

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

**ADMINISTRATIVE SETTLEMENT AGREEMENT**

**In the Matter of:**

**Kare USA Corp.  
Respondent**

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) **AED/MSEB # 7154**  
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This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA), and Kare U.S.A. Corp. (Respondent) regarding compliance by Respondent with the requirements of section 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder at 40 C.F.R. Part 90.

**Purpose**

1. The purpose of this Agreement is to resolve any and all claims by EPA under the Act and Part 90 arising out of the importation of 741 generators and water pumps containing nonroad engines in Respondent's U.S. Customs Entry numbers 370-0069369-9 (Feb. 14, 2006) and 370-0069435-8 (Feb. 27, 2006), as described in Table 1, and to ensure that future violations are avoided.

**Definitions:**

2. For the purposes of this Agreement, the following definitions apply:
  - A. *Certified engine:* A "certified engine" is a nonroad engine that was built after the applicable effective dates of the regulations at Parts 89 or 90 and that is covered by a Certificate of Conformity.

- B. *Dates of the Applicable Regulations:* The term “dates of the applicable regulations” for nonroad spark-ignition engines rated at or below 19 kW, the applicable effective date is January 1, 1997.
- C. *Uncertified engine:* An “uncertified engine” is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.
- D. *This matter:* As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Table 1 and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 90.
- E. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 90.108 for spark ignition engines, after EPA has determined that the manufacturer’s application is complete and that the engine family meets the requirements of 40 C.F.R. Part 90 and the Clean Air Act. Issuance of the Certificate of Conformity permits production of engines built in accordance with the manufacturer’s application provided that the production is within the period during which the Certificate of Conformity is valid.
- F. *Subject engines:* The term “Subject Engines” means the engines whose model numbers, and Customs entry bill numbers are listed in Table 1.

**Statutory and Regulatory Authority:**

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7542(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.

4. 40 C.F.R. § 90.1(a) defines the applicability of 40 C.F.R. Part 90 regulations to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and that are used for any purpose.
5. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity.
6. 40 C.F.R. §§ 90.3 defines a nonroad vehicle manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person in connection with the distribution of such vehicles.
7. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by engine manufacturer of a nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine.
8. 40 C.F.R. § 90.114 requires the engine manufacturer to affix, at the time of manufacture of a certified spark-ignition 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, must contain the content required by 40 C.F.R. § 90.114 and must be attached in such a manner that it cannot be removed without destroying or defacing the label.

### **Background**

9. On March 24, 2006, and March 27, 2006, U. S. Customs and Border Protection (Customs) seized the nonroad equipment listed in Table 1, Entry numbers 370-0069369-9 and 370-0069435-8, respectively, at Port Everglades, Florida.
10. Respondent is the importer of the nonroad equipment containing the Subject Engines.

11. The Subject Engines and nonroad equipment were manufactured after the Dates of the Applicable Regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment.
12. The Subject Engines listed in Table 1 are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §90.114.

**Terms of Agreement**

13. Within 60 days of the date of this Agreement or such other time as required by U.S. Customs, Respondent shall submit U.S. Customs documentation proving that each of the Subject Engines has been exported to a location outside the North American continent.

14. All submissions shall be sent to EPA at the following address:

Leslie A. Kirby-Miles  
U.S. EPA, OECA/AED (mailcode 2242A)  
1200 Pennsylvania Ave NW (Rm. 2117A)  
Washington, DC 20460-0001  
facsimile: (202) 564-0069

15. Respondent shall pay to the United States a civil penalty of \$25,000 within 30 calendar days 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. 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 # 7154

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 15 or faxed to (202) 564-0069 to the attention of Leslie A. Kirby-Miles. Such check shall be identified with the case number and Respondent's name.

16. Respondent agrees that it will not import any nonroad vehicle or piece of equipment manufactured on or after the Dates of the Applicable Regulations unless the nonroad vehicle or equipment complies with all applicable regulations.

**General Provisions**

17. The effective date of this Agreement is the date that EPA signs the Agreement.
18. Respondent hereby represents that the individual or individuals signing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such signature is sufficient to bind Respondent, its agents, assigns, or successors.
19. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default of 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 90. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.
20. The Effect of Settlement as described in Paragraph 23 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Table 1, and the prompt and complete exportation of all engines in accordance with this Agreement.

**Stipulated Penalties:**

21. 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 timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 15, \$400 per day.

- C. For failure to timely export the Subject Engines, or provide proof of such exportation, pursuant to Paragraph 13, \$500 per day.
- 22. All stipulated penalties under Paragraph 21 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 15 and shall be paid within five days of written demand by EPA. 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.

**Effect of Agreement**

- 23. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

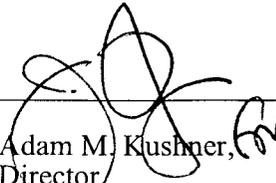
Kare U.S.A. Corp.

By: Nelson Yeung  
Nelson Yeung, as President  
Owner

6/05<sup>th</sup>/06  
Date:

U.S. Environmental Protection Agency  
In the Matter of Kare U.S.A. Corp.

AED/MSEB # 7154

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

6 15. 06  
Date

**Table 1**

*In the Matter of Kare USA Corp.*  
AED/MSEB # 7154

Uncertified and Unlabeled Engines

<b>Entry Date</b>	<b>Entry Number</b>	<b>Engine Model Number or Generator Model</b>	<b>Quantity</b>	<b>Manufacturer</b>
2/14/06	370-0069369-9	No markings PG-950U 0.8kW (gasoline generators)	432	Power Angel
2/27/06	370-0069435-8	No markings PG-950U 0.8kW (gasoline generators)	100	Power Angel
2/27/06	370-0069435-8	No markings PG-6500UE (gasoline generators)	204	Power Angel or Camp Outing
2/27/06	370-0069435-8	No markings WP20A, WP25, WP40A, WP50, PW80 (gasoline water pumps)	5	Diluvio