

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

In the Matter of:)	
)	
AMERICAN SCIENCE AND ENGINEERING, INC.)	ADMINISTRATIVE SETTLEMENT AGREEMENT AND AUDIT POLICY DETERMINATION
)	
)	AED/MSEB #7871
)	
Respondent.)	
)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and American Science and Engineering, Inc. (Respondent) having an office at 829 Middlesex Turnpike, Billerica, MA 01821.

Respondent

1. Respondent, a Massachusetts corporation, manufactures and sells specially equipped vehicles that can detect explosives, chemicals, and other potential security risks and contraband.
2. Respondent's business is to temporarily import vehicles into the United States, alter the vehicles to install their proprietary detection equipment, and then export the altered vehicles to specified foreign facilities.

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Purpose

3. The purpose of this Agreement is to resolve 54 violations of Section 203(a) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a), and the regulations promulgated thereunder at 40 C.F.R. Parts 85 and 86.

Statutory Authority

4. Sections 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of a new motor vehicle from distributing into commerce, selling, offering for sale, introducing into commerce, or importing a new motor vehicle manufactured after the effective date of regulations applicable to such vehicle unless such vehicle (a) is built in conformity with and covered by an EPA-issued certificate of conformity (COC) and (b) bears the required EPA emissions information label.
5. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates § 7522(a) to a civil penalty for each motor vehicle or engine violation. The maximum civil penalty applicable to the alleged violations is \$37,500 per vehicle or engine based on the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the applicable regulations, 40 C.F.R. § 19.4, adjusting the statutory penalty from \$25,000 to \$37,500 for violations committed after January 12, 2009. These dates are relevant to the subject violations, certain of which occurred after January 12, 2009.

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6. Section 216(1) of the CAA, 42 U.S.C. § 7550(1), defines a “manufacturer” as any person engaged in the manufacturing or assembling of new motor vehicles, or importing such motor vehicles for resale.
7. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines a “motor vehicle” as any self propelled vehicle designed for transporting persons or property on a street or highway.

Regulatory Authority

8. 40 C.F.R. § 86.1801 establishes emission standards for new 2001 and later model year light-duty vehicles.
9. 40 C.F.R. § 86.1803-01 defines “light-duty vehicle” as a passenger car or passenger car derivative capable of seating 12 passengers or less.
10. 40 C.F.R. § 85.1511(b)(1) permits owners of fleet vehicles or engines to import such vehicles or engines solely for purposes of repairs or alterations (the Alteration Exemption). Such vehicles or engines may not be registered or licensed in the United States for use on public roads and highways, and such vehicles may not be sold or leased in the United States and must be exported upon completion of the repairs or alterations.
11. 40 C.F.R. § 85.1511(b) qualifies the Alteration Exemption as only permitting the temporary importations of uncertified vehicles “if prior written approval for such conditional admission is obtained from the [EPA] Administrator.”

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Background

12. In a letter dated October 16, 2009, Respondent disclosed to EPA that it had imported fifty-four (54) uncertified vehicles (the Disclosed Vehicles).
13. On September 2, 2009, the United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP) issued a Request for Information to Respondent regarding two (2) vehicles (the CBP Vehicles) imported into the United States on August 6, 2009.
14. The CBP Vehicles were included in the list of the fifty-four (54) Disclosed Vehicles; therefore, the total number of uncertified vehicles is fifty-four (54); these vehicles are collectively referred to herein as the Subject Vehicles.
15. The Subject Vehicles, which are light-duty vehicles, were not covered by a COC at the time of importation.
16. The Subject Vehicles were not exempted by the Alteration Exemption, which allows the temporary importation of otherwise uncertified vehicles for alterations. *See* 40 C.F.R. § 85.1511(b).
17. 40 C.F.R. § 85.1511(b) requires an importer to obtain EPA's prior written approval before importing uncertified vehicles under the alteration exemption. Respondent did not obtain EPA's prior written approval in connection with the importation of the Subject Vehicles.
18. Those Subject Vehicles that have not already been altered and exported are currently in Massachusetts and North Carolina at two of Respondent's facilities, where they are in

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various stages of alteration before export. Respondent (or its agent) is both the importer and the exporter of record, and none of the Subject Vehicles were ever intended to be offered for sale within the United States.

Violations

19. EPA alleges that Respondent is liable for 54 separate violations of Section 203(a)(1) of the CAA and 40 C.F.R. § 85.1511(b) for the introduction into commerce of the Subject Vehicles for all the reasons disclosed by Respondent and summarized above in Paragraphs 12 through 18 above.

Audit Policy Determination

20. On April 11, 2000, EPA issued the Final Policy Statement entitled “Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations” 65 Fed. Reg. 19618 (Audit Policy).
21. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for regulated entities to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties; however, EPA retains discretion to recover any economic benefit gained as a result of any non-compliance.
22. Where the disclosing party establishes that it satisfies all of the conditions set forth in the Audit Policy, EPA will not seek gravity-based civil penalties. Where the disclosing party

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establishes that it satisfies all of the conditions except for the first condition, systematic discovery of the violations, the disclosing party is eligible for a 75% reduction of the gravity-based civil penalties.

23. Upon consideration of relevant information regarding Respondent's disclosed violations, EPA concludes that Respondent has not satisfied all of the requisite conditions under the Audit Policy, and that Respondent does not qualify for a penalty reduction pursuant to the Audit Policy. EPA applied the EPA's Mobile Source Civil Penalty Policy to determine the appropriate penalty for the disclosed violations of the CAA.

Civil Penalty

24. For the disclosed violations of the CAA and the regulations promulgated thereunder at 40 C.F.R. Parts 85 and 86 arising from the introduction into commerce of the Subject Vehicles, Respondent shall pay to the United States a total of \$74,000 within 30 days of the date 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 plus the stipulated penalties as specified in Paragraphs 26 and 27 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 # 7871

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Respondent may also pay online at 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

25. A copy of the payment check(s) and the transmittal letter(s) shall be faxed to Robert G. Polin at (202) 564-0015 no later than 24 hours after mailing the payment. All correspondence to EPA concerning this Agreement shall be sent to:

Regular Mail

Robert G. Polin
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7871

Courier Service

Robert G. Polin
U.S. Environmental Protection Agency
Ariel Rios South, Room 1117A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attn: AED/MSEB-7871

Stipulated Penalties

26. Respondent must pay a penalty of \$500.00 per day for failure to timely pay the penalty pursuant to Paragraph 24 of this Agreement and/or provide proof thereof pursuant to Paragraph 25 of this Agreement.
27. Stipulated penalties under Paragraph 26 of this Agreement shall begin to accrue on the day after performance is due and shall continue to accrue until the day compliance is

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achieved. Stipulated penalties shall be paid in accordance with Paragraph 24 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Robert G. Polin at the address specified in Paragraph 25 of this Agreement.

General Provisions

28. This Agreement becomes effective upon the date executed by EPA (Effective Date of the Agreement), at which time an electronic copy will be returned to Respondent.
29. Respondent hereby represents that the individual or individuals 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 and its agents, assigns, and successors.
30. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default, or failure to comply with any term 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 CAA, 42 U.S.C. § 7524, commence an action to enforce this Agreement, recover the civil penalty pursuant to Section 205 of the CAA, or 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 violations of the CAA and the regulations promulgated thereunder at 40 C.F.R. Parts 85 and 86. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, any applicable statute of limitation, or other provisions limiting actions as

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a result of passage of time. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement. *See* 31 U.S.C. § 7701.

31. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
32. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
33. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement and the prompt and complete remediation of any violations in accordance with this Agreement.

Effect of Agreement

34. Upon completion of the terms of this Agreement, the violations described in this Agreement shall be deemed resolved by EPA. 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 laws or regulations.

The following agree to the terms of this Agreement:

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American Science and Engineering, Inc., a Massachusetts corporation

By:  _____

Date: March 11, 2011

Typed name: Kenneth J. Galaznik

Typed title: Sr. VP, CFO and Treasurer

Federal Tax Identification Number: 04-2240991

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United States Environmental Protection Agency

By: 

Phillip A. Brooks, Director
Air Enforcement Division

Date: 3/23/2011