



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.

In the Matter of:

Makita Corporation,
Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB #8130

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Makita Corporation (Respondent) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations.
2. Respondent in this matter is Makita Corporation. Respondent is organized under the laws of Japan with facilities at 3-11-8 Sumiyoshi-cho, Anjo, Aichi 446-8502. Respondent designs and manufactures spark-ignition nonroad engines that power outdoor power equipment including blowers, cutters, saws, and pumps.
3. The EPA's delegated official and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) and 213(d) of the CAA, 42 U.S.C. §§ 7524(c) and 7547(d), and 40 C.F.R. § 1068.125.

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile sources of air pollution. The Alleged Violations of Law, stated below, regard nonroad spark-ignition engines with power at or below 19 kilowatts (kW) for which 40 C.F.R. Part 1054 sets exhaust emission standards and 40 C.F.R. Part 1068 sets compliance provisions. The Alleged Violations of Law also regard equipment powered by nonroad spark-ignition engines with power at or below 19 kW for which 40 C.F.R. Part 1060 sets evaporative emission standards and 40 C.F.R. Part 1068 sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.
5. Starting with model year 2012, all nonroad spark-ignition engines with power at or below 19 kW must satisfy air pollutant exhaust emission standards in 40 C.F.R. Part 1054, Subpart B. These exhaust emission standards impose limits on emissions of hydrocarbons and oxides of nitrogen (HC + NO_x), and carbon monoxide (CO).
6. Starting with model year 2013, all nonroad spark-ignition engines with power at or below 19 kW must satisfy air pollutant evaporative emission standards in 40 C.F.R. Part 1060, Subpart B. 40 C.F.R. §§ 1054.15(a), 1054.110, 1054.112. These evaporative emission standards impose limits on emissions of evaporated fuel.
7. The EPA's certification program is designed to ensure that every engine and piece of equipment introduced into United States commerce conforms in all material respects to a design that has been approved by the EPA. The EPA approves engines and equipment by issuing certificates of conformity (COCs).
8. To obtain a COC, a manufacturer must submit a COC application to the EPA for each

engine family (for exhaust standards), each emission family (for evaporative standards), and for each model year that it intends to introduce into United States commerce.

40 C.F.R. Part 1054, Subpart C (outlining exhaust emission certification requirements);

40 C.F.R. Part 1060, Subpart C (outlining evaporative emission certification requirements).

9. The COC application must detail engine and equipment specifications and demonstrate with test data that the engine's exhaust emissions or that the equipment's evaporative emissions (depending on the type of COC application) satisfy applicable emission standards. 40 C.F.R §§ 1054.205, 1060.205.
10. Once issued, a COC covers only those engines or equipment produced during the period of time specified in the application for that COC. A COC covers no engine produced before the date that the manufacturer submitted the application for that COC nor any engine produced after December 31 of the calendar year for which the model year is named. 40 C.F.R. §§ 1054.201(a), 1060.201(a), 1068.103(a), (c), (d).
11. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a new nonroad spark-ignition engine, or a new piece of equipment powered by such an engine, unless it is covered by a COC or is otherwise exempt from certification requirements. 40 C.F.R. § 1068.101(a)(1).
12. A person who violates 40 C.F.R. § 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each violation. 40 C.F.R. § 1068.101(a)(1).
13. Manufacturers shall establish and maintain records, and provide information the EPA may reasonably require to determine if that manufacturer has acted or is acting in

compliance with the CAA and its regulations. CAA § 208(a), 42 U.S.C. § 7542(a). Among such mandatory records, manufacturers must complete the appropriate EPA declaration form before importing any engines or equipment and keep these forms for five years. 40 C.F.R. § 1068.301(d). The appropriate form for importing a nonroad spark-ignition engine, or a piece of equipment powered by such an engine, is EPA Standard Form 3520-21. <http://www.epa.gov/otaq/imports/forms-resources.htm> (last visited August 13, 2014).

14. One's failure to make and maintain required records is prohibited, and subjects that person to a civil penalty of not more than \$37,500 for each day that person is in violation. 40 C.F.R. § 1068.101(a)(2).

Factual Background

15. In model year 2012, Respondent held exhaust emission COCs for (among others) the following engine families: CFNXS.0254GA, CFNX.0344GA, and CFNXS.0765GA. Respondent also held model year 2012 evaporative emission COCs for (among others) the following emission families: CFNXPTANKBA0, CFNXPTANKBB0, CFNXPTANKBC0, CFNXPTANKBD0, and CFNXPTANKJA0. Respondent timely obtained these COCs to cover many of its model year 2012 blowers, cutters, saws, and pumps.
16. However, Respondent obtained neither exhaust emission COCs nor evaporative emission COCs for certain model year 2013 engines (used to power blowers, cutters, saws, and pumps) that it manufactured and introduced into commerce. These engines' horsepower ranged from approximately 0.69 to 2.84 horsepower. Similarly, Respondent obtained

neither exhaust emission COCs nor evaporative emission COCs for its model year 2014 blowers, cutters, saws, and pumps until approximately May 29, 2014. On or about May 29, 2014, the EPA issued Respondent COCs to cover engines and equipment produced after that date (including EFNXS.0254GA, EFNX.0344GA, EFNXS.0765GA, EFNXPTANKBA0, EFNXPTANKBB0, EFNXPTANKBC0, EFNXPTANKBD0, and EFNXPTANKJA0).

17. Respondent represents that each model of blowers, cutters, saws, and pumps affected by this lapse in certification were identical in all material respects between model years 2012, 2013, and 2014. As such, Respondent obtained the above-listed model year 2014 COCs by *carrying over* the emission test data from model year 2012 pursuant to 40 C.F.R. §§ 1054.235(d), 1060.235(e). Respondent likewise represents that it would have been appropriate to obtain model year 2013 COCs based on carrying over the same 2012 emission test data.
18. Respondent represents that it first learned of the above-described lapse in certification on or about April 28, 2014. On May 1, 2014, and in subsequent communications, Respondent disclosed to the EPA the existence of and details concerning the lapse in certification and other potential noncompliance.
19. In response to the lapse in certification, Respondent prepared and submitted applications for the model year 2014 COCs listed above. Additionally, Respondent stopped approximately 8,863 affected products from being sold to ultimate purchasers in the United States even though these products had already been imported. Respondent has exported each of these products to a country other than Canada, Mexico, and Territories of the United States.

20. Respondent represents that it has implemented corrective actions to prevent lapses in certification and other compliance problems. Such actions include the implementation of a new standard operating procedure by which engine and equipment production cannot begin until the existence of the requisite COCs is formally confirmed. Such actions also include employee training and product inspection.
21. Respondent has committed to honor the emissions related warranty for each affected product just as though the certification lapse did not occur.
22. On or about July 11, 2014, Respondent disclosed that neither Respondent nor its subsidiary, Makita U.S.A., Inc., completed EPA Standard Form 3520-21 for imported engines and equipment in 2013 and 2014. These engines were manufactured by Respondent and Makita USA Inc. acted as the importer of record.

Alleged Violations of Law

23. Respondent is a “person.” CAA § 302(e), 42 U.S.C. § 7602(e).
24. Respondent is a “manufacturer.” CAA § 216(1), 42 U.S.C. § 7550(1).
25. Between approximately January 2013 and May 2014, Respondent sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) approximately 22,313 new nonroad spark-ignition engines with power at or below 19 kW that were not covered by an exhaust emission COC in violation of 40 C.F.R. § 1068.101(a)(1).
26. Between approximately January 2013 and May 2014, Respondent sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) approximately 22,313 new pieces of equipment

powered by nonroad spark-ignition engines with power at or below 19 kW that were not covered by a evaporative emission COC in violation of 40 C.F.R. § 1068.101(a)(1).

27. Between approximately January 2013 and May 2014, Respondent failed to complete and keep appropriate EPA declarations forms, namely EPA Standard Form 3520-21, for approximately 8,046 engines or pieces of equipment in violation of 40 C.F.R. § 1068.101(a)(2).

Terms of Agreement

28. Respondent:
- (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c) and other provisions of law;
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;
 - (e) agrees to any conditions specified in this Agreement;
 - (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law stated above;
 - (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
 - (h) agrees that Respondent may not delegate Respondent's duties under this

Agreement to any other person without the written consent of the EPA, which may be granted, conditionally granted, or withheld at EPA's sole discretion;

- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
 - (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
 - (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
 - (l) certifies that the information it has supplied concerning this matter was at the time of submission, and is at the time of signature to this Agreement, true, accurate, and complete; and
 - (m) acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
29. For purposes of this proceeding, the Parties each agree that:
- (a) 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;
 - (b) 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 and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;

- (c) its undersigned representative is fully authorized by the Party whom he or she represents to enter that Party into this Agreement, to execute it on behalf of that Party, and to legally bind that Party;
- (d) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and
- (e) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.

30. Respondent agrees to pay to the United States a civil penalty of \$76,000 (the Civil Penalty). The Civil Penalty reflects a 75 percent reduction to the gravity component of what would otherwise have been the appropriate penalty in this matter had Respondent not disclosed the violations described above in satisfaction of conditions (2) through (9) of EPA's Audit Policy. Incentives for Self-Policing: Discovery, Disclosure, Correction

and Prevention of Violation, 65 Fed. Reg. 19,618, 19,625-26 (April 11, 2000).

31. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement;
32. Respondent agrees to pay the Civil Penalty in the manner specified below:
 - (a) Pay the EPA Penalty using any method, or combination of methods, provided on the following website:

http://www.epa.gov/cfo/finservices/payment_instructions.htm;
 - (b) Identify each and every payment with “AED/MSEB # 8130”; and
 - (c) Within 24 hours of payment, email proof of payment to Evan Belser at belser.evan@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “AED/MSEB # 8130”).
33. Respondent acknowledges that the United States Department of Homeland Security’s Bureau of Customs and Border Protection may assess penalties (that are separate and in addition to the Civil Penalty) based on the facts stated in this Agreement.
34. Respondent agrees to pay the following stipulated penalties to the United States in accordance with Paragraph 32, not more than 30 days after receipt of written demand by the EPA for such penalties: \$1,000 per day to the United States if and when it fails to timely pay the Civil Penalty in accordance with Paragraph 32.

Effect of Agreement

35. By its signature below, the EPA covenants not to sue Respondent for civil penalties for the

Alleged Violations of Law stated above, but such covenant automatically terminates 90 calendar days following the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraphs 30–32 and pay any and all stipulated penalties demanded under Paragraph 34. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil judicial action under the CAA or as a matter of contract.

36. Failure to pay the full amount of the Civil Penalty may subject Respondent to a civil action to collect any unpaid portion of the Civil Penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with the Civil Penalty, as described in the following Paragraph of this Agreement, Respondent must timely pay the Civil Penalty.
37. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
 - (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds,

40 C.F.R. Part 13, Subparts C and H; and

- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
38. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
39. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
40. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.
41. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If and when such termination occurs, the EPA reserves the right to pursue legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

In the Matter of:

Makita Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB #8130

By my signature, I execute this Agreement on behalf of Makita Corporation and thereby enter Makita Corporation into this Agreement and bind Makita Corporation to this Agreement.


Signature

June, 19, 2015
Date

Printed Name: TOMOYASU KATO

Title: Director, Corporate officer, R&D Headquarters

Address: 3-11-8, Sumiyoshi-cho, Anjo, Aichi 446-8502 JAPAN

Respondent's Federal Tax Identification Number: 13-2672211

In the Matter of:

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Respondent.

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By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.



for Phillip A. Brooks, 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, DC 20460-0001

July 27, 2015
Date