that fully describes the corrective action taken in accordance with Paragraphs 12 and 13, and certifies that such corrective action was conducted as described. The report must include the following:
  - a. An affidavit from Respondent. The affidavit shall certify the date, time, and place of the corrective action work, identify each person who supervised the work, identify the vehicle identification number of each vehicle that contained a Subject Engine that was labeled, provide a clear readable picture of the label affixed to each Test Sample Engine(s), and provide the results of any tests performed to determine whether or not the label was permanently affixed and could not be removed without destroying or defacing the label; and
  - b. An unconditional statement from Respondent certifying that the Subject Engines comply with the applicable requirements of the CAA and 40 C.F.R. Part 90.

**Civil Penalty:**

15. Respondent has agreed to pay a civil penalty of \$6,000 to the United States of America no later than thirty days from the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraph 21 of this Agreement. Respondent agrees to pay the amount by certified check or cashier's check payable to the United States of America, and to mail the payment to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Attn: AED/MSEB -7263

Alternatively, Respondents may pay online at [www.pay.gov](http://www.pay.gov). From the “Search Public Form” field, enter “SFO 1.1,” click “EPA Miscellaneous Payments - Cincinnati Finance Center”, and complete the “SFO Form Number 1.1.”

**Notice**

16. A copy of the payment(s) shall be faxed to the EPA attorney assigned to this case no later than twenty-four (24) hours after payment(s). All correspondence concerning this Agreement shall be sent to:

**(Regular Mail)**

Jocelyn Adair, Esq.  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Attn: AED/MSEB-7263

**(Courier Service)**

Jocelyn Adair, Esq.  
U.S. EPA  
Ariel Rios South, Room 1109A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**General Provisions**

17. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.

18. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
19. Notwithstanding any other provisions of this Agreement, upon Respondent's default or failure to comply with any terms of this Agreement, EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to Section 205 of the Act, 42 U.S.C. § 7524, and pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of the Act and 40 C.F.R. Part 90. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, *see e.g.* 28 U.S.C. § 2462.
20. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representation to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

**Stipulated Penalties**

21. For failure to comply with the terms of this Agreement on a timely basis, Respondent shall pay stipulated penalties to the United States as follows:
  - a. For failure to export, destroy, or label the Subject Engines or provide proof thereof, pursuant to Paragraphs 11, 12, 13, and 16, \$250.00 per day;
  - b. For the failure to provide the corrective action report, pursuant to Paragraph 14, \$250 per day; and,
  - c. For failure to timely pay the civil penalty or provide proof thereof, pursuant to Paragraphs 15 and 16, \$250.00 per day.
22. All stipulated penalties under Paragraph 21 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent simultaneous accrual of separate stipulated

penalties for separate violations of this Agreement. All stipulated penalties shall be paid in the manner specified in Paragraph 15 of this Agreement. In addition, a copy of the transmittal letter(s) and payment(s) shall be sent to the EPA attorney assigned to this case at the address specified in Paragraph 16. All stipulated penalties shall be paid to the United States of America within five (5) days of written demand by EPA (the due date). Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA from seeking any other remedy or sanction available by virtue of Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

**Enforcement**

23. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects, or relieves Respondent of responsibility to comply with other state, federal or local law or regulations, and does not address Respondent's potential liability to U.S. Customs for the Subject Engines.

The following agree to the terms of this Agreement:

**Marathon Motors Corporation**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_



**Administrative Settlement Agreement - *In the Matter of Marathon Motors Corporation;*  
*AED/MSEB-7263***

**U.S. Environmental Protection Agency**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Adam M. Kushner  
Director  
Air Enforcement Division

**Appendix A**

**List of Subject Engines**

**For Administrative Settlement Agreement - *In the Matter of Marathon Motors Corporation;*  
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<b>Entry No.</b>	<b>Number</b>	<b>VIN</b>	<b>Engine No.</b>	<b>Violation</b>
002-8120589-8	1	LZWCAAGA071075054	706510732F	Defective Label
002-8120589-8	2	LZWCAAGA771075052	706510710F	Defective Label
002-8120589-8	3	LZWCAAGA971075053	706510727F	Defective Label
002-8120589-8	4	LZWCBAGA372059048	706510769F	Defective Label
002-8120589-8	5	LZWCAAGA571075051	706510719F	Defective Label
002-8121079-9	6	LZWACAGA775044653	707119799	No Visible Label
002-8121079-9	7	LZWACAGA075044655	707119773	No Visible Label
002-8121079-9	8	LZWACAGA975044654	707119792	No Visible Label

**Appendix B**

**Sample Label and Instructions for Applying the Label**

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