

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

In the Matter of:

White Storm Inc. d.b.a. Swiss Clean Inc.,

Respondent.

Administrative Settlement Agreement  
AED/MSEB # 7888

**Purpose**

1. The United States Environmental Protection Agency (EPA) and White Storm Inc. *doing business as* Swiss Clean Inc. (White Storm) 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. §§ 89.1003(a) and 1068.101(a)(1).

**Governing Law**

2. Congress authorized EPA to regulate emissions from nonroad vehicles and engines to protect public health and welfare. 42 U.S.C. § 7547. Accordingly, EPA has set air pollutant emission standards for oxides of nitrogen, hydrocarbons, and carbon monoxide for nonroad spark-ignition engines (NRSI engines) that are codified at 40 C.F.R. Parts 90 and 1054.
3. Model year 2010, nonhandheld NRSI engines with gross power output at or below 19 kilowatts (kW) must satisfy air pollutant emission standards in 40 C.F.R. Part 90, Subpart B. 40 C.F.R. §§ 90.1, 1054.1. To demonstrate that such an engine meets these

- standards, the manufacturer must test a prototype engine, and on the basis of these tests, obtain an EPA-issued certificate of conformity (COC). 40 C.F.R. Part 90, Subpart B.
4. Model year 2011, nonhandheld NRSI engines with engine displacement greater than or equal to 225 cubic centimeters (cc) must meet air pollutant emission standards in 40 C.F.R. Part 1054, Subpart B. 40 C.F.R. § 1054.1. To demonstrate that such an engine meets these standards, the manufacturer must test a prototype engine, and on the basis of these tests, obtain an EPA-issued COC. 40 C.F.R. Part 1054, Subpart C.
  5. A NRSI engine is covered by a COC only if the engine was produced during the named model year, which ends no later than December 31 of the calendar year for which the model year is named. 40 C.F.R. §§ 90.3, 90.106, 1054.201(a), 1054.801, 1068.103(b)(1).
  6. A manufacturer “may not sell, offer for sale, or introduce or deliver into commerce in the United States” a model year 2010 or model year 2011 NRSI engine with engine displacement greater than or equal to 225 cc unless that engine is covered by a COC. 40 C.F.R. §§ 90.1003(a)(1)(i), 1068.101(a)(1).
  7. Converting a new certified model year 2010 or a new certified model year 2011 constitutes a violation of 40 C.F.R. § 1068.101(a)(1) unless the converted engine is recertified (i.e., is covered by a new COC that reflects the fuel type). 40 C.F.R. §§ 90.1003(b)(3)(ii), 1054.645(a).
  8. A manufacturer who violates 40 C.F.R. §§ 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each engine in violation. 40 C.F.R. § 1068.101(a)(1).
  9. Rather than referring a matter to the United States Department of Justice to commence a civil action, EPA may assess a civil penalty through its own administrative process if the

penalty sought is less than \$295,000. 42 U.S.C. § 7524(c); 40 C.F.R. §§ 90.1006(c), 1068.125(b); *see also* 40 C.F.R. §§ 19.4, 90.1006(a), 90.1006(a)(6) (defining a violation of 40 C.F.R. § 90.1003(a)(1)(i) as being a violation of 42 U.S.C §§ 7522 and 7547 for which the administrative penalty cap has been adjusted for inflation).

### Violations

10. The Subject Engines in this matter are described in the following table:

<b>Subject Engines</b>					
<b>Displacement</b>	<b>Horsepower</b>	<b>Make, Model, Fuel of Original Engine</b>	<b>Converted Engine Model, Fuel</b>	<b>Equipment Model Sold with Converted Engine</b>	<b>Quantity Converted and Sold</b>
585 cc	15	Kawasaki, FH541, Gasoline	FH541V, Liquefied Petroleum Gas	1007 Phoenix Titan 24 LS	45

11. The model year 2010 Subject Engines are new nonroad engines regulated under 40 C.F.R. Part 90, and the model year 2011 Subject Engines are new nonroad engines regulated under 40 C.F.R. Parts 1054 and 1068. 40 C.F.R. §§ 90.1, 1054.1.
12. Sometime after January 1, 2010, White Storm or its predecessor in interest, Swiss Clean Inc., converted the original engines, which were designed to run on gasoline, to run on propane. Upon conversion, the Subject Engines were no longer covered by any COC that may have covered them before conversion. 40 C.F.R. §§ 90.1003(b)(3)(ii), 1054.645(a).
13. White Storm did not obtain a COC to cover the Subject Engines, and no COC otherwise covers the Subject Engines.
14. From June 2010 to March 2011, White Storm sold into United States commerce each of the Subject Engines.

15. The sale of each Subject Engine constituted separate violations of 40 C.F.R. § 1068.101(a)(1).

#### **Civil Penalty**

16. White Storm must pay to the United States a civil penalty of \$16,000 (EPA Penalty).
17. The EPA Penalty reflects a 75 percent reduction to the gravity component of what would otherwise have been the appropriate penalty in this matter had White Storm not disclosed the violations described above in satisfaction of conditions (2) – (9) of EPA’s Audit Policy. *See Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 65 Fed. Reg. 19,618, 19,625–26 (April 11, 2000). Since discovering its violations, White Storm has sold only engines covered by a COC and has otherwise taken steps to ensure all engines sold in the future will be covered by a COC.
18. White Storm agrees to pay the EPA Penalty to the United States according to the following schedule: \$6,000 within 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 23); \$5,000 within 135 calendar days immediately following the effective date of this Agreement; and \$5,000 within 240 calendar days immediately following the effective date of this Agreement. 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 White Storm on demand by the United States. White Storm 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, cashier’s, or company 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 # 7888

This check must be identified with case number AED/MSEB # 7888 and state that it is remitted by White Storm. Simultaneously, scan and email a copy of the check to Evan M. Belser at [belser.evan@epa.gov](mailto:belser.evan@epa.gov).

- b. Pay online through the Department of the Treasury using [www.pay.gov](http://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 # 7888. Within 24 hours of payment, scan and email a copy of the receipt to [belser.evan@epa.gov](mailto:belser.evan@epa.gov).

#### **Stipulated Penalties**

19. White Storm 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 ¶ 18.
20. Every stipulated penalty must be paid within 30 calendar days of the day that White Storm receives a demand letter from the EPA, and in the manner specified in ¶ 18 of this Agreement.

#### **Effect of Agreement**

21. On completion of the terms of this Agreement, the alleged violations described in this Agreement will be deemed resolved. Nothing herein limits EPA's rights to proceed against White Storm for its default or noncompliance with this Agreement, for violations of the Clean Air Act, 42 U.S.C. §§ 7401–7671q, or the Act's implementing regulations

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.

### General Provisions

22. All correspondence to EPA or notifications required by this Agreement must be in writing and emailed to [belser.evan@epa.gov](mailto: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 # 7888

(Courier Service)  
Evan Belser  
U.S. EPA  
Ariel Rios South, Room 1142C  
1200 Pennsylvania Ave., NW  
Washington, DC 20004  
Attn: AED/MSEB # 7888

23. 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 White Storm.
24. The individual or individuals executing this Agreement on behalf of White Storm are authorized to do so and such execution is intended to and does bind White Storm and its agents, successors, and assigns.
25. 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.

26. 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.
27. White Storm 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.
28. Notwithstanding any other provision of this Agreement, the parties agree that on White Storm'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(d) of the Act, 42 U.S.C. § 7524(d), to commence a civil action against White Storm in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. White Storm expressly waives its right to assert that the Subject Stationary and Nonroad 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. White Storm acknowledges that EPA intends to use White Storm's tax identification number, which White Storm 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.
29. White Storm 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.

30. 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 White Storm, any rights, remedies, or other benefits.
31. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
32. This Agreement is contingent on the truthfulness, accuracy, and completeness of White Storm's disclosures and representations to EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Engines.
33. This Agreement in no way affects or relieves White Storm 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**

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The following agrees to the terms of this Agreement:

**White Storm Inc.**

By: David S. Court

Typed or Printed Name: DAVID S. COURT

Typed or Printed Title: PRESIDENT

Federal Tax Identification Number: 27-2310999

Date: 7/18/12

**United States Environmental Protection Agency**

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The following agrees to the terms of this Agreement:

**United States Environmental Protection Agency**

By: \_\_\_\_\_

*Phillip A. Brooks*

Date: \_\_\_\_\_

*8/8/12*

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