

U.S. ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

_____)	
In the Matter of:)	Administrative Settlement
_____)	Agreement
Dorian Drake International Inc.)	
_____)	
Respondent)	AED/MSEB # 7869
_____)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Dorian Drake International, Inc. (Dorian Drake).

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under Title II of the Clean Air Act (Act), 42 U.S.C. § 7401 *et seq.*, and EPA’s regulations at 40 C.F.R. Part 90 resulting from Dorian Drake’s importation of small spark ignition (SI) engines contained in the United States Department of Homeland Security’s Bureau of Customs and Border Protection (CPB) entry numbers BGZ-0010789-0 and BGZ-0010791-6, identified in Attachment 1.

Statutory Authority

2. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer from selling or offering for sale, or introducing or delivering for introduction into commerce, or any person from importing, any motor vehicle engine unless the engine, or vehicle containing an engine is covered by an EPA certificate of conformity that is issued, and in effect.

3. Section 213(d), 42 U.S.C. § 7547(d) makes the prohibition in section 203(a)(1) applicable to nonroad engines, including engines contained in nonroad equipment or nonroad vehicles.
4. Section 216(1) of the Act, 42 U.S.C. § 7550(1), defines a manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or a person who acts for and is under the control of such a person.
5. Under section 205(a) of the Act, 42 U.S.C. § 7524(a), any person who violates section 203(a)(1), 42 U.S.C. §§ 7522(a)(1) or (a)(4), is subject to a civil penalty of not more than \$37,500 for each motor vehicle.
6. Sections 216(10) and (11) of the Act, 42 U.S.C. §§ 7550(10) and (11), define a nonroad engine as an engine that is not used in a motor vehicle, a competition vehicle, or a stationary source.

Regulatory Authority

7. 40 C.F.R. § 90.1(a) makes Part 90 regulations applicable 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.
8. 40 C.F.R. §§ 90.909(a) and (d), and § 90.1004(d) provide that a new nonroad engine intended solely for export to a country without emissions standards is exempt from 40 C.F.R. § 90.1003 if the engine is labeled or tagged as being for “solely for export” on the engine and its container.
9. 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 either covered by a certificate of conformity or is exempt from the requirements of § 90.1003.

10. 40 C.F.R. §§ 90.3 defines a nonroad vehicle manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person in connection with the distribution of such vehicles.

Definitions

11. *Certificate of conformity*: The document issued by EPA to a manufacturer after EPA has determined that the manufacturer's application is complete and that the engine family meets the applicable requirements of the Code of Federal Regulations and the Act. Issuance of the certificate of conformity permits importation and introduction into commerce of vehicles or engines which conform, in all material respects, to the design specifications described in the manufacturer's application as long as they are built after the effective date of the certificate and before the end of the calendar year for which the model year indicated on the certificate of conformity is named.
12. *Manufacturer* has the meaning given in section 216(1) of the Act, 42 U.S.C. § 7550(1). In general, this term includes any person who manufactures an engine or piece of equipment for sale in the United States or otherwise introduces a new engine or piece of equipment into U.S. commerce. The term manufacturer includes any person who imports new engines or new equipment into the United States for resale.

Violations

13. Dorian Drake imported 890 model TBC-550DX engines, 260 model TIA-350S engines, and 60 model TEA-500 engines on November 11, 2009, under Entry Numbers BGZ-0010791-6 and BGZ-0010789-0, as identified in Attachment 1 (Subject Engines).
14. Dorian Drake claimed on EPA form 3520-21 that the Subject Engines were intended solely for export, but neither the Subject Engines nor their containers were labeled or tagged in a manner that would indicate this intent. Consequently, the Subject Engines do not meet the requirements for an exemption under 40 C.F.R § 90.909, and are subject to the provisions of 40 C.F.R. § 90.1003.
15. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits the importation of any new nonroad engine unless such engine is covered by a valid certificate of conformity.
16. The Subject Engines were not covered by a valid certificate of conformity.
17. Importation of the Subject Engines constitutes 1210 violations of sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1) and 7547(d).

Civil Penalty

18. Dorian Drake shall pay to the United States a civil penalty of fifty seven thousand dollars (\$57,000) (EPA penalty).
19. Dorian Drake agrees to pay the EPA penalty to the United States within thirty (30) calendar days of the effective date of this Agreement (penalty due date), but not before the effective date. Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Dorian Drake agrees to pay the amount in the manner specified in paragraph a or b below:

- a. Send a certified check or cashier's check payable to the United States of America, and mailed via United States Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7869

Simultaneously, fax a photocopy of the check to (202) 564-0069 to the attention of David Alexander, or scan and email a copy of the check to alexander.david@epa.gov. This check shall be identified with case number AED/MSEB # 7869, and Dorian Drake's name; or

- b. Pay online through the Department of the Treasury using 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 shall be identified with case number AED/MSEB # 7869. Within twenty-four hours of payment, fax a photocopy of the receipt of payment to (202) 564-0069 to the attention of David Alexander, or scan and email a copy of the receipt to alexander.david@epa.gov.

20. Dorian Drake shall export the Subject Engines within thirty calendar days of the effective date of this Agreement, or within thirty calendar days of their release for exportation by CBP, whichever is later. Exportation shall be carried out under the supervision of CBP. Dorian Drake shall, within the same time, certify to EPA that the Subject Engines were exported or destroyed and shall submit supporting documents issued by CBP proving exportation or destruction.

21. Separate and apart from the EPA penalty, CBP may require payment of a forfeiture remission amount for the release of the goods from seizure.

Notice

22. All written correspondence to EPA concerning this Agreement shall be sent to:

(Postal Service Mail)

David E. Alexander
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7869

(Courier Service)

David E. Alexander
U.S. EPA
Ariel Rios South, Room 1111A
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7869

General Provisions

23. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time an electronic copy will be returned to Dorian Drake.
24. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Dorian Drake to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to section 205 of the Act, or pursue any other remedies available to it. Dorian Drake expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time. Dorian Drake acknowledges that EPA intends to use Dorian Drake's tax identification number, which Dorian Drake 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).

25. The parties represent that the individual or individuals executing this Agreement on behalf of Dorian Drake are authorized to do so on behalf of Dorian Drake and that such execution is intended and is sufficient to bind Dorian Drake, its agents, assigns, or successors.
26. Dorian Drake 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.
27. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
28. This Agreement is contingent upon the truthfulness, accuracy and completeness of Dorian Drake's disclosures and representations to EPA including, but not limited to, representations regarding importations and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties

29. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to paragraphs 18, 19 and/or 20 of this Agreement, Dorian Drake agrees to the following stipulated penalties:
30. For the failure to timely pay the civil penalty, provide proof of such payment, or export the Subject Engines pursuant to paragraphs 18, 19 and/or 20 of this Agreement, Dorian Drake shall pay a stipulated penalty of \$250 per day.

31. All stipulated penalties shall be paid in the manner specified in paragraph 18 of this Agreement. In addition, a copy of the transmittal letter(s) and receipts(s) shall be sent to David E. Alexander in the manner specified in paragraph 22.

Effect of Agreement

32. 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 Dorian Drake in the event of default or noncompliance with this Agreement, for violations of sections 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, 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. This Agreement in no way affects or relieves Dorian Drake of responsibility to comply with other state, federal, or local laws and/or regulations.

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of

Dorian Drake International Inc., Respondent

AED/MSEB # 7869

The following agrees to the terms of this Agreement:

By: _____

Date: _____

Typed or Printed Name: _____

Typed or Printed Title: _____

Federal Tax Identification Number: _____

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of

Dorian Drake International Inc., Respondent

AED/MSEB # 7869

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: _____

Date: _____

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

ATTACHMENT 1

Subject Engines

EQUIPMENT	MODEL	ENGINE FAMILY MODEL YEAR	QUANTITY	NONCOMPLIANCE SPECIFICATIONS
<i>Entry Number BGZ-0010789-0</i>		<i>Entry Date 11/11/2009</i>		
Small nonroad SI engine (Brush Cutter)	TBC-550DX	Unknown	890	Imported without valid COC and with insufficient labeling
<i>Entry Number BGZ-0010791-6</i>		<i>Entry Date 11/11/2009</i>		
Small nonroad SI engine (Coring Auger Drill)	TIA-350S	Unknown	260	Imported without valid COC and with insufficient labeling
Small nonroad SI engine (Auger Drill)	TEA-500	Unknown	60	Imported without valid COC and with insufficient labeling