

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

In the Matter of:)	
)	ADMINISTRATIVE
Briggs & Stratton Corporation)	SETTLEMENT AGREEMENT
)	AED/MSEB - 7199
Respondent)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Briggs & Stratton Corporation, 12301 W. Wirth Street, Wauwatosa, WI 53222 (Respondent).

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and the implementing small spark-ignition (SI) nonroad engine regulations, 40 C.F.R. Part 90 (SI Nonroad Regulations).

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit any person from importing any new nonroad vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued and in effect, and bears the required EPA emissions label; or, is excluded or exempt from complying with the regulatory requirements.

Regulatory Authority - SI Nonroad Regulations:

3. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any SI engine manufactured after the effective dates of the regulations, unless such engine is covered by a certificate of conformity issued by EPA.
4. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI engine manufactured after the

effective dates of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 90.114.

5. 40 C.F.R. § 90.1004(b) provides that the Administrator may exempt a new nonroad engine from § 90.1003 upon such terms and conditions as the Administrator may find necessary for the purpose of export, among other things.
6. 40 C.F.R. § 90.1004(d) provides that a new nonroad engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, shall be subject to the provisions of § 90.1003, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart B of this part, then the engine must comply with the standards of the country that is to receive the engine.
7. 40 C.F.R. § 90.3 defines an engine manufacturer as any person who, among other things, imports nonroad SI engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
8. 40 C.F.R. § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified SI engine, a permanent and legible label identifying each nonroad engine and containing certain information. The label must be readily visible after the engine is installed in the equipment.
9. 40 C.F.R. §§ 90.114(c)(3)-(6), require the label to specify the operating fuel, identify the emission control system, specify the engine lubricant, and specify the date of manufacture, respectively.

Definitions:

10. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulation and dates:* 40 C.F.R. Part 90 is applicable to nonroad SI engines at or below 19 kilowatts (kW) built after the applicable dates in 40 C.F.R. Part 90.

- b. *Certified engine*: A nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
- c. *Certificate of Conformity*: The document issued by EPA to a manufacturer under 40 C.F.R. § 90.106, as applicable, after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Part 90 and the CAA.
- d. *Uncertified engine*: A nonroad engine built after the applicable dates of the regulations but that is not covered by a Certificate of Conformity issued by EPA.
- e. *Export exemption*: An exemption granted under § 90.1004(b) for the purpose of exporting new nonroad engines.
- f. *Export*: To transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy*: The complete destruction of the Subject Engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.
- h. *This matter*: Respondent's importation of the nonroad engines as described in Paragraphs 11 through 13 of this Agreement (Subject Engines), and the corrective action that may apply to such alleged violations.

Alleged Violations:

11. On or about October 23, 2006, Respondent imported into Port Everglades, Florida 528 generators that contained SI nonroad engines (Subject Engines). The Subject Engines are described in Appendix A to this Agreement. Seventy-six of the Subject Engines did not bear or bore an EPA emissions information label that was not visible, in violation of 90.114(a). The remaining 452 Subject Engines involved in the entry bore EPA emissions information labels that did not specify the operating fuel, identify the emission control system, specify the engine lubricant, and date of manufacture, in violation of 40 C.F.R.

§ 90.114(c)(3)-(6), respectively. This constitutes 528 violations of 40 C.F.R.

§ 90.1003(a)(4)(ii).

12. On or about April 9 and May 8, 2007, Respondent imported into Miami, Florida 1,000 SI nonroad engines (Subject Engines). These Subject Engines are described in Appendix B to this Agreement. Respondent declared that the Subject Engines were being imported for export. The Subject Engines or the containers for the Subject Engines did not bear an export label, in violation of 40 C.F.R. § 90.1004(d). This constitutes 1000 violations of 40 C.F.R. § 90.1003(a)(4)(ii).
13. On or about July 14, 2007, Respondent imported into Miami, Florida 185 water pumps that contained SI nonroad engines (Subject Engines). The Subject Engines are described in Appendix C to this Agreement. The Subject Engines either did not bear or bore a label that was not visible, in violation of § 90.114(a)(5). This constitutes 185 violations of 40 C.F.R. § 90.1003(a)(4)(ii).
14. U.S. Customs and Border Protection (Customs) at Port Everglades and Miami, Florida seized and/or detained the Subject Engines.
15. Based on the forgoing, EPA alleges that Respondent committed 1,713 violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d) and the small SI Nonroad Regulations, 40 C.F.R. Parts 90.
16. By entering into this Agreement, Respondent does not admit that it has committed any violations of the Clean Air Act or its implementing regulations, including any of the violations alleged in Paragraph 15 of this Agreement. Respondent also does not admit that it has committed any violation of any provision of law administered by Customs.

Corrective Action:

17. No later than thirty (30) days from the effective date of this, or such longer period of time as required by U.S. Customs, Respondent shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of U.S.

Customs. Respondent shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.

18. Respondent further agrees, without waiving any rights to the contrary, to affix to its certified 2008 and later model year small SI nonroad engines an EPA emissions information label that contains all of the information specified at 40 C.F.R. § 90.114(c), including, but not limited to, the operating fuel, the emission control system, the engine lubricant, and the date of manufacture.

Civil Penalty:

19. Respondent has agreed to pay to the United States of America a civil penalty of \$130,000 no later than thirty (30) days from 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, plus the stipulated penalties as specified in Paragraph 25 of this Agreement. 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 63197-9000
Attn: AED/MSEB - 7199

Respondent may also pay online at www.pay.gov. From the "Search Public Form" field, enter SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the "SFO Form Number 1.1."

Notice:

20. A copy of the payment(s) and all correspondence to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Jocelyn Adair, Esq.
U.S. EPA (Mail Code: 2242A)
1200 Pennsylvania Avenue, NW

(Courier Service)

Jocelyn Adair, Esq.
U.S. EPA
Ariel Rios South, Room 1109A

Washington, DC 20460
Attn: AED/MSEB-7199

1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

General Provisions

21. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
22. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
23. Notwithstanding any other provisions of this Agreement, upon Respondent's 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 Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
24. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representation to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties

25. 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 pay the civil penalty or provide proof thereof, pursuant to Paragraphs 19 and 20, \$250.00 per day; and
 - b. For failure to export or destroy the Subject Engines or provide proof thereof, pursuant to Paragraphs 17 and 20, 250.00 per day.

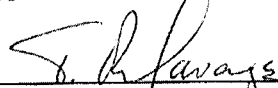
26. All stipulated penalties under Paragraph 25 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in the manner specified in Paragraph 19 of this Agreement. In addition, a copy of the transmittal letter(s) and payment(s) shall be sent to Jocelyn Adair, Esquire at the address specified in Paragraph 20. All stipulated penalties shall be paid to the United States of America within five (5) days of written demand by EPA (the due date). Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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:

27. 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 responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Briggs and Stratton Corporation

By: 

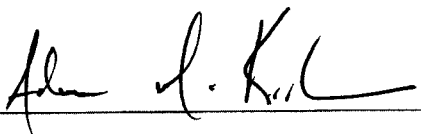
Date: 11/22/07

Printed Name: T.R. Sausage

Printed Title: Senior VP Admin

Administrative Settlement Agreement - *In the Matter of Briggs and Stratton, AED/MSEB - 7199*

U.S. Environmental Protection Agency

By:  Date: 12/6/07

Adam M. Kushner
Director
Air Enforcement Division

Appendix A

**For Administrative Settlement Agreement - *In the Matter of Briggs and Stratton,
AED/MSEB - 7199***

Entry Number: 916-1547001-9

	Description of Generators	Quantity Imported	Violation
1	Promax 7500-E	40	No Label Found on Engine
2	Promax 7500-3E	36	No Label Found on Engine
3	Promax 4500	48	Required information missing from the label
4	Promax 9000E	40	Required information missing from the label
5	Promax Classic 5000	24	Required information missing from the label
6	Handy Pro 5000L	52	Required information missing from the label
7	Promax Classic 3500L	72	Required information missing from the label
8	Handy Pro 3500L	120	Required information missing from the label
9	Handy Pro 2500	60	Required information missing from the label
10	Promax 6000EA	36	Required information missing from the label

Appendix B

**For Administrative Settlement Agreement - *In the Matter of Briggs and Stratton,*
*AED/MSEB - 7199***

Entry Date	Entry Number	Engine Model	Horse Power (Hp)	Quantity	Manufacturer
4/09/07	004-4660067-8	326431	16 Hp	260	Briggs and Stratton
4/09/07	004-4660067-8	243341	10 Hp	340	Briggs and Stratton
5/08/07	004-4683080-4	326431	16 Hp	316	Briggs and Stratton
5/08/07	004-4683080-4	243341	10 Hp	84	Briggs and Stratton
Total				1000	

Appendix C

**For Administrative Settlement Agreement - *In the Matter of Briggs and Stratton,*
*AED/MSEB - 7199***

Entry Date	Entry Number	Engine Model	Horse Power	Quantity	Manufacturer
7/14/2007	004-4750570-6	WP3-65	6.5 Hp	185	Briggs and Stratton