

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

In the Matter of:)	
)	ADMINISTRATIVE
HOMELITE CONSUMER)	SETTLEMENT AGREEMENT
PRODUCTS INC.)	
)	AED/MSEB # 7956
)	
Respondent.)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Homelite Consumer Products Inc. (Respondent) having an office at 1428 Pearman Dairy Road, Anderson, SC 29625.

Respondent

1. Respondent is a subsidiary of Techtronic Industries North America Inc., a multinational company that produces products for home improvement, reparation, and construction, headquartered in Anderson, South Carolina. Respondent is a manufacturer of handheld outdoor power equipment, including: string trimmers, blowers, chain saws, hedge trimmers, pressure washers, water pumps, and generators.

Purpose

2. The purpose of this Agreement is to resolve 1,104 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 nonroad engine regulations promulgated thereunder at 40 C.F.R. Parts 90 and 1068.

Statutory Authority

3. Sections 203(a) and 213(d) of the CAA, 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 manufactured after the effective date of regulations applicable to such vehicle unless such engine (a) is built in conformity with and covered by a EPA-issued certificate of conformity (COC) and (b) bears the required EPA emissions information label.
4. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates § 203(a) of the CAA 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 alleged violations, which occurred in 2010.

Regulatory Authority

5. 40 C.F.R. § 90.1003(a) and 40 C.F.R. § 1068.101(a) prohibit the sale, or the offering for sale, or the introduction, or the delivery for introduction, into commerce of any new nonroad spark-ignition (SI) engine at or below 19 kilowatts, manufactured after the effective date of regulations applicable to such engine, unless such engine is covered by a COC and bears a permanently affixed EPA emissions control information label or is properly exempted or excluded from the certification requirements.
6. 40 C.F.R. § 90.114 and 40 C.F.R. § 1068.45 require the label to be permanently affixed to the engine for life in such a manner that the label cannot be removed without destroying or defacing the label, and must include, among other things, the manufacturer's name, trademark, engine family name, engine displacement, fuel type, advertised power, and the date of manufacture.

Background

7. On or about May 19, 2010, under entry number KC1-17029324, Respondent imported 384 high pressure washers (the Subject Washers), model number 090079102, customer model number HL252300, into the United States.
8. On or about September 24, 2009, under entry number MC2-61470082, Respondent imported 720 portable gasoline generators (the Subject Generators), model number RD6800, into the United States.
9. The Subject Washers and the Subject Generators are nonroad SI engines, which are subject to Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the regulations promulgated thereunder at Parts 90 and 1068.

10. Respondent alleges that the Subject Washers were certified under EPA engine family ACRPS.1791GA (the Washer COC). The application for the Washer COC states that there are no adjustable parameters.
11. EPA alleges that the Subject Washers were manufactured with adjustable parameters. EPA inspectors were able to easily adjust the idle air-fuel mixture screw in under two minutes with a screwdriver. This screw therefore qualifies as an adjustable parameter under 40 C.F.R. § 90.112.
12. EPA alleges that the Subject Washers do not conform to the design specifications of the Washer COC with respect to adjustable parameters, and, thus, the Subject Washers are not covered by the Washer COC. Therefore the Subject Washers are uncertified and were not covered by a valid COC at the time of importation.
13. The Subject Generators are certified under EPA engine family 9YMXS.3572EE (Generator COC). The Generator COC was issued to Yamaha Motor by EPA with an effective date of December 4, 2008, and covers engines produced no later than December 31, 2009.
14. The emission control information labels on the Subject Generators contain a space for the date of manufacture, but the manufacture date was not included on the emission control information labels.
15. The Subject Generators did not conform with EPA emission control information labeling requirements governing nonroad SI engines at 40 C.F.R. § 90.114, and, thus, the Subject Generators were introduced into commerce in violation of 40 C.F.R. § 90.1003(a)(4).

Violations

16. EPA alleges that Respondent is liable for 1,104 separate violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§7522(a) and 7547(d), and the regulations at 40 C.F.R. Parts 90 and 1068, for the introduction into commerce of the Subject Washers and the Subject Generators for all the reasons summarized above in Paragraphs 7 through 15.

Civil Penalty

17. For the alleged violations of the CAA and the regulations promulgated thereunder at 40 C.F.R. Parts 90 and 1068 arising from the importation and introduction into commerce of the Subject Washers and the Subject Generators, Respondent shall pay to the United States a total of \$ 65,000.00 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 19 and 20 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 # 7956

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

18. 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-7956

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- 7956

Stipulated Penalties

19. Respondent must pay a penalty of \$1,000 per day for failure to timely pay the penalty pursuant to Paragraph 17 of this Agreement or provide proof thereof pursuant to Paragraph 18 of this Agreement.
20. Stipulated penalties under Paragraph 19 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 17 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 18 of this Agreement.

General Provisions

21. This Agreement becomes effective upon the date executed by both Parties (Effective Date of the Agreement), at which time an electronic copy will be returned to Respondent.
22. 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.
23. 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 40 C.F.R. Parts 89 and 1068. 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.
24. 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.
25. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

26. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement.

Effect of Agreement

27. Upon completion of the terms of this Agreement, the alleged 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 Homelite Consumer Products Inc. AED/MSEB - 7956*

Homelite Consumer Products Inc.

By:  _____

Date: 01/11/12

Typed name: Mark A. Rowe

Typed title: General Counsel, Secretary & Chief Compliance Officer

Federal Tax Identification Number: 04-3590655

Settlement Agreement

In the Matter of Homelite Consumer Products Inc. AED/MSEB - 7956

United States Environmental Protection Agency

By:  Date: 1/11/12
for Phillip A. Brooks, Director
Air Enforcement Division