

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

In the Matter of:	)	
	)	
Benron Perfume LLC	)	<b>ADMINISTRATIVE</b>
d/b/a/ Perfume Connection I	)	<b>SETTLEMENT AGREEMENT</b>
	)	<b>AED/MSEB # 7125</b>
Respondent.	)	
	)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Benron Perfume LLC, d/b/a/ Perfume Connection (Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 90.

**Purpose**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to provide for resolution and remediation of any and all claims by EPA under the Act and Part 90 arising out of the importation of the 254 generators containing the nonroad engines described in Attachment 1 (Subject Engines), while ensuring that prior violations are identified and resolved, and future violations are avoided.

**Definitions:**

2. For the 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 violation.
  - b. *Certificate of Conformity:* the document issued by EPA to a manufacturer under 40 C.F.R. § 90.108 after EPA determines that the manufacturer's application is

complete and that the engine family meet the requirements of Part 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 dates of the regulations and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable dates 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 90, is applicable to all nonroad spark-ignition engines at or below 19 kW, beginning with model year 1997 and subsequent model years.

**Regulatory Authority:**

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. § 7542, and 42 U.S.C. § 7547, prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.
- 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 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. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by engine manufacturer of a nonroad engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine.
7. 40 C.F.R. § 90.3 defines an engine manufacturer as any person who, among other things, imports nonroad engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
8. 40 C.F.R. § 90.114 requires the engine manufacturer to affix, at the time of manufacture of a certified 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**

9. On September 2, 2005, Respondent imported the equipment containing the Subject Engines at Port Everglades, Florida.
10. On September 13, 2005, U. S. Customs and Border Protection (Customs) seized the equipment containing the Subject Engines described in Paragraph 9, above, at Port Everglades, Florida, where it is presently being held.
11. After entry into the United States, the Respondent declared that the Subject Engines were certified under EPA regulations and presented EPA Forms 3520-21 with Box G, and code #1 checked.

12. EPA has determined that
  - a. Respondent is the importer of the Subject Engines,
  - b. the Subject Engines are certified under Sections 203(a) and 213(d) of the Act,
  - c. the Subject Engines are subject to the requirements of 40 C.F.R. § 90.114, and
  - d. at the time of entry into the United States, no labels were evident on the Subject Engines.
  
13. Based on the above, EPA has determined that Respondent is liable for 254 violations of 40 C.F.R. § 90.114.

**Terms of Agreement**

14. Within thirty (30) days of this Agreement, or such longer period of time if required by the Customs, Respondent shall affix permanent and legible labels identifying each nonroad engine (the engine manufacturer has authorized Respondent to do this). The label must meet the requirements of 40 C.F.R. § 90.114. The application of the labels shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the labels are permanently affixed, legible and readily visible to the average person after the engine is installed in the equipment.
  
15. EPA has determined to reduce the civil penalty for the 254 violations identified in Paragraph 13 of this Agreement to \$7,800, provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$7,800 to the United States of America within thirty (30) days from the date that this Agreement is executed by EPA (the 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 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 - 7125

16. A copy of the check shall be sent to Angela E. Fitzgerald via facsimile 202/564-0015 or at the address specified in Paragraph 18 of this Agreement.
17. Within 90 days of the date of this Agreement, Respondent shall provide EPA with a detailed plan reasonably calculated to ensure that all nonroad engines imported after the date of this Agreement into the United States by Respondent have proper EPA emission information labels affixed to each engine, and are imported in a manner that complies with all other applicable regulations, including Part 90.
18. Response to Paragraph 17 shall be sent via courier delivery to Angela E. Fitzgerald, at the following address:

Angela E. Fitzgerald (Ariel Rios South - 1117A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

### **General Provisions**

19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
20. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is

intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.

21. Notwithstanding any other provisions of this Agreement, upon Respondent's failure to timely perform pursuant to Paragraphs 14-17 of this Agreement, 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 Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
22. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representations to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

**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 15, \$250.00 per day;
  - b. For failure to label the Subject Engines, and provide proof thereof, pursuant to Paragraph 14, \$250.00 per day;

- c. For failure to submit to EPA, in writing, a plan to prevent further violations, pursuant to Paragraph 17, \$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 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.

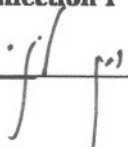
**Enforcement**

- 25. 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; 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 law or regulations.

The following agree to the terms of this Agreement:

**Benron Perfume LLC**  
**d/b/a/ Perfume Connection I**

By: \_\_\_\_\_  
Ron Livni  
Owner

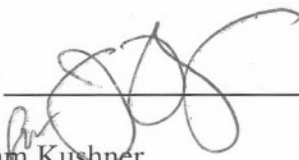


10/30/2005  
Date



**Administrative Settlement Agreement  
In the Matter of United States v. Benron Perfume LLC, d/b/a/ Perfume Connection I**

U.S. Environmental Protection Agency

By:  \_\_\_\_\_ Date: 11.10.05 \_\_\_\_\_  
Adam Kushner  
Director  
Air Enforcement Division



**Benron Perfume LLC, d/b/a/ Perfume Connection I**  
Administrative Settlement Agreement  
AED/MSEB #

ATTACHMENT 1