

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

In the Matter of:

**E-Z-GO
DIVISION OF TEXTRON INC.**

Respondent.

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**ADMINISTRATIVE
SETTLEMENT AGREEMENT
AND AUDIT POLICY
DETERMINATION**

AED/MSEB # 7896

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and E-Z-GO Division of Textron Inc., (Respondent) having an office at 1451 Marvin Griffin Road, Augusta, GA 30906.

Respondent

1. Respondent is a corporation organized under the laws of the state of Georgia.
2. Respondent operates as a division of Textron, Inc.
3. Respondent is a leading manufacturer of golf carts.

Purpose

4. The purpose of this Agreement is to resolve 6,200 violations of Sections 203(a) and 213(d) of the Clean Air Act (Act), 42 U.S.C. §§ 7522(a) and 7547(d), and the small nonroad spark-ignition (NRSI) engine regulations at 40 C.F.R. Part 90.

Statutory Authority

5. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit a manufacturer of a new nonroad engine from distributing into commerce, selling, offering for sale, introducing into commerce, or importing a new nonroad engine, unless the new nonroad engine (a) is built in conformity with and covered by a valid EPA-issued certificate of conformity (COC) and (b) bears the required EPA emissions information label.
6. Section 205(a) of the Act, 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 of \$25,000 to \$37,500 for violations committed after January 12, 2009. The subject violations occurred after January 12, 2009.

Regulatory Authority

7. 40 C.F.R. § 90.1003(a)(1)(i) prohibits the distribution in commerce, the sale, the offering for sale, or the introduction, or delivery for introduction, into commerce, of any new small NRSI engine manufactured after the effective date of Part 90 unless such engine is covered by a COC issued (and in effect) under regulations found in Part 90.
8. 40 C.F.R. § 90.1(a) indicates that Part 90 applies to NRSI engines with a maximum engine power below 19 kW (25 horsepower), i.e., small NRSI engines.
9. 40 C.F.R. § 90.2 indicates that Part 90 is effective for small NRSI engine models 1997 or later.
10. 40 C.F.R. § 90.127(b) requires that fuel lines used with small NRSI engines be covered by a COC.
11. Pursuant to 40 C.F.R. § 90.127(c), introducing engines or equipment into U.S. commerce without meeting the fuel line certification requirement of § 90.127(b) is a violation of § 90.1003(a)(1).

Background

12. On June 14, 2010, Respondent disclosed to EPA that it introduced into commerce 6,200 uncertified fuel lines (the Subject Fuel Lines) within 6,200 vehicles.
13. Respondent acknowledged that the Subject Fuel Lines were not covered by a COC when Respondent introduced them into commerce.

Violations

14. Respondent is liable for 6,200 separate violations of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and the small NRSI engine regulations at 40 C.F.R. Part 90, for the introduction into commerce of the Subject Fuel Lines for all the reasons summarized above in Paragraphs 12 through 13.

Audit Policy Determination

15. 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).
16. 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.
17. 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 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.

18. Upon consideration of relevant information regarding Respondent's disclosed violations, EPA concludes that Respondent has satisfied all of the conditions set forth in the Audit Policy except for systematic discovery of the violations.

Civil Penalty

19. For the disclosed violations of the Act and the regulations promulgated thereunder at 40 C.F.R. Part 90 arising from the introduction into commerce of the Subject Fuel Lines, Respondent shall pay to the United States a total of \$18,000.00 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 21 and 22 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 # 7896

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

20. 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-7896

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-7896

Stipulated Penalties

21. Respondent must pay a penalty of \$1,000 per day for failure to timely pay the penalty pursuant to Paragraph 19 of this Agreement or provide proof thereof pursuant to Paragraph 20 of this Agreement.
22. 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. Stipulated penalties shall be paid in accordance with Paragraph 19 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 20 of this Agreement.

General Provisions

23. 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.

24. 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.
25. 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 Act, 42 U.S.C. § 7524, commence an action to enforce this Agreement, recover the civil penalty pursuant to Section 205 of the Act, 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 Act and 40 C.F.R. 90. 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 a result of passage of time. Respondent acknowledges that its tax identification numbers may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement. *See* 31 U.S.C. § 7701.
26. 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.
27. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

28. 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

29. 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:

*Settlement Agreement
In the Matter of E-Z-GO Division of Textron Inc.
AED/MSEB – 7896*

E-Z-GO Division of Textron Inc.

By: 

Date: 7/26/11

Typed name: Carol Gardner

Typed title: Principal Engineer, E-Z-GO Division of Textron Inc.

By: 

Date: 7/27/11

Typed name: John Rupp

Typed Title: Senior Associate General Counsel, Textron Inc.

Federal Tax Identification Number: 05-0315468

*Settlement Agreement
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United States Environmental Protection Agency

By: *Matthew W. Zefferson* Date: *8/9/11*
la Phillip E. Brooks, Director
Air Enforcement Division