

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

_____)	
In the Matter of:)	
Briggs and Stratton Corporation,)	Administrative Settlement Agreement
Respondent.)	AED/MSEB # 8027
_____)	

Purpose

1. The United States Environmental Protection Agency (EPA) and Briggs and Stratton Corporation (B&S) enter into this Administrative Settlement Agreement (Agreement) to resolve alleged violations of sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. Part 90.

Governing Law

2. Section 203(a)(4) of the Act prohibits the sale or lease of any subject motor vehicle or engine by a manufacturer unless a label or tag is affixed to such vehicle or engine in accordance with Section 207(c)(3) of the Act, 42 U.S.C. § 7541(c)(3), 42 U.S.C. § 7522(a)(4).
3. “Manufacturer” is defined broadly to include “any person engaged in . . . importing such vehicles or engines for resale.” 42 U.S.C. § 7550(1).
4. Section 213(d) of the Act extends the prohibitions enumerated in section 203 to nonroad engines and vehicles. 42 U.S.C. § 7547(d).
5. EPA regulates new nonroad SI engines with gross power output at or below 18 kilowatts (kW) under 40 C.F.R. Part 90 unless such engines are subject to emission standards under

40 C.F.R. Part 1054 or unless certain other exceptions in 40 C.F.R. § 90.1(d) apply.

40 C.F.R. §§ 90.1(a) and (d).

6. Part 1054 does not apply to nonhandheld engines with an engine displacement of less than 225 cubic centimeters (cc) before model year 2012. 40 C.F.R. § 1054.1, Table 1.
7. The manufacturer of an engine subject to 40 C.F.R. Part 90 must affix at the time of manufacture a permanent and legible label identifying each nonroad engine. This label must meet certain requirements. 40 C.F.R. § 90.114(a).
8. The label must be attached in such a manner that it cannot be removed without destroying or defacing the label. 40 C.F.R. § 90.114(a)(1).
9. An engine manufacturer is prohibited from selling, offering for sale, or introducing or delivering into commerce a nonroad engine manufactured after the date of the regulations unless a label or tag is affixed to the engine in accordance with the requirements of 40 C.F.R. Part 90. 40 C.F.R. § 90.1003(a)(4)(ii).
10. An engine manufacturer includes any person who, among other things, is engaged in the importing of 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. 40 C.F.R. § 90.3.
11. A person who violates 40 C.F.R. § 90.1003(a)(4) is subject to a civil penalty of up to \$37,500 for each nonroad engine. 40 C.F.R. §§ 90.1006(a)(1) and (a)(3); 40 C.F.R. § 19.4, Table 1.
12. Rather than referring a matter to the United States Department of Justice to commence a civil action, EPA may assess a civil penalty through its own administrative process if the total penalty sought is less than \$295,000. 42 U.S.C. § 7524(c); 40 C.F.R. § 90.1006(c)(1); 40 C.F.R. § 19.4, Table 1.

Violations

13. On or about March 13, 2011, B&S imported 960 nonroad SI engines (Subject Engines) in entries under Entry 231-27229296, each with an advertised power output of 4.7 horsepower and engine displacement of 205 cc.
14. The Subject engines are nonhandheld engines manufactured in Model Year 2011 with an engine displacement of less than 225 cc and therefore are not subject to 40 C.F.R. Part 1054.
15. The Subject Engines are governed by 40 C.F.R. Part 90, and allegedly are covered by the COC for engine family BBSXS.2051HC.
16. An EPA inspection of the Subject Engines determined that they had labels that are easily removed without being defaced or destroyed, in violation of 40 C.F.R. § 90.114(a)(1).
17. Therefore, B&S committed 960 violations of 42 U.S.C. §§ 7522 and 7547 and 40 C.F.R. § 90.1003(a)(4)(ii) by importing the Subject Engines.

Civil Penalty

18. B&S agrees to pay the United States a civil penalty of \$80,000 (EPA Penalty).
19. B&S agrees to pay the EPA Penalty to the United States within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 25). Late payment is subject to interest and fees as specified in 31 U.S.C. § 3717, and such interest and fees must be paid by B&S on demand by the United States. B&S agrees to pay the EPA penalty in the manner specified in subparagraph a. or b. below:
 - a. Mail by United States Postal Service a certified check or cashier's check, payable to the United States of America, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 8027

This check must be identified with case number AED/MSEB # 8027 and state that it is remitted by B&S. Simultaneously, scan and email a copy of the check to John Keenan, at keenan.john@epa.gov.

- b. Pay online through the Department of the Treasury using www.pay.gov. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1. The payment must be identified with case number AED/MSEB # 8027. Within 24 hours of payment, scan and email a copy of the receipt to keenan.john@epa.gov.
20. B&S acknowledges that the United States Department of Homeland Security's Bureau of Customs and Border Protection may assess separate penalties and stipulated damages related to the Subject Engines in addition to those assessed by EPA under this Administrative Settlement Agreement.

Stipulated Penalties

21. B&S agrees to pay a stipulated penalty of \$1,000 per day for its failure to timely pay the civil penalty or provide proof of such payment according to ¶ 18 and ¶ 19.
22. Every stipulated penalty must be paid within 30 days of its corresponding precipitating event as listed in ¶ 21 and in the manner specified in ¶ 19 of this Agreement.

Effect of Agreement

23. This Agreement resolves the EPA's civil claims for the violations alleged in ¶¶ 13-17. This resolution of claims will take effect when the United States receives the civil penalty payment required by ¶ 18. Nothing herein limits EPA's rights to proceed against B&S for its default or noncompliance with this Agreement, for violations of the Act, 42 U.S.C. §§ 7401-7671q, or the Act's implementing regulations which are not the subject matter of this Agreement, for other violations of law, or with respect to other matters not within the scope of the Agreement.

General Provisions

24. All correspondence to EPA or notifications required by this Agreement must be in writing and emailed to keenan.john@epa.gov or mailed to:
- John Keenan
Office of Compliance and Enforcement (OCE -127)
U.S. EPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
25. This Agreement becomes effective on the date executed by EPA (effective date of the Agreement), at which time a fully executed electronic copy will be returned to B&S.
26. The individual or individuals executing this Agreement on behalf of B&S are authorized to do so and such execution is intended to and does bind B&S and its agents, successors, and assigns.
27. This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties

had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts. Any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement.

28. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
29. B&S may not delegate its duties under this Agreement to any other party without the written consent of EPA, which may be granted or withheld at EPA's sole discretion. If EPA so consents, the Agreement is binding on the party or parties to whom the duties are delegated.
30. Notwithstanding any other provision of this Agreement, the parties agree that on B&S's default or failure to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General pursuant to § 205 of the Act, 42 U.S.C. § 7524, to commence a civil action against B&S in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. B&S expressly waives its right to assert that the Subject Engines are certified or exempt from the certification requirements, or that such action is barred by 18 U.S.C. § 3282(a), other statutes of limitation, or other provisions limiting actions as a result of passage of time. B&S acknowledges that EPA intends to use B&S's tax identification number, which B&S has appended to this Agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. 31 U.S.C. § 7701.

31. B&S 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. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than EPA and B&S, any rights, remedies, or other benefits.
33. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
34. This Agreement is contingent on the truthfulness, accuracy, and completeness of B&S's disclosures and representations to EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Engines.
35. This Agreement in no way affects or relieves B&S of responsibility to comply with other federal, state, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

United States Environmental Protection Agency

Administrative Settlement Agreement

In the Matter of Briggs and Stratton Corporation

AED/MSEB # 8027

The following agrees to the terms of this Agreement:

Briggs and Stratton Corporation

By: Patricia M. Hanz

Typed or Printed Name: PATRICIA M. HANZ

Typed or Printed Title: ASSISTANT GENERAL COUNSEL

Federal Tax Identification Number: 39-0182330

Date: 11/1/12

United States Environmental Protection Agency

Administrative Settlement Agreement

In the Matter of Briggs and Stratton Corporation

AED/MSEB # 8027

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: _____



Date: _____

11/13/2012

Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency