

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

In the Matter of:	)	
	)	ADMINISTRATIVE
Solus International Corporation and	)	SETTLEMENT AGREEMENT
Kandi USA, Inc.,	)	AED/MSEB-7809
	)	
Respondents.	)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Solus International Corporation (Solus), 4210 198<sup>th</sup> Street, Suite 111, Lynnwood, WA 98038, and Kandi USA, Inc., (Kandi) 1450 East Francis Street, Los Angeles, CA 90012 (collectively Respondents).

**Purpose**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve ninety-eight alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and the implementing small spark-ignition (SI) nonroad engine regulations, 40 C.F.R. Part 90.

**Statutory Authority**

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit a manufacturer from manufacturing for sale in the United States and prohibit any person from importing for resale or causing such importation of any new nonroad vehicle or engine, unless such vehicle or engine is covered by an EPA-issued certificate of conformity issued and in effect (EPA-COC) and bears the required EPA emissions information label.

**Regulatory Authority**

3. 40 C.F.R. § 90.1003(a)(1)(i) prohibits a manufacturer of new nonroad engines from distributing, selling, offering for sale, introducing, or delivering for introduction into commerce any new nonroad engine manufactured after the effective date of the regulations, unless the engine is covered by an EPA-COC.

4. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing for resale into the United States any nonroad engine manufactured after the effective date of the regulations, unless such engine is covered by an EPA-COC.
5. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits an engine manufacturer from selling, offering for sale, introducing, or delivering for introduction into commerce any nonroad engine manufactured after the effective date of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 90.114.
6. 40 C.F.R. § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad engine, a permanent and legible label identifying each nonroad engine and containing certain information (EPA-label).
7. 40 C.F.R. § 90.3 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or the importing of such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
8. 40 C.F.R. § 1051.801 defines an all-terrain vehicle as a land-based or amphibious nonroad vehicle that is either (1) designed to travel on four low pressure tires, designed to be straddled by the operator and steered by handlebars, and intended for use by a single operator and no other passengers, or (2) designed, among other things, to operate over rough terrain.
9. 40 C.F.R. § 85.1703 defines a motor vehicle as any self-propelled vehicle that is capable of transporting a person, any material, or apparatus, unless the vehicle, among other things, cannot exceed a maximum speed of 25 miles per hour (mph) over a level-paved surface.

### **Definitions**

10. For the purposes of this Agreement, the following definitions apply:
  - a. *Applicable regulation and dates:* 40 C.F.R. Part 90 is applicable to SI nonroad engines at or below 19 kilowatts (kW) built after the applicable dates in

40 C.F.R. Part 90. 40 C.F.R. Part 90 is also applicable to engines that have a total engine displacement at or below 1,000 cubic centimeters (cc), have a maximum power at or below 30 kilowatts (kW), and are in an engine family that has a valid EPA-COC showing that the engine meets emission standards for Class II engines under 40 C.F.R. Part 90 for the appropriate model year.

- b. *Certified engine*: A nonroad engine built after the applicable dates of the regulations and that is covered by an EPA-COC.
- c. *Certificate of Conformity*: The document issued by EPA to a manufacturer under 40 C.F.R. § 90.106, as applicable, 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 CAA.
- d. *Uncertified engine*: A nonroad engine built after the applicable dates of the regulations but that is not covered by an EPA-COC.
- e. *Export*: To transport to a location outside of North America and the territories of the United States.
- f. *Destroy*: The complete destruction of each vehicle and engine. Each engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything. In addition, each vehicle shall be disassembled and broken down in such a manner that it can never be reassembled or used to transport anything.
- g. *This matter*: Respondents' importation of the mini cars that contained nonroad engines as described in Paragraph 11 of this Agreement, the corrective action, and civil penalty that may apply to such alleged violations.

### **Alleged Violations**

11. On or about September 23, 2008, Solus imported into the Port of Savannah, GA, twenty-eight mini cars that contained SI nonroad engines (subject vehicles). The subject vehicles are described in Appendix 1 to this Agreement.

12. Solus declared on the EPA Declaration Form, 3520-1 (Rev 1-06) that the subject vehicles were U.S. certified and bore EPA-labels.
13. The Department of Homeland Security's Bureau of Customs and Border Protection (U.S. Customs) inspected a sample of the subject vehicles and documented, among other things, that the subject vehicles bore EPA-labels stating that the subject vehicles are manufactured by Zhejiang Kangdi Vehicles Co., LTD, are imported by Kandi USA, Inc., are covered under engine family 8KNDX.250GML, have an engine displacement of 244 cc, and conform with EPA regulations for 2008 model year ATVs.
14. U.S. Customs also documented that the subject vehicles did not meet the regulatory definition of an ATV, i.e., the subject vehicles were designed as a mini car and were not designed to operate over rough terrain. In addition, the owner's manuals that accompanied the subject vehicles identify the subject vehicles as a Kandi COCO KD08A with, among other things, a maximum speed of 25 mph.
15. The EPA-COC for engine family 8KNDX.250GML only covers ATVs or vehicles/engines that are fully described in the manufacturer's certification application. The certification application for the engine family states that the ATV is equipped with emissions controls such as a catalytic converter, and does not identify Solus as a manufacturer/importer, identify model number KD08A COCO as a covered model, or specify that the maximum speed of the vehicle is 25 mph.
16. On or about January 28, 2009, Solus self-disclosed to EPA that it had similarly imported seventy additional mini cars, model number KD08A COCO, as described in Appendix 2 to this Agreement (subject vehicles).
17. EPA's Small Business Compliance Policy (Small Business Policy), April 5, 2000, allows EPA to significantly reduce the gravity-based (i.e., non-economic benefit) penalty where the violator finds the violation through voluntary environmental audits or efforts that reflect due diligence, and promptly discloses and expeditiously corrects the violation.

18. The Small Business Policy also imposes important safeguards to prevent abuses of its use. These safeguards require: (1) prompt disclosure of the violation, (2) expeditious correction of the violation, (3) action to prevent recurrence of the violation, and (4) action to remedy any environmental harm that occurred as a result of the violation. Additionally, certain violations are ineligible for consideration under the policy such as: (1) repeat violations, (2) violations discovered by non-voluntary means, i.e., an EPA information request, inspection, field citation, or tip; (3) violations that caused actual harm, (4) violations that present imminent and substantial endangerment, and (5) violations that involve criminal conduct.
19. Based on the foregoing, EPA alleges that the ninety-eight subject vehicles were not eligible for coverage under engine family 8KNDX.250GML. As the manufacturers of the uncertified subject vehicles, Respondents committed ninety-eight violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the SI nonroad engine regulations, 40 C.F.R. § 90.1003(a).
20. By entering into this Agreement, Respondents do not admit that they have committed any violations of the CAA or its implementing regulations, including any of the violations alleged in Paragraph 19 of this Agreement.

**Corrective Action**

21. No later than thirty days from the effective date of this Agreement or such longer period of time as required by U.S. Customs, Respondents shall export or destroy the ninety-eight subject vehicles. This exportation or destruction shall be carried out under the supervision of U.S. Customs.
22. No later than thirty days from the date of the corrective action, Respondents shall submit to EPA a corrective action report. The report shall fully describe the corrective action taken, identify the subject vehicles by their vehicle identification number, and certify that the corrective action was conducted as described. The report shall also include supporting

documents (e.g., loading, shipping and freight documents) to further verify that the subject vehicles were either exported or destroyed.

**Civil Penalty**

23. Each Respondent shall pay a civil penalty of \$40,000 to the United States of America. The penalty shall be payable in eight (8) consecutive monthly payments of \$5,000 each. The first payment shall be due no later than thirty days from the effective date of the Agreement. Similarly, the second payment shall be due no later than sixty days, the third payment no later than ninety day, *etc.* The final payment shall be due no later than 240 days from the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraph 25 of this Agreement. Each 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  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Attn: AED/MSEB -7809.

Each Respondent may also pay online at [www.pay.gov](http://www.pay.gov). From the “Search Public Form” field, Respondent shall enter “SFO 1.1”, click “EPA Miscellaneous Payments - Cincinnati Finance Center”, and complete the SFO Form Number 1.1.

**Notice**

24. A copy of the payment(s) shall be faxed to Jocelyn L. Adair, Esq., at (202) 564-1068 no later than twenty-four (24) hours after payment(s). All correspondence concerning this Agreement shall be sent to:

**(Regular Mail)**

Jocelyn L. Adair, Esq.  
U.S. Environmental Protection Agency  
Mail Code 2242A

**(Courier Service)**

Jocelyn L. Adair, Esq.  
U.S. EPA  
Ariel Rios South, Room 1109A

1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Attn: AED/MSEB-7809.

1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

### **Stipulated Penalties**

25. Time is of the essence under this Agreement. Upon the failure to comply or timely comply with the requirements in Paragraphs 21 through 24 of this Agreement, each Respondent shall pay stipulated penalties to the United States as follows:
- a. For failure to export or destroy, the subject vehicles or provide proof thereof, pursuant to Paragraphs 21, 22, and 24 of this Agreement, \$250.00 per day; and
  - b. For failure to timely pay the civil penalty or provide proof thereof, pursuant to Paragraphs 23 and 24 of this Agreement, \$250.00 per day.
26. All stipulated penalties under Paragraph 25 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 the manner specified in Paragraph 23 of this Agreement. In addition, a copy of the transmittal letter(s) and payment(s) shall be sent to the Jocelyn L. Adair, Esq., at the address specified in Paragraph 24. All stipulated penalties shall be paid to the United States of America within five (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. 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 Respondents' violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

### **General Provisions**

27. The effective date of this Agreement is the date that EPA executes the Agreement, at which time a copy will be returned to Respondents.

28. Each 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 each Respondent, Respondent's agents, assigns, or successors.
29. Notwithstanding any other provisions of this Agreement, Respondents agree that upon their default or failure to comply with the 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 CAA, 42 U.S.C. § 7524, commence an action to enforce this Agreement, or pursue any other available remedies. Each Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, or other statutes of limitation. Each Respondent acknowledges that its tax identification number may be used for collecting or reporting delinquent monetary obligation arising from this Agreement, *see* 31 U.S.C. § 7701.
30. This settlement is contingent upon the truthfulness, accuracy and completeness of Solus's disclosure and representation to EPA, and the prompt and complete remediation of any violations in accordance with this Agreement.

#### **Effects of Enforcement**

31. 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 Respondents 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 Respondents of responsibility to comply with other state, federal or local law or regulations, and does not address Respondents' potential liability to U.S. Customs for engines that are seized or detained now or in the future.

The following agree to the terms of this Agreement:



**Administrative Settlement Agreement: In the Matter of Solus International Corporation and Kandi USA, Inc., AED/MSEB-7809**

Solus International Corporation

By: 

Date: 6/28/2009

Print Name: Zheng Li

Print Title: President

Federal Tax Identification Number: 26-1988889

**Administrative Settlement Agreement: In the Matter of Solus International Corporation and Kandi USA, Inc., AED/MSEB-7809**

Kandi USA, Inc.

By: 

Date: 05/28/09

Print Name: Cindy Zhang

Print Title: Representative

Federal Tax Identification Number: 205050301

**Administrative Settlement Agreement -In the Matter of Solus International Corporation  
and Kandi USA, Inc., AED/MSEB-7809**

**U.S. Environmental Protection Agency**

By: Matthew W. Morrison Date: 6/5/09

Matthew W. Morrison  
Acting Director  
Air Enforcement Division

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and Kandi USA, Inc., AED/MSEB-7809**

**Appendix 1**

No.	VIN	No.	VIN	No.	VIN
1	LA9SFLZR58MZKD117	12	LA9SFLZRX8MZKD128	23	LA9SFLZR48MZKD139
2	LA9SFLZR08MZKD087	13	LA9SFLZR08MZKD137	24	LA9SFLZR08MZKD140
3	LA9SFLZR38MZKD066	14	LA9SFLZR08MZKD123	25	LA9SFLZR68MZKD143
4	LA9SFLZR98MZKD119	15	LA9SFLZR88MZKD127	26	LA9SFLZR28MZKD141
5	LA9SFLZRX8MZKD114	16	LA9SFLZR18MZKD132	27	LA9SFLZR18MZKD129
6	LA9SFLZR28MZKD088	17	LA9SFLZR58MZKD120	28	LA9SFLZR28MZKD138
7	LA9SFLZR48MZKD125	18	LA9SFLZR78MZKD135		
8	LA9SFLZR18MZKD115	19	LA9SFLZR98MZKD136		
9	LA9SFLZR88MZKD130	20	LA9SFLZRX8MZKD131		
10	LA9SFLZR98MZKD105	21	LA9SFLZR38MZKD133		
11	LA9SFLZR78MZKD121	22	LA9SFLZR28MZKD124		

**Administrative Settlement Agreement -In the Matter of Solus International Corporation  
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**Appendix 2**

**Vehicle Identification Numbers (VIN):**

LA9SFLZR28MZKD009	LA9SFLZR78MZKD071
LA9SFLZR68MZKD031	LA9SFLZR98MZKD072
LA9SFLZR88MZKD032	LA9SFLZR08MZKD073
LA9SFLZRX8MZKD033	LA9SFLZR28MZKD074
LA9SFLZR18MZKD034	LA9SFLZR48MZKD075
LA9SFLZR38MZKD035	LA9SFLZR68MZKD076
LA9SFLZR58MZKD036	LA9SFLZR88MZKD077
LA9SFLZR78MZKD037	LA9SFLZRX8MZKD078
LA9SFLZR98MZKD038	LA9SFLZR18MZKD079
LA9SFLZR08MZKD039	LA9SFLZR88MZKD080
LA9SFLZR78MZKD040	LA9SFLZRX8MZKD081
LA9SFLZR98MZKD041	LA9SFLZR18MZKD082
LA9SFLZR08MZKD042	LA9SFLZR38MZKD083
LA9SFLZR28MZKD043	LA9SFLZR58MZKD084
LA9SFLZR48MZKD044	LA9SFLZR78MZKD085
LA9SFLZR68MZKD045	LA9SFLZR98MZKD086
LA9SFLZR88MZKD046	LA9SFLZR48MZKD089
LA9SFLZRX8MZKD047	LA9SFLZR08MZKD090
LA9SFLZR18MZKD048	LA9SFLZR28MZKD091
LA9SFLZR38MZKD049	LA9SFLZR48MZKD092
LA9SFLZRX8MZKD050	LA9SFLZR68MZKD093
LA9SFLZR18MZKD051	LA9SFLZR88MZKD094
LA9SFLZR38MZKD052	LA9SFLZRX8MZKD095
LA9SFLZR78MZKD054	LA9SFLZR18MZKD096
LA9SFLZR98MZKD055	LA9SFLZR38MZKD097
LA9SFLZR08MZKD056	LA9SFLZR58MZKD098
LA9SFLZR28MZKD057	LA9SFLZR78MZKD099
LA9SFLZR48MZKD058	LA9SFLZRX8MZKD100
LA9SFLZR68MZKD059	LA9SFLZR18MZKD101
LA9SFLZR28MZKD060	LA9SFLZR38MZKD102
LA9SFLZR48MZKD061	LA9SFLZR58MZKD103
LA9SFLZR68MZKD062	LA9SFLZR78MZKD104
LA9SFLZRX8MZKD064	LA9SFLZR08MZKD106
LA9SFLZR98MZKD069	LA9SFLZR28MZKD107
LA9SFLZR58MZKD070	LA9SFLZR48MZKD108