

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

Pramac Industries, Inc.

Respondent

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AED/MSEB # 7230

This **Administrative Settlement Agreement** is made and entered into by and between the United States Environmental Protection Agency ("EPA"), and Pramac Industries, Inc., 10100 NW 116th Way, Suite 10, Medley, FL 33178 ("Respondent" or "Pramac") regarding Respondent's compliance with the requirements of the Clean Air Act ("the Act") and the regulations promulgated thereunder at 40 C.F.R. Parts 89 and 90.

Purpose

1. The purpose of this Administrative Settlement Agreement ("Agreement") is to resolve 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 seventy-three (73) spark ignition ("SI") and compression ignition ("CI") nonroad engines and equipment containing those engines ("the Subject Engines"), as described in Attachment 1.

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 and 90 and that is covered by a Certificate of Conformity.
 - b. *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. Likewise, 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.

- c. *This matter*: As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Attachment 1 and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Parts 89 and 90.
- d. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106, after EPA has determined that the manufacturer’s application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Parts 89 and 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.
- e. *Certificate Holder*: The manufacturer whose name appears on the Certificate of Conformity issued for the engines covered by this Agreement pursuant to 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106 is the “Certificate Holder.”
- f. *Labeling requirements*: “Labeling requirements” means collectively the requirements found at 40 C.F.R. § 89.110 and 40 C.F.R. § 90.114 that require that certified engines be labeled at the time of manufacture.

Statutory Authority

- 3. Section 213(d) of the Clean Air Act, 42 U.S.C. § 7547(d), authorizes EPA to promulgate regulations “as may be necessary to determine compliance with, and enforce, standards in effect” under the nonroad engines and vehicles section.

Nonroad CI Engine Regulatory Authority

4. 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 or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.
5. 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 content of 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. § 89.110, and must be attached in such a manner that it cannot be removed without destroying or defacing the label.

Nonroad SI Engine Regulatory Authority

6. 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 or tag is affixed to the engine in accordance with 40 C.F.R. § 90.114.
7. 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 content of 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

8. On or about December 20, 2006, and January 12, 2007, Respondent imported into the United States at the Port of Savannah, GA, three entries containing seventy-three (73) CI

and SI nonroad engines and the generator sets containing the Subject Engines listed in Attachment 1.

9. Upon examination by the Department of Homeland Security's Customs and Border Protection ("CBP") and consultation with EPA, EPA determined that the Subject Engines were not labeled in compliance with 40 C.F.R. §§ 89.110 and 90.114.
10. EPA has determined that Respondent is the importer of the Subject Engines.

Terms of Agreement

11. 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.
12. Respondent shall pay to the United States a civil penalty of twelve thousand five hundred dollars (\$12,500) dollars ("EPA penalty") in satisfaction of the violations described herein, provided Respondent successfully completes the terms of this Agreement.
13. Respondent agrees to pay the \$12,500 EPA penalty to the United States of America within thirty (30) calendar days of the effective date of this Agreement ("penalty due date"). Late payment of the EPA 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
P.O. Box 371099M
Pittsburgh, PA 15251
ATTN: AED/MSEB # 7230

Simultaneously, a photocopy of the check shall be faxed to (202) 564-0068 to the attention of Meredith G. Miller. Such check shall be identified with the case number and Respondent's name.

14. Separate and apart from this EPA penalty, CBP may require payment of a forfeiture remission amount for the release of the goods from seizure.

15. Within thirty (30) days from the date that CBP releases the subject engines, or from the effective date of this Agreement if CBP has released the subject engines prior to the effective date of this Agreement, whichever is applicable, Respondent shall export to a country other than Canada or Mexico or destroy the subject engines. This exportation or destruction shall be carried out under the supervision of CBP. Within forty-five (45) days from the applicable date under this Paragraph, Respondent shall certify to EPA and provide supporting documents that each of the subject engines has been either destroyed or exported under the supervision of CBP.
16. In lieu of exporting or destroying each Subject Engine as required by Paragraph 15 of this Agreement, the Certificate Holder for the Subject Engines may remove each non-complying label from the Subject Engines and affix a complying EPA emissions information label ("replacement label") to each of the Subject Engines. This corrective action must include each of the following steps:
 - a. The Certificate Holder shall send to EPA a sample of the proposed replacement label and a technical description of the method and procedures that the Certificate Holder will use to affix the replacement label to the Subject Engine. The replacement label must contain all the information specified at 40 C.F.R. § 89.110 or 40 C.F.R. § 90.114, as applicable. In addition, the replacement label and method and procedures used to affix the label must be designed to ensure that the replacement label is readily visible and is permanently affixed so that it cannot be removed without destroying or defacing the label. This submission, affidavit, and all other correspondence concerning this Agreement shall be sent to Meredith G. Miller at the address specified in Paragraph 17 of this Agreement.
 - b. Where EPA determines that the proposed sample label is deficient, EPA may notify the Certificate Holder and Pramac of the deficiency of the proposed label

within five (5) days of receiving the proposed label from the Certificate Holder. If EPA provides comments on the deficiency of the label or process for affixing the label, the Certificate Holder shall revise its label and/or process according to EPA's comments or provide EPA with an explanation as to why the label/or process is not deficient.

- c. The Certificate Holder shall establish and fully document a chain of custody for the replacement labels from the time of production until the time of installation on the Subject Engine, and destruction of any unused replacement label.
- d. This corrective action shall be conducted under the observation of CBP, or a board certified licensed professional engineer ("Observer") not employed directly by either Pramac or the Certificate Holder. The corrective action shall be completed within thirty (30) days following the date of this Agreement, or such longer period of time if requested by Respondents and approved by EPA for good cause shown.
- e. The Certificate Holder shall remove the non-complying label and give it to the Observer, and shall attach the replacement label in accordance with the procedure submitted to EPA in the above Subparagraph (a).
- f. After the replacement label has been affixed to each of the seventy-three (73) Subject Engines, the Observer shall randomly select one Subject Engine from each model ("Test Sample Engine") to determine whether or not the replacement label is readily visible and is permanently attached to the Subject Engine and cannot be removed without destroying or defacing the replacement label. Any Test Sample Engine whose replacement label is destroyed or defaced during this test must be relabeled by the Certificate Holder. However, where the replacement label on a Test Sample Engine can be removed without destroying or defacing the

replacement label, the Test Sample Engine and the related model Subject Engines must be exported or destroyed as described in Paragraph 15.

- g. Where a replacement label on a Test Sample Engine contains all the specified information, is readily visible, and cannot be removed without destroying or defacing the replacement label, the Test Sample Engine (once re-labeled, if necessary) and the related model Subject Engines may be sold or introduced into commerce.
- h. Within thirty (30) days of this Agreement (or such longer period of time if requested by Respondents and approved by EPA for good cause shown), Respondents shall provide EPA with a report that fully describes and certifies the corrective action taken. The report must include the following:
 - 1. An affidavit from the Certificate Holder who has performed the corrective action work. The affidavit shall certify the date, time, and place of the corrective action work, identify each person doing the work, identify the serial number of each Subject Engine that was re-labeled, provide a clear readable picture of the replacement label affixed to each model of the Subject Engines, and provide the results of any tests performed to determine whether or not the replacement label was permanent and could not be removed without destroying or defacing the label; and
 - 2. An unconditional statement from the Certificate Holder certifying that the Subject Engines comply with all requirements of the Clean Air Act, 40 C.F.R. Part 89 and 40 C.F.R. Part 90.
- i. Where the Observer determines that a replacement label is non-complying, or can be removed without destroying or defacing the label, or the corrective action work has not been performed, the Observer will report his or her findings to EPA and

Respondents shall either export or destroy the Subject Engines as described in Paragraph 15.

- j. The Observer shall destroy all the removed labels no later than the day the last Subject Engine receives a replacement label.
17. A copy of all correspondence and certifications to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Meredith G. Miller, Esq.
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB-7230

(Courier Service)

Meredith G. Miller, Esq.
U.S. EPA
Ariel Rios South, Room 2119A
1200 Pennsylvania Ave., NW
Washington, DC 20004

Root Cause Analysis and Corrective Action Compliance Plan

18. Within thirty (30) days from the date of this Agreement, the Certificate Holder shall initiate a thorough review and assessment of its non-road engine labeling practices and procedures to ensure that all labels are permanently affixed on the Certificate Holder's engines and/or equipment at the time of manufacture and otherwise comply with the requirements of 40 C.F.R. Parts 89 and 90. The Certificate Holder shall, as part of such review:
- a. Review regulatory requirements for labels on non-road engines;
 - b. Analyze a representative sample of the Subject Engines and labels to determine the potential cause(s) of label noncompliance;
 - c. Review current labeling procedures and associated quality assurance and/or control practices, including label installation procedures, label design and label performance characteristics; and
 - d. Identify and implement corrective action(s) to label installation procedure/design/performance as well as quality assurance/quality control

procedures at locations where the Certificate Holder's non-road equipment is manufactured and/or assembled, and for shipment to the United States, to ensure that labels remain permanently affixed and attached such that they cannot be removed without their being defaced or destroyed.

The Certificate Holder shall complete the review and analysis required by this Paragraph 18, and shall implement all corrective actions, within one hundred and eighty (180) days of the effective date of this Agreement. The Certificate Holder shall, within two hundred and ten (210) days of the effective date of this Agreement, submit a report to EPA of the Root Cause Analysis and Corrective Action Plan detailing the analysis, cause(s) of noncompliance, and all corrective actions implemented by the Certificate Holder. Such report shall include example(s) of new or redesigned label(s) identified for use by Respondents as a result of the Root Cause Analysis and Corrective Action Plan.

General Provisions

19. Notwithstanding any other provision 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.
20. The parties represent that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such

execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.

21. 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.
22. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
23. This Settlement is contingent 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 Attachment 1, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

24. 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 civil penalty or provide proof thereof, pursuant to Paragraphs 12 and 13, \$250.00 per day;
 - b. For failure to export or destroy or re-label the Subject Engines or provide proof thereof, pursuant to Paragraphs 15 and 16, \$250.00 per day; and
 - c. For failure to provide the reports specified in Paragraphs 17, 18, and 19, \$250 per day.
25. All stipulated penalties under Paragraph 24 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 13 and shall be paid within five (5) 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

26. 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, for violations of Sections 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, which are not the subject matter of this Agreement, 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.

U.S. Environmental Protection Agency

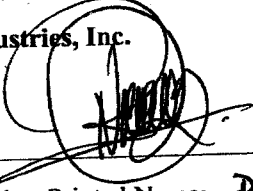
Settlement Agreement In the Matter of Pramac Industries, Inc.

AED/MSEB #7230

The following agree to the terms of this Agreement:

Pramac Industries, Inc.

By: _____



Date: 07/16/07

Typed or Printed Name: RICARDO LAVARRO

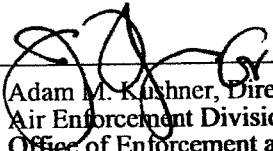
Typed or Printed Title: PRESIDENT

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of Pramac Industries, Inc.

AED/MSEB #7230

By: _____



Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: Nov 16, 2007

Attachment 1

In the Matter of Pramac Industries, Inc.

AED/MSEB # 7230

Improperly Labeled Subject Engines

Entry Date	Entry #	Engine Model # or Generator Model	CI or SI?	Qty.	Manufacturer	Serial Numbers
12/20/06	AM5-4213802-0	GC160/HG2800	SI	48	Honda	0020413-0020428 0020397-0020412 002157-0020164 0020389-0020396
12/20/06	AM5-4213802-0	P6000s/LD100	CI	17	Yanmar	0020753, 0020741, 0020765, 0020752, 0021082, 0020736, 0021084, 0020739, 0021085, 0020737, 0020742, 0020745, 0020747, 0020746, 0020749, 0020750, 0020764
1/12/07	AM5-4213846-7	P6000s/L100	CI	8	Yanmar	0022564-0022571