

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

In the Matter of:)	
New Scooters 4 Less)	ADMINISTRATIVE
Respondent.)	SETTLEMENT AGREEMENT
)	AED/MSEB # 7117

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and New Scooters 4 Less (Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 89.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Part 89 arising out of the importation of 29 generator sets containing the nonroad engines described in Attachment 1 (the Subject Engines), while ensuring that future violations are avoided.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - a. This matter: as used in this Agreement means Respondent's importation of the Subject Engines and any civil liability that may apply to such violation.
 - b. Certificate of Conformity: the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of Part 89 and the Clean Air Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of engines built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.

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- c. Certified engine: a nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
- d. Uncertified engine: a nonroad engine built after the applicable dates of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
- e. Applicable regulation and dates: 40 C.F.R. Part 89, is applicable to compression-ignition nonroad engines built after the applicability dates in 40 C.F.R. Part 89.

Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. 7542, and 42 U.S.C. 7547, prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.
- 4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
- 5. Under 40 C.F.R. § 89.1003(b)(4), “Certified nonroad engines shall be used in all vehicles and equipment . . . unless the manufacturer of the vehicle or equipment *can prove* that the vehicle or equipment will be used in a manner consistent with paragraph (2) of the definition of nonroad engine in § 89.2.” (emphasis added). 40 C.F.R. § 89.2, under the definition of “nonroad engine,” reads that an engine is not considered a nonroad engine if “the engine . . . will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation.”

6. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad engine manufactured after the applicable effective date of the regulations, unless a label is affixed to the engine in accordance with 40 C.F.R. § 89.110.
7. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or a person acting for, and under the control of such person.
8. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified 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.

Background

9. On July 13 and July 22, 2005, U.S. Customs and Border Protection (Customs) detained the generator sets containing the 29 Subject Engines at Jacksonville, Florida.
10. Upon entry into the United States, the Respondent declared the Subject Engines for stationary use on EPA Form 3520-21, after initially declaring them certified.
11. EPA has subsequently determined that Respondent is the importer of the Subject Engines.
12. The Subject Engines were built in 2005 with a rated power ranging from 5 kW to 19 kW, and consequently they are subject to the requirements of 40 C.F.R. Part 89.
13. The Subject Engines are uncertified. Respondent did not provide proof at the time of importations that the generator sets would be used consistent with the stationary use exemption at 40 CFR §89.2.
14. Based on the above, EPA has determined that Respondent is liable for 29 violations of Section 203(a) and 213(d) of the Act, and applicable regulations thereunder.

Terms of Agreement

15. Within 30 days of this Agreement, or such longer period of time if required by Customs, Respondent shall place the Subject Engines under Customs bond and constructive seizure, or re-delivery notice and for each generator set containing a Subject Engine either
- a. export/destroy the Subject Engine. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the subject engines were either exported or destroyed. Exportation of the Subject Engines shall be to any country other than Canada or Mexico; or
 - b. submit a signed affidavit of stationary use of the generator set in the United States (one per engine), per Attachment 2, signed by the retail purchaser of the generator set.
16. EPA has determined to reduce the civil penalty for the 29 violations identified in Paragraph 13 of this Agreement to \$3,600 provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$3,600 to the United States of America within 30 days from the date that this Agreement is executed by EPA (the due date). 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 - 7117
17. Within 90 days of the date of this Agreement, Respondent shall provide EPA with a detailed plan reasonably calculated to ensure that all nonroad engines imported after the date of this Agreement into the United States by Respondent have proper EPA emission information labels affixed to each engine, and are imported in a manner that complies with all other applicable regulations, including Part 89.

18. Responses to Paragraphs 16 and 17 shall be sent via courier delivery to Angela E. Fitzgerald, at the following address:

Angela E. Fitzgerald, Attorney
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
1200 Pennsylvania Avenue, NW
Ariel Rios South, (1117A)
Washington, DC 20004

General Provisions

19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondents.
20. Respondent hereby represents that the individual 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, Respondent's agents, assigns, or successors.
21. Notwithstanding any other provisions of this Agreement, upon Respondent's default 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 40 C.F.R. Part 89. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
22. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representations to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties

23. 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 export or destroy the Subject Engines and provide proof thereof, or provide any of the required affidavits, pursuant to Paragraph 15, \$250.00 per day;
 - b. For failure to pay the civil penalty, \$3,600 pursuant to Paragraph 16, \$250.00 per day; and
 - c. For failure to submit to EPA, in writing, a plan to prevent further violations, pursuant to Paragraph 17, \$250.00 per day
24. All stipulated penalties under Paragraph 23 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 simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by EPA (the due date). Late payment of the 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 - 7117

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.

Enforcement

25. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed terminated and resolved. 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 law or regulations.

The following agree to the terms of this Agreement:

New Scooters 4 Less

By: Justin Jackrel Justin Jackrel Date: 9/27/05
- (Typed Name)
(Typed Title)

**Administrative Settlement Agreement
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U.S. Environmental Protection Agency

By: Adam L. Kushner Date: 10/7/05

Adam Kushner
Director
Air Enforcement Division