

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:)	
)	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
CSX Transportation, Inc.)	AED/MSEB #8039
Respondent)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and CSX Transportation, Inc. (CSX or Respondent), 500 Water Street, 15th Floor, Jacksonville, FL 32202.

Purpose:

1. The purpose of this Administrative Settlement Agreement is to resolve sixteen 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 regulations entitled “Control of Emissions from Locomotives” (Locomotive Regulations) at 40 C.F.R. Parts 92 and 1033 and those at 40 C.F.R. Part 1068.

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit any person from selling, offering for sale, or introducing into commerce, any new locomotive unless such locomotive is covered by a Certificate of Conformity that is issued and in effect, and the locomotive bears the required EPA emissions label.

Regulatory Authority - Locomotives and Locomotive Engines:

3. 40 C.F.R. § 92.1103(a)(1)(i)(A) prohibits a manufacturer or remanufacturer of new locomotive engines from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or distributing in commerce, any new locomotive engine manufactured or remanufactured after the effective date of the regulations unless said locomotive or locomotive engine is covered by a Certificate of Conformity that is issued and in effect. Introduction into commerce includes placement of a locomotive with a new locomotive engine back into service

following remanufacturing. Under 40 C.F.R. § 92.1(a), the effective date of the regulations is January 1, 2000.

4. 40 C.F.R. § 1033.5(c) provides that the requirements of Part 1033 apply to locomotives that have become new on or after July 7, 2008. As defined in 40 C.F.R. § 1033.901(*new*) a locomotive becomes new, in pertinent part, when it is remanufactured.
5. 40 C.F.R. § 1068.101(a)(1) prohibits the sale, offering for sale, introduction or delivery into commerce in the United States, or importation of any new engine or equipment, including a remanufactured locomotive, unless it is covered by a valid Certificate of Conformity for its model year and has the required label or tag. 40 C.F.R. § 1033.601(e) provides that placement of the locomotive back into service constitutes introduction into commerce.

Definitions:

6. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* the Respondent's introduction into commerce of the Subject Locomotives and any civil liability that may result from this introduction into commerce.
 - b. *Certificate of Conformity:* the document issued by the EPA to a manufacturer under 40 C.F.R. § 92.208 or 40 C.F.R. § 1033.255, after the EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Parts 92 or 1033 and the CAA.
 - 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 manufactured or remanufactured after the applicable dates of the regulations but that is not covered by a Certificate of Conformity issued by the EPA.

- e. *Applicable regulation and dates:* 40 C.F.R. Part 92 is applicable to locomotives manufactured or remanufactured before July 6, 2008, and 40 C.F.R Parts 1033 and 1068 are applicable to locomotives manufactured or remanufactured on or after July 7, 2008.
- f. *Remanufactured:* the acts described by 40 C.F.R. § 92.2(*remanufacture*).
- g. *Automatic Engine Stop/Start System* or *AESS:* a device that automatically shuts down an idling diesel engine and uses battery power to keep the locomotive in an operating state, ready to start on demand.
- h. *Model Year:* the time period described by 40 C.F.R. § 92.2(*model year*) for locomotives remanufactured before July 6, 2008, and the time period described by 40 C.F.R. §1033.901(*model year*) for locomotives remanufactured on or after July 7, 2008.
- i. *Subject Locomotives:* the sixteen locomotives owned by CSX and identified in Attachment 1.
- j. *Remediation Pool Locomotives:* the thirty two locomotives owned by CSX and identified in Attachment 2.

Alleged Violations:

- 7. Between the dates of February 12, 2008, and October 14, 2008, Respondent remanufactured the Subject Locomotives and subsequently placed them into service.
- 8. On March 6 - 8, 2012, the EPA conducted an inspection of CSX's remanufacturing facility in Huntington, WV, and reviewed records of CSX's remanufacturing activities starting in 2008. During the inspection, CSX informed the EPA that its review of records to prepare for the EPA's visit disclosed that CSX had placed into service the Subject Locomotives. The locomotives were remanufactured in the 2008 model year and CSX intended that the locomotives would belong to engine family 8CSXK0710ES2, but that engine family was never certified by the EPA. Upon discovery of the issue, CSX removed the Subject Locomotives from service.

9. Based on the forgoing, the EPA alleges that Respondent committed sixteen violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d) and the Locomotive Regulations, 40 C.F.R. Parts 92 and 1033, and 40 C.F.R Part 1068 by placing into service sixteen new uncertified locomotives.

Terms of Agreement:

10. Respondent agrees to pay a civil penalty of \$98,000 (the EPA penalty) to the United States within thirty calendar days from the effective date of this Agreement.
11. Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, payable upon demand by the United States, plus the stipulated penalties specified in Paragraph 26 of this Agreement.
12. Respondent agrees to pay the EPA penalty in the manner specified in subparagraphs “a” or “b” below:

- a. Mail a certified, cashier’s or corporate check payable to the United States of America to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Attn: AED/MSEB #8039

This check must be identified with case number AED/MSEB # 8039 and state that it is remitted by Respondents. Simultaneously, scan and email a copy of the check to David Alexander at alexander.david@epa.gov.

- b. Pay online through the Department of the Treasury using www.pay.gov. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1. The payment must be identified with case number AED/MSEB # 8039. Within twenty four hours, scan and email a copy of the check to David Alexander at alexander.david@epa.gov.

13. Within sixty calendar days of the effective date of this Agreement, Respondent shall complete the installation of AESS equipment on each of the Subject Locomotives and label the Subject Locomotives and their engines as specified in Attachment 3. CSX shall operate the AESS equipment in each of the Subject Locomotives until the Subject Locomotive is permanently retired from service or until it is next remanufactured, whichever comes first.
14. Once the AESS equipment is installed on the Subject Locomotives, CSX may place the Subject Locomotives into full service on its system.
15. Within seventy five calendar days of the effective date of this Agreement, CSX shall send the EPA a report documenting the installation of the AESS equipment on the Subject Locomotives and the labeling of the Subject Locomotives and their engines. This report shall include the locomotive number, the locomotive model, the engine model, the date the locomotive was remanufactured, the locomotive's horsepower, the number of power assemblies in the locomotive, the date the AESS was installed on the locomotive, and the date the locomotive was returned to service.
16. Within one year of the effective date of this Agreement, CSX shall install AESS equipment on any sixteen of the thirty two Remediation Pool Locomotives identified in Attachment 2, and shall operate the installed AESS equipment in each of the Remediation Pool Locomotives until the locomotive is permanently retired from service or until it is next remanufactured, whichever comes first.
17. Within fourteen months of the effective date of this Agreement, CSX shall send the EPA a report documenting the installation of the AESS equipment on the Remediation Pool Locomotives. This report shall include the locomotive number, the locomotive model, the engine model, the date the AESS was installed, the locomotive's horsepower, the number of power assemblies in the locomotive, and the date the locomotive was returned to service.

18. Within twenty six months after the effective date of this Agreement and annually thereafter for seven years, CSX shall send the EPA a report documenting the status of AESS equipment installed on the Subject Locomotives and Remediation Pool Locomotives.
19. A copy of the payment check or receipt and all correspondence and reports to the EPA concerning this Agreement shall be sent to

(Regular Mail)

David E. Alexander, Attorney
Attn: AED/MSEB-8039
Environmental Protection Agency
Mail Code 2242A
Clinton Building South, Rm. 1109A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

(Courier Service)

David E. Alexander, Attorney
Attn: AED/MSEB-8039
Environmental Protection Agency
Clinton Building South, Rm. 1109A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

20. Within thirty calendar days from the date of this Agreement, Respondent shall initiate a thorough review and assessment of its locomotive certification practices and procedures (Root Cause Analysis and Corrective Action Plan) to ensure that all future certifications are secured by the time of manufacture or remanufacture of any locomotive and otherwise comply with the requirements of 40 C.F.R. Parts 92 and 1033, as applicable. During the review and assessment, the respondent shall:
- a. Review regulatory requirements for certification of locomotives;
 - b. Review current certification procedures and determine the reason for the failure to obtain a carryover certification for Engine Family 8CSXK0710ES2; and
 - c. Identify corrective action(s) to ensure that future certification is obtained before any locomotives utilizing components based on such certification are placed into service.

Respondent shall complete the review and analysis required by this Paragraph, and shall implement all corrective actions within 180 calendar days of the effective date of this Agreement. Respondent shall submit a report to the EPA of the Root Cause Analysis and Corrective Action Plan detailing the analysis, cause(s) of noncompliance, and all

corrective actions implemented by Respondent within fourteen months of the effective date of this Agreement.

General Provisions:

21. The effective date of this Agreement is the date that the EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
22. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
23. Notwithstanding any other provisions of this Agreement, upon Respondent's default or failure to comply with any terms of this Agreement, the 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, the EPA may proceed in an action based on the original claim of violation of the Act, 40 C.F.R. Part 92, and Parts 1033 and 1068. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, *see e.g.* 28 U.S.C. § 2462.
24. This settlement is contingent upon the truthfulness, accuracy, and completeness of Respondent's disclosure and representation to the EPA, and the prompt and complete remediation of any violations in accordance with this Agreement.
25. Respondent agrees that it will not deduct any penalties paid pursuant to this agreement in calculating its federal income taxes and will not capitalize into inventory or basis, and will not deduct any costs or expenditures incurred in installing AESS equipment on any Remediation Pool Locomotive.

Stipulated Penalties:

26. 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 pay the civil penalty or provide proof thereof, pursuant to Paragraphs 10, 12 and 19, \$250.00 per day; and
 - b. For failure to install the required AESS equipment on all Subject Locomotives, to label the Subject Locomotives and their engines, or submit a report thereof pursuant to Paragraphs 13 and 15, \$500.00 per day; and
 - c. For failure to install the required AESS equipment on sixteen Remediation Pool Locomotives pursuant to Paragraph 16, or to submit any report pursuant to Paragraphs 17 and 18, \$500 per day, and
 - d. For failure to submit the Root Cause Analysis and Corrective Action Plan report specified in Paragraph 20, or submitting an incomplete report, \$500.00 per day.
27. All stipulated penalties under Paragraph 26 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 in the manner specified in Paragraph 12 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to David E. Alexander at the address specified in Paragraph 19. All stipulated penalties shall be paid to the United States of America within seven calendar days of written demand by the 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 the 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.

Enforcement:

28. 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 the EPA to proceed against Respondent 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, Respondent of the responsibility to comply with other state, federal or local law or regulations.

Administrative Settlement Agreement - In the Matter of CSX Corporation, AED/MSEB #8039

The following agree to the terms of this Agreement:

CSX Transportation, Inc.

By: 

Date: 3/3/14

Printed Name: Frank Lonergo

Printed Title: Vice President - Mechanical

Administrative Settlement Agreement - *In the Matter of CSX Corporation, AED/MSEB #8039*

United States Environmental Protection Agency

By:  _____ Date: 3/18/2014

Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

ATTACHMENT 1

SUBJECT LOCOMOTIVES

Locomotive Number	Locomotive Model	Engine Model	Remanufacture Date	Horsepower
CSXT4507	SD70AC	16-710G3BES	2008/02/22	4000
CSXT4509	SD70AC	16-710G3BES	2008/12/04	4000
CSXT4513	SD70AC	16-710G3BES	2008/08/19	4000
CSXT4514	SD70AC	16-710G3BES	2008/09/10	4000
CSXT4526	SD70AC	16-710G3BES	2008/06/02	4000
CSXT4530	SD70AC	16-710G3BES	2008/06/10	4000
CSXT4533	SD70AC	16-710G3BES	2008/09/04	4000
CSXT4534	SD70AC	16-710G3BES	2008/02/12	4000
CSXT4544	SD70AC	16-710G3BES	2008/09/05	4000
CSXT4546	SD70AC	16-710G3BES	2008/04/14	4000
CSXT4548	SD70AC	16-710G3BES	2008/09/19	4000
CSXT4553	SD70AC	16-710G3BES	2008/12/10	4000
CSXT4589	SD70AC	16-710G3BES	2008/04/22	4000
CSXT4595	SD80AC	20-710G3BES	2008/10/07	5000
CSXT4597	SD80AC	20-710G3BES	2008/12/12	5000
CSXT4601	SD80AC	20-710G3BES	2008/10/14	5000

ATTACHMENT 2

REMEDIATION POOL LOCOMOTIVES

Owner	Number	Class	AESS Installed	Estimated Next Overhaul	Build Year	HP
CSXT	1123	SW1001	NO	2025	1973	1000
CSXT	1177	MP15AC	NO	2025	1978	1500
CSXT	1190	MP15AC	NO	2025	1978	1500
CSXT	1201	MP15T	NO	2025	1984	1500
CSXT	1213	MP15T	NO	2025	1984	1500
CSXT	1216	MP15T	NO	2025	1985	1500
CSXT	1228	MP15T	NO	2025	1985	1500
CSXT	1231	MP15T	NO	2025	1985	1500
CSXT	1232	MP15T	NO	2025	1985	1500
CSXT	1235	MP15T	NO	2025	1985	1500
CSXT	1237	MP15T	NO	2025	1985	1500
CSXT	1240	MP15T	NO	2025	1985	1500
CSXT	1241	MP15T	NO	2025	1985	1500
CSXT	1536	GP15T	NO	2025	1979	1500
CSXT	1547	GP15T	NO	2025	1979	1500
CSXT	1144	MP15	NO	2023	1975	1500
CSXT	1145	MP15	NO	2023	1975	1500
CSXT	1147	MP15	NO	2023	1975	1500
CSXT	1149	MP15	NO	2023	1975	1500
CSXT	1524	GP15T	NO	2023	1982	1500
CSXT	2450	SD38-2	NO	2023	1975	2000
CSXT	2682	GP38-2	NO	2023	1979	2000
CSXT	2688	GP38-2	NO	2023	1979	2000
CSXT	4306	GP39-2	NO	2023	1974	2300
CSXT	6448	GP40-2	NO	2023	1981	3000
CSXT	1128	SW1001	NO	2022	1973	1000
CSXT	1148	MP15	NO	2022	1975	1500
CSXT	1193	MP15AC	NO	2022	1978	1500
CSXT	2500	GP38-2	NO	2022	1973	2000
CSXT	4308	GP39-2	NO	2022	1974	2300
CSXT	6148	GP40-2	NO	2022	1977	3000
CSXT	6447	GP40-2	NO	2022	1981	3000

ATTACHMENT 3

INSTRUCTIONS FOR LABELING SUBJECT LOCOMOTIVES

The Subject Locomotives shall be labeled as provided in 40 C.F.R. § 92.212(b)(2) and their engines shall be labeled as provided in 40 C.F.R. § 92.212(c)(2) except as follows:

1. the words “Pursuant to Administrative Settlement Agreement AED/MSEB #8039” shall be inserted before the words “this locomotive conforms to U.S. EPA regulations . . .” required in § 92.212(b)(2)(D) and § 92.212(c)(2)(D), and
2. the “model name” shall be identified in lieu of the engine family specified in § 92.212(b)(2)(C) and § 92.212(c)(2)(C).