

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

In the Matter Of:)	ADMINISTRATIVE SETTLEMENT AGREEMENT
BLEC USA, Inc.,)	
)	
Respondents)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and BLEC USA Inc., (Respondent) regarding compliance by Respondent 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 two BLEC Uniseeders containing the nonroad engines described in Table 1 (Subject Engines), while ensuring that prior violations are identified and resolved and future violations are avoided.

Table 1: Description of Subject Engines

Make & Model	Engine S/N	Hp	Engine Build Year	Certified ? (Y/N)	Labeled ? (Y/N)
BLEC UNI SEEDER Serial #040316	GC02-7681786	5.5	2001	N	N
BLEC UNI SEEDER Serial # 040313	GCABT-1355108	5.5	2003	N	N

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* As used in this Agreement means the Respondent's importation of the Subject Engines and any civil liability that may apply to such violation.
 - 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. On or about March 31, 2004, U.S. Customs and Border Protection (Customs) identified the Subject Engines as missing EPA emissions information labels on an EPA Nonroad Program Worksheet, noting that the Subject Engines (Detained Merchandise) were located on the Respondent's premises.
11. On April 6, 2004, Customs received written notice from BLEC USA that the Subject Engines would remain in constructive detention in Respondent's warehouse in Anderson, South Carolina, "until given clearance to ship the machines."
12. Rather than keeping the Subject Engines under constructive detention as initially agreed, BLEC USA, through its import agent Panalpina, Inc., obtained clearance from Customs to export the Subject Engines to Birmingham, Great Britain. The Subject Engines were exported on or about May 26, 2004. According to BLEC USA, the declared value of the two engines was \$ 954.70.

13. The Subject Engines are spark ignition engines built after 1997 with gross power output at or below 19 kilowatts (kW), and consequently they are subject to the requirements of 40 C.F.R. Part 90.
14. This is Respondent's first violation of the Regulations pertaining to the importation of nonroad engines.
15. Respondent affirms that since March 24, 2003, it has imported seven spark ignition nonroad engines into the United States, including the two Subject Engines. Table 2 includes the information Respondent provided concerning the additional five engines:

Table 2

Shipping Date¹	BLEC Model	BLEC Serial No.	Honda Engine No.	Customer Details	Date Sold	Inv. No.
24.03.2003	UNISEEDER US24	030287	814539	Aer Core	30Apr2003	5312
24.03.2003	UNISEEDER US24	030288	8400797	Aer Core	30Apr2003	5312
31.07.2003	UNISEEDER US24	030300	1115710	Aer Core	26Aug2003	6019
24.10.2003	UNISEEDER US24	030308	1355133	BLEC USA Inc.	24Oct2003	6473
17.12.2003	UNISEEDER US24	040312	1270060	BLEC USA Inc.	17Dec2003	6679

¹ Date format matches format followed by BLEC USA.

Terms of Agreement

16. Respondent shall conduct an audit of its records within ninety (90) days from the date of this Agreement, of all spark ignition nonroad engines imported by Respondent between January 1, 2000, and the present, and submit written evidence of the audit to EPA. Information found pertaining to the five engines listed in Table 2 shall be included. The audit shall include importations "for export only." The audit shall consist of a compilation of the following information about each imported engine based upon all records available to Respondent after a diligent search:

- a) manufacturer;
- b) engine family number, in the case of certified engines;
- c) engine serial number;
- d) date of manufacture;
- e) horsepower rating;
- f) a statement that the engine was or was not manufactured under a Certificate of Conformity issued by EPA;
- g) date of import; and
- h) if an EPA form 3520-21 was filed, the box number that was checked.

It is anticipated that, provided that Respondent conducts a diligent search, its inability to locate records relating to import transactions shall not constitute a violation of this Agreement.

17. Within ninety (90) days from the date of this Agreement, Respondent shall provide EPA with a plan reasonably calculated to insure that all spark ignition nonroad engines imported after the date of this Agreement into the United States by Respondent, shall be imported in a manner that complies with all applicable regulations, including 40 C.F.R. Part 90.

18. Responses to Paragraphs 16-17 shall be sent to Ann M. Stephanos, the EPA attorney assigned to this case, at the following address:

Via Regular Mail:

U.S. Environmental Protection Agency
OECA/Air Enforcement Division
Ariel Rios Bldg. (2242A)
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Via Courier Service:

U.S. Environmental Protection Agency
Air Enforcement Division
Ariel Rios Building (Rm. 1109A)
1200 Pennsylvania Ave., N.W.
Washington, DC 20004

19. Respondent shall pay to the United States One Thousand Dollars (\$ 1,000.00) within thirty (30) days of the 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
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB # [number]

Simultaneously, a photocopy of the check shall be mailed to Ann M. Stephanos at the address specified in Paragraph 18 or faxed to 202-564-0069. Such check shall be identified with the case number and Respondent's name.

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 Respondent.
21. 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.
22. Upon failure to timely perform pursuant to Paragraphs 16-19 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by the Respondent, 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, or 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 Part 90. Respondent expressly waives its right to assert that such action is barred by any applicable statutes of limitation. *See, e.g.*, 28 U.S.C. § 2462.

23. Violations disclosed to EPA as a result of this Agreement may fall under EPA's Self-Disclosure Policy "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," *see* 65 Fed. Reg. 19,618 (Apr. 11, 2000). It is anticipated that violations discovered in the course of the audit required by Paragraph 16 of this Agreement may be deemed to have been systematically and voluntarily discovered independent of a government or third party plaintiff. It is anticipated that violations reported in the audit report may be deemed to have been disclosed promptly, notwithstanding the passage of more than twenty-one (21) days from their actual discovery, provided that Respondent delivers its audit report to EPA on or before the time provided in this Agreement (or any extension thereof).
24. Settlement under the Self-Disclosure Policy of Respondent's voluntarily disclosed violations is contingent upon the truthfulness and accuracy of Respondent's disclosure to EPA.

Stipulated Penalties

25. Respondent shall pay stipulated penalties of five hundred dollars (\$ 500.00) per day to the United States for failure to comply with the terms of this Agreement as follows:
 - a. Failure to Pay the civil penalty pursuant to Paragraph 19;
 - b. Failure to conduct the audit required by Paragraph 16, or to submit to EPA, in writing, the results of this audit, pursuant to Paragraph 18; and
 - c. Failure to submit to EPA, in writing, a plan to prevent future violations, pursuant to Paragraph 17.

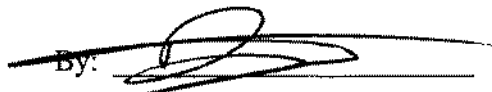
26. All stipulated penalties under Paragraph 25 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 25 and shall be paid within five (5) 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.
27. The effect of settlement described in paragraph 28 below is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraphs 10-15 of this consent agreement and final order and Respondent's response within ninety (90) days of the date of this Agreement.

Enforcement

28. Upon completion of the terms of this Agreement, the alleged violations for the engines described in Table 1 of this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

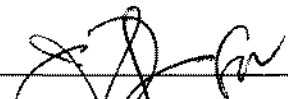
BLEC USA, Inc.

By: 
(name) David F. Taylor
(title) General Manager

5-13-05
Date

**Administrative Settlement Agreement in the matter of United States v.
BLEC USA, Inc.**

U.S. Environmental Protection Agency

By:  _____

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

6-2-05

Date