

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

Cummins Mid-America L.L.C.)
8201 N.E. Parvin Road) AED/MSEB No. 7195
Kansas City, Missouri 64161)
)

NOTICE OF DETERMINATION

Pursuant to the Policy on Incentives for Self-Policing (Audit Policy), 65 Fed. Reg. 19,618 (April 11, 2000), the U.S. Environmental Protection Agency (EPA or Agency) hereby issues this Notice of Determination (NOD) regarding violations voluntarily disclosed to EPA by Cummins Mid-America L.L.C. (hereinafter CMA).

Preliminary Statement

1. As an incentive for regulated entities to conduct independent environmental compliance audits and disclose any violations, EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be assessed for violations which are voluntarily disclosed in compliance with the conditions specified in the Audit Policy. As such, CMA performed a voluntary environmental audit of its facilities and identified to EPA violations uncovered by the audit.

Findings of Fact

1. The violations that are the subject of this NOD were voluntarily disclosed by CMA to EPA by letters dated April 28, 2005 and June 23, 2005.

2. CMA disclosed to EPA violations of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 89, as follows:

(a) For 203 generator sets and uncertified nonroad engines purchased by CMA and listed in Appendix I (attached hereto): Circumvention of the residence time requirements as required by Section 203(a)(1) and 213(d) of the Act, and 40 C.F.R. § 89.1003(a)(5).

3. Based on information provided by CMA on April 28, 2005 and June 23, 2005 for the disclosures identified above, EPA has determined that CMA has met each of the following conditions set forth in the Audit Policy:

(a) CMA has stated that the violations were discovered through a due diligence audit entered into in anticipation of the sale of CMA to Cummins North America, Inc.

(b) CMA has stated that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.

(c) The violations were promptly disclosed and submitted in writing upon discovery by CMA.

(d) CMA has stated that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, or imminent discovery by a regulatory agency.

(e) CMA has stated that it has taken the appropriate steps to return to compliance as quickly as possible. As of the date of its final report, June 23, 2005, all violations have been corrected.

(f) CMA has stated that the cumulative costs of the replacement engines from the factory is approximately \$250,000. Labor, supplies and related transactional costs including shipping, rental of replacement gensets and other customer service were approximately \$200,000.

(g) CMA has stated to EPA that it has sold its business to a third party; therefore, there is no possibility of a repeat occurrence by CMA.

(h) CMA has stated that the violations at issue or closely related violations have not occurred previously within the past three years at the same facility and are not part of a pattern of violations within the past five years.

(i) CMA has stated that the violations at issue have not resulted in serious actual harm to human health or the environment, and that the violations have not presented an imminent and substantial endangerment to public health or the environment. Furthermore, CMA has stated that the violations at issue do not violate the specific terms of any judicial order, administrative order, consent decree or consent agreement.

(j) CMA has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the Audit Policy to its disclosure.

Determination

Based on EPA's review of information and documentation received from CMA, and in reliance on CMA's certifications, EPA has determined that:

1. CMA has met all of the conditions of the Audit Policy and thus, is eligible for a waiver of the total gravity-based civil penalty for the disclosed violations;

2. No significant economic benefit of noncompliance has accrued to CMA as a result of the violations described herein; and
3. Pursuant to the Audit Policy, EPA will not assess a civil penalty against CMA for the disclosed violations.

Reservation of Rights

1. If, and to the extent, that any information or statement provided by CMA upon which this NOD is based, was materially false or inaccurate at the time such information or statement was provided to EPA, EPA reserves the right to revoke this NOD and, thereby, render such NOD null and void. Such revocation shall be in writing and shall become effective upon receipt by CMA.
2. If, and to the extent, that any information or statement provided by CMA upon which any civil penalty mitigation granted herein for such violations was based, was materially false or inaccurate at the time such information or statement was provided to EPA, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by CMA.
3. Nothing herein shall be construed to limit the authority of EPA and/or the United States to undertake action against any person, including CMA, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare or the environment. Furthermore, issuance of this NOD does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against CMA for any other violation of any federal or state statute, regulation, or permit.
4. In issuing this NOD, EPA seeks to promote self-auditing by CMA, and expects CMA to be in full compliance with all environmental requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.



Adam M. Kushner, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C. 20460

Date: January 5, 2007