

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

In the Matter Of:

HOMELITE CONSUMER
PRODUCTS, INC.

and

KOMATSU ZENOAH AMERICA, INC.,

Respondents.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND AUDIT POLICY
DETERMINATION

AED/MSEB # 7146

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Homelite Consumer Products, Inc. (Homelite) and Komatsu Zenoah America, Inc. (Komatsu Zenoah) regarding compliance with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 90.

Respondents

1. Homelite is a wholly owned subsidiary of Techtronic Industries Co., Ltd. Techtronic Industries Co., Ltd. also owns a company named Homelite Far East Co. Ltd. (Homelite Far East).
2. Komatsu Zenoah is a Georgia corporation engaged in the marketing and sale of commercial outdoor power equipment, and importation of engines for such equipment.

Purpose

3. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and 40 C.F.R. Part 90 arising out of the importation and introduction into commerce of 5,760 nonroad engines described in Attachment 1 (Subject Engines), while ensuring that future violations are avoided.

Definitions

4. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter*: as used in this Agreement means Respondents' importation and introduction into commerce 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 40 C.F.R. 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.
 - d. *Applicable regulation and dates*: 40 C.F.R. Part 90, is applicable to spark ignition nonroad engines below 19 kW built in or after model year 1997.

Regulatory Authority

5. Sections 203(a) and 213(d) of the Act, 42 U.S.C. § 7522(a), and 42 U.S.C. § 7547(d), 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.
6. 40 C.F.R. § 90.1(a) defines the applicability of 40 C.F.R. Part 90 regulations to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and that are used for any purpose.
7. 40 C.F.R. § 90.1003(a)(i) prohibits a manufacturer of a new nonroad park ignition engine manufactured after the applicable effective date of the regulations from introducing or causing the introduction of a nonroad engine into commerce unless it is covered by a Certificate of Conformity.
8. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing or causing the importation into the United States of any nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
9. 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 an EPA emission label is affixed to the engine.
10. 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.

11. 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.
12. 40 C.F.R. § 90.1103(b) requires the manufacturer of a new nonroad engine to warrant to the ultimate purchaser and each subsequent purchaser that each nonroad engine is designed, built, and equipped to conform with the applicable regulations under section 213 of the Act, 42 U.S.C. § 7547, and is free of any material defects which would cause the engine to fail to conform with the applicable regulations for its warranty period (EPA Emissions Warranty).
13. 40 C.F.R. Part 90, Subpart C allows engine manufacturers to meet the applicable HC + NOx emission standards for Phase 2 spark ignition engines by participating in an averaging, banking and trading program.

Background

14. On January 13, 2004, EPA issued 2004 Model Year Certificate of Conformity number HCP-NRSI-04-02 to Homelite. This Certificate of Conformity covered engine family number 4HCPS.0254AD. Homelite Far East produced the engines covered by this Certificate of Conformity.
15. On or before September 23, 2005, Homelite Far East produced the Subject Engines and affixed Homelite emissions labels to these engines indicating that they were covered by a 2005 Model Year Certificate of Conformity.
16. Komatsu Zenoah purchased and imported the Subject Engines on or before September 23, 2005.

17. At the time Homelite Far East manufactured the Subject Engines and Komatsu Zenoah purchased and imported the Subject Engines, they were not covered by a Certificate of Conformity.
18. EPA alleges that Homelite caused the importation of Subject Engines by contributing to Homelite Far East's improper emissions labeling practices. EPA alleges that Homelite failed to adequately control the use of its emissions labels and allowed Homelite Far East to affix Homelite's emissions label to the Subject Engines, when EPA had not yet issued Homelite a Certificate of Conformity covering the engines
19. On September 23, 2005, EPA issued Certificate of Conformity Number HCP-NRSI-05-08 to Homelite. This Certificate of Conformity covers small SI engine family number 5HCPS.0254AD.
20. Homelite affirms that each of the Subject Engines conform in all material respects to the design specifications of the engines that were tested in support of the application for certificate number HCP-NRSI-05-08.
21. The Subject Engines are spark ignition engines manufactured in 2005 with a rated power below 19kW, and consequently they are subject to the requirements of 40 C.F.R. Part 90.
22. Homelite has elected to demonstrate compliance with the applicable 2005 HC + NO_x emission standards for engine family 5HCPS.0254AD by participating in the averaging, banking and trading program set forth in 40 C.F.R. Part 90, Subpart C.
23. Based on the above, EPA has determined that Respondents are liable for 5,760 violations of Section 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), and the applicable regulations.

Audit Policy Determination

24. Komatsu Zenoah and Homelite self-disclosed the violations at issue in this matter and requested that EPA apply its Final Policy Statement entitled “Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations” 65 FR 19618, April 11, 2000 (“Audit Policy”).
25. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties; however, EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.
26. Where the disclosing party establishes that it satisfies all of the conditions set forth in the Audit Policy, EPA will not seek gravity-based civil penalties. Where the disclosing party establishes that it satisfies all of the conditions except for the first condition, systematic discovery, the disclosing party is eligible for a seventy five percent (75%) reduction of the gravity-based civil penalties.
27. Upon consideration of relevant information about Komatsu Zenoah’s self-disclosed violations, EPA concludes that it has satisfied all of the conditions set forth in the Audit Policy, except for systematic discovery of the violations.
28. Upon consideration of relevant information about Homelite’s self-disclosed violations, EPA concludes that it is not eligible for penalty mitigation under the Audit Policy because the violations at issue in this matter were repeat violations. EPA has, however, taken Homelite’s cooperation in self-disclosing the violations into consideration in determining the penalty in this matter.

Terms of Agreement

29. Respondents agree to provide full EPA emission warranty protection for each of the Subject Engines.
30. Homelite agrees to include all negative credits that it would have created from each of the Subject Engines if it had obtained a Certificate of Conformity in a timely manner in its 2005 Averaging, Banking and Trading Calculations under 40 C.F.R. Part 90, Subpart C. Homelite agrees to send a detailed narrative report to EPA at the address set forth in paragraph 37 of this Agreement demonstrating its compliance with the applicable HC + NOx emission standards at the same time it submits its final Averaging, Banking and Trading reports required under 40 C.F.R. § 90.210.
31. Homelite shall retain an independent contractor to prepare a plan reasonably calculated to insure that all nonroad engines manufactured for sale in the United States market or imported into the United States after the date of this Agreement have proper EPA emission information labels affixed to the engines and conform in all material respects to the engines that were tested in support of the relevant application for certification. Komatsu Zenoah shall prepare a plan reasonably calculated to insure that all nonroad engines it imports for sale in the United States are covered by a Certificate of Conformity and have proper EPA emission information labels affixed to the engines. Respondents shall provide a copy of the plan to EPA within 90 days from the date of this Agreement.
32. For alleged violations of the Act and the regulations promulgated thereunder at 40 C.F.R. Part 90 arising from the importation and introduction into commerce of the Subject Engines, Respondents shall pay to the United States a total of \$148,000 within thirty days of the date 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. Respondents agree 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 # 7146

Simultaneously, a photocopy of the check shall be mailed to Jeffrey A. Kodish at the address specified in Paragraph 37. Such check shall be identified with the case number and Respondents' names.

Stipulated Penalties

33. For failure to comply with the terms of this Agreement on a timely basis Respondents shall pay stipulated penalties to the United States as follows:
 - a. For failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 32, \$250 per day;
 - b. For failure to submit the reports demonstrating compliance with the averaging, banking and trading provisions of 40 C.F.R. Part 90, Subpart C in a timely manner, pursuant to Paragraph 30, \$250 per day;
 - c. For failure to provide full EPA emission warranty protection for any of the Subject Engines, \$1,000 per engine;
 - d. For failure to submit to EPA, in writing, a plan that is adequately designed to prevent future violations, pursuant to Paragraph 31, \$250 per day.

34. All stipulated penalties under Paragraph 33 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 32 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 the statutes or regulations upon which the Agreement is based, in the event that Respondents violate the Agreement.

General Provisions

35. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondents.
36. Respondents hereby authorize representatives of EPA to enter their facilities at any time for the purpose of determining compliance with the terms of this Agreement.
37. Responses to Paragraphs 30, 31 and 32 shall be sent to Jeffrey A. Kodish, at the following address:

Jeffrey A. Kodish, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch
12345 West Alameda Parkway, Suite 214
Denver, CO 80228

facsimile: (303) 236-9514

38. Respondents hereby represent that the individual or individuals executing this Agreement on behalf of Respondents are authorized to do so on behalf of Respondents and that such execution is intended and is sufficient to bind Respondents, their agents, assigns, or successors.

39. Notwithstanding any other provision of this agreement, upon Respondents' failure to timely perform pursuant to Paragraph 32 of this Agreement, or default of 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. Respondents specifically agree 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, except that in the event of a failure by one Respondent to comply with an obligation under this Agreement that applies only to that Respondent, EPA may proceed in an action based on the original claim only against that Respondent. Respondents expressly waive their right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
40. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondents' disclosure and representations to EPA as memorialized in Paragraphs 14 - 23 of this Agreement, and the remediation of the violations in accordance with Paragraph 30 of this Agreement.

Enforcement

41. Upon completion of the terms of this Agreement, the alleged violations of the Act and the regulations promulgated thereunder at 40 C.F.R. Part 90 described in this Agreement shall be considered resolved by EPA.

The following agree to the terms of this Agreement:

Homelite Consumer Products, Inc.


By: Lee Sowell
(name) Lee E Sowell
(title) President

5/19/06
Date

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and Komatsu Zenoah America, Inc.**

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Komatsu Zenoah America, Inc.

By: 
(name) Kuniyo Watanabe
(title) president

May 22, 2006
Date

**Administrative Settlement Agreement *In the Matter of:* Homelite Consumer Products, Inc.
and Komatsu Zenoah America, Inc.**

AED/MSEB # 7146

U.S. Environmental Protection Agency

By:  _____

Adam M. Kushner, Director
Air Enforcement Division

Office of Enforcement and Compliance Assurance

5-30-06

Date

**Administrative Settlement Agreement In the Matter of: Homelite Consumer Products, Inc.
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Attachment 1

Model	Serial Numbers
BC250	50407061 - 50408020
BC250	50508021 - 50508780
BC250	50608781 - 50609990
BT250	50406577 - 50407536
BT250	50507537 - 50508696
BT250	50608697 - 50608976
BT250	50708977 - 50709276