

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

<b>In the Matter of:</b>	)	
<b>Joseph Osborne, d/b/a/Apple Tree Imports</b>	)	<b>ADMINISTRATIVE</b>
<b>Respondent.</b>	)	<b>SETTLEMENT AGREEMENT</b>
	)	<b>AED/MSEB # 7155</b>

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Joseph Osborne, d/b/a/Apple Tree Imports, 437 4<sup>th</sup> Avenue NW, Hickory, North Carolina, (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 196 generators containing the nonroad gasoline engines described in Table 1., below (Subject Engines), while ensuring that future violations are avoided.

Table 1. Subject Engines

<b>Entry Date</b>	<b>Seizure #</b>	<b>Model and Power</b>	<b>Qty.</b>	<b>Equipment</b>
12/30/05	2006-1501-000002	Engine: B168F (5 hP) Generator: ProPower 3200	196	Gasoline powered electric generators

**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.
  - f. *Effective date of this Agreement:* The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.

**Statutory and Regulatory Authority:**

3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. § 7522, 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 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. § 90.3 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.
7. 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 in accordance with 40 C.F.R. § 90.114.

**Background**

8. On December 30, 2005, Respondent imported equipment containing the Subject Engines into Wilmington, North Carolina.

9. On February 13, 2006, U. S. Customs and Border Protection (Customs) seized the equipment containing the Subject Engines, because the Subject Engines were not properly labeled.
10. EPA has determined that
  - a. Respondent is the importer of the 196 Subject Engines,
  - b. All the Subject Engines are subject to the Act and to the requirements of 40 C.F.R. Part 90,
  - c. The Subject Engines are certified under Sections 203(a) and 213(d) of the Act, and
  - d. The Subject Engines were not properly labeled under Part 90.
  - e. Based on the above, EPA has determined that Respondent is liable for 196 violations of 40 C.F.R. Part 90 and the Act.

**Terms of Agreement**

11. Within ninety (90) days of this Agreement, or such longer period of time if required by Customs, Respondent shall permanently export/destroy each Subject Engine. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the subject engines were either exported or destroyed within 15 days of that exportation or destruction. Exportation of the Subject Engines shall be to any country other than Canada or Mexico.
12. Respondent has agreed to pay a civil penalty of \$4,511 under this Agreement. Accordingly, under this Agreement, within 30 days from the date of this Agreement (the Agreement effective date), Respondent shall pay \$4,511 to the United States of America.

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 - 7155

13. A copy of the check shall be sent to Angela E. Fitzgerald via facsimile 202/564-0015 or 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**

14. 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.
15. Notwithstanding any other provisions of this Agreement, upon Respondent's failure to timely perform pursuant to Paragraphs 11-13 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.

16. 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**

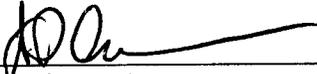
17. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
  - a. For failure to export or destroy the Subject Engines, and provide proof thereof, pursuant to Paragraph 11 of this Agreement, \$250.00 per day;
  - b. For failure to pay the penalty, or provide proof thereof, pursuant to Paragraph 12 of this Agreement, \$250.00 per day; and
  - c. For failure to provide proof of payment of the penalty, pursuant to Paragraphs 13 of this Agreement, \$250.00 per day.
18. All stipulated penalties under Paragraph 17 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 12 of this Agreement 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**

19. 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:

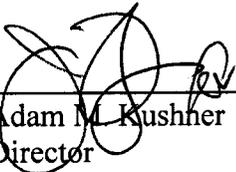
**Joseph Osborne, d/b/a/Apple Tree Imports**

By:   
(Printed name) JOSEPH OSBORNE  
(Title) OWNER

8-5-06  
Date

**Administrative Settlement Agreement  
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AED/MSEB - 7155**

U. S Environmental Protection Agency

By:  \_\_\_\_\_  
Adam M. Kushner  
Director  
Air Enforcement Division

Date: 9.12.06 \_\_\_\_\_