

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


In the Matter of:)	
)	ADMINISTRATIVE
Alex Cabanillas, and)	SETTLEMENT AGREEMENT
A/C Emergency Power Systems Corp.)	
Guaynabo, Pureto Rico)	AED/MSEB - 7180
)	
Respondents)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), Alex Cabanillas, and A/C Emergency Power Systems Corp., Ind. Los Frailes Road 20Km 5.2, P.O. Box 1537, Guaynabo, Pureto Rico 00970-1537 (Respondents).

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve twenty-five alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a), and 7547(d), and the implementing compression-ignition (CI) engines nonroad regulations at 40 C.F.R. Part 89 (CI Non-Road Regulations).

Statutory Authority:

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2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), prohibit any person from importing any new nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.

Regulatory Authority - CI Non-Road Regulations:

3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
4. 40 C.F.R. § 89.1003(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 a label is affixed to the engine in accordance with 40 C.F.R. § 89.110.

5. 40 C.F.R. § 89.1004(b) provides that the “Administrator may exempt a new nonroad engine from §89.1003 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigation, studies, demonstrations, or training, or for reasons of national security.”
6. 40 C.F.R. § 89.1004(d) provides that a “new nonroad engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, shall be subject to the provisions of § 89.1003, except that if the country that is to receive the engine has emissions standards that differ from the standards prescribed under subpart B of this part, then the engine must comply with the standards of the country that is to receive the engine.”
7. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or a person acting for, and under the control of such person.
8. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified engine, a permanent and legible 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.
9. 40 C.F.R. § 1039.20 requires excluded stationary engines built on or after January 1, 2006 to bear a permanent label or tag that identifies the engine as a stationary engine that cannot be used in any other application.

Definitions:

10. For the purposes of this Agreement, the following definitions apply:

- a. *This matter*: as used in this Agreement means Respondent's importation of the twenty-five nonroad engines as described in Paragraph 11 of this Agreement (Subject Engines) and any civil liability that may apply to such violations.
- b. *Certificate of Conformity*: the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105, after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Parts 89.
- 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 89 is applicable to compression-ignition nonroad engines built after the applicability dates.
- f. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy*: the complete destruction of the Subject Engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.


Alleged Violations:

11. EPA alleges that Respondents imported into the United States the twenty-five generators containing CI non-road engines (generator sets), as described in the Table below (the Subject Engines).

Entry Date	Entry No.	Description	Qty.	Manufacturer
9/19/2006	256-0277252-4	14 kW, 1800 RPM, 60 HZ, 240/120 V	5	Heimer USA, Inc.
9/19/2006	256-0277252-4	20 kW, 1800 RPM, 60 HZ, 240/120 V	10	Heimer USA, Inc.
9/19/2006	256-0277252-4	35 kW, 1800 RPM, 60 HZ, 240/120 V	5	Heimer USA, Inc.
9/19/2006	256-0277252-4	46 kW, 1800 RPM, 60 HZ, 240/120 V	5	Heimer USA, Inc.

12. During November 2006, U.S. Customs and Border Protection (Customs) at the Port of San Juan, Puerto Rico seized the generator sets containing the twenty-five Subject Engines.
13. The Subject Engines were not proven to be certified or exempt from complying with CI Non-Road Regulations, nor did the Subject Engines bear an EPA Emissions Label, or a label required by 40 C.F.R. § 1039.20 indicating that generators were for stationary use only.
14. As the importer of the Subject Engines, Respondents committed twenty-five separate violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), and the CI Non-Road Regulations, 40 C.F.R. Parts 89.

Terms of Agreement:

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15. Respondents have agreed to pay a civil penalty of \$36,000 in two payments of \$18,000 each. The second payment will be subject to interest that will start to accrue thirty days from the date of this Agreement. Under this Agreement, Respondents shall pay \$18,000 to the United States of America within thirty days from the date of this Agreement, and Respondents shall pay \$18,000 plus interest within six months from the date of the Agreement. The second payment or any late payments of the civil penalty are subject to interest and fees as specified in 31 U.S.C. § 3717, and stipulated penalties specified in Paragraph 22 of this Agreement. Respondents agree to pay this 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 - 7180

16. Respondents shall export or destroy the Subject Engines within thirty days of this Agreement, or such longer period of time if required by U.S. Customs and Border Protection (Customs). The exportation or destruction shall be carried out under the

supervision of Customs. Respondents shall also certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.

17. A copy of the payment check and all correspondence to EPA concerning this Agreement shall be sent to:


Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W. Room 1109A
Washington, DC 20460

General Provisions

18. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondents.
19. Respondents hereby represent that the individual executing this Agreement on behalf of Respondents are authorized to do so on behalf of Respondents and that such execution is intended and is sufficient to bind Respondents, Respondents's agents, assigns, or successors.
20. Notwithstanding any other provisions of this Agreement, upon Respondents's default 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. Respondents specifically agree 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 40 C.F.R. Part 89. Respondents expressly waive Respondents's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
21. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondents's disclosure and representation to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties

22. For failure to comply with the terms of this Agreement on a timely basis Respondents shall pay stipulated penalties to the United States as follows:
- a. For failure to timely pay the civil penalty, pursuant to Paragraph 15 of this Agreement, \$250.00 per day; and
 - b. For failure to export or destroy the Subject Engines and provide proof thereof, pursuant to Paragraph 16 of this Agreement, \$250.00 per day.
23. All stipulated penalties under Paragraph 22 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 simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid to the manner specified in Paragraph 15 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jocelyn Adair at the address specified in Paragraph 17 of this Agreement. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by EPA (the due date). Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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 Respondents's violation of this Agreement or of the statues or regulations upon which the Agreement is based.



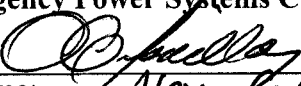
Enforcement

24. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondents in the event of default or noncompliance with this Agreement; or for other violations of law; or with respect to other matters not within the

scope of the Agreement. This Agreement in no way affects, or relieves Respondents of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

A/C Emergency Power Systems Corporation

By: 
Printed Name: Alex Labanillas
Printed Title: President

Date: 3/7/07



Administrative Settlement Agreement - In the Matter of A/C Emergency Power Systems Corporation; AED/MSEB - 7180

U.S. Environmental Protection Agency

By:  _____ Date: 3.15.07

Adam M. Kushner
Director
Air Enforcement Division