

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

In the Matter of:

Backup Power Systems, Inc.
Miami, Florida

Respondent

ADMINISTRATIVE
SETTLEMENT AGREEMENT

AED/MSEB -7209

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Backup Power Systems, Inc., 12955 SW 84th Avenue, Miami, Florida 33156 (Respondent).

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve twenty-two 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 compression-ignition (CI) engines nonroad regulations at 40 C.F.R. Part 89 (CI Non-Road Regulations).

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 importing any new nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.

Regulatory Authority - CI Non-Road Regulations:

3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
4. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad engine manufactured after the applicable effective date of the regulations, unless a label is affixed to the engine in accordance with 40 C.F.R. § 89.110.

5. 40 C.F.R. § 89.1004(b) provides that the "Administrator may exempt a new nonroad engine from §89.1003 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigation, studies, demonstrations, or training, or for reasons of national security."
6. 40 C.F.R. § 89.2 defines an 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.
7. 40 C.F.R. § 89.110 requires the original 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.
8. 40 C.F.R. § 89.906 requires a manufacturer who imports nonroad engines under the Manufacturer-owned exemption to be a holder of a current EPA certificate of conformity.

Definitions:

9. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* as used in this Agreement means Respondent's importation of the twenty-two nonroad engines as described in Paragraph 11 of this Agreement (Subject Engines) and any civil liability that may apply to such violations.
 - b. *Certificate of Conformity:* the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105, after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Parts 89.
 - 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 built after the applicable dates of the regulations but that is not covered by a Certificate of Conformity issued by EPA.

- e. *Applicable regulation and dates:* 40 C.F.R. Part 89 is applicable to compression-ignition nonroad engines built after the applicability dates.
- f. *Export:* to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy:* the complete destruction of the Subject Engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.
- h. *Manufacturer-owned nonroad engine:* means an uncertified nonroad engine owned and controlled by a nonroad engine manufacturer and used in a manner not involving lease or sale or market promotion purposes.

Alleged Violations:

10. EPA alleges that Respondent imported into the United States the twenty-two generators containing CI non-road engines (generator sets), as described in the Table below (the Subject Engines).

Entry Date	Entry No.	Description	Qty.	Manufacturer
12/13/2006	911-0601098-5	GF3-20	4	Unknown
12/13/2006	911-0601098-5	GF3-24	8	Unknown
12/13/2006	911-0601098-5	GF3-30	10	Unknown

- 11. During February 2006, U.S. Customs and Border Protection (Customs) at the Port of Miami, Florida seized the generator sets containing the twenty-two Subject Engines.
- 12. On the EPA Declaration Form 3520-21, Respondent checked boxes D and 3. In checking box D, Respondent declared that he was importing nonroad compression-ignition engines. In checking box 3, Respondent declared that he was importing "manufacturer-owned engines".
- 13. The twenty-two Subject Engines are not manufacturer-owned nonroad engines as defined by 40 C.F.R. § 90.902, and Respondent did not comply with the recordkeeping, right of entry, reporting, and labeling requirements as specified at 40 C.F.R. § 90.906.

14. The Subject Engines were not excluded or exempt from complying with the certification and labeling requirements of the CAA and CI Nonroad Regulations.
15. As the importer of the Subject Engines, Respondent committed twenty-two separate violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), and the CI Non-Road Regulations, 40 C.F.R. Parts 89.

Terms of Agreement:

16. Respondent has agreed to pay a civil penalty of \$15,000 within thirty days from the date of this Agreement to the United States of America. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraph 22 of this Agreement. Respondent agrees to pay the amount by certified check or cashier's check payable to the United States of America, and to mail the payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 7209

17. Respondent shall export or destroy the Subject Engines within thirty days of this Agreement, or such longer period of time if required by U.S. Customs and Border Protection (Customs). The exportation or destruction shall be carried out under the supervision of Customs. Respondent shall also certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.
18. A copy of the payment check and all correspondence to EPA concerning this Agreement shall be sent to:

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W. Room 1109A
Washington, DC 20460



General Provisions

19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
20. 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.
21. Notwithstanding any other provisions of this Agreement, upon Respondent's default 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 40 C.F.R. Part 89. 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.
22. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representation to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties

23. 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 civil penalty pursuant to Paragraph 16 of this Agreement, \$250.00 per day; and
 - b. For failure to export or destroy the Subject Engines and provide proof thereof, pursuant to Paragraph 17 of this Agreement, \$5,000 for each Subject Engine.



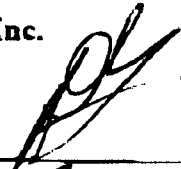
24. All stipulated penalties under Paragraph 23 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid to 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. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by 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 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

25. 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 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 responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Backup Power Systems, Inc.

By: 
 Printed Name: ANTHONY KAY
 Printed Title: PRESIDENT

Date: MARCH 08 / 2007

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U.S. Environmental Protection Agency

By:  _____ Date: 3-16-07 _____

Adam M. Kushner
Director
Air Enforcement Division