

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

.....  
In the Matter Of: )

PETER STERN, )

and )

GARANTIA, LLC. )

Respondents )  
.....

ADMINISTRATIVE SETTLEMENT  
AGREEMENT

AED/MSEB - 6099 and 7000

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Peter Stern and Garantia, LLC. (Respondents) regarding compliance by Respondents with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 90.

**Purpose**

1. The purpose of this Agreement is to resolve all claims by EPA under the Act and 40 C.F.R. Part 90 arising out of the importation of the 4,000 uncertified nonroad engines described in Attachments 1 and 2 (Subject Engines), while ensuring that prior violations are identified and resolved and future violations are avoided.

**Definitions:**

2. For the purposes of this Agreement, the following definitions apply:
  - a. *This matter:* as used in this Agreement means the violations alleged in the May 16, 2003, Notices of Violations (NOVs) *see* Attachments 1 & 2.
  - b. *Certificate of Conformity:* the document issued by EPA to a manufacturer under 40 C.F.R. § 90.108 after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of Part 90 and the Clean Air Act. Issuance of the Certificate of Conformity permits production of a

covered vehicle or engine after the date of the certificate and before expiration of the model year.

- b. *Certified engine*: a nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
- c. *Uncertified engine*: a nonroad engine built after the applicable dates of the regulations but which is not covered by a Certificate of Conformity issued by EPA.

**Statutory and Regulatory Authority:**

- 3. Sections 203(a) and 215(d) of the Clean Air Act, 42 U.S.C. § 7542, and 42 U.S.C. § 7547, prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.
- 4. 40 C.F.R. § 90.1(a) defines the applicability of the regulations at 40 C.F.R. Part 90 to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts (kW) and that are used for any purpose.
- 5. 40 C.F.R. § 90.2 sets forth the effective dates of the regulations at 40 C.F.R. Part 90, and provides that these regulations apply to spark ignition nonroad engines built in or after model year 1997.
- 6. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
- 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 engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine.

8. 40 C.F.R. § 90.3 defines an engine manufacturer as any person who, among other things, imports nonroad engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
9. 40 C.F.R. § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.

### **Background**

10. In January of 2001, EPA commenced an investigation relating to nonroad engines that were contained in hand-held chain saws offered for sale at a number of Costco Wholesale Corporation (Costco) stores. The purpose of this investigation was to determine compliance with section 213 of the Act, 42 U.S.C. § 7547, and the regulations issued thereunder at 40 C.F.R. Part 90.
11. As a result of this investigation, EPA determined that Respondents imported, or caused the importation of 4,000 chain saws powered by the Subject Engines that were not covered by a certificate of conformity as required by the Clean Air Act.
12. The Subject Engines are spark ignition engines built after 1997 with a gross power output at or below 19 kW, and consequently they are subject to the requirements of 40 C.F.R. Part 90.
13. On May 13, 2004, EPA issued an NOV to Respondent Garantia, LLC alleging that it imported the Subject Engines in violation of 40 C.F.R. § 90.1003(a)(1)(ii) and section 213 of the CAA, 42 U.S.C. § 7547.
14. On May 13, 2004, EPA also issued an NOV to Respondent Peter Stern alleging that he caused the importation of the Subject Engines in violation of 40 C.F.R. § 90.1003(a)(1)(ii) and section 213 of the CAA, 42 U.S.C. § 7547.

15. Based on the above, EPA has determined that Respondents are liable for 4,000 violations of Section 203(a) and 215(d) of the Clean Air Act, and applicable regulations.
16. Fifteen of the Subject Engines remain in their uncertified configuration in the United States or were destroyed. 3,985 of the Subject Engines were returned to the original engine manufacturer (OEM) where they were either a) modified to conform in all material respects to the engines that were tested in support of the OEM's application for certification and are now covered by the OEM's Certificate of Conformity; or b) were exported to a country other than Canada or Mexico.
17. Respondents affirm, under penalty of perjury, that they have not imported or caused the importation of any spark-ignition engines or compression ignition engines since October 1, 1999, other than the Subject Engines.

**Terms of Agreement**

18. Respondents have informed EPA that they do not intend to be involved in the business of importing nonroad engines in the future, and agree that they will not import or cause the importation of any spark ignition or compression ignition nonroad engines.
19. Respondents shall pay to the United States Fifty Thousand Dollars (\$50,000) within thirty (30) days of the date 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. Respondents agree 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 # 6099 and # 7000

Such check shall be identified with the case number and Respondents' names.

Simultaneously, a photocopy of the check shall be mailed to Jeffrey A. Kodish 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

**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 Respondents.
21. Respondents hereby represent that the individual or individuals executing this Agreement on behalf of each Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind each Respondent, its agents, assigns, or successors.
23. The obligations of Respondents to pay amounts owed to the United States under this Agreement are joint and several. In the event of the failure of any one of the Respondents to make the payments required under this Agreement, the remaining Respondent shall be responsible for such payment.
24. Notwithstanding any other provision of this agreement, upon Respondents' failure to timely perform pursuant to Paragraph 19 of this Agreement, 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. Respondents specifically agree 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 Part 90. Respondents expressly waive their rights to assert that such action is barred by any applicable statutes of limitation, *see e.g.* 28 U.S.C. § 2462.

25. The effect of the settlement described in paragraph 28, below, is contingent upon the truthfulness, accuracy and completeness of Respondents' disclosure and representations to EPA as memorialized in Paragraphs 10 - 17.

**Stipulated Penalties:**

26. For failure to comply with the terms of this Agreement on a timely basis Respondents shall pay stipulated penalties to the United States as follows:
- a. For failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 19, \$500 per day;
  - b. For importing or causing the importation of any small spark ignition engines in the future in violation of Paragraph 18, \$500 per engine.
27. All stipulated penalties under Paragraph 26 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 19 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.

**Enforcement:**

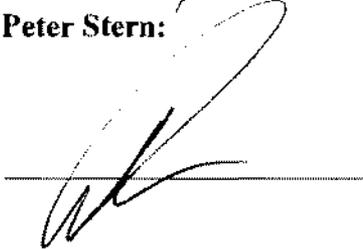
28. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

**Garantia, LLC:**

By: Peter Steen, Member 12/2/04  
(name) Date  
(title)

**Mr. Peter Stern:**

  
Date 12/2/04

**U.S. Environmental Protection Agency**

By:  1/5/04  
Adam M. Kushner, Date  
Acting Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance

**Attachment #1**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 16, 2003

CERTIFIED MAIL #7000 1670 0004 9533 3743  
RETURN RECEIPT REQUESTED

Mr. Peter Stern  
Registered Agent for  
Garantia LLC  
18 Shortcliff Place  
Great Neck, New York 11023-2016

RE: File No. AED/MSEB- 7000  
Notice of Violations of the Clean Air Act

Dear Mr. Stern:

In January, 2001, the U.S. Environmental Protection Agency (EPA) commenced an investigation relating to nonroad engines that were contained in hand held power equipment offered for sale at a number of Costco Wholesale Corporation (Costco) stores. The purpose of this investigation was to determine compliance with section 213 of the Clean Air Act (CAA), 42 U.S.C. § 7547, and the regulations issued thereunder at 40 C.F.R. Part 90 (Regulations).

Section 90.1003(a)(1)(ii) of the Regulations prohibits any person from importing into the United States any nonroad engine manufactured after the applicable effective date, or any nonroad equipment containing such engine, unless the engine is covered by a certificate of conformity. Pursuant to 40 C.F.R. § 90.1006 and section 205 of the CAA, 42 U.S.C. § 7524, any person who violates 40 C.F.R. § 90.1003(a)(1)(ii) is subject to civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each violation.

As a result of our investigation, we have determined that Garantia LLC imported four thousand (4,000) nonroad engines that were not covered by a certificate of conformity as required by the CAA. This constitutes four thousand (4,000) separate violations of 40 C.F.R. § 90.1003(a)(1)(ii) and section 213 of the CAA, 42 U.S.C. § 7547. As the person who imported these engines, Garantia LLC is liable for these violations.

The EPA encourages settlement of enforcement matters rather than initiating formal adjudicatory proceedings or litigation in the federal courts. The settlement process provides substantial flexibility for reducing the statutory penalty, particularly if the alleged violations are corrected. Garantia LLC may be eligible for a very substantial reduction in penalties if it agrees to take appropriate remedial actions and implement a plan to prevent future violations of the CAA and the regulations issued thereunder.

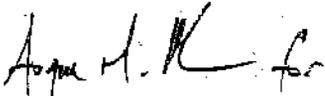
If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in United States district court.

Please contact the EPA attorney designated below regarding this Notice:

Jeffrey A. Kodish, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch  
12345 West Alameda Parkway, Suite 214  
Denver, CO 80228  
Phone: (303) 236-9511

Let me emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

  
Bruce C. Buckheit, Director  
Air Enforcement Division

**Attachment #2**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 16, 2003

CERTIFIED MAIL #7000 1670 0004 9533 3736  
RETURN RECEIPT REQUESTED

Mr. Peter Stern  
18 Shortcliff Place  
Great Neck, New York 11023-2016

RE: File No. AED/MSEB- 6099  
Notice of Violations of the Clean Air Act

Dear Mr. Stern:

In January, 2001, the U.S. Environmental Protection Agency (EPA) commenced an investigation relating to nonroad engines that were contained in hand held power equipment offered for sale at a number of Costco Wholesale Corporation (Costco) stores. The purpose of this investigation was to determine compliance with section 213 of the Clean Air Act (CAA), 42 U.S.C. § 7547, and the regulations issued thereunder at 40 C.F.R. Part 90 (Regulations).

Section 90.1003(a)(1)(ii) of the Regulations prohibits any person from importing or causing the importation into the United States of any nonroad engine manufactured after the applicable effective date, or any nonroad equipment containing such engine, unless the engine is covered by a certificate of conformity. Pursuant to 40 C.F.R. § 90.1006 and section 205 of the CAA, 42 U.S.C. § 7524, any person who violates 40 C.F.R. § 90.1003(a)(1)(ii) is subject to civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each violation.

As a result of our investigation, we have determined that you caused the importation of four thousand (4,000) nonroad engines that were not covered by a certificate of conformity as required by the CAA. This constitutes four thousand (4,000) separate violations of 40 C.F.R. § 90.1003(a)(1)(ii) and section 213 of the CAA, 42 U.S.C. § 7547. As the person who caused the importation of these engines, you are liable for these violations.

The EPA encourages settlement of enforcement matters rather than initiating formal adjudicatory proceedings or litigation in the federal courts. The settlement process provides substantial flexibility for reducing the statutory penalty, particularly if the alleged violations are corrected. You may be eligible for a very substantial reduction in penalties if you agree to take appropriate remedial actions and implement a plan to prevent future violations of the CAA and the regulations issued thereunder.