



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.

In the Matter of:

Pleasurecraft Marine Engine Company,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8271

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Pleasurecraft Marine Engine Company, (Respondent or PCM) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations by Respondent.
2. Respondent in this matter is PCM. Respondent is a corporation organized under the laws of the State of Ohio with an office and manufacturing facilities at 1737 Highway 76, Little Mountain, South Carolina 29075. PCM is a manufacturer of marine spark-ignition (SI) engines.
3. The delegated official of the EPA and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) and 213(d) of the CAA, 42 U.S.C. §§ 7524(c) and 7547(d), and 40 C.F.R. § 1068.125.

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile

sources of air pollution, including evaporative emissions of carbon monoxide and exhaust emissions of hydrocarbons plus oxides of nitrogen and carbon monoxide emissions. The Alleged Violations of Law, stated below, regard sterndrive/inboard marine SI engines.

5. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of a new motor vehicle or engine from distributing into commerce, selling, offering for sale or introduction into commerce, or delivering for introduction into commerce any new motor vehicle or engine manufactured after the effective date of regulations unless the motor vehicle or engine is covered by a certificate of conformity (COC) issued (and in effect) under the applicable regulations.
6. Section 203(a)(4) of the CAA, 42 U.S.C. § 7522(a)(4), prohibits any manufacturer of a new motor vehicle or engine from selling or leasing any such engine unless the manufacturer has affixed an EPA label to the engine in accordance with 42 U.S.C. § 7541(c)(3).
7. Section 213 (d) of the CAA, 42 U.S.C. § 7547(d), provides that nonroad emission standards shall be subject to 42 U.S.C. §§ 7525 and 7541-7543, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under 42 U.S.C. § 7521.
8. 40 C.F.R. § 1068.1 provides that Part 1068 is applicable to marine spark-ignition (SI) engines regulated under 40 C.F.R. Part 1045.
9. 40 C.F.R. § 1068.101(a)(1) prohibits the sale, offering for sale, or introduction into commerce in the United States of any new nonroad engine after emission standards take effect for the engine, unless it is covered by a valid COC for its model year and has the

required label or tag. In addition, 40 C.F.R. § 1068.101(a)(1)(ii) provides that the requirements of this paragraph (a)(1) also cover engines that are produced to replace an older engine in a piece of equipment, unless the new engine qualifies for the replacement-engine exemption in 40 C.F.R. § 1068.240.

10. 40 C.F.R. § 1068.230(c) provides that manufacturers must label export exempt engines with a label that includes the corporate name and trademark of the manufacturer.
11. 40 C.F.R. § 1068.240, exempts a manufacturer from compliance with 40 C.F.R. § 1068.101(a)(1) when the manufacturer introduce into commerce new replacement engines that do not comply with current model year emissions standards provided the manufacturer meets the following specified conditions for the replacement engine exemption. A replacement engine is used to replace an engine that has already been placed into service (old engine). In short, before introducing the new engine(s) into commerce, the manufacturer must: (1) determine that neither it nor the company that produced the older engine currently produces a compatible engine that is certified to meet current emission requirements. If not, the manufacturer must configure the replacement engine to be identical in all material respects to the certified specifications of the older engine of the same or newer model year that is the “cleanest available fit” for the equipment; (2) affix the required label to the replacement engine as described in 40 C.F.R. § 1068.240(b)(5); and (3) properly dispose of the old engine.

Factual Background

12. On July 31, 2014, the EPA issued to PCM an Information Request pursuant to section 208(a) of the CAA, 42 U.S.C. § 7542(a). The Information Request concerned, among other things, the certification and exemption status of marine engines that PCM produced

and introduced into commerce between January 1, 2013, and June 1, 2014, and the type of label that PCM affixed to each engine.

13. On September 11, 2014, PCM responded to the EPA's Information Request. PCM's responses indicated the following:
 - (a) PCM produced 459 new marine engines that were not covered by a COC;
 - (b) Of the 459 engines that were not covered by a COC, PCM intended for 168 of the engines to be exempted as export engines and for 291 to be exempt as replacement engines;
 - (c) For the 168 export engines, the EPA alleges that PCM affixed defective labels that failed to include PCM's corporate name and trademark as required by 40 C.F.R. § 1068.230(c); and
 - (d) For the 291 engines which PCM intended to be exempted under the replacement engine exemption, the EPA alleges that PCM failed to meet certain exemption requirements specified at 40 C.F.R. § 1068.240.
14. On December 2, 2015, the EPA issued to Respondent a Notice of Violation and alleged that PCM failed to meet certain requirements for exempting new engines under the replacement engine exemption, 40 C.F.R. § 1068.240, and failed to comply with the export labeling requirements of 40 C.F.R. § 1068.230(c).
15. In response to the EPA's NOV, PCM represents that it developed a new compliance form that requires its customers to provide sufficient information so that PCM can determine and is assured that all replacement engines will meet all of the exemption requirements of 40 C.F.R. §1068.240 prior to PCM providing the engine to its customer for sale. PCM

acknowledges that PCM is ultimately responsible for the requirements of 40 C.F.R. § 1068.240.

Alleged Violations of Law

16. The EPA alleges that PCM sold or introduced into U.S. commerce 291 new marine SI engines that were neither covered by a COC nor exempted from the certification requirement in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 1068.101(a)(1). In addition, the EPA alleges that PCM failed to affix complying export labels to 168 new marine SI engines in violation of section 203(a)(4) of the CAA, 42 U.S.C. § 7522(a)(4), and 40 C.F.R. § 1068.101(a)(1).

Terms of Agreement

17. Respondent:
- (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c);
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;
 - (e) agrees to any conditions specified in this Agreement;
 - (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under sections 205(c) and 307(b)(1) of the CAA, 42 U.S.C. §§ 7534(c) and 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law and Factual Background stated above;

- (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
- (h) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which may be granted, conditionally granted, or withheld at EPA's unfettered discretion;
- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
- (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
- (l) certifies that that to the best of its knowledge the information it has supplied concerning this matter was at the time of submission true, accurate, and complete;
and
- (m) acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

18. For purposes of this proceeding, the Parties, desiring to settle this matter, each agree that:

- (a) this Agreement is in the public interest and is an appropriate way to resolve this matter;
- (b) 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;
- (c) 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 and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;
- (d) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Agreement and to execute it on behalf of that Party;
- (e) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and

- (f) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.
19. Respondent agrees to pay to the United States a civil penalty of \$225,000 (the Civil Penalty).
20. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement. EPA agrees to provide to Respondent at the email address provided on Respondent's signature page, below, a copy of the executed Agreement within 5 calendar days of that date.
21. Respondent agrees to pay the Civil Penalty in the manner specified below:
- (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with "AED/MSEB # 8271"; and
 - (c) Within 24 hours of payment, email proof of payment to Jocelyn Adair at Adair.Jocelyn@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB # 8271").
22. Respondent agrees to pay the following stipulated penalties to the EPA in the manner specified by Paragraph 21, not more than 30 days after receipt of written demand by the EPA for such penalties:
- (a) \$500 per day to the United States if and when it fails to timely pay the Civil Penalty, or provide proof thereof, in accordance with Paragraph 21.

Effect of Agreement

23. By its signature below, the EPA covenants not to sue Respondent for legal or equitable relief for the Alleged Violations of Law stated above, but such covenant automatically terminates if Respondent fails to pay the civil penalty, as specified in the above Paragraphs 19 through 21, after 90 days after the date that the EPA signs this Agreement. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA, as a matter of contract, or both.
24. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty (see 42 U.S.C. § 7413(d)(5));
 - (b) refer the debt to a credit reporting agency or a collection agency (see 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33);
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and
 - (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (see 40 C.F.R. § 13.17).

25. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes.
28 U.S.C. § 162(f).
26. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent or if they continue a substantive portion of Respondent's business that is regulated under the CAA. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
27. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.
28. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was or is materially false or inaccurate. If and when such termination occurs, the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

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By my signature, I execute this Agreement on behalf of Pleasurecraft Marine Engine Company (PCM) and thereby enter PCM into this Agreement and bind PCM to this Agreement.

 _____ Date 10.21.16

Printed Name: MARK C. MARINNEY

Title: President

Address: 1737 Highway 76 East Little Mountain SC 29675

Respondent's Federal Tax Identification Number: 310859379

Email address for receipt of copy of Agreement: MMARINNEY@PLEASURECRAFT.COM

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By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency (EPA) and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.



Philip A. Brooks, Director
Air Enforcement Division
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Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

11/4/2016
Date