

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

In the Matter of:	)	)	<b>ADMINISTRATIVE SETTLEMENT</b>
Generating Systems, Inc.	)	)	<b>AGREEMENT</b>
Fort Lauderdale, FL	)	)	<b>AED/MSED: 7049</b>
Respondent.	)	)	

**THIS ADMINISTRATIVE SETTLEMENT AGREEMENT** is made and entered into by and between the United States Environmental Protection Agency (EPA) and Generating Systems, Inc., 1800 Eller Drive, Fort Lauderdale, FL 33316 (Respondent).

**Purpose:**

The purpose of the Settlement Agreement (Agreement) is to resolve alleged violations of Sections 203 and 213 of the Clean Air Act (CAA), 42 U.S.C. § 7522 and § 7547, and the regulations issued thereunder: the Compression Ignition Nonroad Regulations (CI Nonroad Regulations), 40 C.F.R. Part 89, and the Spark Ignition Nonroad Regulations (SI Nonroad Regulations).

**Applicable CI Nonroad Regulatory Provisions:**

1. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any diesel or compression ignition (CI) nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity (EPA-issued certificate of conformity).
2. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a CI nonroad engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine.
3. 40 C.F.R. § 89.1007 requires the manufacturer of each new nonroad engine to warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine is designed, built, and equipped to comply with the federal emissions standards, and is free of any material defects which would cause the vehicle or engine to fail to comply with the federal emissions standards during its useful life (EPA emissions warranty).
4. 40 C.F.R. § 89.2 defines an engine manufacturer as any person who, among other things, imports nonroad engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.

5. 40 C.F.R. § 89.110 requires the 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 (EPA emissions label).

**Applicable SI Nonroad Regulatory Provisions:**

6. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any gasoline or spark ignition (SI) nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity (EPA-issued certificate of conformity).
7. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by engine manufacturer of a SI nonroad engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine (EPA emissions label).
8. 40 C.F.R. § 90.1103 requires the manufacturer of each new nonroad engine to warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine is designed, built, and equipped to comply with the federal emissions standards, and is free of any material defects which would cause the vehicle or engine to fail to comply with the federal emissions standards during its useful life (EPA emissions warranty).
9. 40 C.F.R. § 90.3 defines an engine manufacturer as any person who, among other things, imports nonroad engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
10. 40 C.F.R. § 90.114 requires the 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.

**Other Definitions:**

11. For purposes of this Agreement the term “export” means to transport to a location outside of the United States and its territories, Canada, and Mexico.
12. For purposes of this Agreement the term “destroy” means the complete destruction of the nonroad engine and the complete disassembly of the equipment. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything, and the equipment shall be disassembled and broken down in such a manner that it can never be reassembled.

**Alleged Violations:**

13. EPA alleges that on October 14, 2004, Respondent imported into the United States 134 nonroad engines as described in the Attachment (subject nonroad engines). The subject

nonroad engines were not covered by an EPA-issued certificate of conformity and did not bear an EPA emissions label.

14. Based on the forgoing, EPA alleges that Respondent committed 134 separate violations of Section 213 of the CAA, 42 U.S.C. § 7547, and the CI Nonroad Regulations, or the SI Nonroad Regulations.

**Terms of Agreement:**

15. EPA has determined to reduce the civil penalty for the 134 violations alleged in Paragraph 14 of this Agreement to \$8,699, provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$8,699 to the United States of America within thirty days from the date that this Agreement is executed by EPA (the due date). 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:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn: AED/MSEB- 7049

A copy of the check shall be sent to Jocelyn Adair at the address specified in Paragraph 17 of this Agreement.

16. Within fifteen days of this Agreement, or such longer period of time if required by the United States Customs and Border Protection (Customs), Respondent shall export or destroy the subject nonroad engines. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the subject nonroad engines were either exported or destroyed.
17. All correspondence to EPA concerning this Agreement shall be sent to:  
  
Jocelyn Adair  
Mail Code 2242A  
Room 1109A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460
18. Within sixty days of this Agreement, Respondent shall provide to EPA a plan that it will implement to ensure that all nonroad engines imported into the United States after the date of this Agreement comply with the appropriate CI Nonroad Regulations or the SI Nonroad Regulations.
19. Upon execution of this Agreement by EPA, EPA agrees to recommend that Customs release the subject nonroad engines so that they may be exported or destroyed in accordance with Paragraph 16 of this Agreement.

**Stipulated Penalties:**

20. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 15 or 16 of this Agreement, Respondent agrees to the following stipulated penalties:
  - (a) For the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to Paragraph 15 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day. However, if after sixty days of this Agreement, Respondent has failed to pay the civil penalty, Respondent shall be in default of this Agreement. Upon such default, Respondent shall pay a stipulated penalty of \$2,500 per subject nonroad engine.
  - (b) For the failure to export or destroy the subject nonroad engines as required by Paragraph 16 of this Agreement, Respondent shall pay for each nonroad engine a stipulated penalty of \$2,500.
21. All stipulated penalties shall be paid in 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.
22. Respondent further agrees that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act; or pursue any other remedies available to it. Respondent expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.
23. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
24. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent.
25. 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 consented to herein.
26. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.
27. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

28. The effect of settlement described in Paragraph 29 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
29. Upon completion of the terms of this Agreement, this civil matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of § 213 of the Clean Air Act, 42 U.S.C. § 7547, which are not the subject matter of 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 responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Generating Systems, Inc.

By: Francisco Perez

Date: 1-12-05

U.S. Environmental Protection Agency

By: Adam Kushner

Date: 2/1/05

Adam Kushner  
Acting Director  
Air Enforcement Division

**ATTACHMENT**

<b>Model Nos.</b>	<b>Qty.</b>	<b>Build Date</b>	<b>Power Rating</b>	<b>Engine Type</b>	<b>Manufacturer</b>
DEK5000SL	2	8/2004	5 kW	Portable Diesel Generator	Fuzhou D&J Power
DEL5000CLE	12	8/2004	5 kW	Portable Diesel Generator	Fuzhou D&J Power
DEK4000CL	14	8/2004	4 kW	Portable Diesel Generator	Fuzhou D&J Power
DEK180WE	4	8/2004	5 kW	Portable Diesel Generator	Fuzhou D&J Power
DEK100CL	4	8/2004	9.9 Hp	Diesel Water Pump 4"	Fuzhou D&J Power
F210D	4	8/2004	4.2 Hp	Portable Diesel Generator	Fuzhou D&J Power
F300D	4	8/2004	6.6 Hp	Portable Diesel Generator	Fuzhou D&J Power
F400D	4	8/2004	9.9 Hp	Portable Diesel Generator	Fuzhou D&J Power
DJ950CL	48	8/2004	800 watts	Portable Gasoline Generator	Fuzhou D&J Power
DJ2500CL	12	8/2004	2.5 kW	Portable Gasoline Generator	Fuzhou D&J Power
DJ6500CLE	6	8/2004	6.5 Hp	Portable Gasoline Generator	Fuzhou D&J Power
DJ160D	8	8/2004	5.5 Hp	Portable Gasoline Generator	Fuzhou D&J Power
DJ80C	4	8/2004	6.5 Hp	Gasoline Water Pump	Fuzhou D&J Power
DJ50C	8	8/2004	5.5 Hp	Gasoline Water Pump	Fuzhou D&J Power
<b>Total</b>	<b>134</b>				