

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

In the Matter Of:

FIMCO, Inc.

Respondent

)
)
)
)
)
)

ADMINISTRATIVE SETTLEMENT
AGREEMENT

AED/MSEB Number - 7063

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

Purpose

1. 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 of the 21 nonroad engines that are described in Attachment 1 (the Subject Engines), and the 500 nonroad engines that are described in Attachment 2 (the Additional Engines) while ensuring that prior violations are identified and resolved, and future violations are avoided.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* means Respondent's importation of the Subject Engines and the Additional Engines, and any civil liability under the Act that may result from such importation.
 - 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 Part 90 and the Clean Air Act. Issuance of the Certificate of Conformity permits production (in

the case of domestic manufacture) or importation of a covered piece of equipment or engine after the date of the certificate and before expiration of the 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 spark ignition nonroad engines at or below 19 kW [25 HP] built in or after model year 1997.

Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 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.
- 4. 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 kW and that are used for any purpose.
- 5. 40 C.F.R. § 90.2 sets forth the effective dates of the regulations at 40 C.F.R. Part 90, and provides that these regulations apply to spark ignition nonroad engines at or below 19 kW built in or after model year 1997.
- 6. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad spark ignition engine at or below 19 kW manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
- 7. 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 Emissions label is affixed to the engine.

8. 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.
9. 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 EPA Emissions 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.

Background

10. On August 12, 2004 U. S. Customs and Border Protection (Customs) detained the Subject Engines at the port of Omaha, Nebraska, where they are currently being held, because no EPA emission information labels were affixed to the engines.
11. On or about September 3, 2004, Respondent informed EPA that on August 23, 2004, it had imported the Additional Engines. At Respondent's direction the Additional Engines are being held without sale or offer for sale in sealed container number CRXU1545488, at Ray's Transfer 1309 Avenue J, Council Bluffs, IA 51501, telephone (712) 323-7644.
12. Respondent is the importer of the Subject Engines and the Additional Engines. The Subject Engines and the Additional Engines are uncertified.
13. The Subject Engines and the Additional Engines are spark ignition engines built in 2004 with a rated power of 4 to 13 HP, and consequently they are subject to the requirements of 40 C.F.R. Part 90.
14. Based on the above, EPA has determined that Respondent is liable for five hundred twenty one (521) violations of Section 203(a) and 215(d) of the Clean Air Act, and applicable regulations.
15. Respondent also affirms that it has not imported any spark ignition engines or compression ignition engines since January 1, 1996, other than the Subject Engines and the Additional Engines.

Terms of Agreement

16. a. Within thirty days of the date of this Agreement, Respondent will submit an application for testing exemption for the Subject Engines that contains all of the information required under 40 C.F.R. § 89.905, to the following address:

Kesha Jennings
Mailcode 6403J
US EPA, Office of Transportation and Air Quality,
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

telephone: (202) 343-9499

or,

- b. If Respondent fails to submit a complete testing exemption application within 30 days as required under Paragraph 16.a, or if Respondent's testing exemption request is denied for any reason, Respondent shall export the Subject Engines to a country other than Mexico or Canada and submit Customs documentation of such export. If required by this Paragraph 16.b, Respondent shall complete exportation and submit Customs documentation of such export within thirty days following notification that the testing exemption application was not complete, notification that the testing exemption request was denied, or expiration of the 30 day period provided in Paragraph 16.a, whichever is later.
17. Within 30 days from the date of this Agreement Respondent shall export the Additional Engines to a country other than Canada or Mexico and submit Customs documentation of such export.
18. Within 60 days from the date of this Agreement, Respondent shall provide EPA with a plan reasonably calculated to insure that all nonroad engines imported after the date of this Agreement into the United States by Respondent have proper EPA emission information labels affixed to the engines, and are imported in a manner that complies with all other applicable regulations, including Parts 89 and 90.

BL

19. Unless otherwise noted all submissions shall be sent to David Alexander, at the following address:

David E. Alexander, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (Mailcode 2242-A)
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460-0001

facsimile: (202) 564-0069

20. Respondent shall pay to the United States Two Thousand Dollars (\$2,000) within thirty (30) 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. 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
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB # 7063

Simultaneously, a photocopy of the check shall be mailed to David E. Alexander at the address specified in Paragraph 19. Such check shall be identified with the case number and Respondent's name.

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 or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
23. Notwithstanding any other provision of this agreement, upon Respondent's failure to timely perform pursuant to Paragraphs 16 - 20 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. 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 Part 90. Respondent expressly waives its 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 representations to EPA as memorialized in Paragraphs 10 - 15, 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 timely pay the penalty, or provide proof thereof, pursuant to Paragraph 20, \$250 per day;
 - d. For failure to submit to EPA, in writing a plan to prevent future violations, pursuant to Paragraph 18, \$250 per day.
 - e. For failure to secure a test exemption or export the Subject Engines pursuant to Paragraph 16, \$500 per day.
 - f. For failure to export the Additional Engines pursuant to Paragraph 17, \$500 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid

in accordance with Paragraph 25 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 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 considered resolved.

The following agree to the terms of this Agreement:

FIMCO, Inc.

By: [Signature] 12/2/04
(name) Date
(title) Vice President

U.S. Environmental Protection Agency

By: [Signature] 12/30/04
Adam M. Kusner Date
Acting Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

bc

Attachment 1
Subject Engines

China Model Number	Fimco Model Number	Number of Units
160 FL	XR-4-V	2
168F	XR-5.5-H	2
168F-2	XR-6.5-H-2	2
168FA	XR-6.5-H	2
168FA-2	XR-5.5-H-2	2
188FD-3	XR-5.5-H-3	2
188F	XR-13-H	2
168FLZ	XR-5.5-V-SP	2
168FL	XR-5.5-V	2
ZB60	HighFlo 5.5-	1
ZB80	HighFlo 5.5-	1
139F	XR-1-H	1

BL

Attachment 2
Additional Engines

500 units Shandong Huasheng 2 cycle 40.2 cc Water Pumps, model QG225-30 made in 2004.

BL