

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

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In the matter of:)	
)	
I.M.I. Motorsports, Inc.)	SETTLEMENT AGREEMENT
)	AED/MSEB #7136
Respondent.)	
)	
)	

This Settlement Agreement is made and entered by and between the United States Environmental Protection Agency (EPA) and I.M.I. Motorsports, Inc., 5074 Weld County Road, #8, Dacono, Colorado 80514 (Respondent or IMI) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. parts 89 and 90.

Purpose

1. The purpose of this Settlement Agreement (Agreement) is to provide for resolution and remediation of any and all claims by EPA under the Act and 40 C.F.R. Parts 89 and 90 (Nonroad Regulations), arising out of the importation of eighty-three nonroad engines and the equipment containing those engines, as described in Paragraph 12 of this Agreement, (Subject Engines), while ensuring that future violations are avoided.

Definitions

2. For 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 violations.
 - b. *Certificate of Conformity:* the document issued by EPA to an engine manufacturer under 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106, as applicable, after EPA determines that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Parts 89 or 90 and the 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.

c. *Certified engine*: a nonroad engine built after the applicable date of the regulations and that is covered by a Certificate of Conformity.

d. *Uncertified engine*: a nonroad engine built after the applicable date 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 nonroad compression-ignition engines built after the applicability dates in 40 C.F.R. Part 89. 40 C.F.R. Part 90 is applicable to nonroad spark-ignition engines built after the applicability dates in 40 C.F.R. Part 90.

f. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.

g. *Destroy*: the complete destruction of the engine and the complete disassembly of the generator. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything, and the generator shall be disassembled and broken down in such a manner that it can never be reassembled.

Statutory Authority

3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad engines, including engines contained in nonroad equipment or nonroad vehicles, unless the engine or vehicle is covered by a Certificate of Conformity issued and in effect.

Nonroad Compression Ignition (CI) Engine Regulatory Authority

4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits the following acts and the causation thereof: "The importation into the United States [of] any new nonroad [CI] engine manufactured after the applicable effective date under this part, or any nonroad vehicle or equipment containing such engine, unless such engine is covered by a certificate of conformity..."

5. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad CI 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. § 89.11.

6. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad CI engines or importing such engines for resale, or a person acting for, and under the control of, such person.

7. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad CI 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.

Nonroad Spark Ignition (SI) Engine Regulatory Authority

8. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits the following acts and the causation thereof: “The importation into the United States [of] any new nonroad [SI] engine manufactured after the applicable effective date under this part unless such engine is covered by a certificate of conformity....”

9. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI 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. § 90.114.

10. 40 C.F.R. § 90.3 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad SI engines or importing such engines for resale, or a person acting for, and under the control of, such person.

11. 40 C.F.R. § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad SI 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

12. On or about July 1, 2004, Respondent imported into the United States eighty-three nonroad engines and the equipment containing such engines (Subject Engines), as described in the Table below.

**Table
Generators with Subject Engines Imported by IMI**

Generator type	kW	# of Units	Certified (Y/N)	Label (Y/N)
Diesel				
DEK 6000 SL	5.5	15	N	N
DEK 6000 CLE	5.5	30	N	N
DEK 3500 SL	3.5	5	N	N
DEK 180 WE	4.2	10	N	N
Gasoline				
DJ 6000 SL	5.5	20	N	N
DJ 180 WE	4.2	3	N	N
Total Units		83		

13. The Subject Engines are regulated by and subject to the requirements of the applicable Nonroad Regulations.

14. On or about April 20, 2005 and May 4 and 15, 2005, inspectors from EPA inspected the facilities of Respondent located at 5074 Weld County Road, #8, in Dacono, Colorado, to determine Respondent's compliance with the Nonroad Regulations. As a result of these inspections, on or about August 11, 2005, EPA sent Respondent an information request letter pursuant to Section 208(a) of the Act, 42 U.S.C. § 7524(a) (EPA's information request letter) to determine Respondent's compliance with these regulations. On or about December 31, 2005, Respondent replied to EPA's information request letter and provided information about its compliance.

15. In its response to EPA's information request letter, Respondent admitted to importing

the eighty-three (83) Subject Engines identified in Paragraph 12, above, and that said Subject Engines were not equipped with the permanent, legible label required by the applicable Nonroad Regulations.

16. Subsequent EPA investigation established that none of the Subject Engines were certified as required under the applicable Nonroad Regulations.

17. As a result of the foregoing investigations into Respondent's compliance with the Nonroad Regulations, EPA has determined that: Respondent is the importer of the Subject Engines; none of the Subject Engines were certified as required pursuant to 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106, as applicable; and none of the Subject Engines were equipped with the permanent, legible identification labels required pursuant to 40 C.F.R. § 89.110 or 40 C.F.R. § 90.114, as applicable.

18. Based upon the foregoing, EPA has determined that Respondent is liable for eighty-three violations of Sections 203(a) and 213(d) of the Act, amounting to sixty violations of 40 C.F.R. § 89.1003(a)(1)(ii) and 40 C.F.R. § 89.1003(a)(4)(ii) for the CI Subject Engines, and twenty-three violations of 40 C.F.R. § 90.1003(a)(1)(ii) and 40 C.F.R. § 90.1003(a)(4)(ii) for the SI Subject Engines.

Terms of Agreement

19. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.

20. Subject to the requirements set forth in Paragraph 30 of this Agreement, EPA has determined to reduce the civil penalty for the eighty-three violations alleged in Paragraph 18 of this Agreement to \$9,294, provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$9,294 to the United States of America within thirty days from the effective date of this Agreement (penalty 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 penalty 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 #7136

A copy of the check shall simultaneously be sent to Judy Lubow at the following address:

Judy Lubow, Attorney
U.S. Environmental Protection Agency
12345 West Alameda parkway
Suite 214
Denver, CO 80228

21. Within sixty days from the effective date of this Agreement, Respondent shall export or destroy the forty-five complete or partial Subject Engines that were in Respondent's possession at the time of its December 31, 2005 response to EPA's information request letter. Within seventy days from the effective date of this Agreement, the Respondent shall provide to Judy Lubow of the EPA at the address specified for her in Paragraph 20 of this Agreement, a written certification and supporting documentation that the forty-five Subject Engines identified in this Paragraph were either exported or destroyed.

22. Within sixty days of the effective date of this Agreement, Respondent shall implement, and provide to Judy Lubow of the EPA at the address specified for her in Paragraph 20 of this Agreement, a nonroad engine compliance plan which must be acceptable to EPA. The plan must be reasonably calculated to ensure that all nonroad engines imported by the Respondent into the United states after the effective date of this Agreement shall be imported in a manner that complies with all applicable EPA regulations, including the Nonroad Regulations.

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 pay the penalty, or provide proof thereof, pursuant to Paragraph 20, \$250.00 per day;
- b. For failure to appropriately export or destroy the Subject Engines, and provide proof thereof, pursuant to Paragraph 21, \$250.00 per day, per Subject Engine;
- c. For failure to submit to EPA a compliance plan which is acceptable to EPA, and to timely implement that plan, all pursuant to Paragraph 22, \$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 in accordance with Paragraph 23 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 to seek 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.

General Provisions

25. Notwithstanding any other provisions of this Agreement, the parties agree that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act; or pursue any other remedies available to it.

Respondent expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation or other provisions limiting actions as a result of passage of time.

26. The parties represent that the individual or individuals executing this Agreement on behalf of the respective party are authorized to do so and that such execution is intended and is sufficient to bind the respective party

27. The Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.

28. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

29. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA and the prompt and complete remediation of any violations in accordance with this Agreement.

Effect of the Agreement

30. Upon completion of the terms of this Agreement, this civil matter 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; for violations of Section 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 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. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal or local laws or regulations.

The following agree to the terms of this Agreement:

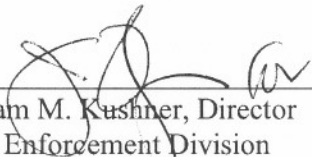
I.M.I. Motorsports, Inc.

By: *BL*
Brad Linkus
Typed or Printed Title: *PRESIDENT*

Date: *5/15/06*

Settlement Agreement In the Matter of I.M.I. Motorsports, Inc.
AED/ MSEB # 7136

U.S. Environmental Protection Agency

By:  _____ Date: 6.5.06 _____
Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance