



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2011 JAN 26 AM 9:36

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2011-0004

IN THE MATTER OF:)

SUPERIOR ENGINES, INC.)

1240 Harlan Street)

Lakewood, CO 80214)

RESPONDENT)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 26th DAY OF January, 2011.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)
)
Superior Engines, Inc.)
1240 Harlan Street)
Lakewood, Colorado 80214)
)
Respondent)
_____)

**COMBINED COMPLAINT
AND CONSENT AGREEMENT**

DOCKET NO. : CAA-08-2011-0004

United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Respondent, Superior Engines, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This civil administrative enforcement action is authorized by Congress in section 113(d)(1)(B) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d) (1)(B). The rules governing this proceeding are the “*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*” (Rules of Practice), 40 C.F.R. part 22.
2. This Combined Complaint and Consent Agreement (the Agreement) is entered into by the parties for the purpose of simultaneously commencing, and amicably concluding, this matter as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
3. EPA and Respondent agree that EPA has jurisdiction over this matter pursuant to the Act, 42 U.S.C. § 7401 *et. seq.* Further, EPA established implementing regulations associated with the “Stratospheric Ozone Protection” requirements of Subchapter VI, Section 608 of the Act, 42 U.S.C. § 7671g. These regulations are found at 40 C.F.R. Part 82, subpart F (Recycling and Emissions Reduction). EPA alleges Respondent violated some requirements of these regulations.
4. The supervisors in the Legal Enforcement Program and the Technical Enforcement Program within the Office of Enforcement, Compliance and Environmental Justice, Region 8, EPA, have been delegated the authority, pursuant to applicable statute, to commence and conclude this matter.

5. Respondent specifically admits that EPA has jurisdiction and venue over the matters contained in this Agreement, however, Respondent neither admits nor denies EPA's specific factual allegations contained herein.
6. This Agreement applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in the constitution of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
7. EPA and Respondent agree that settlement of this matter is in the public interest, and EPA and Respondent agree that execution of this Agreement and issuance of a final order, without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
8. This Agreement contains all terms of the settlement agreed to by the parties.

II. GENERAL ALLEGATIONS

9. On or about October 15, 2009, Mr. Matthew Dehart, an authorized EPA inspector, (the Inspector), conducted an inspection (the inspection), of Respondent's facility (the facility) located at 1240 Harlan Street, Lakewood, Colorado, 80214, with the consent of Respondent, to determine compliance with the Act and its implementing regulations.
10. On January 12, 2010, the parties met to discuss settlement.
11. Superior Engines is a Colorado corporation in good standing. Subsequent to the inspection and settlement discussion, Superior Engines was incorporated by the Colorado Secretary of State on January 30, 2010, and is a "person" as that term is defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e), and is therefore subject to regulation.

III. ALLEGED VIOLATION

Allowing A Person To Repair And/Or Service a Motor Vehicle Air Conditioner For Consideration and Without This Person Being Properly Certified As An EPA-Approved Certified Technician

12. Paragraphs 1 - 11 of the PRELIMINARY STATEMENT and GENERAL ALLEGATIONS are incorporated by this reference and set out as if fully stated herein.
13. EPA alleges that Respondent allowed a person to repair and/or service a motor vehicle air conditioner for consideration and without this person being properly certified as an EPA-Approved Certified Technician, as required by 40 C.F.R. § 82.34(2).
14. The conduct alleged in the preceding paragraph constitutes a violation of the Act.

IV.

TERMS OF SETTLEMENT

15. For good cause shown, specifically, Respondent's cooperation and agreement to perform a Supplemental Environmental Project as outlined in detail below, Complainant agrees to resolve this matter for a civil penalty payment in the amount of **\$1,025.00**.
16. Respondent has achieved compliance with the requirements that formed the basis of the alleged violation stated above in this Agreement.
17. Respondent agrees to the issuance of a final order which incorporates the terms and conditions of this Agreement, and to pay the civil penalty as set forth in Paragraph 18 below.
18. Pursuant to section 113(d)(1)(B) of the Act, and based in part on the nature of the alleged violation and other relevant factors, EPA agrees that an appropriate civil penalty to settle this action is **ONE THOUSAND TWENTY-FIVE DOLLARS (\$1,025.00), to be paid in twelve monthly installments of \$85.42.**
 - a. Within thirty days (30) of receiving a signed Final Order in this matter, Respondent shall remit a cashier's or certified check for the amount specified above for the first monthly installment payment. Respondent shall similarly remit identical payments on or during each of the succeeding eleven months, so that Respondent shall pay at the end of twelve months the amount of ONE THOUSAND TWENTY-FIVE DOLLARS (\$1,025.00) . Respondent shall make its checks payable to "Treasurer, United States of America," and mail them to:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22-checking
Environmental Protection Agency
Account 310006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter sfo1.1 in the search field
Open form and complete required fields

A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:

Ms. Tina Artemis, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8RC]
Denver, Colorado 80202-1129

and

Ms. Cheryl Turcotte
EPCRA Enforcement Coordinator (Acting)
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

b. In the event payment is not received by the specified due date, interest accrues from

the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

- c. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed.) Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
- d. Respondent agrees and acknowledges that any and all civil penalty payments made as a part of this Agreement are ineligible for any kind of favorable tax treatment.

V. ADDITIONAL CONDITIONS OF SETTLEMENT
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

- 19. In addition to the payment described in Paragraph 18 above, Respondent explicitly agrees to perform a Supplemental Environmental Project, described herein below.
- 20. Respondent shall undertake a SEP which is intended for the purpose of securing significant environmental protection and to purchase and operate refrigerant recovery equipment at its place of business. This effort will occur on or before March 1, 2011. Respondent will purchase refrigerant removal equipment costing at least \$3,077.00. The total cost of the SEP will be \$3,077.00.
- 21. Respondent shall expend **THREE THOUSAND SEVENTY SEVEN Dollars (\$3,077.00)** on the SEP. Respondent shall provide Complainant with documentation of the expenditures made in connection with the SEP as specified in Paragraph 25 below.
- 22. Respondent hereby certifies that it is not under any legal obligation, other than this Agreement, to perform or develop the SEP described above nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements.
- 23. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the above-described SEP.
- 24. The determination as to whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall reside in the sole discretion of EPA, such discretion to be exercised reasonably and in good faith.
- 25. Respondent shall submit a SEP Completion Report to EPA within 30 days of the completion of the SEP project and in any event no later than March 1, 2011,

unless the deadline is extended by the mutual agreement of the parties. The SEP Completion Report shall contain, at a minimum, the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any operating problems encountered and the solutions employed;
- iii. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement; and,
- v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

Respondent agrees that failure to submit the SEP Completion Report is a violation of this Agreement resulting in Respondent being liable for stipulated penalties pursuant to Paragraph 28 below.

26. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all reports submitted to EPA pursuant to this Agreement. Respondent shall provide the documentation of any such underlying research and data to EPA within fifteen (15) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Agreement, Respondent shall, by an officer of Respondent's, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

27. Following receipt of the SEP Completion Report described in Paragraph 25 above, EPA will either:
- i. Accept the SEP Completion Report;
 - ii. Reject the SEP Completion Report, notify the Respondent, in writing, of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days to correct any deficiencies;
or

- iii. following the processes set out in subparagraph (ii) immediately above, if EPA must still reject the SEP Completion Report, EPA will so reject the SEP Completion Report in writing, and seek stipulated penalties in accordance with Paragraph 28 below.

If EPA elects to exercise option (ii) above, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's notification of objection to reach agreement. If agreement between the Parties cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of EPA's decision to Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of such deficiency or failure to comply with the terms of this Agreement. In the event the SEP is not completed as described herein, as determined by EPA and within the time period established with EPA's written statement, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 28 below. Any discretion exercised under this paragraph will be exercised reasonably and in good faith.

- 28. In the event that Respondent fails to materially comply with any of the terms or provisions of this Agreement relating to the performance of the SEP or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 21 above, Respondent shall be liable for stipulated penalties as provided below.
 - i. Except as provided in subparagraph (ii) immediately below, if Respondent willfully fails or refuses to complete the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of **THREE THOUSAND SEVENTY SEVEN Dollars (\$3,077.00)**.
 - ii. If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalties.
 - iii. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of **ONE THOUSAND FIVE HUNDRED Dollars (\$1,500.00)**.
 - iv. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalties.

- v. For failure to submit a SEP Completion Report as required by Paragraph 25 above, Respondent shall pay a stipulated penalty in the amount of **FIFTY Dollars (\$50.00) for each day** after the due date that the report is submitted.

Stipulated penalties for subparagraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 18 above. Interest and late charges shall be paid as stated in Paragraph 18 above. Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting EPA's ability to seek any other remedies or sanctions available to EPA by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.

29. Any written public statement made by Respondent regarding the SEP required by this Agreement shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for a violation of the Clean Air Act.


VI.

DELAYS

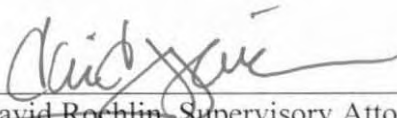
30. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify Complainant in writing within ten (10) days of the delay or date on which Respondent obtains knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of Respondent's obligation under this Agreement based on such incident.
31. If the Parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.
32. In the event that EPA, in the good faith exercise of its discretion, does not agree that a delay in achieving compliance with the requirements of this Agreement has been or

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

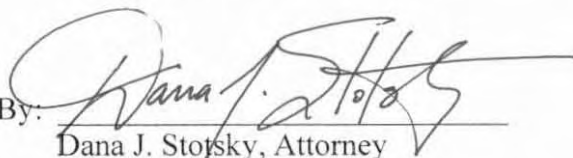
Date: 1/11/2011

By: 
Cynthia J. Reynolds, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: JAN 13 2011

By: 
David Rochlin, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: Jan 11, 2011

By: 
Dana J. Storsky, Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

SUPERIOR ENGINES, INC.

Date: _____

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Date: _____

By: _____
Cynthia J. Reynolds, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: _____

By: _____
David Rochlin, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: _____

By: _____
Dana J. Stotsky, Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

SUPERIOR ENGINES, INC.

Date: 1/6/11
1/6/11

By: Scott Swanson
owner

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT and CONSENT AGREEMENT/FINAL ORDER** in the matter of **SUPERIOR ENGINES, INC.; DOCKET NO.: CAA-08-2011-0004**. The documents were filed with the Regional Hearing Clerk on January 26, 2011.

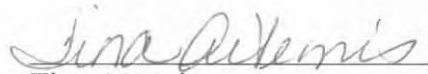
Further, the undersigned certifies that a true and correct copy of the documents were delivered Dana Stotsky, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on January 26, 2011.

Scott Swinson
Superior Engines
1240 Harlan
Lakewood, CO 80214

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

January 26, 2011


Tina Artemis
Paralegal/Regional Hearing Clerk

