

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

_____	)	
In the Matter of:	)	
	)	Administrative Settlement Agreement
Multiquip Inc.,	)	
	)	AED/MSEB # 8036
Respondent.	)	
_____	)	

**Purpose**

1. The United States Environmental Protection Agency (the EPA) and Multiquip Inc. (Multiquip) enter into this Administrative Settlement Agreement (Agreement) to resolve alleged violations of sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. Parts 1054, 1060, and 1068.

**Governing Law**

2. Section 203(a)(1) of the Act prohibits “the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce . . . of any new motor vehicle or new motor vehicle engine” by a manufacturer, unless that new motor vehicle or engine is covered by an EPA-issued certificate of conformity (COC). 42 U.S.C. § 7522(a)(1).
3. “Manufacturer” is defined broadly to include “any person engaged in . . . importing such vehicles or engines for resale.” 42 U.S.C. § 7550(1).
4. The Act also prohibits “any person” from importing a new motor vehicle or new motor vehicle engine unless that vehicle or engine is covered by a COC. 42 U.S.C. § 7522(a)(1).

5. Section 213(d) of the Act and corresponding regulations at 40 C.F.R. Part 1068 extend the prohibitions enumerated in section 203 to nonroad engines and vehicles. 42 U.S.C. § 7547(d); 40 C.F.R. § 1068.101(a)(1) and (b)(5).
6. The EPA regulates new nonhandheld nonroad spark-ignition (SI) engines with a maximum engine power at or below 19 kilowatt (kW) under 40 C.F.R. Parts 1054 and 1068 beginning with model year 2011 if the displacement is greater than or equal to 225 cubic centimeters (cc) and beginning with model year 2012 if the displacement is less than 225 cc. 40 C.F.R. §§ 1054.1, 1054.15, 1068.1(a)(10).
7. Fuel systems used with engines subject to 40 C.F.R. Part 1054 are subject to the evaporative emissions requirements of 40 C.F.R. Parts 1054 and 1060 if the engines use a volatile liquid fuel (such as gasoline). 40 C.F.R. §§ 1054.1(a)(2); 1054.20(b); 1054.101(b); 1060.1(a)(6).
8. 40 C.F.R. § 1068.101(a)(1) prohibits the sale, offering for sale, or introduction or delivery into commerce in the United States, or the importation into the United States, of any new engine/equipment after emission standards take effect for the engine/equipment unless it is covered by a valid COC for its model year and has the required label or tag.
9. Fuel system components subject to permeation or diurnal emission standards under 40 C.F.R. Part 1060 must be covered by a valid COC before being introduced into commerce to avoid violating the prohibition of 40 C.F.R. § 1068.101(a). 40 C.F.R. § 1060.601(a).
10. "Manufacturer" has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures a vehicle or engine for sale in the United States or

otherwise introduces a new vehicle or engine into commerce in the United States and includes importers that import such products. 40 C.F.R. §§ 1054.801; 1060.801.

11. A person who violates 40 C.F.R. § 1068.101(a)(1) is subject to a civil penalty of up to \$37,500 for each engine. 40 C.F.R. §1068.101(a)(1).
12. Rather than referring a matter to the United States Department of Justice to commence a civil action, the EPA may assess a civil penalty through its own administrative process if the total penalty sought is less than \$295,000. 42 U.S.C. § 7524(c); 40 C.F.R. § 1068.125(b).

#### **Violations**

13. On or about February 11, 2012, Multiquip imported, in four shipping containers, 490 gasoline-powered generators into the United States, each with a model year of 2012 and a maximum engine power at or below 19 kW (the Initial Shipment).
14. The Initial Shipment is subject to the requirements of 40 C.F.R. Parts 1054, 1060, and 1068, including the evaporative emission standards under 40 C.F.R. Part 1060 for the fuel system components.
15. A February 16, 2012 EPA inspection of two models of generators and a review of the EPA's certification database revealed that 305 generators in two containers in the Initial Shipment (Containers CAXU7010299 and HLXU4464444) were not covered by a COC for the evaporative components. Multiquip exported all of the generators in Container CAXU7010299 (a total of 152) to Japan on or about April 6, 2012.
16. Three of the shipping containers in the Initial Shipment (Containers HLXU446444, CPSU4046018, and HLXU4160349) were initially released and delivered to the Multiquip warehouse in Boise, Idaho, between February 17 and February 20, 2012, but

subsequently redelivered to the Department of Homeland Security's Bureau of U.S. Customs and Border Protection (CBP).

17. An April 20, 2012 EPA inspection of the generators in Containers CPSU4046018 and HLXU4160349, and a review of the EPA's certification database, revealed that an additional 125 generators in the Initial Shipment were not covered by a COC for the evaporative components.
18. On April 12, 2012, Multiquip submitted to the EPA a voluntary disclosure letter in which Multiquip disclosed that in 2011, and prior to the Initial Shipment in 2012, Multiquip had introduced into commerce in the United States an additional 2848 gasoline-powered generators (not part of the Initial Shipment) that were subject to the requirements of 40 C.F.R. Parts 1054, 1060, and 1068 but were also not covered by a COC for the evaporative components.
19. Therefore, Multiquip committed 3126 violations of 42 U.S.C. §§ 7522 and 7547 and 40 C.F.R. §§ 1054.101(b), 1060.600.1 and 1068.101(a)(1) by the introduction into United States commerce of 3126 uncertified generators (Subject Equipment).

#### **Civil Penalty**

20. Multiquip agrees to pay the United States a civil penalty of \$76,000 (EPA Penalty).
21. Multiquip agrees to pay the EPA Penalty to the United States within 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 29). Late payment is subject to interest and fees as specified in 31 U.S.C. § 3717, and such interest and fees must be paid by Multiquip on demand by the United States. Multiquip agrees to pay the EPA penalty in the manner specified in subparagraph a. or b. below:

- a. Mail by United States Postal Service a certified check or cashier's check, payable to the United States of America, to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
ATTN: AED/MSEB # 8036

This check must be identified with case number AED/MSEB # 8036 and state that it is remitted by Multiquip. Simultaneously, scan and email a copy of the check to John Keenan at Keenan.john@epa.gov.

- b. Pay online through the Department of the Treasury using [www.pay.gov](http://www.pay.gov). In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1. The payment must be identified with case number AED/MSEB # 8036. Within 24 hours of payment, scan and email a copy of the receipt to [keenan.john@epa.gov](mailto:keenan.john@epa.gov).
22. Multiquip acknowledges that the CBP may assess separate penalties and stipulated damages related to the Subject Equipment in addition to those assessed by the EPA under this Agreement.

#### **Remedial Action**

23. Multiquip must submit to the EPA a written certification that the equipment in container CAXU7010299 were exported or destroyed and copies of supporting documents issued by CBP proving exportation or destruction. This must be completed within 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 29).
24. For any of the Subject Equipment currently within Multiquip's control, Multiquip shall:

- a. Within 90 days of the effective date of this Agreement (as defined in ¶ 29), but in any case prior to the final sale of any such Subject Equipment, affix a permanent supplemental label to such Subject Equipment that states “Equipment conforms to the design specification described in the application for certification for evaporative family CDNYPNHEQREI. Equipment is legal for sale pursuant to an agreement with the United States in connection with a settlement of disputed claims in an enforcement action under the Clean Air Act.” The labels must be secured to a part of the Subject Equipment that does not normally require replacement and in a location that is easily visible to the purchaser of the equipment; and
- b. Within 30 days of completion of the supplemental labeling, provide the EPA with a certificate of completion of the supplemental labeling as described above. This certificate shall include a list of serial numbers of the each item of the Subject Equipment to which the supplemental labels were affixed and a photograph of a relabeled sample of the equipment.

#### **Stipulated Penalties**

25. Multiquip agrees to pay a stipulated penalty of
  - a. \$1,000 per day for its failure to timely pay the civil penalty or provide proof of such payment according to ¶¶ 20 and 21; and
  - b. \$1,000 per day for its failure to timely provide the certification and documentation required by ¶¶ 23 and 24.
26. Every stipulated penalty must be paid within 30 days of its corresponding precipitating event as listed in ¶ 25 and in the manner specified in ¶ 21 of this Agreement.

### **Effect of Agreement**

27. On completion of the terms of this Agreement, the alleged violations described in this Agreement will be deemed resolved. Nothing herein limits the EPA's rights to proceed against Multiquip for its default or noncompliance with this Agreement, for violations of the Clean Air Act, 42 U.S.C. §§ 7401–7671q, or the Act's implementing regulations which are not the subject matter of this Agreement, for other violations of law, or with respect to other matters not within the scope of the Agreement.

### **General Provisions**

28. All correspondence to the EPA or notifications required by this Agreement must be in writing and emailed to [keenan.john@epa.gov](mailto:keenan.john@epa.gov) or mailed to:
- John Keenan  
Office of Compliance and Enforcement (OCE -127)  
U.S. EPA Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101
29. This Agreement becomes effective on the date executed by the EPA (effective date of the Agreement), at which time a fully executed electronic copy will be returned to Multiquip.
30. The individual or individuals executing this Agreement on behalf of Multiquip are authorized to do so and such execution is intended to and does bind Multiquip and its agents, successors, and assigns.
31. This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the

counterparts. Any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement.

32. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
33. Multiquip may not delegate its duties under this Agreement to any other party without the written consent of the EPA, which may be granted or withheld at the EPA's sole discretion. If the EPA so consents, the Agreement is binding on the party or parties to whom the duties are delegated.
34. Notwithstanding any other provision of this Agreement, the parties agree that on Multiquip's default or failure to comply with the terms of this Agreement, the EPA may refer this matter to the United States Attorney General pursuant to § 205 of the Act, 42 U.S.C. § 7524, to commence a civil action against Multiquip in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. Multiquip expressly waives its right to assert that the Subject Equipment are certified or exempt from the certification requirements, or that such action is barred by 18 U.S.C. § 3282(a), other statutes of limitation, or other provisions limiting actions as a result of passage of time. Multiquip acknowledges that the EPA intends to use Multiquip's tax identification number, which Multiquip has appended to this Agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. 31 U.S.C. § 7701.
35. Multiquip waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.



36. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than the EPA and Multiquip, any rights, remedies, or other benefits.
37. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
38. This Agreement is contingent on the truthfulness, accuracy, and completeness of Multiquip's disclosures and representations to the EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Equipment.
39. This Agreement in no way affects or relieves Multiquip of responsibility to comply with other federal, state, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

United States Environmental Protection Agency

Administrative Settlement Agreement

*Multiquip Inc.*

AED/MSEB # 8036

The following agrees to the terms of this Agreement:

**Multiquip Inc.**

By: James S. Henehan

Typed or Printed Name: JAMES S. HENEHAN

Typed or Printed Title: SVP & CHIEF FINANCIAL OFFICER

Federal Tax Identification Number: 95-2874203

Date: March 1, 2013

**United States Environmental Protection Agency**

**Administrative Settlement Agreement**

*In the Matter of Multiquip Inc.*

AED/MSEB # 8036

The following agrees to the terms of this Agreement:

**United States Environmental Protection Agency**

By: 

Date: 3/7/2013

Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency