

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

In the Matter of:

McCulloch Corporation

Respondent.

SETTLEMENT AGREEMENT
AED/MSEB #7803

This Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and McCulloch Corporation (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. Part 90.

Purpose

1. The purpose of this Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and the regulations governing the Control of Emissions from Spark-Ignition (SI) Nonroad Engines, codified at 40 C.F.R. Part 90, arising out of the importation of one thousand three hundred and thirty-two (1,332) engines and the equipment containing those engines (Subject Engines), while ensuring that 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 Respondent's importation of the Subject Engines and any civil liability that may apply to such violations.
 - b. *Certificate of Conformity*: the document issued by EPA to a manufacturer under 40 C.F.R. § 90.108 for spark ignition engines, after EPA has determined that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Part 90 and the Act. Issuance of the Certificate of

Conformity permits production of engines built in accordance with the manufacturer's application provided that the production is within the period during which the Certificate of Conformity is valid.

- c. *Dates of the Applicable Regulations:* for nonroad spark-ignition engines rated at or below 19 kW, the applicable effective date is January 1, 1997.

Statutory & Regulatory Authority

3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any spark ignition nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is labeled according to the information label requirements of 40 C.F.R. § 90.114.
4. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity and bears a permanently affixed EPA emissions label, or is properly excluded from the certification requirements.
5. 40 C.F.R. § 90.3 defines a nonroad spark ignition engine manufacturer as any person engaged in the manufacture or assembly 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.
6. 40 C.F.R. § 90.114(a) requires the engine manufacturer to affix, at the time of manufacture of a certified spark-ignition engine, a permanent and legible label identifying each nonroad engine. The label must be readily visible and attached so that it cannot be removed without destroying or defacing the label.
7. 40 C.F.R. § 90.114(b) provides that if the engine label is obscured, "the nonroad vehicle manufacturer must attach a supplemental label so that this label is readily visible. . . ."

8. 40 C.F.R. § 90.114(c)(6) requires the label to include the month and year that the engine was manufactured.

Background

9. Respondent imported 432 nonroad engines on April 13, 2008, and 900 nonroad engines on May 4, 2008, as described in the Subject Engine Table below.

Subject Engine Table

Generator Model	Engine Manufacturer	Engine Family	Quantity
FDD210	Wenling Zhengjiang Vehicles Co., Ltd.	8WZJS.1061WH	432
FGG350MK	Chongqing Dajiang Power Equipment Co., Ltd.	7CDPS.1961GA	900

10. The Department of Homeland Security, Bureau of Customs and Border Protection (CBP) inspected the generators and identified a number of potential problems associated with EPA Declaration Form 3520-21 and the emissions information labels affixed to the Subject Engines.
11. Respondent is the importer of the nonroad equipment containing the Subject Engines.
12. The Subject Engines were manufactured after the Dates of the Applicable Regulations.
13. The emissions labels on the Subject Engines manufactured by Wenling Zhengjiang Vehicles Co., Ltd. were obscured and not readily visible. There were no supplemental emission control labels readily visible to the average person, in violation of 40 C.F.R. § 90.114(b).
14. The emission control labels on the Subject Engines manufactured by Chongqing Dajiang Power Equipment Co., Ltd., were easily removable without defacement or destruction, in violation of 40 C.F.R. § 90.114(a)-(b). In addition, they did not include the year that the engines were manufactured, in violation of 40 C.F.R. § 90.114(c)(6).

15. Based on the foregoing, EPA alleges that Respondent is liable for 1,332 violations of Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), arising from the Respondent's importation of the Subject Engines that did not meet the applicable requirements for emission labels described above.

Terms of Agreement

16. Respondent shall export the Subject Engines outside of North America within 30 days of their release for export-only by CBP. Exportation shall be carried out under the supervision of CBP. Respondent shall, within the same time, certify to EPA that the Subject Engines were exported and shall provide supporting documentation issued by CBP demonstrating that the Subject Engines were exported outside of North America.
17. 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.
18. Respondent shall pay to the United States a civil penalty of \$130,000 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 #7803

A photocopy of the check shall be telefaxed simultaneously to Jeff Kodish at the number specified in Paragraph 19. Alternatively, Respondent may affect 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.

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

Jeffrey A. Kodish
Attorney-Advisor
OECA/AED/Western Field Office (8MSU)
1595 Wynkoop Street
Denver, Colorado 80202

Tel: 303-312-7153
Fax: 303-312-6007

General Provisions

20. 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.
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. 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. Part 90. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation.
23. 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.

Stipulated Penalties:

24. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
 - a. For failure to timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 18, \$400 per day.
 - b. For failure to timely export the Subject Engines, or provide proof thereof, pursuant to Paragraph 16, \$500 per day.
25. All stipulated penalties under Paragraph 24 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. 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 18 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

26. 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, and does not address Respondent's potential liability to CBP for engines that are seized or detained.

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The following agree to the terms of this Agreement:

McCulloch Corporation


By: 
(name)
(title)

NOV. 26, 2008
Date

Steve Jong
CEO, McCulloch Corporation

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U.S. Environmental Protection Agency

By:  Date: 12/17/08

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