

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C.**

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In the Matter of:)	
)	
)	SETTLEMENT AGREEMENT
Kawasaki Motors Corp., U.S.A.)	AND AUDIT POLICY DETERMINATION
)	
)	EPA File No. MSEB/AED #7148
)	
Respondent.)	
)	

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Kawasaki Motors Corp., U.S.A., located at 9950 Jeronimo Road, Irvine, California 92618 (Kawasaki).

A. Preliminary Statement

1. By letter dated August 19, 2004, Kawasaki disclosed to EPA the existence of apparent violations of the spark injection nonroad engine regulations, 40 C.F.R. Part 90 (SI nonroad regulations), occurring in 2003 and 2004.

2. Kawasaki disclosed that, as the manufacturer and importer of the following nonroad engines manufactured in Japan and imported into the United States (Subject Engines):

a. Kawasaki failed to re-certify in model year 2003 and again in model year 2004 (in the January through July 2004 time period), five engine families of small, handheld SI engines that had previously been certified as compliant for model year 2002;

b. approximately 25,000 engines imported into the United States were effected by this failure; and

c. The five Subject Engine families identified by Kawasaki were:
2 KAXS.0404DA; 2 KAXS.0494DA; 2 KAXS.0234DA; 2 KAXS.0254DA; and
2 KAXS.0334DA.

3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the

importation of, any nonroad engines, including engines contained in nonroad equipment or vehicles, unless the engine is covered by a certificate of conformity issued and in effect.

4. The SI nonroad regulations, at 40 C.F.R. § 90.106(a)(1), provide that every manufacturer of new nonroad engines produced during or after model year 1997 must obtain a certificate of conformity covering such engines. These regulations also prohibit, at 40 C.F.R. § 1003(a)(1)(ii), the importation into the United States of any nonroad engine manufactured after the applicable effective date under the regulations unless such engine is covered by a certificate of conformity issued and in effect.

5. As a result of Kawasaki's disclosures and EPA's follow-up investigation, EPA has determined that: Kawasaki is the manufacturer and importer of the Subject Engines identified in Paragraph A(2), above; none of these engines were certified in either model year 2003 or model 2004 (in the January through July 2004 time period), as is required pursuant to 40 C.F.R. § 90.106; all these uncertified engines were imported into the United States in violation of 40 C.F.R. 90.1003(a)(1)(ii).

6. The Clean Air Act, at Sections 203(a) and 213(d) (42 U.S.C. § 7524(a) and 7547(d), respectively), and the SI nonroad regulations at 40 C.F.R. § 90.1006(a)(1), subject violators of these laws to a maximum civil penalty of \$27,500 per day for each violation occurring between January 30 1997 and March 15, 2004, and \$33,500 per day for each violation occurring thereafter, plus the amount of economic benefit or savings resulting from each violation.

7. Based on the foregoing, EPA has determined that Kawasaki is liable for five violations of Sections 203(a) and 213(d) of the Act for failing to certify five engine families of imported engines in model year 2003, and additional five such violations for model year 2004, in the January through July 2004 time period. These violations arise from at least 10 violations of 40 C.F.R. § 90.106(a)(1) and 40 C.F.R. § 90.1003(a)(1)(ii).

8. Kawasaki requested application to its disclosed violations of EPA's "Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (65 Fed. Reg. 19618 (2000)) ("Audit Policy").

B. EPA's Audit Policy Determination and Administrative Action

1. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties. EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.

2. Where the disclosing party establishes that it satisfies all of the conditions set forth in the Audit Policy, EPA will not seek gravity-based penalties for violations of federal environmental requirements. Where the disclosing party establishes that it satisfies all of the Audit Policy conditions with the exception of establishing that the violations were found through a formal audit or due diligence, EPA will reduce the gravity-based penalty for the violations by 75%.

3. After investigation of the disclosures about violations of the SI nonroad regulations made by Kawasaki and identified in Paragraph A(2) of this Agreement, EPA concludes that Kawasaki meets the requirements of the Audit Policy with the exception of establishing that the violations were found through a formal audit or due diligence. Application of the Audit Policy under such circumstances results in the elimination of 75% of the gravity-based component of the penalty for these violations.

4. After considering the gravity of the violations disclosed in paragraph A(2) of this Agreement, Kawasaki's history of compliance, the terms of this Agreement, other facts presented by Kawasaki, the application of the Audit Policy to these violations, and contingent upon the truthfulness and accuracy of the Audit Policy information provided by Kawasaki, EPA has determined to conditionally remit and mitigate the civil penalty for the violations to \$37,500. This penalty reflects the reduced gravity component under the Audit Policy and an economic benefit component that is assumed to de minimis.

C. Terms of Agreement

The parties, desiring to settle and resolve the disclosed SI nonroad regulation violations, in consideration of the mutual covenants and agreements contained herein, which consideration

is acknowledged by the parties to be adequate, agree as set forth herein.

1. The parties agree that the settlement of this matter is in the public interest and that this Settlement Agreement (“Agreement”) is the most appropriate means of resolving the disclosed violations.

2. Jurisdiction to settle this matter exists pursuant to sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), 40 C.F.R. Part 80, and other provisions of law.

3. At all relevant times when the violations occurred, Kawasaki was the manufacturer and importer of the Subject Engines within the meaning of 40 C.F.R. § 90.3.

4. Kawasaki failed to re-certify in violation of 40 C.F.R. § 90.106(a)(1), both in model year 2003 and again in model year 2004 (in the January through July 2004 time period), five engine families of small, handheld SI engines that had previously been certified as compliant for model year 2002; the five uncertified engine families were: 2 KAXS.0404DA; 2 KAXS.0494DA; 2 KAXS.0234DA; 2 KAXS.0254DA; and 2 KAXS.0334DA; and approximately 25,000 of these uncertified engines were imported into the United States as a result of this failure, in violation of 40 C.F.R. § 90.1003(a)(1)(ii).

5. As the nonroad engine manufacturer and importer of the Subject Engines, Kawasaki is responsible for a minimum of ten violations of 40 C.F.R. § 90.106(a)(1) and 40 C.F.R. § 1003(a)(1)(ii).

6. After considering the gravity of the violations, Kawasaki’s history of compliance, the terms of this Agreement, other facts presented by Kawasaki, the application of the Audit Policy to this case, and contingent upon the truthfulness and accuracy of the Audit Policy information provided by Kawasaki, EPA has determined to remit and mitigate the civil penalty for the violations disclosed by Kawasaki, to \$37,500.

7. As a means of resolving the disclosed SI nonroad engine violations identified in Paragraph A(2) of this Agreement, Kawasaki agrees to pay to EPA a civil penalty of \$37,500 within thirty days of receipt of the fully executed Agreement from the EPA (the “penalty due date”). Late payment of this civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Kawasaki agrees to pay this penalty to EPA by cashier's check or certified check, with

the notation "AED/MSEB - 7148", payable to the "United States of America". The penalty is to be mailed to the following address:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB - 7148

A copy of the penalty check shall be simultaneously forwarded to Judy Lubow at the following address:

Judy Lubow, Attorney
U.S. Environmental Protection Agency
12345 West Alameda Parkway
Suite 214
Denver, CO 80228

8. Time is of the essence to this Agreement. Upon Kawasaki's failure to timely pay the civil penalty by the penalty due date listed in paragraph C(7) of this Agreement, the civil penalty of \$37,500 shall immediately become due and owing by Kawasaki. Upon such failure to timely perform, the EPA may commence an action to enforce this Agreement, or to recover civil penalties for the disclosed violations pursuant to § 205 of the Clean Air Act, or pursue any other remedies available to it. Kawasaki specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on a claim of violations of § 211 of the Act, 42 U.S.C. § 7545, and Kawasaki expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of the passage of time.

9. This Agreement becomes effective upon the date signed by the EPA, after which time a copy will be forwarded to Kawasaki.

10. The parties hereby represent that the individual executing this Agreement on behalf of the respective party is authorized to do so and that such execution intended and is sufficient to bind the party and, when applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

11. The effect of the settlement described in the Paragraph C(13) of this Agreement is

conditional upon the accuracy of Kawasaki's representations to EPA as memorialized in paragraph A(2) of this Agreement.

12. Kawasaki waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to matters agreed to herein.

13. The terms of this Agreement shall be the complete settlement of all civil administrative claims and causes of action under the SI nonroad regulations for the violations disclosed by Kawasaki to EPA in its August 19, 2004 letter. Kawasaki's full completion of the terms of this Agreement shall terminate this matter, with, however, such termination being contingent upon the accuracy and truthfulness of the information provided about the violations by Kawasaki.

14. Nothing herein shall limit the right of the EPA to proceed against Kawasaki in the event of default or noncompliance with this Agreement; for violations of Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), which are not the subject matter of this Agreement; or for other violations of law.

15. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

16. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

The following agree to the terms of this Agreement:

Kawasaki Motors Corp., U.S.A.

by: Shigeo Takagi
Shigeo Takagi
General Manager
Product Advancement & Racing

Date: 6/19/06

Settlement Agreement and Audit Policy Determination in the Matter of Kawasaki Motors Corp., U.S.A. - MSEB/AED #7148

United States Environmental Protection Agency

by: 

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

Date: 7/11/06