

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

In the Matter of:)	
)	
Kapa Technologies, Inc.)	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
Respondent)	AED/MSEB - 7164

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Kapa Technologies, Inc., 2805 N Powerline Road, Suite 1, Pompano Beach, Florida 33069 (Respondent).

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve 133 alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. § 7542, and 42 U.S.C. § 7547, and the implementing small spark-ignition (SI) nonroad engine regulations, 40 C.F.R. Part 90 (SI Non-Road Regulations).

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. § 7522(a), and 42 U.S.C. § 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.

Regulatory Authority - SI Non-Road 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, 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. § 90.3 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.
6. 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. The label must be legible and readily visible after the engine is installed in the equipment.

Definitions:

7. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* as used in this Agreement means Respondent's importation of the 133 nonroad engines as described in Paragraph 8 of this Agreement (Subject Engines) and any civil liability that may apply to such violations.
 - b. *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. Issuance of the Certificate of Conformity permits production and introduction into commerce of engines built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.
 - c. *Certified engine:* a nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
 - 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. *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.

- f. *Handheld equipment engine*: means a nonroad engine that meets the requirements specified at 40 C.F.R. § 90.103(a)(2)(i) through (v).
- g. *Non-handheld equipment engine*: means a nonroad engine that does not meet the requirements specified at 40 C.F.R. § 90.103(a)(2)(i) through (v).
- h. *Manufacturer-owned nonroad engine*: means an uncertified nonroad engine owned and controlled by a nonroad engine manufacturer and used in a manner not involving lease or sale or market promotion purposes.
- i. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.
- j. *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.

Alleged Violations:

- 8. EPA alleges that Respondent imported into the United States 133 small SI nonroad engines as described in the Table below (the Subject Engines). The Subject Engines were uncertified for use in non-handheld equipment and did not bear an EPA emissions label.

Table

Entry Date	Entry No.	Equipment Model	Qty.	Manufacturer
07/05/2006	004-02036876-3	Gasoline Skateboards	128	Zhijiang Wuchuan Industrial Co.
07/05/2006	004-0203687-3	Spare Gasoline Engines	5	Zhijiang Wuchuan Industrial Co.

- 9. In September 2006, U.S. Customs and Border Protection (Customs) at the Port of Fort Lauderdale, Florida seized the Subject Engines that were being used to power skateboards, a non-handheld application.
- 10. On the EPA Declaration Form 3521, Respondent checked boxes G and 3. In checking box G, Respondent declared that he was importing nonroad spark-ignition engines at or

below 19 Kw (or 30 kW if total displacement is at or below 1000 cc). In checking box 3, Respondent declared that he was importing "manufacturer-owned engines".

11. The 133 Subject Engines are not manufacturer-owned nonroad engines as defined by 40 C.F.R. § 90.902, and Respondent did not comply with the recordkeeping, right of entry, reporting, and labeling requirements as specified at 40 C.F.R. § 90.906.
12. The Subject Engines were not excluded or exempt from complying with the certification and labeling requirements of the CAA and small SI Nonroad Regulations.
13. Based on the forgoing, EPA alleges that Respondent committed 133 violations of Sections 203(a) and 213(d) of the CAA, and the small SI Non-Road Regulations, 40 C.F.R. Parts 90.

Terms of Agreement:

14. Respondent has agreed to pay a civil penalty of \$2,310 under this Agreement. Accordingly, under this Agreement, within thirty days from the date of this Agreement Respondent shall pay \$2,310 to the United States of America. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the amount by certified check or cashier's check payable to the United States of America, and to mail the payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 7164

15. Within thirty days of this Agreement, or such longer period of time if required by Customs, Respondent shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.

16. Within sixty days of this Agreement, Respondent shall provided to EPA a detailed plan reasonably calculated to ensure that all nonroad engines imported after the date of this Agreement into the United States by Respondent are covered under an EPA-issued certificate of conformity, have proper EPA emission labels affixed to each engine, and are imported in a manner that complies with all other applicable regulations, including 40 C.F.R. Part 90.
17. A copy of the payment check and all correspondence to EPA concerning this Agreement shall be sent to:

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W. Room 1109A
Washington, DC 20460

General Provisions

18. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
19. 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.
20. 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.

21. 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

22. 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, pursuant to Paragraph 14, \$250.00 per day;
 - b. For failure to export or destroy the Subject Engines and provide proof thereof, pursuant to Paragraph 15, \$250.00 per day; and,
 - c. For failure to submit to EPA, in writing, a plan to prevent further violations, pursuant to Paragraph 16, \$250.00 per day.
23. All stipulated penalties under Paragraph 22 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 to the manner specified in Paragraph 14 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jocelyn Adair at the address specified in Paragraph 17. All stipulated penalties shall be paid to the United States of America within 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

24. 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:

Kapa Technologies, Inc.

By: 

Printed Name: Perry Kapatazidis

Printed Title: Pres

Date: 9-28-06

**Administrative Settlement Agreement - *In the Matter of Kapa Technologies, Inc.*;
AED/MSEB - 7164**

U.S. Environmental Protection Agency

By:  _____ Date: 10.20.06 _____

Adam M. Kushner
Director
Air Enforcement Division