

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

**ADMINISTRATIVE SETTLEMENT AGREEMENT**

**In the Matter of:**

**S & R Engineering, S.E.**

**Respondent**

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**AED/MSEB # 7144**

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and S & R Engineering, S.E. (Respondent) regarding compliance by Respondent with the requirements of section 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder at 40 C.F.R. Parts 89 and 90.

**Purpose**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Parts 89 and 90 arising out of the importation of 530 nonroad engines described in Attachment I and to ensure that future violations are avoided.

**Definitions:**

2. For the purposes of this Agreement, the following definitions apply:
  - A. *Certified engine:* A “certified engine” is a nonroad engine that was built after the applicable effective dates of the regulations at Parts 89 or 90 and that is covered by a Certificate of Conformity.
  - B. *Dates of the Applicable Regulations:* The term “dates of the applicable regulations” for a nonroad compression ignition engine means the date after which the certification requirement applies to the engine, as defined in Table 2 of 40

C.F.R. § 89.112. For nonroad spark-ignition engines rated at or below 19 kW, the applicable effective date is January 1, 1997.

- C. *Uncertified engine*: An “uncertified engine” is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.
- D. *This matter*: As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Parts 89 and 90.
- E. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105, for compression ignition engines, or 40 C.F.R. § 90.108 for spark ignition engines, after EPA has determined that the manufacturer’s application is complete and that the engine family meets the requirements of 40 C.F.R. Parts 89 or 90 and the Clean Air Act. Issuance of the Certificate of Conformity permits production of engines built in accordance with the manufacturer’s application provided that the production is within the period during which the Certificate of Conformity is valid.
- F. *Subject engines*: The term “Subject Engines” means the engines whose model numbers, and Customs entry bill numbers are listed in Attachment I.

**Statutory and Regulatory Authority:**

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7542(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.

4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad compression ignition engine manufactured after the applicable effective date of the regulations unless such engine is a certified engine.
5. 40 C.F.R. § 89.1003(b)(4) requires nonroad vehicle and equipment manufacturers to use certified compression ignition engines in vehicles and equipment manufactured after the effective date.
6. 40 C.F.R. § 89.2 defines a nonroad vehicle or equipment manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person.
7. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified compression ignition engine, a permanent and legible label which identifies the nonroad engine and provides the information specified in that section, including a statement that the engine is a certified engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.
8. 40 C.F.R. § 90.1(a) defines the applicability of 40 C.F.R. Part 90 regulations to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and that are used for any purpose.
9. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity.
10. 40 C.F.R. § 90.3 defines a nonroad vehicle manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person in connection with the distribution of such vehicles.

11. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by engine manufacturer of a nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless an emissions label is affixed to the engine.
12. 40 C.F.R. § 90.114 requires the engine manufacturer to affix, at the time of manufacture of a certified spark-ignition engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment, must contain the content required by 40 C.F.R. § 90.114 and must be attached in such a manner that it cannot be removed without destroying or defacing the label.

### **Background**

13. On February 1, 2006, U. S. Customs and Border Protection (Customs) seized the nonroad engines and equipment listed in Attachment I at the port of San Juan, Puerto Rico.
14. Respondent is the importer of the Subject Engines.
15. The Subject Engines and nonroad equipment were manufactured after the Dates of the Applicable Regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment.
16. The Subject Engines listed in Attachment I are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §§ 89.110 or 90.114. This constitutes 530 violations of 40 C.F.R. §§ 89.1003 or 90.1003. As the importer of the Subject Engines, Respondent is liable for these violations.

### **Terms of Agreement**

17. Within 60 days of the date of this Agreement, Respondent shall submit proof that each of the Subject Engines has been exported to a location outside the North American continent.

18. All submissions shall be sent to EPA at the following address:

Jeffrey A. Kodish, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch  
12345 West Alameda Parkway, Suite 214  
Denver, CO 80228

facsimile: (303) 236-9514

19. Respondent shall pay to the United States a civil penalty of twenty-one thousand dollars (\$21,000) within 60 calendar days of 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.

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  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
ATTN: AED/MSEB # 7144

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 18 or faxed to (303) 236-9514 to the attention of Jeffrey A. Kodish. Such check shall be identified with the case number and Respondent's name.

#### **General Provisions**

20. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to the Respondent.
21. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
22. Notwithstanding any other provision of this agreement, upon Respondent's failure to perform, or default of 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 Parts 89 or 90. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.

23. The Effect of Settlement described in Paragraph 26 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Attachment I, and the prompt and complete remediation of any violations in accordance with this Agreement.

**Stipulated Penalties:**

24. 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 timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 19, \$400 per day.
  - B. For failure to timely export the Subject Engines, or provide proof of such exportation, pursuant to Paragraph 17, \$500 per day.
25. All stipulated penalties under Paragraph 24 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 19 and shall be paid within five days of written demand by EPA. 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.

**Effect of Agreement**

26. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

S & R Engineering, S.P.

By:

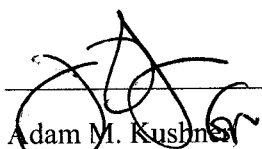
(name)  
(title)

President

Sept 11, 2000  
Date

U.S. Environmental Protection Agency  
In the Matter of S & R Engineering, S.E.  
AED/MSEB # 7144

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

  
Adam M. Kushner  
Director

Air Enforcement Division  
Office of Enforcement and Compliance Assurance

\_\_\_\_\_  
Date

10.12.06



## ATTACHMENT I

In the Matter of S & R Engineering, S.E.

### Uncertified and Unlabeled Engines

Entry Date	Entry Number	Model	Qty.	Equipment
11/05/05	261-0440071-3	XGC700	30	Gasoline Saw
11/05/05	261-0440071-3	DP20G	30	2 inch gas pump
11/05/05	261-0440071-3	DP30G	30	3 inch gas pump
11/05/05	261-0440071-3	DP40G	30	4 inch gas pump
11/05/05	261-0440071-3	HDP20G	30	2 inch diesel pump
11/05/05	261-0440071-3	HDP30G	30	3 inch diesel pump
11/05/05	261-0440071-3	HPD40G	30	4 inch diesel pump
11/05/05	261-0440071-3	XY173F	30	8.0 hp gas engine
11/05/05	261-0440071-3	XY182F	30	11 hp gas engine
11/05/05	261-0440071-3	DH186 F	30	10 hp diesel engine
11/05/05	261-0440071-3	XYQ-2500	30	High pressure washer
11/05/05	261-0440071-3	DY6500L	20	Gasoline Generator
11/05/05	261-0440071-3	DY6500LX	20	Gasoline Generator
11/05/05	261-0440071-3	DY3000L	30	Gasoline Generator
11/05/05	261-0440071-3	DY3000LX	30	Gasoline Generator
11/05/05	261-0440071-3	DH1000LB	30	Gasoline Generator
11/05/05	261-0440071-3	DY100LB	30	Gasoline Generator
11/05/05	261-0440071-3	RB1000L	30	Gasoline Generator