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**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.
ADMINISTRATIVE SETTLEMENT AGREEMENT**

In the Matter of:	)	
	)	
GMS Solutions, Inc.	)	MSEB AED # 7173
	)	
Respondent	)	
	)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and GMS Solutions Inc. (Respondent) regarding compliance by Respondent with the requirements of section 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder at 40 C.F.R. Part 90.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Part 90 arising out of the importation on or about June 13 and August 1, 2006, of 732 generators containing nonroad spark-ignition engines described in Attachment I and twelve unlabeled spark-ignition engines and to ensure that future violations are avoided.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - A. *Certified engine:* A "certified engine" is a nonroad engine that was built after the applicable effective dates of the regulations at Part 90 and that is covered by a Certificate of Conformity.

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- B. *Dates of the Applicable Regulations:* The term “dates of the applicable regulations” means the applicable effective date of emission regulations for nonroad spark-ignition engines rated at or below 19 kW which is January 1, 1997.
- C. *Uncertified engine:* An “uncertified engine” is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.
- D. *This matter:* As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part and 90.
- E. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 90.108 for spark ignition engines, after EPA has determined that the manufacturer’s application is complete and that the engine family meets the requirements of 40 C.F.R. Part 90 and the Clean Air Act. Issuance of the Certificate of Conformity permits production of engines built in accordance with the manufacturer’s application provided that the production is within the period during which the Certificate of Conformity is valid.
- F. *Subject engines:* The term “Subject Engines” means the twelve loose engines imported by Respondent in Customs Entry # 315-822537-7 and 315-8220927-1.
- G. *Subject equipment:* The term “Subject Equipment” means the 732 generators imported by Respondent in Customs Entry # 315-822537-7 and 315-8220927-1 whose serial numbers are listed in Attachment I.

Statutory and Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7542(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into

- commerce, or the importation of any nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.
4. 40 C.F.R. § 90.1(a) defines the applicability of 40 C.F.R. Part 90 regulations to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and that are used for any purpose.
 5. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity.
 6. 40 C.F.R. §§ 90.3 defines a nonroad vehicle manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person in connection with the distribution of such vehicles.
 7. 40 C.F.R. §§ 90.3 defines 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 in connection with the distribution of such engines.
 8. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless an emissions label is affixed to the engine.
 9. 40 C.F.R. § 90.114 requires the engine manufacturer to affix, at the time of manufacture of a certified spark-ignition 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, must contain the content required by 40 C.F.R. § 90.114 and must be attached in such a manner that it cannot be removed without destroying or defacing the label.

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Background

10. On August 2, and October 13, 2006, U. S. Customs and Border Protection (CPB) seized at the port of Fort Lauderdale, FL the Subject Engines and Subject Equipment except for 150 pieces of Subject Equipment identified as having "JL950 Serial Numbers."
11. Respondent is the importer of the Subject Engines and Subject Equipment.
12. The Subject Engines and Subject Equipment were manufactured after the dates of the applicable regulations. As a consequence, the Subject Engines were required to be certified and labeled, and certified and labeled engines were required to be used in the Subject Equipment.
13. The Subject Engines and Subject Equipment do not have affixed the certification label required by 40 C.F.R. § 90.114.

Terms of Agreement

14. Within 120 days of the date of this Agreement, or within 30 days of the date CPB releases the Subject Engines and Subject Equipment for export, whichever is later, Respondent shall submit proof of exportation to a location outside of North and Central America for each of the Subject Engines and each piece of Subject Equipment, except the pieces of Subject Equipment identified as having "JL950 Serial Numbers."
15. All submissions to EPA shall be sent to the following address:

David Alexander
U.S. EPA, OECA/AED (mailcode 2242A)
1200 Pennsylvania Ave NW (Rm. 1111A)
Washington, DC 20460-0001
facsimile: (202) 564-0069
16. Respondent shall pay to the United States a civil penalty of twelve thousand two hundred dollars (\$12,200) within 30 calendar days of the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, and stipulated penalties under Paragraph 21. Respondent agrees to pay the

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amount by certified check or cashier's check payable to the "United States of America", to mark the check "Payment for AED/MSEB # 7173", and to mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB # 7173

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 15 or faxed to (202) 564-0069 to the attention of David Alexander. Such check shall be identified with Respondent's name.

General Provisions

17. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to the Respondent.
18. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
19. Notwithstanding any other provision of this agreement, upon Respondent's failure to perform, or default of 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. Respondent specifically agrees 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 Part or 90. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.
20. The Effect of Settlement described in Paragraph 23 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations

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regarding importations contained in Attachment I, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

21. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
 - A. For failure to timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 16, \$400 per day.
 - B. For failure to timely export the Subject Engines or Subject Equipment, or provide proof of such exportation, pursuant to Paragraph 14, \$500 per day.
22. All stipulated penalties under Paragraph 21 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 16 and shall be paid within five days of written demand by EPA. 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 Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

Effect of Agreement

23. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

GMS Solutions, Inc.

By: Sara Swyers
Sara Swyers

12/26/06
Date

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Title: President

U.S. Environmental Protection Agency
In the Matter of GMS Solutions, Inc.
AED/MSEB #

By: Adam M. Kushner

12/29/06

Adam M. Kushner,
Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date

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JL3600 Serial Numbers

JMC-3600604 0001	JMC-3600604 0046	JMC-3600604 0091	JMC-3600604 0136
JMC-3600604 0002	JMC-3600604 0047	JMC-3600604 0092	JMC-3600604 0137
JMC-3600604 0003	JMC-3600604 0048	JMC-3600604 0093	JMC-3600604 0138
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JL3600 Serial Numbers

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JL6600 Serial Numbers

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JL6600 Serial Numbers

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JMC-6600604 0186	JMC-6600604 0226	JMC-6600604 0266	
JMC-6600604 0187	JMC-6600604 0227	JMC-6600604 0267	
JMC-6600604 0188	JMC-6600604 0228	JMC-6600604 0268	
JMC-6600604 0189	JMC-6600604 0229	JMC-6600604 0269	
JMC-6600604 0190	JMC-6600604 0230	JMC-6600604 0270	

SJS

JL950 Serial Numbers

Y9511-300-001	Y9511-300-041	Y9511-300-081	Y9511-300-121
Y9511-300-002	Y9511-300-042	Y9511-300-082	Y9511-300-122
Y9511-300-003	Y9511-300-043	Y9511-300-083	Y9511-300-123
Y9511-300-004	Y9511-300-044	Y9511-300-084	Y9511-300-124
Y9511-300-005	Y9511-300-045	Y9511-300-085	Y9511-300-125
Y9511-300-006	Y9511-300-046	Y9511-300-086	Y9511-300-126
Y9511-300-007	Y9511-300-047	Y9511-300-087	Y9511-300-127
Y9511-300-008	Y9511-300-048	Y9511-300-088	Y9511-300-128
Y9511-300-009	Y9511-300-049	Y9511-300-089	Y9511-300-129
Y9511-300-010	Y9511-300-050	Y9511-300-090	Y9511-300-130
Y9511-300-011	Y9511-300-051	Y9511-300-091	Y9511-300-131
Y9511-300-012	Y9511-300-052	Y9511-300-092	Y9511-300-132
Y9511-300-013	Y9511-300-053	Y9511-300-093	Y9511-300-133
Y9511-300-014	Y9511-300-054	Y9511-300-094	Y9511-300-134
Y9511-300-015	Y9511-300-055	Y9511-300-095	Y9511-300-135
Y9511-300-016	Y9511-300-056	Y9511-300-096	Y9511-300-136
Y9511-300-017	Y9511-300-057	Y9511-300-097	Y9511-300-137
Y9511-300-018	Y9511-300-058	Y9511-300-098	Y9511-300-138
Y9511-300-019	Y9511-300-059	Y9511-300-099	Y9511-300-139
Y9511-300-020	Y9511-300-060	Y9511-300-100	Y9511-300-140
Y9511-300-021	Y9511-300-061	Y9511-300-101	Y9511-300-141
Y9511-300-022	Y9511-300-062	Y9511-300-102	Y9511-300-142
Y9511-300-023	Y9511-300-063	Y9511-300-103	Y9511-300-143
Y9511-300-024	Y9511-300-064	Y9511-300-104	Y9511-300-144
Y9511-300-025	Y9511-300-065	Y9511-300-105	Y9511-300-145
Y9511-300-026	Y9511-300-066	Y9511-300-106	Y9511-300-146
Y9511-300-027	Y9511-300-067	Y9511-300-107	Y9511-300-147
Y9511-300-028	Y9511-300-068	Y9511-300-108	Y9511-300-148
Y9511-300-029	Y9511-300-069	Y9511-300-109	Y9511-300-149
Y9511-300-030	Y9511-300-070	Y9511-300-110	Y9511-300-150
Y9511-300-031	Y9511-300-071	Y9511-300-111	
Y9511-300-032	Y9511-300-072	Y9511-300-112	
Y9511-300-033	Y9511-300-073	Y9511-300-113	
Y9511-300-034	Y9511-300-074	Y9511-300-114	
Y9511-300-035	Y9511-300-075	Y9511-300-115	
Y9511-300-036	Y9511-300-076	Y9511-300-116	
Y9511-300-037	Y9511-300-077	Y9511-300-117	
Y9511-300-038	Y9511-300-078	Y9511-300-118	
Y9511-300-039	Y9511-300-079	Y9511-300-119	
Y9511-300-040	Y9511-300-080	Y9511-300-120	