

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

In the Matter of:

Zenith Power Products LLC

Respondent.

**SETTLEMENT AGREEMENT
AED/MSEB #7265**

This Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA), and Zenith Power Products LLC (Respondent), to resolve allegations of non-compliance by Respondent with the requirements of Sections 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. Parts 1048 and 1068.

Purpose

1. The purpose of this Agreement is to resolve any and all claims by EPA under the Act and the regulations governing large nonroad spark-ignition (LSI) engines, codified at 40 C.F.R. Parts 1048 and 1068, arising out of Respondent's introduction into commerce of 5,502 LSI engines without aftertreatment components that were specified as part of its certified configuration (Subject Engines).

Definitions

2. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter*: as used in this Agreement, means Respondent's introduction into commerce of the Subject Engines without aftertreatment components (catalytic converters) that were specified as part of their certified configuration and any civil liability that may apply to such non-compliance.
 - b. *Certificate Holder*: a person or entity who has applied for and received an EPA Certificate of Conformity (certificate)
 - c. *Introduction into Commerce*: is interpreted by EPA to include the shipment of an engine to a third party including the manufacturer of equipment containing those engines.
 - d. *Delegated Final Assembly Exemption*: is an exemption that allows shipment of an engine separately from aftertreatment components specified as part of its certified configuration, contingent upon adherence to all of its provisions.
 - e. *Effective Date of the Applicable Regulations*: is January 1, 2004.

Statutory & Regulatory Authority

3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7542(a) and 7547(d), prohibit the sale, offering for sale, introduction, delivery for introduction into commerce, and/or the importation of any new nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is covered by a certificate issued (and in effect).

4. 40 C.F.R. Part 1048 regulates the emissions from new LSI engines.
5. 40 C.F.R. Part 1068 applies to LSI engines subject to 40 C.F.R. Part 1048.
6. 40 C.F.R. §1068.101(a)(1) prohibits the introduction into commerce of LSI engines unless such engine is in conformity with and covered by a certificate.
7. 40 C.F.R. § 1068.260(a) exempts any LSI engine which is shipped separately from an aftertreatment component required by its certificate from the prohibitions of § 1068.101(a)(1) if all the provisions of 40 C.F.R. § 1068.260(a) are followed.
8. 40 C.F.R. § 1068.260(a) requires that in order to qualify for the Delegated Final Assembly Exemption (1) an EPA certificate be applied for and received before shipment; (2) aftertreatment device installation instructions are provided in enough detail to ensure that the engine will be in its certified configuration if the instructions are followed; (3) a contract with the equipment manufacturer is in place that obligates final assembly of each engine in its certified configuration; (4) the cost of all aftertreatment components is included in the cost of the engine; (5) the aftertreatment components are shipped to the equipment manufacturer; (6) appropriate additional steps (affidavits, audits and record keeping) are performed as specified; (7) plans for compliance with the auditing procedures are provided in the application for certification; (8) required records are kept; and 9) the engine is properly labeled pursuant to 40 C.F.R. § 1048.135.

Background

9. On November 6, 2006, EPA issued an information request under Section 208(a) of the Act, 42 U.S.C. § 7424(a), to Respondent to determine Respondent's compliance with the Act and the regulations at 40 C.F.R. Part 1068.
10. Respondent's response showed that between 2004 and 2006, Respondent shipped and thus introduced into commerce 5,502 LSI engines without the required catalytic converters to third parties, i.e., its equipment manufacturers/dealers, and did not meet the specified Delegated Final Assembly Exemption provisions of 40 C.F.R. § 1068.260(a). These 5,502 Subject Engines are listed individually in Appendix 1 to this Agreement.
11. Respondent is the Certificate Holder of the 5,502 Subject Engines.
12. The Subject Engines were manufactured after the Effective Date of the Applicable Regulations.
13. Based on the foregoing, EPA alleges that Respondent is liable for 5,502 violations of Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7542(a) and 7547(d), arising from Respondent's introduction into commerce of the 5,502 Subject Engines that did not meet the Delegated Final Assembly Exemption provisions.

Terms of Agreement

14. This Agreement does not preclude any other action by EPA for violations that are not part of this Agreement, or any future violations of the Act or regulations promulgated thereunder.

15. Respondent shall pay to the United States a civil penalty of \$40,000 within 30 calendar days of 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.

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 63179-9000

ATTN: AED/MSEB #7265

A photocopy of the check shall be telefaxed simultaneously to Angela E. Fitzgerald at the number specified in Paragraph 16. Alternatively, Respondent may effect an online payment by visiting www.pay.gov, and entering "sfo 1.1" in the "Search Public Forms" field to access the EPA Payment Form.

16. A copy of all correspondence and certifications to EPA concerning this Agreement shall be sent to:

Angela E. Fitzgerald (2242A)
U. S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Fax: 202/564-0015

General Provisions

17. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.

18. 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.
19. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or 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. Parts 1048 and 1068. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement, *see* 31 U.S.C. § 7701.
20. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, and the prompt and complete remediation of any violations in accordance with this Agreement.
21. Respondent has demonstrated a financial inability to pay a penalty amount greater than the amount provided in this Agreement.

Stipulated Penalties:

22. For failing to comply with the terms of this Agreement by failing to timely pay the penalty, or provide proof of such payment pursuant to Paragraph 15, \$400 per day.
23. Stipulated penalties under Paragraph 22 of this Agreement shall begin to accrue on the calendar day after performance is due, and shall continue to accrue until the calendar day compliance is achieved. All stipulated penalties shall be paid in accordance with Paragraph 15 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.

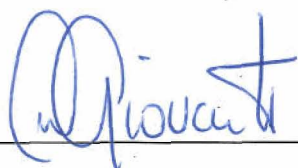
Effect of Agreement

24. 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 its responsibility to comply with other state, federal, or local laws or regulations.

The following agree to the terms of this Agreement:

Settlement Agreement In the Matter of Zenith Power Products LLC - AED/MSEB #7265

Zenith Power Products LLC

By: 

Date: FEBRUARY 26th 2009

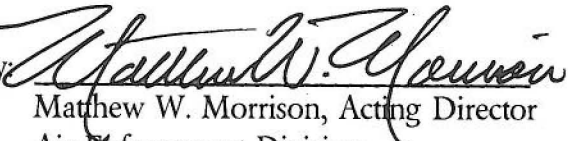
Typed name: Darcio Giovanetti

Typed title: President

Federal Tax Identification Number: 91-2191124

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U.S. Environmental Protection Agency

By: 
Matthew W. Morrison, Acting Director
Air Enforcement Division

Date: February 27, 2009