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Jean A. Webb,

Secretary to the Commission.

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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 97-C0006]

In the Matter of the Toro Company, a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR Section 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with the Toro Company, a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 23, 1997.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 97-C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 3, 1997.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between the Toro Company, a corporation (hereinafter, "Toro"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), pursuant to the procedures set forth in 16 CFR 1118.20, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

The Parties

2. The "Staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency of the United States government, established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), as amended, 15 U.S.C. § 2053.

3. Respondent Toro is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located at 8111 Lyndale Ave. South, Bloomington, MN 55420.

Staff Allegations

4. Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or that the product creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

Count I

5. Among other lawn and garden products manufactured and distributed by Toro, between 1986 and 1988 Toro manufactured certain rear engine riding lawnmowers (hereinafter, "riding mowers"), model #'s 51638, 56145, 56150, 56155, 56170, and 56175, 8-12 horsepower mowers with 32" cutting decks. Toro manufactured and distributed approximately 81,000 of these mowers for sale to and use by consumers in the United States between 1986 and 1988.

6. The rear wheel axle bolt of the 1986-88 product version of these riding mowers had a short shank, thereby exposing the bolt threads to shear forces beyond its capacity and subjecting the bolt to fatigue and breakage. If the bolt breaks, the brakes may fail and the driver may be unable to stop the riding mower with the brakes.

7. In late June of 1989, after learning of at least 4 incidents of bolt failure, Toro sent letters to known customers asking them to replace the original bolt with a replacement bolt of a different design. However, Toro failed to notify the Commission.

8. In April of 1995, the staff learned of this bolt problem and sent a letter or inquiry to Toro. Toro responded on June 5, 1995 and filed a full report with the Commission.

9. By April of 1995, Toro had notice of approximately 7 incidents associated with the failure of the original axle bolt,

in all of which cases, consumers or dealers clearly identified the problem and alleged a loss of control of the riding mower. Several of these consumers also alleged that they suffered personal injury.

10. Although Toro obtained sufficient information to reasonably support the conclusion that the riding mowers contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b). This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a) (4).

11. Toro's failure to report to the Commission, as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), was committed "knowingly", as that term is defined in Section 20(d) of the CPSA, 15 U.S.C. § 2069(d), and Toro is subject to civil penalties under Section 20 of the CPSA.

Count II

12. Approximately 6,500 of Toro's Wheel Horse Yard and Garden Tractors (Model #264-6) and its Ford and New Holland brand LS 25 and 45 Gear Yard Tractors, six-speed riding tractors (hereinafter, "yard tractors") were sold to consumers nationwide from January 1994 to May 1996 for about \$2,500 each.

13. These tractors had brakes or braking systems, which, in a number of cases, failed prematurely, suddenly and without warning. If the brakes fail in this manner, while operating the yard tractor on a hill, the driver may be unable to stop the yard tractors with the brakes.

14. From 1994-1996, Toro learned of approximately 24 reports of failures of the brakes on these yard tractors. In 2 incidents the user suffered fractured limbs.

15. In March and May of 1995, Toro issued Service Bulletins to its authorized dealers and service centers advising them of the problem and asking them to correct them in response to complaints they receive.

16. Although Toro did file a report with the Commission staff in April of 1996, Toro had obtained sufficient information to reasonably support the conclusion that the yard tractors contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, substantially before that time. Therefore, it failed to make such a report on a timely basis, as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b). This is a violation of section

19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

17. Toro's failure to report to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), was committed "knowingly" as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(b), and Toro is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

Response of Toro

18. Toro denies each and all of the staff allegations with respect to the products identified in the Agreement. Toro also denies the allegations that its products identified in paragraph 5 and 12 above contained a defect which created or could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. § 2064(a), or created an unreasonable risk of serious injury or death. Toro further denies any obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. § 2064(b), with respect to the products described in paragraphs 5 and 12 above and asserts that its report with respect to the products listed in paragraph 12 was on a timely basis, having been filed after Toro exercised its statutory discretion and determined that only then did a report need be filed. Toro makes no admission of any fault, liability or statutory violation whatsoever. Toro alleges further that there are no design or manufacturing defects with respect to any of the products covered by this Agreement and asserts that the incidents involving the use of the products enumerated in paragraphs 5 and 12 were caused by unusual conditions or through inappropriate use by the operators. Toro does not admit any liability for any accidents or injuries from the products covered by the Agreement. Additionally, Toro has entered into this Settlement Agreement in the interest of avoiding the time and cost of litigation.

19. Specifically and without limitation on any of the denials set out above, Toro states that in each of the cases, as set forth above, it appropriately and responsibly took care of the customers, reworked the products on a timely basis, notified its customers, and issued service bulletins to dealers and distributors. It is Toro's position that the actions taken relating to products referenced in paragraph 5 above were undertaken to deal with non-reportable safety or maintenance issues and to assure customer satisfaction. With respect to the products referenced in paragraph 12 above, only one of the

customers claimed sudden, unexplained failure of the brakes. Gradual fading of the brakes, of which an operator would be aware, was more the rule.

Agreement of the Parties

20. The Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

21. Toro and the staff agree that this Settlement Agreement does not establish any legal or factual conclusions.

22. Toro knowingly, voluntarily and completely waives any rights it may have (1) To an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), has occurred, (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty, and (5) to any claims under the Equal Access to Justice Act.

23. This Settlement Agreement and Order settles any allegations of violation of section 15(b) of the CPSA regarding the mowers and tractors described above. It further settles and discharges any claims for violation of any such reporting obligations with respect to old matters which were the subject of a search conducted by Toro at the staff's request, filed by Toro during the negotiations on the subject wheel bolt case, and reviewed by the staff without opening new files. This Settlement Agreement and Order becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

24. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR § 1118.20(f).

25. Upon final acceptance of this Settlement Agreement and Order, the Commission shall issue the attached Order, incorporated herein by reference.

26. The provisions of this settlement Agreement and Order shall apply to Toro and its successors and assigns.

27. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

28. This Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: May 9, 1997.

The Toro Company.

J. Lawrence McIntyre,

Vice President, Secretary, and General Counsel.

The Consumer Product Safety Commission.
David Schmeltzer, Associate Executive
Directors, Office of Compliance, Eric L.
Stone, Director, Division of Administrative
Litigation, Office of Compliance.

Dated: May 15, 1997.

By:

Melvin I. Kramer,

*Trial Attorney, Division of Administrative
Litigation, Office of Compliance.*

Order

Upon consideration of the Settlement Agreement between Respondent The Toro Company, a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over The Toro Company, and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further Ordered, that within 20 days of the service of the Final Order upon Respondent, The Toro Company shall pay to the order of the U.S. Treasury a civil penalty in the amount of two hundred and fifty thousand dollars (\$250,000).

Provisionally accepted and Provisional Order issued on the 3rd day of June, 1997.

By Order of the Commission.

Sadye E. Dunn,

*Secretary Consumer Product Safety
Commission.*

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