

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

In the Matter of:

General Power Products, LLC

Respondent.

ADMINISTRATIVE
SETTLEMENT AGREEMENT
AED/MSEB - 7158

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and General Power Products, LLC, 424 Wards Corner Road, Loveland, Ohio 45140 (Respondent or GPP), 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 resolve any and all claims by EPA under the Act and 40 C.F.R. Part 90 arising out of the importation of 18,671 small portable generator sets containing the nonroad-gasoline engines (Subject Engines) as described in Attachments 1 and 2 of this Agreement.

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, any violations of law or regulations resulting from these importations, and any civil liability that may apply to such violations.
 - 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 meets the requirements of 40 C.F.R. Part 90 and the Clean Air 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 spark-ignition nonroad engines at or below 19 kilowatts (kW) built in or after model year 1997.

Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§7522 and 7547(d), 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. Section 208(a) of the Act, 42 U.S.C. § 7542(a), provides that EPA may require any person who is subject to the requirements of Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§7522 and 7547(d), and the SI Nonroad Regulations, 40 C.F.R. Part 90, to provide information necessary to determine whether the person has acted or is acting in compliance with these requirements and the regulations promulgated thereunder.
- 5. 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 output at or below 19 kW and that are used for any purpose.
- 6. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.

7. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad engine manufactured after the applicable effective date of the regulations, unless a label is affixed to the engine in accordance with 40 C.F.R. § 90.114.
8. 40 C.F.R. § 90.3 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or a person acting for, and under the control of such person.
9. 40 C.F.R. § 90.114 provides that, “(a) the engine manufacturer shall affix at the time of manufacture a permanent and legible label identifying each nonroad engine. The label must meet the following requirements: (1) Be attached in such a manner that it cannot be removed without destroying or defacing the label;”
10. 40 C.F.R. § 90.902 defines a manufacturer-owned nonroad engine as an uncertified nonroad engine owned and controlled by a nonroad engine manufacturer and used in a manner not involving lease or sale by itself or in a vehicle employed from year to year in the ordinary course of business for product development, production method assessment, and market promotion purposes.
11. 40 C.F.R. § 90.906 provides that any manufacturer-owned nonroad engine, as defined by 40 C.F.R. § 90.902, is exempt from 40 C.F.R. § 90.1003, without application, if the manufacturer complies with certain recordkeeping, right of entry, reporting, and labeling requirements.

Background

12. As described in Attachment 1, on June 2 and June 14, 2006, Respondent imported, for sale, 7,680 small portable generator sets containing the Subject Engines. On the EPA Declaration Form 3520-21, used to import the Subject Engines, Respondent represented that the Subject Engines were being imported under the “manufacturer-owned engine” exemption in accordance with 40 C.F.R. § 90.906.

13. U.S. Customs and Border Protection (U.S. Customs) detained the 7,680 Subject Engines at the port of Cincinnati, Ohio.
14. The 7,680 Subject Engines are not manufacturer-owned nonroad engines as defined by 40 C.F.R. § 90.902, and Respondent did not comply with the recordkeeping, right of entry, reporting, and labeling requirements as specified at 40 C.F.R. § 90.906.
15. After the U.S. Customs detained the 7,680 Subject Engines, Respondent amended the declaration made on the EPA Form 3520-21 to state that the engines were EPA certified and bore the required EPA emissions label.
16. U.S. Customs inspection of a few of the 7,680 Subject Engines revealed that the EPA emission labels installed on these engines could be removed without destroying or defacing the labels. As a consequence, the Subject Engines do not comply with the labeling requirements of 40 C.F.R. § 90.114.
17. Subsequent to the U.S. Customs inspection of the 7,680 Subject Engines, Respondent informed EPA that it imported 10,991 additional Subject Engines, as described in Attachment 2, and these additional Subject Engines have labels installed on the engines that can be removed without destroying or defacing the labels.
18. Based on the above, EPA has determined that Respondent is liable for 18,671 violations of Section 203(a) and 213(d) of the Act, and Small Spark-Ignition Nonroad Regulations, 40 C.F.R. Part 90, by declaring falsely that 7,680 Subject Engines were manufacturer-owned nonroad engines and exempt from the certification requirements, 40 C.F.R. § 90.1003, and by failing to affix a permanent EPA emission label to each of the 18,671 Subject Engines that meets the requirements of 40 C.F.R. § 90.114.

Terms of Agreement

19. Upon ratification of this Agreement, EPA agrees to recommend to U.S. Customs that Respondent be allowed to enter into a Constructive Seizure Agreement with U.S. Customs to permit movement of the Subject Engines so that Respondent may take certain corrective action in accordance with Paragraph 20 of this Agreement.

20. Within 15 days following the date of this Agreement, Respondent shall transport the engines, subject to the terms of the Constructive Seizure Agreement, to the following location 10880 Enterprise Drive, Cincinnati, Ohio 45241. Respondent agrees that it shall not move the Subject Engines from the facility or transfer ownership of any generator containing a Subject Engine unless and until:
- a. Respondent removes the labels installed on the engines and replace the labels on the engine with emission labels that have been approved by EPA to meet all requirements of 40 C.F.R. § 90.114, including the requirement that the label must be permanent and attached in such a manner that it cannot be removed without being destroyed or defaced. In order to obtain EPA approval for the label, Respondent shall send to EPA a sample of the proposed label, and a technical description of the method Respondent proposes to use to attach the label to the engine. This submission shall be to Jocelyn Adair, at the address specified in Paragraph 24 of this Agreement.
 - b. Respondent shall complete the engine labeling requirement under Paragraph 20(a) for each Subject Engine within 60 days following the date of this Agreement.
21. Within 75 days from the date of this Agreement, Respondent shall provide EPA with an affidavit, from an authorized representative who has monitored the actions that Respondent has taken pursuant to Paragraph 20 of this Agreement, verifying that Respondent has completed all of the conditions set forth in Paragraph 20 of this Agreement. In addition to affirming that Respondent has affixed the EPA approved emission information label to each of the Subject Engines that meets the requirements of 40 C.F.R. § 90.114, the affidavit shall also a) identify each Subject Engine by serial number, b) affirm that each Subject Engine conforms in all material respects to the engines that were tested in support of the appropriate application for certification, and c) affirm

that each Subject Engine is subject to EPA emission warranty protection by General Power Products. Respondent shall send the affidavit to Jocelyn Adair, at the address set forth in Paragraph 24 of this Agreement.

22. In lieu of removing and labeling the Subject Engines, as described in Paragraph 20 of this Agreement, Respondent shall either export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of U.S. Customs. Respondent shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed. Exportation of the Subject Engines shall be to any country other than Canada or Mexico.
23. Respondent agrees to pay a civil penalty of \$60,000 for the violations identified in Paragraph 18 of this Agreement. Respondent shall pay \$60,000 to the United States of America within 60 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 - 7158

A copy of the check or proof of payment shall also be sent to Jocelyn Adair at the address specified below.

24. Responses to Paragraphs 20 through 23 shall be sent via courier delivery to Jocelyn Adair at the following address:

Jocelyn Adair, Attorney
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
1200 Pennsylvania Avenue, NW
Ariel Rios South, (1109A)
Washington, DC 20004

A scanned PDF file of these documents may also be sent to: Adair.Jocelyn@EPA.gov.

25. If Respondent satisfies all of the conditions set forth in Paragraphs 20 through 23 of this Agreement, EPA will recommend that Customs release the Subject Engines from Constructive Seizure.

General Provisions

26. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
27. 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.
28. Notwithstanding any other provisions of this Agreement, upon Respondent's default 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.
29. 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

30. 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 perform the corrective action, pursuant to either Paragraphs 20 or 22 of this Agreement, \$250.00 per day;
 - b. For failure to pay the civil penalty or provide proof thereof, pursuant to Paragraph 23, \$250.00 per day.
31. All stipulated penalties under Paragraph 26 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 to the United States of America within 5 days of written demand by EPA (the due date). Late payment of the 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 -7158

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.

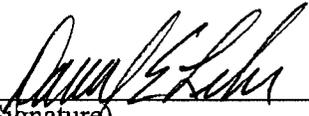
Enforcement

32. 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:

General Power Products, LLC

By:  Date: 7/31/06
(Signature)
DANIEL E. LEHR
(Typed Name)
PRESIDENT
(Typed Title)

**Administrative Settlement Agreement
In the Matter of United States v. General Power Products, LLC
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U.S. Environmental Protection Agency

By: Adam M. Kushner Date: August 2, 2006

Adam Kushner
Director
Air Enforcement Division

ATTACHMENT 1

USEPA ASA
AED/MSEB-7158
Importer: General Power Products

SUBJECT ENGINES

Entry Date	Entry Number	Model	Quantity	Manufacturer
06/02/06	004-2011394-6	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group
06/14/06	004-2020969-4	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group
06/14/06	004-2015314-0	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group
06/14/06	004-2015314-0	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group

ATTACHMENT 2

USEPA ASA
AED/MSEB-7158
Importer: General Power Products

SUBJECT ENGINES

Entry Date	Entry Number	Model	Quantity	Manufacturer
5/23/06	004-20017196	Generator APP 6000 Engine GPP208-02026	1391	Chongqing Zongshen Motorcycle Group
6/20/06	004-2025245-4	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group
7/19/06	004-2049045-0	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group
7/19/06	004-2049053-4	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group
7/19/06	004-2049060-9	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group
7/19/06	004-2049069-0	Generator APP 6000 Engine GPP208-02026	1920	Chongqing Zongshen Motorcycle Group