

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 205(c) of the CAA, 42 U.S.C. § 7524(c), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Title II of the CAA

3.1. Section 203(a) of the CAA, 42 U.S.C. § 7522(a), prohibits a manufacturer from selling, offering for sale, introducing, or delivering for introduction into commerce, or any person from importing, any vehicle or engine manufactured after the effective date of the applicable regulations unless such vehicle or engine is covered by a certificate of conformity (“COC”) issued by EPA.

3.2. Pursuant to Section 216(1) of the CAA, 42 U.S.C. § 7550(1), the term “manufacturer” as used in Section 203 of the CAA, 42 U.S.C. § 7522, and its implementing regulations includes any person who imports engines or vehicles for resale.

3.3. "Certificate of conformity" or "COC" means the certificate issued by EPA under 40 C.F.R. Parts 1054 or 1060 after receipt by EPA of an acceptable application prepared in accordance with one of those Parts that covers the appropriate category of engines/equipment and conforms to all requirements specified for equipment in the standard-setting part.

3.4. Pursuant to Section 213(d) of the CAA, 42 U.S.C. § 7547(d), nonroad vehicle and engine standards, "...shall be enforced in the same manner as the standards prescribed under section 202, [42 U.S.C. § 7521] for motor vehicles and motor vehicle engines," and "the Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under [Section 213]."

3.5. The "General Compliance Provisions for Engine Programs" under 40 C.F.R. Part 1068 were promulgated pursuant to the authority of Section 213(d) of the CAA, 42 U.S.C. § 7547(d), to extend the prohibitions enumerated in Section 203 to nonroad engines and vehicles. See 40 C.F.R. § 1068.101(a)(1) and (b)(5).

3.6. With certain exceptions not relevant here, beginning with model year 2011, small, nonhandheld, nonroad spark-ignition engines with maximum engine power at or below 19 kilowatt and engine displacement greater than or equal to 225 cubic centimeters ("cc") are regulated under 40 C.F.R. Part 1054, "Control of Emissions from New, Small Nonroad Spark-Ignition Engines and Equipment." 40 C.F.R. § 1054.1(a).

3.7. 40 C.F.R. Part 1054 codifies emissions standards for new, small nonroad spark-ignition engines and equipment, as well as testing, certification, and labeling requirements. Standards in Part 1054 pertain to both exhaust emissions, which require engine certification, and evaporative emissions, which require equipment certification if the engines runs on volatile fuel, such as gasoline. 40 C.F.R. §§ 1054.20(b); 1054.101(a) and (b).

3.8. Beginning with model year 2011, equipment containing small, nonhandheld, nonroad spark-ignition engines regulated under 40 C.F.R. Part 1054 must meet the evaporative emissions standards set forth at 40 C.F.R. Part 1060, "Control of Evaporative Emissions from New and In-Use Nonroad and Stationary Equipment." 40 C.F.R. §§ 1054.110, 1054.112, and 1060.1(a)(6).

3.9. The regulations at 40 C.F.R. §§ 1054.135 and 1060.135 describe the labels that must be attached to subject engines and the required content of the labels.

3.10. 40 C.F.R. § 1054.135(c)(8) requires that the label state either:

- a. If the engine is certified only with respect to exhaust emissions: "THIS ENGINE MEETS U.S. EPA EXH REGS FOR [MODEL YEAR];" or
- b. If the engine is certified with respect to exhaust emissions and the equipment with respect to evaporative emissions: "THIS ENGINE MEETS U.S. EPA EXH/EVP REGS FOR [MODEL YEAR]."

3.11. 40 C.F.R. § 1060.135 requires equipment manufacturers to affix a permanent label to the equipment that states "THIS EQUIPMENT MEETS U.S. EPA EVAP STANDARDS."

3.12. Where the same manufacturer holds both the exhaust emissions COC and the evaporative emissions COC, a single emissions control information label may be used to satisfy all labeling requirements, including the evaporative emissions labeling requirements. See 40 C.F.R. § 1054.135(c)(8)(ii).

3.13. 40 C.F.R. § 1054.15(c) provides that anyone who manufactures, imports, installs, owns, operates, or rebuilds any of the engines subject to 40 C.F.R. Part 1054 or equipment containing these engines is also subject to 40 C.F.R. Part 1068.

3.14. 40 C.F.R. §§ 1060.15(b) and 1060.601(a) provide that anyone who manufactures, imports, owns, operates, or services any of the commerce fuel system components that are subject to permeation or diurnal emission standards under Part 1060 is also subject to 40 C.F.R. Part 1068.

3.15. 40 C.F.R. § 1060.601(a) provides that, except for certain exceptions not relevant here, fuel-system components that are subject to permeation or diurnal emission standards under Part 1060 must be covered by a valid COC before being introduced into U.S. commerce to avoid violating the prohibition of 40 CFR 1068.101(a).

3.16. 40 C.F.R. § 1068.101(a)(1) prohibits any person from selling, offering for sale, or introducing or delivering into commerce in the United States or importing into the United States any new regulated engine or equipment subject to emission standards referenced in 40 C.F.R. Part 1068 unless it is covered by a valid COC and has the required labels or tags, or is properly exempted or excluded from the certification requirements.

3.17. 40 C.F.R. § 1060.601(e) provides that, if there is no valid COC for any given emission standard for new equipment, the manufacturer of the engine, equipment, and fuel system components are each liable for violations of the prohibited acts with respect to the fuel system and fuel system components they have introduced into interstate commerce, including fuel systems and fuel system components installed in engines or equipment at the time the engines or equipment are introduced into United States commerce.

3.18. Section 208(a) of the CAA, 42 U.S.C. § 7542(a), requires persons subject to the requirements of Parts A or C of Title II to, among other things, provide information EPA may reasonably require to determine whether such person has acted or is acting in compliance with such requirements and the regulations adopted thereunder. See also 40 C.F.R. § 1068.25.

3.19. Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), makes it unlawful for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under Section 208 of the CAA, 42 U.S.C. § 7542.

3.20. 40 C.F.R. § 1068.101(2) prohibits a subject entity from failing to provide to EPA complete and accurate reports and information without delay as required.

3.21. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), provides, among other things, that any person who violates Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), shall be subject to a civil penalty of not more than \$25,000 for each vehicle or engine. See also 40 C.F.R. § 1068(a)(1).

3.22. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), also provides, among other things, that any person who violates Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2), shall be subject to a civil penalty of not more than \$25,000 per day of violation. See also 40 C.F.R. § 1068(a)(2).

3.23. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the maximum civil penalties referred to in the preceding paragraphs have been increased to \$45,268.

General Allegations

3.24. Respondent in this matter is a corporation organized under Idaho law, with its principal place of business at 8651 West Westpark Street, Boise, Idaho, 83704.

3.25. Respondent is an importer of equipment such as portable generators and other equipment that contains engines.

3.26. As such, Respondent is a "manufacturer" within the meaning of Section 203(a) of the CAA, 42 U.S.C. § 7522(a), and that regulations implementing that provision.

3.27. On or about April 28, 2015, Respondent imported into the United States 56 portable generators with the model name HD8000GX (“56 Generators”).

3.28. In addition to the 56 Generators, the shipment also included 168 pieces of other equipment (e.g., water pumps and air compressors) that each contained a small, nonroad, spark-ignition engine powered by a volatile fuel, such as gasoline gasoline-powered engines.

3.29. Each of the 56 Generators contained a spark-ignition engine manufactured during or after model year 2011, had an engine displacement greater than 225 cc, a maximum engine power at or below 19 kilowatt, and ran on gasoline.

3.30. The 56 Generators had fuel system components, such as fuel lines and a fuel tank, that are subject to permeation or diurnal emission standards under Part 1060.

3.31. On May 7, 2015, an EPA inspector inspected a sample from the shipment of the 56 Generators. The inspection and further investigation revealed that:

- a. An emissions control information label was observed on the sample engine that stated, “THIS ENGINE MEETS U.S. EPA EXH AND CALIFORNIA SORE EXH REGS FOR 2014.”
- b. The emissions control information label indicated that the engines were manufactured by Honda.
- c. No evaporative emissions label meeting the requirements of 40 C.F.R. §§ 1060.135 or 1060.137 was found on the engine inspected.
- d. The 56 Generators were manufactured by Emax Power (Shanghai) Company, Ltd.
- e. Based on a review of EPA’s certification database, EPA had not issued any evaporative COC to Emax Power (Shanghai) Company, Ltd. until August 4, 2015.

3.32. By letter dated November 25, 2015, EPA sent a written request for information to Respondent under the authority of Section 208 of the CAA, 42 U.S.C. § 7542 (“Information Request”).

3.33. The Information Request required Respondent to submit specified information for each piece of equipment imported or caused to be imported to the United States by Respondent or one of its affiliates since January 1, 2014, that contained a small, nonroad, spark-ignition engine powered by a volatile fuel, such as gasoline.

3.34. The Information Request required that the specified information be submitted to EPA within 30 days of issuance of the request, that is, by December 25, 2015.

3.35. On December 10, 2015, at Respondent’s request, EPA extended by 30 days the deadline for Respondent to respond to the Information Request. Therefore, Respondent’s revised deadline for responding to the Information Request was January 24, 2016.

3.36. Respondent did not contact EPA after December 10, 2015, to request an additional extension of time to respond to the Information Request.

3.37. On February 23, 2016, Respondent submitted to EPA some information in response to the Information Request (“Information Request Response”). Specifically, the Information Request Response contained some of the required information for 280 generators, Model HD8000GX, imported by Respondent that were shipped from Shanghai, China, on or about April 16, 2015 (“Additional Generators”), as well as some of the required information for the 56 Generators.

3.38. The Additional Generators had the same model number as the 56 Generators. The 56 Generators and the Additional Generators will be referred to collectively as the “336 Generators.”

3.39. The Information Request Response did not provide all of the required information with respect to the 336 Generators identified by Respondent in the Information Request Response, such as the dates of importation, U.S. Customs and Border Protection entry numbers, packing slips, and bills of lading,

3.40. The Information Request Response also did not include any information on the importation of any other equipment imported by Respondent or one of its affiliates since January 1, 2014, containing small, nonroad, spark-ignition engine powered by a volatile fuel, such as the 168 pieces of other equipment imported by Respondent with the 56 Generators that were inspected by EPA on May 7, 2015.

CLAIM 1

3.41. Each of the 336 Generators imported by Respondent on or about April 28, 2015, contained a spark-ignition engine regulated under 40 C.F.R. Part 1054 because the engine was manufactured during or after model year 2011, had an engine displacement greater than 225 cc, a maximum engine power at or below 19 kilowatt, and was not excluded from the requirements of Part 1054 under 40 C.F.R. § 1054.5.

3.42. The 336 Generators and their associated fuel system components (e.g., fuel lines and fuel tank) were subject to the permeation or diurnal emission standards under 40 C.F.R. Part 1060 because they ran on gasoline, a volatile fuel, and none of the exemptions in 40 C.F.R. § 1060.105 apply.

3.43. The 336 Generators and their associated fuel system components (e.g., fuel lines and fuel tank) were required to be labeled under 40 C.F.R. § 1060.135 with an evaporative emissions label at the time of importation into the United States.

3.44. The 336 Generators and their associated fuel system components (e.g., fuel lines and fuel tank) were required to be covered by an evaporative emissions COC under 40 C.F.R. § 1060.601(a) at the time of importation into the United States.

3.45. The 336 Generators and their associated fuel system components (e.g., fuel lines and fuel tank) did not contain an evaporative emissions label and were not covered by an evaporated emissions COC when Respondent imported or caused to be imported the 336 Generators into the United States.

3.46. Respondent's importation of the 336 Generators into the United States in April 2015 violated 40 C.F.R. §§ 1060.15(b), 1060.135, 1060.601(a), and 1068.101(a)(1), and Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a).

CLAIM 2

3.47. Respondent did not timely respond the Information Request because its Information Request Response was submitted on February 23, 2016, after the extended deadline of January 25, 2015.

3.48. Respondent's Information Request Response did not include all of the information required to be submitted under the Information Request.

3.49. By submitting a late and incomplete response to the Information Request, Respondent violated 40 C.F.R. § 1068.101(2), and Sections 203(a)(2)(A) and 208(a) of the CAA, 42 U.S.C. §§ 7522(a)(2)(a) and 7542(a).

PENALTIES

3.50. Under Section 205(a) and (c) of the CAA, 42 U.S.C. § 7542(a) and (c), and 40 C.F.R. Part 19, EPA may assess civil penalties for the violations.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), EPA has taken into account the gravity of the violations, the economic benefit or savings (if any) resulting from the violations, size of Respondent's business, Respondent's history of noncompliance, action to remedy the violation, the effect of the Assessed Penalty on Respondent's ability to continue in business, and such other factors as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$35,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the issuance of the Final Order (i.e., the effective date of this Consent Agreement and Final Order).

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Luna.teresa@epa.gov

John Keenan
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Keenan.john@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6), to collect the Assessed Penalty under the CAA. In any such collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7524(c)(6), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States'

enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal or seek judicial review of the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8/4/2017

FOR RESPONDENT:

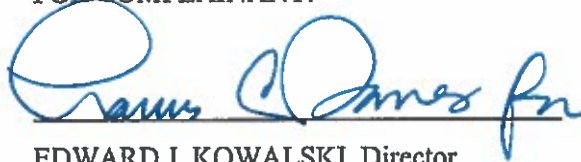


Antonio LaPetina, President
HD Power Systems, Inc.

DATED:

8/10/2017

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2017-0109
HD POWER SYSTEMS, INC.,)	FINAL ORDER
)	
Boise, Idaho,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 16th day of August, 2017.



M. SDCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: HD POWER SYSTEMS, INC., Docket No.: CAA-10-2017-0109** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. Matthew Taylor
Mr. Fredrick Freeman
Taylor Law Offices, PLLC
P.O. Box 268
112 W. Main Street, Suite 101
Boise, Idaho 83702

DATED this 17 day of August, 2017.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10