

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

In the Matter of:)	
)	
Genmax Power Industrial, Inc.,)	Administrative Settlement Agreement
)	
Respondent.)	AED/MSEB # 7889
)	

Purpose

1. The United States Environmental Protection Agency (EPA) and Genmax Power Industrial, Inc. (Genmax) enter into this Administrative Settlement Agreement (Agreement) to resolve alleged violations of Sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. Parts 89, 90, 1039, and 1068.

Governing Law

2. Section 203(a)(1) of the Act prohibits “the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce ... of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations” unless it is covered by an EPA-issued certificate of conformity (COC). 42 U.S.C. § 7522(a)(1).
3. It is also prohibited for “any person” to import “any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations ... unless such vehicle or engine is covered by a certificate of conformity.” 42 U.S.C. § 7522(a)(1).
4. Section 216(1) of the Act defines “manufacturer” to include “any person engaged in ... importing such vehicles or engines for resale.” 42 U.S.C. § 7550(1).

5. Section 213 of the Act, along with corresponding regulations at 40 C.F.R. Part 1068, extends the prohibitions enumerated in Section 203 to nonroad engines and vehicles. 42 U.S.C. § 7547; 40 C.F.R. § 1068.101(a)(1), (b)(5).
6. Small nonroad spark-ignition (SI) engines:
 - a. EPA regulates new nonroad SI engines with a gross power output of 19 kilowatts (kW) or lower under 40 C.F.R. Part 90, unless the engines qualify for an exclusion under 40 C.F.R. § 90.1(d). 40 C.F.R. § 90.1(a).
 - b. The importation of new nonroad SI engines that are not covered by a COC is prohibited. 40 C.F.R. § 90.1003(a)(1)(ii).
 - c. An adjustable parameter is defined as “any device, system, or element of design which is physically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation.” 40 C.F.R. § 90.3.
 - d. All adjustable operating parameters must be described in the application for a COC. 40 C.F.R. § 90.107(d)(6).
 - e. The text of every COC states that only such engines that “conform in all material respects to the design specifications” in the application are covered.
 - f. Importers of uncertified SI engines, whose violations occur after January 12, 2009, are subject to a civil penalty of up to \$37,500 per violation. *See* 40 C.F.R. § 90.1006(a)(1) (establishing that a violation of 40 C.F.R. § 90.1003(a)(1)(ii) is a violation of 42 U.S.C. §§ 7522 and 7547); 40 C.F.R. § 19.4 (adjusting maximum penalty for inflation). Each violative engine constitutes a distinct violation. 40 C.F.R. § 90.1006(a)(3).

7. Nonroad compression-ignition (CI) engines:
- a. EPA regulates new nonroad CI engines with a power output of 19 kW or lower under 40 C.F.R. Part 89, or, beginning with model year 2008, under 40 C.F.R. Parts 1039 and 1068. 40 C.F.R. §§ 1039.1, 1039.15, 1068.1(a)(2).
 - b. The importation of new nonroad CI engines that are not covered by a COC is prohibited. 40 C.F.R. §§ 89.1003(a)(1)(ii), 1068.101(a)(1).
 - c. The text of every COC states that only such engines that “conform in all material respects to the design specifications” in the application are covered. *See also* 40 C.F.R. § 1068.101(a)(1)(i) (requiring that the engine be “in a configuration described in the application for certification”).
 - d. Manufacturers must label engines in compliance with EPA regulations, which enumerate requirements for each label and specify certain information that must be included on the labels. 40 C.F.R. §§ 89.110, 1039.135.
 - e. The importation of such CI engines without compliant labeling is prohibited. 40 C.F.R. §§ 89.1003(a)(4)(ii), 1068.101(a)(1).
 - f. Importers of uncertified CI engines or CI engines without compliant labels, whose violations occur after January 12, 2009, are subject to a civil penalty of up to \$37,500 per violation. *See* 40 C.F.R. § 89.1006(a)(1) (establishing that a violation of 40 C.F.R. § 89.1003(a)(1) and (a)(4) is a violation of 42 U.S.C. §§ 7522 and 7547); 40 C.F.R. §§ 19.4 (adjusting maximum penalty for inflation), 1068.101(a)(1). Each violative engine constitutes a distinct violation. 40 C.F.R. §§ 89.1006(a)(3) 1068.101(a)(1).

Violations

8. Small nonroad SI engines:

- a. On or about April 13, 2010, Genmax imported 1500 generators of model number GG1500DC, each containing a small spark-ignition engine (Subject SI Engines). These machines entered the United States through Port Everglades, Florida, entry number AGA-0014631-9.
- b. The Subject SI Engines were purported to be covered by the COC for engine family 9GNSS.0631HC. The application for that COC lists no adjustable parameters and states that covered engines have a power output of 1.6 horsepower (Hp).
- c. Inspectors discovered an air-fuel mixture screw in the Subject SI Engines, capable of adjusting the carburetor's air-fuel ratio. This device is an adjustable parameter. *See* 40 C.F.R. §§ 90.3, 90.107(d)(6). Because the screw was not mentioned in the application for certification for engine family 9GNSS.0631HC, its presence constitutes a material difference from the specifications of the application. Thus, the Subject SI Engines are not covered by that COC.
- d. Photographs of the commercial packaging for the imported engines reveal that the engines are advertised as having a power output of 3.0 Hp. This figure constitutes a material difference from the 1.6 Hp listed in the application for certification for engine family 9GNSS.0631HC, as it is nearly double the covered value. Accordingly, this constitutes another violation that takes the Subject SI Engines out of conformity with that COC.

- e. Therefore, by importing the uncertified Subject SI Engines found in the entry AGA-0014631-9, Genmax committed 1500 violations of 40 C.F.R. § 90.1003(a)(1)(ii) and 42 U.S.C. §§ 7522 and 7547.

9. Nonroad CI engines:

- a. On or about July 17, 2010, Genmax imported 144 generators of model number LDE6800T, each containing a compression-ignition engine (Subject CI Engines). These machines entered the United States through Port Everglades, Florida, entry number AGA-0015160-8.
- b. EPA has found contradictory information regarding the engine family of the Subject CI Engines. They are purported to be from either engine family 7FZLL.418F86 (according to labeling on the sampled engine), AFZLL.418F86 (according to the Genmax's EPA Form 3520-21 and the COC it submitted). It is also possible that the Subject CI Engines may be from engine family 9FZLL.418F86 (implied by language on the label stating that "This engine conforms to 2009 U.S. EPA regulations for large nonroad CI engines").
- c. The catalytic converter for all three possible engine families is listed in each respective certification application as being 0.43 liters (L) or 430 cubic centimeters (cc) in volume.
- d. Through an inspection of a sample engine, EPA learned that the volume of the catalytic converter was 0.265 L or 265 cc. This value is materially different from the covered value of 0.43 L or 430 cc, constituting a discrepancy of nearly 40 percent. Accordingly, the Subject CI Engines are not covered by the COC for any

of the three possible engine families: 7FZLL.418F86, 9FZLL.418F86, and AFZLL.418F86.

- e. As explained in ¶ 9.b., photographs of the engines reveal inconsistent labeling. Accordingly, the Subject CI Engines lack compliant labeling, as required by 40 C.F.R. §§ 89.110, 1039.135.
- f. Therefore, by importing the uncertified and improperly labeled Subject CI Engines found in the entry AGA-0015160-8, Genmax committed 144 violations of 40 C.F.R. §§ 89.1003(a)(1)(ii), (a)(4)(ii) and 1068.101(a)(1) and 42 U.S.C. §§ 7522 and 7547.

Civil Penalty

- 10. Genmax must pay to the United States a civil penalty of \$3,500 (EPA Penalty). This amount reflects a significant reduction based on the fact that Genmax demonstrated that a higher amount would have unduly affected the company's ability to continue in business.
- 11. Genmax agrees to pay the EPA Penalty to the United States within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 17). Late payment is subject to interest and fees as specified in 31 U.S.C. § 3717, and such interest and fees must be paid by Genmax on demand by the United States. Genmax agrees to pay the EPA penalty in the manner specified in subparagraph a. or b. below:
 - a. Mail by United States Postal Service a certified check or cashier's check, payable to the United States of America, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

ATTN: AED/MSEB # 7889

This check must be identified with case number AED/MSEB # 7889 and state that it is remitted by Genmax. Simultaneously, scan and email a copy of the check to Evan M. Belser at belser.evan@epa.gov.

- b. Pay online through the Department of the Treasury using 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. The payment must be identified with case number AED/MSEB # 7889. Within 24 hours of payment, scan and email a copy of the receipt to belser.evan@epa.gov.
12. Beside the EPA Penalty, Genmax acknowledges that CBP may assess separate penalties related to the Subject SI Engines and the Subject CI Engines.

Stipulated Penalties

13. Genmax agrees to pay a stipulated penalty of \$1,000 per day for its failure to timely pay the civil penalty or provide proof of such payment according to ¶ 11.
14. Every stipulated penalty must be paid within 30 days of notice from the EPA and in the manner specified in ¶ 11 of this Agreement.

Effect of Agreement

15. This Agreement resolves the EPA's civil claims for the violations alleged in ¶¶ 8 – 9 above. The resolution of claims set forth in this paragraph will take effect upon receipt of the civil penalty payment required by ¶ 10. Nothing in this Agreement limits the EPA's rights to proceed against Genmax for default or noncompliance with this Agreement, or

for violations under the Act, 42 U.S.C. §§ 7401 – 7671(q), that are not the subject matter of this Agreement or the Act's implementing regulations, or for other violations of law.

General Provisions

16. All correspondence to EPA or notifications required by this Agreement must be in writing and emailed to belser.evan@epa.gov or mailed to:

(U.S. Postal Service Mail)
Evan Belser
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7889

(Courier Service)
Evan Belser
U.S. EPA
Ariel Rios South, Room 1142C
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7889

17. This Agreement becomes effective on the date executed by EPA (effective date of the Agreement), at which time a fully executed electronic copy will be returned to Genmax.
18. The individual or individuals executing this Agreement on behalf of Genmax are authorized to do so and such execution is intended to and does bind Genmax and its agents, successors, and assigns.
19. 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 may be detached from any counterpart and attached to any other counterpart of this Agreement.

20. 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.
21. Genmax may not delegate its duties under this Agreement to any other party without the written consent of EPA, which may be granted or withheld at EPA's sole discretion. If EPA so consents, the Agreement is binding on the party or parties to whom the duties are delegated.
22. Notwithstanding any other provision of this Agreement, the parties agree that on Genmax's default or failure to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General pursuant to § 205 of the Act, 42 U.S.C. § 7524, to commence a civil action against Genmax in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. Genmax expressly waives its right to assert that the Subject SI Engines and the Subject CI Engines are certified or exempt from the certification requirements, or that such action is barred by 18 U.S.C. § 3282(a), other statutes of limitation, or other provisions limiting actions as a result of passage of time. Genmax acknowledges that EPA intends to use Genmax's tax identification number, which Genmax has appended to this Agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. 31 U.S.C. § 7701.
23. Genmax waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.

24. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than EPA and Genmax, any rights, remedies, or other benefits.
25. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
26. This Agreement is contingent on the truthfulness, accuracy, and completeness of Genmax's disclosures and representations to EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Engines.
27. This Agreement in no way affects or relieves Genmax of responsibility to comply with other federal, state, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

United States Environmental Protection Agency

Administrative Settlement Agreement

In the Matter of Genmax Power Industrial, Inc.

AED/MSEB # 7889

The following agrees to the terms of this Agreement:

Genmax Power Industrial, Inc.

By:  _____

Typed or Printed Name: XIAOYU WEI

Typed or Printed Title: GENERAL MANAGER

Federal Tax Identification Number: 20-8480763

Date: JUN-16-2013

United States Environmental Protection Agency

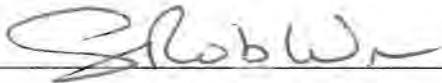
Administrative Settlement Agreement

In the Matter of Genmax Power Industrial, Inc.


AED/MSEB # 7889

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: 

Date: August 16, 2013

 Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency