

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

**ADMINISTRATIVE SETTLEMENT AGREEMENT**

**In the Matter of:**

**Karya Brothers Network, Inc.**

**Respondent**

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**AED/MSEB # 7161**

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Karya Brothers Network, Inc. (Respondent) regarding compliance by Respondent with the requirements of section 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, 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 642 nonroad engines described in Attachment 1 and 13 nonroad engines described in Attachment 2, and to ensure that future violations are avoided.

**Definitions:**

2. For the purposes of this Agreement, the following definitions apply:
  - A. *Certified engine:* A “certified engine” is a nonroad engine that was built after the applicable effective dates of the regulations at 40 C.F.R. Part 90 and that is covered by a Certificate of Conformity.
  - B. *Dates of the Applicable Regulations:* 40 C.F.R. Part 90 is applicable to spark ignition nonroad engines below 19 kW built in or after model year 1997.

- C. *Uncertified engine*: An “uncertified engine” is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.
- D. *This matter*: As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Attachments 1 and 2, and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 90 arising from the importation of these engines.
- E. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 90.108 for spark ignition engines, after EPA has determined 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 of engines built in accordance with the manufacturer’s application provided that the production is within the period during which the Certificate of Conformity is valid.
- F. *Subject engines*: The term “Subject Engines” means the engines whose model numbers, and Customs entry bill numbers are listed in Attachment 1, and the engines listed in Attachment 2.

**Statutory and Regulatory Authority:**

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7542(a) 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 after the applicable effective date of the regulations unless such vehicle or engine is certified.
- 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 spark-ignition 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 a nonroad vehicle manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person in connection with the distribution of such vehicles.
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 spark-ignition engine manufactured after the applicable effective date of the regulations, unless an emissions information label is affixed to the engine.
8. 40 C.F.R. § 90.114 requires an emissions information label to be attached to each certified nonroad spark-ignition engine in such a manner that it cannot be removed without destroying or defacing the label. The label must be legible and readily visible to the average person after the engine is installed in the equipment, must contain the content required by 40 C.F.R. § 90.114, including the full corporate name and trademark of the engine manufacturer.

### **Background**

9. On August 28, 2006, U. S. Customs and Border Protection (Customs) seized the nonroad engines and equipment listed in Attachment 1 at the port of Miami, Florida.
10. On February 20, 2006, EPA inspectors examined the nonroad engines and equipment listed in Attachment 2.
11. Respondent is the importer of the Subject Engines.
12. The Subject Engines and nonroad equipment were manufactured after the Dates of the Applicable Regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment.

13. The emissions information labels affixed to the Subject Engines do not identify the name and trademark of the engine manufacturer, and/or are not affixed to engines in such a manner that they cannot be removed without destroying or defacing the label as required by 40 C.F.R. § 90.114. This constitutes 655 violations of 40 C.F.R. §§ 90.114 and 90.1003. As the importer of the Subject Engines, Respondent is liable for these violations.

**Terms of Agreement**

14. Within 60 days of the date of this Agreement, Respondent shall submit proof that each of the Subject Engines identified in Attachment 1 has been exported to a location outside the North American continent.
15. Within 60 days of the date of this Agreement, Respondent shall submit proof that each of the Subject Engines identified in Attachment 2 were either exported to a location outside the North American continent or destroyed. For purposes of this Agreement, the term “destroy” means the complete destruction of the engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything and can never be reassembled.
16. Respondent shall retain an independent contractor to prepare a plan reasonably calculated to insure that all nonroad engines manufactured for sale in the United States market or imported into the United States after the date of this Agreement have proper EPA emission information labels affixed to the engines and conform in all material respects to the engines that were tested in support of the relevant application for certification. Respondent shall provide a copy of the plan to EPA within 90 days from the date of this Agreement.
17. All submissions shall be sent to EPA at the following address:

Jeffrey A. Kodish, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch  
12345 West Alameda Parkway, Suite 214  
Denver, CO 80228  
facsimile: (303) 236-9514

18. Respondent shall pay to the United States a civil penalty of eight thousand five hundred dollars (\$8,500) within 60 calendar days of the effective date of this Agreement. Late payment of the civil penalty and the stipulated penalties under Paragraph 24 of this Agreement are 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 # 7161

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 17 or faxed to (303) 236-9514 to the attention of Jeffrey A. Kodish. Such check shall be identified with the case number and Respondent's name.

19. In addition to the civil penalties set forth in Paragraph 18, above, the parties acknowledge that Customs will require payment of a forfeiture remission amount for the disposition of the Customs Seizure cases relating to the Subject Engines. EPA will recommend to Customs that it collect eight thousand dollars (\$8,000) as a forfeiture remission amount for the two Customs cases relating to the Subject Engines, as long as the Respondents fully comply with the terms of this Agreement.

#### **General Provisions**

20. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to the Respondent.
21. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
22. Notwithstanding any other provision of this agreement, upon Respondent's failure to

perform, 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 its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.

23. The Effect of Settlement described in Paragraph 26 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Attachments 1, and the prompt and complete remediation of any violations in accordance with this Agreement.

**Stipulated Penalties:**

24. 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 timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 18, \$400 per day.
  - B. For failure to timely export or destroy the Subject Engines, or provide proof of such exportation, pursuant to Paragraphs 14 and 15, \$500 per day.
  - C. For failure to timely submit a compliance assurance plan required pursuant to Paragraph 16, \$500 per day.
25. All stipulated penalties under Paragraph 24 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 18 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.

**Effect of Agreement**

26. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

**Karya Brothers Network, Inc.**

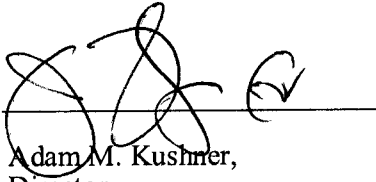
By:   
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(name)  
(title) *Benny yap.*  
*Director*  
*KBN Inc.*

*2/15/07*  
\_\_\_\_\_  
Date

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**United States Environmental Protection Agency**

By:

A handwritten signature in black ink, appearing to be 'AK', written over a horizontal line.

Adam M. Kushner,  
Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance

2-27-07  
Date



## ATTACHMENT 1

### In the Matter of Karya Brothers Network, Inc. Spark Ignition Engines

Entry Date	Entry Number	Model	Qty.	Manufacturer
5-18-06	BDD-0841889-5	GFH3000LX YK650	450	Shandong Huasheng Zhongtian Machinery Group Co., Ltd.
5-19-06	BDD-0841890-3	GFH7000LXE YK1300	192	Samafuji Electrical Co. Ltd.

## ATTACHMENT 2

### In the Matter of Karya Brothers Network, Inc. Spark Ignition Engines

<b>Engine Manufacturer</b>	<b>Engine Serial #</b>	<b>Build Date</b>	<b>HP</b>
KBN	U4HS5501223	2004	5.5
Shandong	H5HTH6500831	2005	5.5
Powerful Machinery	H5HTH4000001	2005	4.0
KBN	L4SPH6500085U	2005	6.5
Powerful Machinery	H5HTH8000006	2005	8.0
Samafuji	H5HTH1300029	2005	13.0
Samafuji	D5SPH90000251	2005	9.0
Samafuji	L4SPH1100044U	2005	11.0
Shandong	F5HSH66002076	2005	6.5
Shandong	H5HTH6500154	2005	6.5
Shandong	H5HTH6500135	2005	5.5
Shandong	G5HTH6500000	2005	6.5
Powerful Machinery	F5PWH1300005	2005	13.0