



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.**

In the Matter of:

Mercury Marine, a division of Brunswick Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8129

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Mercury Marine, a division of Brunswick Corporation, (Mercury) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations.
2. Respondent in this matter is Mercury Marine. Respondent is a division of Brunswick Corporation, organized under the laws of the State of Delaware with an office at One North Field Ct., Lake Forest, Illinois 60045-4811. Mercury Marine manufactures and sells spark-ignition propulsion marine engines. Mercury Marine sells their engines domestically and abroad.
3. The EPA's delegated official and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) and 213(d) of the CAA, 42 U.S.C. §§ 7524(c) and 7547(d), and 40 C.F.R. § 1068.125.

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile sources of air pollution. The Alleged Violations of Law, stated below, regard spark-ignition propulsion marine engines, specifically outboard engines, for which (beginning in model year 2010) 40 C.F.R. Part 1045 sets emission standards and 40 C.F.R. Part 1068 sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.
5. Starting with model year 2010, all outboard engines must satisfy air pollutant emission standards in 40 C.F.R. § 1045.103. These exhaust emission standards impose limits on emissions of hydrocarbon and oxides of nitrogen (HC + NO_x), and carbon monoxide.
6. The EPA’s certification program is designed to ensure that every engine introduced into United States commerce conforms in all material respects to an engine that has been approved by the EPA. The EPA approves engines by issuing certificates of conformity (COCs).
7. To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and for each model year that it intends to introduce into United States commerce. 40 C.F.R. Part 1045, Subpart C (outlining certification requirements).
8. The COC application must include, among other things, a description of the basic parameters of the engine’s design and emission controls and a list of each distinguishable engine configuration that is within the engine family that will be covered by the COC. 40 C.F.R § 1045.205(a).

9. Once issued, a COC covers only those engines which conform in all material respects with the engine tested for and described in the COC application. 40 C.F.R. §§ 1068.101(a)(1)(i), 1068.103(a).
10. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a spark-ignition propulsion marine engine unless it is covered by a COC or is otherwise exempt from certification requirements. 40 C.F.R. § 1068.101(a)(1).
11. A person who violates 40 C.F.R. § 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each violation. 40 C.F.R. § 1068.101(a)(1).

Factual Background

12. In 2013, Respondent manufactured 52 spark-ignition propulsion marine engines identified with model 1225D73EY, 1225D83EY, or 1225D84EY (Subject Engines). These are 2-stroke, 3-liter engines with maximum power of approximately 174 kilowatts.
13. The Subject Engines are regulated under 40 C.F.R. Part 1045.
14. Respondent had obtained COCs for 2012 and prior model years that covered engines with the same configuration as the Subject Engines. In model year 2013, however, Respondent decided to not seek a COC for these models.
15. The Subject Engines were labeled as lawful for “export only,” consistent with EPA regulations for engines manufactured in the United States but intended for sale outside the United States. 40 C.F.R. § 1068.230.

16. Respondent sold the Subject Engines to dealers and ultimate purchasers in the United States. Respondent subsequently reacquired three of the Subject Engines in order to prevent their sale and use in the United States.
17. Respondent represents that these sales occurred because the Subject Engines, although intended for foreign markets, were inadvertently added to a “close out” inventory list that was available for domestic purchase.
18. Respondent learned of the sale of one or more Subject Engine in April 2014. Respondent disclosed the sale of the Subject Engines to the EPA later that month.
19. Respondent revised its model year 2013 Averaging, Banking, and Trading (AB&T) end of year report to forfeit approximately 7,308 HC + NOx emission credits.
 - (a) Under the AB&T program, emission credits represent surplus emission reductions that manufacturers achieve beyond those required under applicable emission standards. Manufacturers may certify engines that emit regulated pollutants at higher levels than the applicable emission standards provided that they consume sufficient emission credits to cover such excess emissions. So, AB&T credits are limited authorizations to emit regulated air pollution. *See* 40 C.F.R. Part 1045, Subpart H (outlining AB&T requirements for spark-ignition propulsion marine engines).
 - (b) Here, the Subject Engines emit approximately 28 grams per kilowatt-hour (g/kW-hr) whereas the applicable emission standard for the Subject Engines (under 40 C.F.R. § 1045.103) is approximately 16 g/kW-hr. As such, had Respondent certified the Subject Engines, it would have needed to consume approximately 7,308 HC + NOx emission credits under the AB&T program. This amount of

credits represents 7,308 actual kilograms of HC + NOx emissions. By forfeiting these credits, no manufacturer (including Respondent) may use them to certify and sell engines that exceed applicable emission standards.

Alleged Violations of Law

20. Respondent is a “person.” CAA § 302(e), 42 U.S.C. § 7602(e).
21. Respondent is a “manufacturer.” CAA § 216(1), 42 U.S.C. § 7550(1).
22. Respondent sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) the 52 new Subject Engines described above.
23. None of the Subject Engines was covered by a COC nor otherwise exempt from certification requirements.
24. Therefore, Respondent violated 40 C.F.R. § 1068.101(a) each time it sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) every one of the 52 Subject Engines.

Terms of Agreement

25. Respondent:
 - (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c) and other provisions of law;
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;

- (e) agrees to any conditions specified in this Agreement;
- (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law stated above;
- (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
- (h) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which may be granted, conditionally granted, or withheld at EPA's sole discretion;
- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information;
- (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
- (l) certifies that the information it has supplied concerning this matter was at the time of submission, and is at the time of signature to this Agreement, truthful, accurate, and complete; and

- (m) acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

26. For purposes of this proceeding, the Parties each agree that:

- (a) this Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
- (b) this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;
- (c) its undersigned representative is fully authorized by the Party whom he or she represents to enter that Party into this Agreement, to execute it on behalf of that Party, and to legally bind that Party;
- (d) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for

the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and

- (e) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.
27. Respondent agrees to pay to the United States a civil penalty of \$92,000 (the Civil Penalty). The Civil Penalty reflects a 75 percent reduction to the gravity component of what would otherwise have been the appropriate penalty in this matter had Respondent not disclosed the violations described above in satisfaction of conditions (2) through (9) of EPA's Audit Policy. Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violation, 65 Fed. Reg. 19,618, 19,625-26 (April 11, 2000).
28. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement;
29. Respondent agrees to pay the Civil Penalty in the manner specified below:
- (a) Pay the EPA Penalty using any method, or combination of methods, provided on the following website:
http://www.epa.gov/cfo/finservices/payment_instructions.htm;
 - (b) Identify each and every payment with "AED/MSEB # 8129"; and
 - (c) Within 24 hours of payment, email proof of payment to Evan Belser at Belser.Evan@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB # 8129").

30. Respondent agrees to pay the following stipulated penalties to the United States in accordance with Paragraph 29, not more than 30 days after receipt of written demand by the EPA for such penalties: \$1,000 per day to the United States if and when it fails to timely pay the Civil Penalty in accordance with Paragraphs 27–29.

Effect of Agreement

31. By its signature below, the EPA covenants not to sue Respondent civil penalties for the Alleged Violations of Law stated above, but such covenant automatically terminates 90 calendar days following the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraphs 27–29 and pay any and all stipulated penalties demanded under Paragraph 30. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA or as a matter of contract.
32. Failure to pay the full amount of the Civil Penalty may subject Respondent to a civil action to collect any unpaid portion of the Civil Penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with the Civil Penalty, as described in the following Paragraph of this Agreement, Respondent must timely pay the Civil Penalty.
33. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to

- 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
 - (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
34. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
35. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
36. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or

regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.

37. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If and when such termination occurs, the EPA reserves the right to pursue legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

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By my signature, I execute this Agreement on behalf of Mercury Marine and thereby enter Mercury Marine into this Agreement and bind Mercury Marine to this Agreement.



Signature

7/21/15

Date

Printed Name: TODD LEMKE

Title: VICE PRESIDENT, GENERAL COUNSEL
BRUNSWICK CORPORATION, MERCURY MARINE DIVISION

Address: W6250 PIONEER ROAD, FOND DU LAC, WI 54935

Respondent's Federal Tax Identification Number: 36-0848180

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By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.



 Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

July 27, 2015
Date