

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

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In the Matter of:

Wayne/Scott Fetzer Co.,

Respondent.

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ADMINISTRATIVE  
SETTLEMENT AGREEMENT  
AED/MSEB No. EF-2008-7270

The United States Environmental Protection Agency (EPA or the Agency) and Wayne/Scott Fetzer Co. (Respondent) enter into this Administrative Settlement Agreement (Agreement) to resolve allegations of non-compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 90.

**Purpose**

The purpose of this Agreement is to resolve all claims by EPA under Section 213 of the Act, 42 U.S.C. § 7547, and the implementing regulations that control emissions from spark-ignition (SI) nonroad engines, found at 40 C.F.R. Part 90, arising out of the failure to properly certify three thousand four hundred and three (3,403) engines.

**Definitions**

1. For purposes of this agreement, the following definitions apply:
  - a. *Certified engine* means an SI nonroad engine built after the applicable date(s) of the Part 90 regulations and which is covered by a valid certificate of conformity as defined in 40 C.F.R. § 90.3.

- b. *Uncertified engine* means an SI nonroad engine built after the applicable date(s) of the Part 90 regulations but which is not covered by a valid certificate of conformity issued by EPA as described in 40 C.F.R. § 90.106.

**Regulatory Authority**

2. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits manufacturers, including importers, from commercial distribution or sale of a new nonroad engine manufactured after the applicable effective date, or any nonroad equipment containing such engine, unless such engine is covered by a certificate of conformity issued under 40 C.F.R. § 90.106.
3. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits manufacturers, including importers, from selling, offering for sale, or introducing or delivering into commerce, a nonroad engine unless a label or tag is affixed to the engine in accordance with regulations under Part 90.

**Background**

4. The Respondent, is an importer of engines and is located at 101 Production Drive, Harrison, OH 45030.
5. As a result of a random inspection and information submitted by Respondent under a Clean Air Act Section 114 information request, the Agency concluded that Respondent imported 3,403 uncertified engines during a period beginning in June, 2003 and through March, 2005.
6. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, and which consideration is acknowledged by the parties to be adequate, agree as set forth herein.
7. By entering into this Agreement, Respondent does not admit that it is responsible for the alleged violations or that any violations have occurred.

### Terms of Agreement

8. The parties stipulate and agree to the matters identified in this Paragraph. It is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty arising out of this Agreement or the subject matter of this Agreement:
  - a. The parties agree that the settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter;
  - b. Jurisdiction to settle this matter exists pursuant to Section 213 of the Act, 42 U.S.C. § 7547, 40 C.F.R. § 90.1006 and other provisions of law;
  - c. At all relevant times, Respondent was an engine manufacturer within the meaning of 40 C.F.R. § 90.3.
  - d. The Agreement resolves, as to the Respondent, the violations alleged in Paragraph 5 of this Agreement.
9. Respondent asserts herein that it has corrected its practices to address the conditions that created the alleged violations.
10. After considering the gravity of the facts disclosed in paragraph 5 of this Agreement, Wayne/Scott Fetzer's long history of full compliance, the terms of this Agreement, and other facts presented, the Respondent agrees to pay a civil penalty of \$135,000 to the United States of America by no later than thirty days from the effective date of this Agreement. Late payment of the civil penalty is subject to interest pursuant to Paragraph 11 and stipulated penalties pursuant to Paragraph 13 of this Agreement. The civil penalty shall be paid by:
  - a. Certified check or cashier's check payable to the "United States of America," and mailed via United States Postal Service to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
ATTN: AED/MSEB No. EF-2007-7278

Simultaneously, a photocopy of the check shall be faxed to (202) 564-0015 to the attention of David Schnare or rendered as a digital image and electronically mailed to [schnare.david@epa.gov](mailto:schnare.david@epa.gov). This check shall be identified with the case number and Respondent's name; or

- b. An online payment through the Department of the Treasury by visiting [WWW.PAY.GOV](http://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." Within twenty-four hours of payment, Respondent shall fax a copy of the online payment receipt to David Schnare at (202) 564-0015, or rendered as a digital image and electronically mailed to [Schnare.david@epa.gov](mailto:Schnare.david@epa.gov). Upon signing, the Respondent shall mail this **Agreement** to:

David W. Schnare, Esq. Ph.D., Attorney-Advisor  
U.S. Environmental Protection Agency (2242A)  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

11. Interest, at the statutory judgment rate provided for in 31 U.S.C. §3717, will begin to accrue the day after the civil penalty agreed to herein is due. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 (a)(1). Interest will be assessed at the rate of the



United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a).

12. Under 28 U.S.C. § 162(f), penalties paid pursuant to this Agreement are not deductible for federal tax purposes.
13. Respondent agrees to pay stipulated penalties of \$1000 per day for failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 10.
14. The parties further agree that upon default or failure to comply with Paragraphs 9, 10, 11, and/or 13, EPA may refer this matter to the United States Department of Justice for collection pursuant to Section 213(d) of the Act, 42 U.S.C. § 7547(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 211 of the Act; or pursue any other remedies available to it.
15. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of Section 213 of the Act, 42 U.S.C. § 7547, which are not the subject matter of this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement.
16. Respondent specifically agrees that in the event of such default or failure to comply with this Agreement, EPA may proceed in an action based on the allegations set forth herein, and Respondent expressly waives its right to assert that any action based upon the allegations set forth herein is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.
17. If any provision or provisions of this Agreement are held to be invalid, illegal, or unenforceable, Respondent expressly waives its right to assert that any action based upon the allegations set forth herein is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

18. This Agreement becomes effective upon the date signed by the EPA, after which time a copy will be forwarded to the Respondent.
19. Each party hereby represents to the other that the individuals executing this Agreement on behalf of the party are authorized to do so and that such execution is intended and is sufficient to bind the party and, as applicable, its officers, agents, directors, owners, heirs, assigns, and successors.
20. Respondent waives its rights, if any, to a hearing, trial, or any other proceeding on any issue of fact or law relating to matters agreed to herein.
21. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable Federal law.
22. The effect of the settlement described in this Agreement is conditional upon the accuracy of Respondent's disclosures and representations made in Paragraphs 6, 8 and 9.
23. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved.
24. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal, or local law or regulations.

**Administrative Settlement Agreement  
In the Matter of Wayne/Scott Fetzer Co.  
AED/MSEB # EF-2008-7270**

The following agree to the terms of this Agreement:

**Wayne/Scott Fetzer Co.**


By:   
(name)

Date: 7/24/08

VP  
\_\_\_\_\_  
(title)

**Administrative Settlement Agreement**  
***In the Matter of Scott Fetzer Co.***  
**AED/MSEB # EF-2008-7270**

**United States Environmental Protection Agency**

By:  \_\_\_\_\_  
Adam M. Kushner  
Director  
Air Enforcement Division  
Office of Civil Enforcement

Date: 8.5.2008