

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

In the Matter of:

Fiat Powertrain Technologies of North
America, Inc.,

Respondent.

SETTLEMENT AGREEMENT
AED/MSEB # 7895

This Settlement Agreement is made and entered into between the United States Environmental Protection Agency (the EPA), and Fiat Powertrain Technologies of North America, Inc., a Delaware corporation whose principle business office is located at 245 E North Avenue, Carol Stream, Illinois (Respondent), to resolve violations of Sections 203 and 213 of the Clean Air Act (the Act), 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder at 40 C.F.R. Part 94.

Purpose

1. The purpose of this Settlement Agreement (Agreement) is to resolve all claims by the EPA under the Act and the regulations governing the Control of Emissions from Marine Compression-Ignition Engines, codified at 40 C.F.R. Part 94, arising out of the importation of 48 engines (Subject Engines), while ensuring that future violations are deterred.

Definitions

2. For the purpose of this Agreement, the following definitions apply:

1

Settlement Agreement In the Matter of Fiat Powertrain Technologies of North America, Inc.

- a. *This matter*: as used in this agreement means Respondent's importation of the Subject Engines and any civil liability under the Act that may have resulted from the importation of the Subject Engines.
- b. *Certificate of Conformity*: the document issued by the EPA to a manufacturer of marine nonroad compression ignition engines under 40 C.F.R. § 94.208 after the EPA has determined that the manufacturer's application is complete and that the test engine meets the standards of 40 C.F.R. Part 94 and the Act. Issuance of the Certificate of Conformity permits the importation and introduction into commerce in the United States of engines that are manufactured during its model year in accordance with the specifications in the manufacturer's application.
- c. *Dates of the Applicable Regulations*: emissions regulations applicable to the Subject Engines became effective in model year 2004, as indicated at 40 C.F.R. § 94.8 for commercial marine engines with displacement greater than or equal to 0.9 liters and less than 1.2 liters.

Statutory and Regulatory Authority

3. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer from selling, offering for sale, introducing, delivering for introduction into commerce, or importing, any vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is covered by a certificate of conformity in effect and issued by the EPA. Section 203(a)(1) also prohibits any person or entity from causing such actions.
4. Section 213(d) of the Act, 42 U.S.C. § 7547(d) requires the nonroad vehicle and engine standards to be enforced in the same manner as the standards prescribed under Section

Settlement Agreement In the Matter of Fiat Powertrain Technologies of North America, Inc.

202 of the Act, 42 U.S.C. § 7521 (emission standards for new motor vehicles or new motor vehicle engines) and gives the EPA authority to revise or promulgate regulations as may be necessary to determine compliance with, and enforce, the nonroad vehicle and engine standards.

5. 40 C.F.R. § 94.9(b), requires an engine manufacturer to demonstrate compliance with the applicable emission standards for an engine family before a certificate of conformity can be granted to the manufacturer.
6. 40 C.F.R. § 94.1103(a)(1)(ii), prohibits any person from importing a new marine engine, unless the engine is covered by a certificate of conformity issued (and in effect) under regulations found in Part 94.

Background

7. Between February and December 2007, Respondent imported the 48 Subject Engines as described in Attachment 1 to this Settlement Agreement.
8. Four of the Subject Engines were sold and distributed to ultimate purchasers and one of the Subject Engines remains in the United States as a non-operative display engine. The remaining 43 Subject Engines were exported from the United States. Respondent has advised that each of the Subject Engines complies with all applicable emission standards and was sold with an emissions warranty that complies with requirements set forth in the Act and regulations.
9. The Subject Engines were not covered by certificates of conformity.
10. Respondent is the importer or corporate successor of the importer of each of the Subject Engines.
11. The Subject Engines were manufactured after the Dates of the Applicable Regulations.

Violations

12. The Subject Engines were imported into the United States in violation of Section 203(a) of the Act, 42 U.S.C. § 7522(a), and 40 C.F.R. § 94.1103(a)(1)(ii).
13. The EPA alleges that Respondent is subject to a civil penalty for 48 violations of Section 203(a) of the Act, 42 U.S.C. § 7522(a) under Section 205 of the Act, 42 U.S.C. § 7524.

Terms

14. **Subject Engines Sold in the United States**

- a. Respondent must send a letter (Manufacturer Letter) to each owner of the four Subject Engines that were sold to ultimate purchasers in the United States notifying them that the label on the Subject Engine contains incorrect information in that the engine was not covered by a certificate of conformity and must provide information on how to contact the manufacturer. The Manufacturer Letter must also indicate that the emissions-related parts of each Subject Engine are covered by the warranty required by the Act which runs for five years or 300 hours of operation from the date of first purchase, whichever occurs first.
- b. Before sending the Manufacturer Letter to the owners of the Subject Engines Respondent must submit the Manufacturer Letter to the EPA, and receive EPA approval.
- c. Within thirty days after approval of the Manufacturer Letter by the EPA, Respondent must submit to the EPA a statement, made upon penalty of perjury, that it has sent the Manufacturer Letter to each owner of the four engines sold in the United States at the last known address of each owner.

CF

Settlement Agreement In the Matter of Fiat Powertrain Technologies of North America, Inc.

15. **Civil Penalty.** Respondent must pay to the United States a civil penalty of \$67,000 within 30 calendar days of the effective date of this Settlement Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the amount by certified check or cashier's check payable to the "United States of America," and to mail the payment to

ATTN: AED/MSEB # 7895
U.S. Environmental Protection Agency, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A photocopy of the check must be simultaneously emailed to David E. Alexander at the address specified in Paragraph 18. Alternatively, Respondent may effect an online payment by visiting www.pay.gov, and entering "sfo 1.1" in the "Search Public Forms" field to access the EPA Payment Form. On the Miscellaneous Payment Form page, "civil penalty" must be selected as the type of payment, and AED/MSEB #7895 must be selected as the court order # or bill #. A copy of the pay.gov receipt must be emailed to David E. Alexander as specified above.

Stipulated Penalties

16. For failure to comply with the terms of this Agreement on a timely basis Respondent must pay stipulated penalties to the United States as follows:
- a. For failure to correctly and timely pay the penalty, or provide proof of payment, pursuant to Paragraph 15, \$1,000 per day.
 - b. For failure to send the Manufacturer Letter or provide proof thereof, pursuant to Paragraph 14, \$500 per day.

All stipulated penalties under Paragraph 16 of this Agreement accrue on the calendar day after performance is due, and continue to accrue until the calendar day compliance is achieved. Nothing herein prevents the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties must be paid in accordance with Paragraph 15 and must be paid within five days of written demand by the EPA. Stipulated penalties must 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.

General Provisions

17. This agreement does not preclude any other action by the United States for violations that are not part of this Agreement, or any future violations of the Act or regulations promulgated thereunder.

18. A copy of all correspondence and certification to the EPA concerning this Agreement must be sent to:

David E. Alexander, Attorney
U.S. Environmental Protection Agency
Air Enforcement Division (MC 2242A)
1200 Pennsylvania Ave. NW (Room 1111A)
Washington, DC 20460 (zip for courier delivery 20004)
Tel: 202-564-2109
Email: alexander.david@epa.gov

19. This Agreement becomes effective upon the date executed by the EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.
20. Respondent 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, affiliates, assigns, and successors.
21. Notwithstanding any other provision of this agreement, upon Respondent's failure to perform, or 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 and 40 C.F.R. Part 94. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation.
22. Respondent acknowledges that its tax identification number may be used for the purpose of collecting or reporting any delinquent monetary obligation arising from this agreement. (See 31 U.S.C. § 7701.)

12

Settlement Agreement In the Matter of Fiat Powertrain Technologies of North America, Inc.

23. For the purpose of this Agreement, Respondent agrees that is it subject to the requirements of the Act and that the EPA has jurisdiction over Respondent and Respondent's conduct described above. Respondent consents and submits to the jurisdiction and venue in United States court, waives all objections to such jurisdiction and venue, and knowingly waives its due process rights in connection with its consent to jurisdiction and venue.
24. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters in this Agreement.
25. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the violations addressed in this agreement.
26. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to the EPA under this Agreement, and the prompt and complete remediation of any violations in accordance with this Agreement.
27. Respondent acknowledges that a false, misleading or incomplete representation in this Agreement or in materials required to be submitted to the EPA under this Agreement may subject Respondent to criminal sanction under 18 U.S.C. § 1001.
28. This Agreement resolves the EPA's civil claims for the violations alleged in this agreement. The resolution of claims set forth in agreement will take effect when the United States receives payment of the civil penalty specified in paragraph 15 and Respondent completes the mailing of the Manufacturer Letter required by paragraph 14. Nothing in this Agreement limits 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;

Settlement Agreement In the Matter of Fiat Powertrain Technologies of North America, Inc.

or with respect to other matters not within the scope of the Agreement. This Agreement does not change Respondent's responsibility to comply with other state, federal, or local laws or regulations, and does not change Respondent's potential liability to any other federal agency.

29. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than the EPA and Respondent, any rights, remedies, or other benefits.
30. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement remain in full force and effect. Time is of the essence in this Agreement.

The following agree to the terms of this Agreement:

Fiat Powertrain Technologies of North America, Inc.

By: Carrie Flank Date: 12-21-12

Typed or Printed Name: Carrie-Ann Flank

Typed or Printed Title: General Manager & Treasurer

Federal Tax Identification Number: 23-2808268

Settlement Agreement In the Matter of Fiat Powertrain Technologies of North America, Inc.

U.S. Environmental Protection Agency

By: 

Date: 1/2/2013

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency

ATTACHMENT 1 – Table of Subject Engines

Model Year	Labelled Engine Family	Engine Horsepower	Number of Engines
2007	7VEXM05.9MCR	247	6
2007	7VEXM06.7MNA	147	2
2007	7VEXM07.8CRS	528	5
2007	7VEXM06.7MNA	123	4
2007	7VEXM05.9MCR	394	23
2007	7VEXM06.7MNA	83.8	5
2007	7VEXM06.7MTA	174	3

CF