

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

----- X  
UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil No. 13-cv-912

AMERICAN HONDA MOTOR  
COMPANY, INC.,

Defendant.

----- X

**CONSENT DECREE**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	JURISDICTION AND VENUE .....	1
III.	APPLICABILITY .....	1
IV.	DEFINITIONS.....	2
V.	CIVIL PENALTY.....	3
VI.	COMPLIANCE REQUIREMENTS.....	3
VII.	REPORTING REQUIREMENTS .....	3
VIII.	STIPULATED PENALTIES .....	4
IX.	FORCE MAJEURE .....	5
X.	DISPUTE RESOLUTION .....	6
XI.	INFORMATION COLLECTION AND RETENTION.....	8
XII.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS .....	9
XIII.	COSTS .....	9
XIV.	NOTICES.....	9
XV.	EFFECTIVE DATE.....	10
XVI.	RETENTION OF JURISDICTION .....	10
XVII.	MODIFICATION .....	10
XVIII.	TERMINATION.....	11
XIX.	PUBLIC PARTICIPATION .....	11
XX.	SIGNATORIES/SERVICE.....	11
XXI.	INTEGRATION .....	12
XXII.	FINAL JUDGMENT .....	12

## **I. INTRODUCTION**

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, American Honda Motor Company, Inc. (“AHM”), violated Section 203(a)(1) of the Clean Air Act (“Act”), 42 U.S.C. § 7522(a)(1).

B. The Complaint alleges that AHM sold, offered for sale, or introduced or delivered for introduction into commerce new non-road spark-ignition engines that did not conform to the design specifications in its applications for certificates of conformity in that they did not include in the same shipment with the engines, certain emission-related engine components, including air intake systems and mufflers.

C. AHM denies the violations alleged in the complaint and does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

D. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 205 of the Act, 42 U.S.C. § 7524, and over the Parties. Venue lies in this District pursuant to Section 205 of the Act, 42 U.S.C. § 7524, because the Administrator has his principal place of business here. For purposes of this Decree, AHM consents to the Court’s jurisdiction and consents to venue in this judicial district.

2. For purposes of this Consent Decree, AHM agrees that the Complaint states claims upon which relief may be granted pursuant to Section 203(a)(1) of the Action, 42 U.S.C. § 7522(a)(1).

## **III. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon AHM and any successors, assigns, or other entities or persons otherwise bound by law. No transfer or change in ownership, or corporate or other legal status of AHM, including any transfer of assets or personal property, shall relieve AHM, its successors, or assigns of their responsibilities under this Consent Decree.

4. AHM shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree.

5. In any action to enforce this Consent Decree, AHM shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

#### IV. DEFINITIONS

6. Terms used in this Consent decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Complaint” shall mean the complaint filed by the United States in this action;
- b. “Consent Decree” or “Decree” shall mean this Decree;
- c. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- d. “Defendant” and “AHM” shall mean American Honda Motor Company, Inc.;
- e. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- f. “Effective Date” shall have the definition provided in Section XV;
- g. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;
- h. “Parties” shall mean the United States and AHM;
- i. “Section” shall mean a portion of this Decree identified by a roman numeral;
- j. “United States” shall mean the United States of America, acting on behalf of EPA.

## V. CIVIL PENALTY

7. Within 30 Days after the Effective Date, AHM shall pay the sum of \$580,000 as a civil penalty together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

8. AHM shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to AHM, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Columbia, 555 Fourth Streets, N.W., Washington, D.C., 202-514-7211. At the time of payment, AHM shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. American Honda Motor Co., Inc.*, and shall reference the civil action number and DOJ case number 90-5-2-1-10148, to the United States in accordance with Section XIV (Notices); by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

9. AHM shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

## VI. COMPLIANCE REQUIREMENTS

10. Recoupment of Excess Emissions.

a. Within 30 Days of the Effective Date, AHM shall retire 55 tons of hydrocarbons (HC) plus nitrogen oxides (NOx) (the “credits”) in compensation to the United States for the excess pollution generated by the installation of the improper air boxes. AHM shall permanently retire any credits designated and/or purchased for this purpose and AHM cannot use such credits for any additional purpose.

b. The credits shall come only from the following source: AHM’s Averaging, Banking and Trading (AB&T) account.

c. Within 60 Days of the Effective Date, AHM shall provide written evidence of its compliance with this Paragraph by sending a Notice in accordance with Section XIV of this Consent Decree (Notices).

## VII. REPORTING REQUIREMENTS

11. All reports shall be submitted to the persons designated in Section XIV (Notices).

12. Each report submitted by AHM under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

13. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

14. The reporting requirements of this Consent Decree do not relieve AHM of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

15. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

## **VIII. STIPULATED PENALTIES**

16. AHM shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure).

17. If AHM fails to pay the civil penalty required to be paid to the United States by the deadline in Paragraph 7, AHM shall pay both interest at the rate specified in 28 U.S.C. § 1961 and a stipulated penalty of \$1000 per Day for each Day that the payment is late.

18. If AHM fails to retire the required number of credits by the deadline set forth in Paragraph 10, it shall pay to the United States a stipulated penalty of \$500 per day for each day the full amount of the credits are not retired.

19. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

20. AHM shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

21. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

22. Stipulated penalties shall continue to accrue as provided in Paragraph 19, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, AHM shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, AHM shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, AHM shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

23. AHM shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 8, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

24. If AHM fails to pay stipulated penalties according to the terms of this Consent Decree, AHM shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for AHM's failure to pay any stipulated penalties.

25. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for AHM's violation of this Consent Decree or applicable law.

## **IX. FORCE MAJEURE**

26. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of AHM, of any entity controlled by AHM, or of AHM's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite AHM's best efforts to fulfill the obligation. The requirement that AHM exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent

possible. "Force Majeure" does not include AHM's financial inability to perform any obligation under this Consent Decree.

27. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, AHM shall provide written notice within 15 days to the United States. The notice shall include an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; AHM's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of AHM, such event may cause or contribute to an endangerment to public health, welfare or the environment. AHM shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude AHM from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. AHM shall be deemed to know of any circumstance of which AHM, any entity controlled by AHM, or AHM's contractors knew or should have known.

28. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify AHM in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

29. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify AHM in writing of its decision.

30. If AHM elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, AHM shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that AHM complied with the requirements of Paragraphs 26 and 27. If AHM carries this burden, the delay at issue shall be deemed not to be a violation by AHM of the affected obligation of this Consent Decree identified to EPA and the Court.

## **X. DISPUTE RESOLUTION**

31. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. AHM's failure to seek resolution of a

dispute under this Section shall preclude AHM from raising any such issue as a defense to an action by the United States to enforce any obligation of AHM arising under this Decree.

32. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when AHM sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within ten Days after the conclusion of the informal negotiation period, AHM invokes formal dispute resolution procedures as set forth below.

33. Formal Dispute Resolution. AHM shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting AHM's position and any supporting documentation relied upon by AHM.

34. The United States shall serve its Statement of Position within 45 Days of receipt of AHM's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on AHM, unless AHM files a motion for judicial review of the dispute in accordance with the following Paragraph.

35. AHM may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of AHM's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

36. The United States shall respond to AHM's motion within the time period allowed by the Local Rules of this Court. AHM may file a reply memorandum to the extent permitted by the Local Rules.

37. Standard of Review. AHM shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

38. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of AHM under this Consent Decree,

unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 22. If AHM does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

## **XI. INFORMATION COLLECTION AND RETENTION**

39. Until three years after the termination of this Consent Decree, AHM shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to AHM's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, AHM shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

40. At the conclusion of the information-retention period provided in the preceding Paragraph, AHM shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, AHM shall deliver any such documents, records, or other information to EPA. AHM may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If AHM asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by AHM. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

41. AHM may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that AHM seeks to protect as CBI, AHM shall follow the procedures set forth in 40 C.F.R. Part 2.

42. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of AHM to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

43. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint.

44. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 43.

45. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. AHM is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and AHM's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that AHM's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act or with any other provisions of federal, state, or local laws, regulations, or permits.

46. This Consent Decree does not limit or affect the rights of AHM or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against AHM, except as otherwise provided by law.

47. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

## **XIII. COSTS**

48. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

## **XIV. NOTICES**

49. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States: Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-10148

To the U.S. or EPA: Director, Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

To AHM: Britt Fleming, Esq.  
Van Ness Feldman, LLP  
1050 Thomas Jefferson Street, NW  
Washington, DC 20007  
(202) 298-1863

50. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above, or may add an additional notice recipient.

51. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XV. EFFECTIVE DATE**

52. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, as recorded on the Court's docket.

#### **XVI. RETENTION OF JURISDICTION**

53. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

#### **XVII. MODIFICATION**

54. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

55. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 37, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

### **XVIII. TERMINATION**

56. After AHM has completed the requirements of Section VI (Compliance Requirements) and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, AHM may serve upon the United States a Request for Termination, stating that AHM has satisfied those requirements, together with all necessary supporting documentation.

57. Following receipt by the United States of AHM's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether AHM has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

58. If the United States does not agree that the Decree may be terminated, AHM may invoke Dispute Resolution under Section X. However, AHM shall not seek Dispute Resolution of any dispute regarding termination until 45 days after service of its Request for Termination.

### **XIX. PUBLIC PARTICIPATION**

59. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. AHM consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified AHM in writing that it no longer supports entry of the Decree.

### **XX. SIGNATORIES/SERVICE**

60. Each undersigned representative of AHM and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

61. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. AHM agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XXI. INTEGRATION**

62. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

**XXII. FINAL JUDGMENT**

63. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and AHM.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2013

---

UNITED STATES DISTRICT JUDGE

Signature Page to Consent Decree in *United States v. American Honda Motor Company, Inc.*

**FOR THE UNITED STATES OF AMERICA:**

6/12/13  
Date

/s/ W. Fisherow  
W. BENJAMIN FISHEROW  
Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

MARK A. GALLAGHER  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20044-7611

**FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:**

          /s/ Susan Shinkman  
SUSAN SHINKMAN  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

          /s/ Phillip Brooks  
PHILLIP A. BROOKS  
Director, Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

          /s/ Meetu Kaul  
MEETU KAUL  
Attorney-Advisor  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Signature Page to Consent Decree in *United States v. American Honda Motor Company, Inc.*

**FOR AMERICAN HONDA MOTOR COMPANY, INC.:**

3/25/2013  
Date

/s/ K. Nishizawa  
KAZUTOSHI NISHIZAWA  
Vice President  
Product Regulatory Office  
American Honda Motor Co., Inc.  
1919 Torrance Blvd.  
Torrance, CA 90501

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

UNITED STATES OF AMERICA,	)	
U.S. Department of Justice	)	
Environment & Natural	)	
Resources Division	)	
10th & Pennsylvania Ave., N.W.	)	
Washington, D.C. 20530	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
AMERICAN HONDA MOTOR	)	
COMPANY, INC.,	)	
1919 Torrance Blvd.	)	
Torrance, CA 90501-2746	)	
	)	
Defendant.	)	

---

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency, (“EPA”), files this complaint and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action brought pursuant to Sections 203, 204, 205(b), and 213(d) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7522, 7523, 7524(b), and 7547(d), and regulations promulgated thereunder, for the assessment of civil penalties and award of injunctive relief against American Honda Motor Company, Inc. (“American Honda”) for violations of the CAA.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of, and the parties to, this action pursuant to CAA Section 205(b), 44 U.S.C. §7524(b); 40 C.F.R. 90.1006(b); and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this jurisdiction pursuant to CAA Section 205(b), 42 U.S.C. § 7524(b); and 40 C.F.R. 90.1006(b)(1) because the Administrator has her principal place of business here.

## **DEFENDANT**

4. Defendant American Honda is incorporated under the laws of the State of California and does business in the District of Columbia. At all times relevant to this action, Defendant American Honda was a “person” as defined by CAA Section 302(e), 42 U.S.C. § 7602(e).

5. Honda Motor Company, Ltd. is a parent corporation of American Honda.

## **STATUTORY AND REGULATORY BACKGROUND**

6. This action arises under Subchapter II of the CAA, as amended, CAA Sections 202 through 250, 42 U.S.C. §§ 7521 through 7590, and 40 C.F.R. Part 90.

7. CAA Section 213(a), 42 U.S.C. § 7547(a), requires the Administrator to promulgate emission standards for new nonroad engines and nonroad vehicles if the Administrator makes certain determinations establishing that such standards are necessary to protect the public health and welfare.

8. CAA Section 213(d) authorizes the Administrator to revise or promulgate regulations as may be necessary to determine compliance with and enforce standards in effect under Section 213. Section 213(d) further provides that the standards promulgated under CAA

Section 213 shall be enforced in the same manner as the standards prescribed under CAA Section 202.

9. Pursuant to CAA Section 213(a) and (d), 42 U.S.C. § 7547(a) and (d), the Administrator promulgated emission standards for nonroad spark-ignition engines with a rated power at or below 19 kilowatts and associated enforcement provisions. Those regulations are found at 40 C.F.R. Part 90.

10. Together CAA Section 203(a) and CAA Section 213(d), as well as 40 C.F.R. § 90.1003(a)(1)(ii), prohibit all persons from importing into the United States any new nonroad engine, unless such engine is covered by a certificate of conformity issued (and in effect) under the standards of 40 C.F.R. Part 90.

11. To obtain a certificate of conformity for a new nonroad engine, the manufacturer must, *inter alia*, submit an application to the Administrator, describing the engine's overall design and its emission-related components and providing emission test results that allow the Administrator to determine whether the engine design as tested conforms to the emission standards promulgated by the Administrator. 40 C.F.R. § 90.107.

12. A person who violates 40 C.F.R. § 90.1003(a)(1) is subject to a civil penalty of up to \$32,500 per engine. 40 C.F.R. § 90.1006(a)(1) and (3).

13. A person who violates CAA Section 203(a) is subject to a civil penalty of up to \$25,000 per engine. CAA Section 205.

14. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 the maximum statutory civil penalty for violations occurring between January 30, 1997 and March 14, 2004 is increased to \$27,500 and the maximum statutory civil penalty for violations

occurring between March 15, 2004 and January 12, 2009 is increased to \$32,500. 69 Fed. Reg. 7121-27 (February 13, 2004).

15. Pursuant to CAA Section 204 and 40 C.F.R. § 90.1005(a), the district courts of the United States have jurisdiction to restrain violations of CAA Section 203(a) and 40 C.F.R. § 90.1006(a)(1) and (3) respectively.

### **GENERAL ALLEGATIONS**

16. Defendant American Honda has imported new nonroad engines manufactured in Japan into the United States.

17. Each certificate of conformity issued to Honda Motor Company, Ltd. by EPA during the time period relevant to this Complaint provides that the certificate covers only those new engines that conform, in all material respects, to the representative test engine which provided the test results that served as the basis for EPA's decision to grant the certificate of conformity.

18. Subject to reasonable opportunity for further investigation or discovery, Defendant's representative test engines were equipped with certain emission-related engine components, including air intake systems and mufflers.

19. From August 1, 2003 to January 31, 2008, Defendant imported approximately 437,637 nonroad engines that were not equipped with the air intake box and/or muffler present on Defendant's test engines. (Hereinafter "the Subject Engines").

20. The Subject Engines have a rated power below 19 kilowatts and thus are subject to and regulated by 40 C.F.R. Part 90.

21. At least approximately 4,450 of the Subject Engines reached end users with the incorrect air intake assembly installed; these engines emitted and will continue to emit nitrogen oxides and hydrocarbons in excess of regulatory standards unless corrected

### **CLAIM FOR RELIEF**

#### **Importing New Nonroad Engines Not Covered by Certificates of Conformity**

22. The United States re-alleges Paragraphs 1-21 as set forth herein.

23. The Subject Engines did not conform in all material respects to the certificates of conformity issued by EPA because they were not equipped with the air filter top cap and/or air filter safety element and/or muffler installed on the representative test engines that produced the test results that served as the basis for EPA's decision to grant the certificates of conformity.

24. Defendant's importation of the Subject Engines into the United States for delivery to equipment manufacturers constitutes the importation of new nonroad engines not covered by certificates of conformity in violation of 40 C.F.R. § 90.1003(a)(1)(ii) and CAA Section 203(a).

25. Each Subject Engine not covered by a certificate of conformity and so imported is a separate violation of 40 C.F.R. § 90.1003(a)(1)(ii) and CAA Section 203(a) subjecting Defendant to penalties of up to \$32,500 per engine.

### **PRAYER FOR RELIEF**

Wherefore, the United States respectfully demands judgment:

a. Assessing civil penalties against Defendant with respect to each engine imported in violation of 40 C.F.R. § 90.1003(a)(1)(ii) and 203(a), as alleged above, of up to \$32,500 per engine;

b. Issuing a permanent injunction directing Defendant to take appropriate steps to remedy the noncompliance, including but not limited to undertaking an investigation to

determine which engines were sold to end users without the correct air intake assembly and/or muffler and remedying the nonconformity, and mitigating excess emissions resulting from the violations ;

- c. Awarding the United States its costs and disbursements in this action; and
- d. Granting such other and further relief as the Court deems just and proper.

W. BENJAMIN FISHEROW  
Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

/s/ Mark Gallagher  
MARK A. GALLAGHER  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-5405

OF COUNSEL:

MEETU KAUL  
Attorney-Advisor  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460