

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC  
ADMINISTRATIVE SETTLEMENT AGREEMENT**

**In the Matter of:**

**MAN Engines and Components, Inc.,  
Respondent**

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**AED/MSEB # 7253**

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (“EPA”), and MAN Engines and Components, Inc., 591 SW 13<sup>th</sup> Terrace, Pompano Beach, FL 33069 (“Respondent” or “MAN”) regarding compliance by Respondent with the requirements of the Clean Air Act (“the Act”) and the regulations promulgated thereunder at 40 C.F.R. Part 94.

**PURPOSE**

1. The purpose of this Administrative Settlement Agreement (“Agreement”) is to resolve alleged violations of Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), and the implementing Marine Compression Ignition Regulations found at 40 C.F.R. Part 94, arising out of the importation of sixty-four (64) marine CI engines (“Subject Engines”), as described in Table 1.

**STATUTORY AUTHORITY**

2. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any new motor vehicle or engine, unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect, and bears the required EPA Emissions Information Label.

## **REGULATORY AUTHORITY - MARINE ENGINES**

3. 40 C.F.R. § 94.2 defines a manufacturer as any person engaged in the manufacturing or assembling of new marine CI engines or importing such engines for resale, or a person acting for, and under the control of, such person.
4. 40 C.F.R. § 94.1103(a)(1)(ii) prohibits the following acts and the causation thereof: “The importation into the United States of any engine manufactured on or after the implementation date of the applicable emission limits for the relevant engine, unless such engine is covered by a certificate of conformity . . . .”
5. 40 C.F.R. § 94.1103(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by a manufacturer of a new CI marine engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 94.212.
6. 40 C.F.R. § 94.212 requires the original engine manufacturer to affix, at the time of manufacture of a certified marine CI engine, a permanent and legible label identifying each new marine engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment, must contain the content required by 40 C.F.R. § 94.212(b), and must be attached in such a manner that it cannot be removed without destroying or defacing the label.

## **DEFINITIONS**

7. For the purposes of this Agreement, the following definitions apply:
  - a. *Applicable regulation and dates:* 40 C.F.R. Part 94 is applicable to marine compression-ignition engines built after the applicability dates in 40 C.F.R. Part 94.
  - b. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 94.208, after EPA has determined that the manufacturer’s application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Part 94 and the Act.

Issuance of the Certificate of Conformity permits production and introduction into commerce of engines built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.

- c. *Certificate holder*: The "Certificate holder" is the entity that has obtained a Certificate of Conformity pursuant to 40 C.F.R. § 94.208 for a particular engine family. In this matter, the certificate holder is Respondent MAN.
- d. *Certified engine*: A "certified engine" is an engine that was built after the applicable effective dates of the Part 94 regulations and that is covered by a Certificate of Conformity.
- e. *Destroy*: The term "destroy" means the complete destruction of the engine and the complete disassembly of the equipment. The water jackets of the cylinder block and the head shall be impaled in multiple locations such that they can not thereafter be made to retain coolant regardless of whether repair is attempted and the equipment shall be crushed or disassembled and damaged in such a manner that it can never be reassembled.
- f. *Label requirements*: The "label requirements" include the permanency, durability, readability, visibility, and information requirements specified in Section 203(a)(4) the Clean Air Act, 42 U.S.C. § 7522(a)(4), and 40 C.F.R § 89.110.
- g. *Observer*: A U.S. Customs and Border Protection representative or an independent board-certified licensed professional engineer.
- h. *Subject Engines*: The "Subject Engines" are the CI nonroad engines identified in Tables 1 and 2.
- i. *This matter*: As used in this Agreement, "this matter" means the Respondent's importation of the Subject Engines identified in Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 94.



- j. *Uncertified engine:* An “uncertified engine” is an engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity issued by the EPA.

### **BACKGROUND**

8. MAN has not had any prior citations or violations from EPA. MAN acted promptly and proactively to resolve this matter upon being advised of the issues.
9. On or about July 14, 2007, and July 22, 2007, Respondent imported into the United States at the Port of Miami, FL, two entries containing the thirty-two (32) CI marine Subject Engines listed in Table 1.
10. At the time of importation, Respondent submitted to U.S. Customs and Border Protection (“CBP”) the EPA Declaration Form, EPA Form 3520-21 (Rev 04-06), declaring that the Subject Engines were U.S. certified Marine CI engines.
11. Upon examination, CBP determined that the labels on the 32 Subject Engines listed in Table 1 could be removed without destroying or defacing the labels. In addition, the labels on the Subject Engines were missing required information.
12. Respondent has since voluntarily disclosed that two more entries, containing 32 similar engines, are in transit to the Port of Miami. These Subject Engines listed in Table 2 also have deficient labels.

### **ALLEGED VIOLATIONS**

13. EPA has determined that Respondent is the importer of the Subject Engines and that the Subject Engines are uncertified because they do not comply with the Labeling Requirements of 40 C.F.R. Part 94.
14. The CBP inspection revealed that the engines bore Emissions Information Labels that were not permanently affixed and could be removed without destroying or defacing the label, in violation of 40 C.F.R. § 94.212. The labels were also missing content required by 40 C.F.R. § 94.212(b).

15. Based on the forgoing, EPA alleges that Respondent committed violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the Marine Compression Ignition Regulations found at 40 C.F.R. Part 94.
16. By entering into this Agreement, Respondent does not admit that it has committed any violation of the Clean Air Act or its implementing regulations.

## **TERMS OF AGREEMENT**

### **Injunctive Relief/Corrective Action**

17. Within thirty (30) days from the date that CBP releases the subject engines, or from the effective date of this Agreement if CBP has released the subject engines prior to the effective date of this Agreement, whichever is applicable, Respondent shall export to a country other than Canada or Mexico or destroy the subject engines. This exportation or destruction shall be carried out under the supervision of CBP. Within forty-five (45) days from the applicable date under this Paragraph, Respondent shall certify to EPA and provide supporting documents that each of the subject engines has been either destroyed or exported under the supervision of CBP.
18. In lieu of exporting or destroying each Subject Engine as required by Paragraph 17 of this Agreement, the Certificate Holder for the Subject Engines may remove each non-complying label from the Subject Engines and affix a complying EPA emissions information label (“replacement label”) to each of the Subject Engines. This corrective action must include each of the following steps:
  - a. Prior to performing corrective action, provide to EPA a technical description of the method and procedures that the Certificate Holder shall use to affix the replacement labels to the Subject Engines to ensure that each replacement label is permanently affixed and cannot be removed without destroying or defacing the label. EPA will review and approve the method prior to corrective action;

- b. Establish and fully document a chain of custody for the replacement labels from the time of production until the time of installation on the Subject Engines, and destruction of any unused replacement labels;
  - c. Remove each noncomplying label from the Subject Engines and affix a complying EPA emissions information label (“replacement label”) to each of the Subject Engines in accordance with the method and procedures submitted to EPA pursuant to Paragraph 17(a);
  - d. Perform this corrective action under the direction of the Observer;
  - e. Remove each noncomplying label and give it to the Observer; and
  - f. Ensure that the Observer destroys all the removed labels and unused replacement labels no later than the day on which the last Subject Engine receives a replacement label.
19. After the replacement labels have been affixed to all the Subject Engines being relabeled, the Certificate Holder shall have the Observer randomly select one Subject Engine from each equipment model (“Test Sample Engines”) to determine whether or not the replacement label is permanently affixed to the Subject Engine and cannot be removed without destroying or defacing the replacement label, using hand pressure only. Any Test Sample Engine whose replacement label is destroyed or defaced during this test must be relabeled by the Certificate Holder.
20. In the event that a replacement label on a Test Sample Engine can be removed without destroying or defacing the replacement label, the Test Sample Engine and the related equipment from the same model family shall be exported.
21. Where the replacement label on a Test Sample Engine contains all the required content and is permanently affixed and cannot be removed without destroying or defacing the label, the Test Sample Engine and the related equipment model Subject Engines may be deemed to comply with 40 C.F.R. § 94.212 and may be released by CBP.



22. No later than thirty (30) days from the effective date of this Agreement (or such longer period of time if requested by Respondent and approved by EPA for good cause shown), Respondent shall provide EPA with a written report that fully describes the corrective action taken, and certifies that such corrective action was conducted as described. The report must include the following:
- a. An affidavit from the Certificate Holder who has performed the corrective action work. The affidavit shall certify the date, time, and place of the corrective action work, identify each person doing the work, identify the serial number of each Subject Engine that was re-labeled, provide a clear readable picture of the replacement label affixed to each model of the Subject Engines, and provide the results of any tests performed to determine whether or not the replacement label was permanent and could not be removed without destroying or defacing the label; and
  - b. An unconditional statement from the Certificate Holder certifying that the Subject Engines comply with all requirements of the Clean Air Act and 40 C.F.R. Part 94.

**Root Cause Analysis, Corrective Action Compliance Plan and Compliance Certification**

23. No later than thirty (30) days from the effective date of this Agreement, MAN shall initiate a thorough review and analysis (“Root Cause Analysis”) of its marine engine labeling practices and procedures at each facility where the Certificate Holder produces engines for importation into the United States. This Root Cause Analysis is intended to ensure that all labels are permanently affixed on the Certificate Holder’s engines and/or equipment at the time of manufacture and otherwise comply with the requirements of 40 C.F.R. Part 94, in particular to ensure that labels once affixed cannot be removed without being destroyed or defaced at any point during the life of the engines, and during the manufacturing and assembly process (including during overseas shipment for assembly, and for importation into the United States). The Certificate Holder shall, as part of such review:

- a. Review the regulatory requirements for labels on marine engines;
- b. Analyze a representative sample of its engines and labels for importation to the United States to determine the potential cause(s) of label noncompliance;
- c. Review current labeling procedures and associated quality assurance and/or control practices, including label installation procedures, label design and label performance characteristics; and
- d. Identify and implement corrective action(s) to label installation procedure/design/performance as well as quality assurance/quality control procedures at locations where the Certificate Holder's equipment is manufactured and/or assembled, for shipment to the United States, and at U.S. ports as may be permitted by CBP to ensure that labels remain permanently affixed and attached such that they cannot be removed without their being defaced or destroyed.

The Certificate Holder shall complete the review and analysis required by this Paragraph 22, and shall implement all corrective actions within one hundred and eighty (180) days of the effective date of this Agreement. The Certificate Holder shall, within 210 days of the effective date of this Agreement, submit a copy of the Corrective Action Plan, together with a report to EPA of the Root Cause Analysis and Corrective Action Plan detailing the analysis, cause(s) of noncompliance, and all corrective actions implemented by the Certificate Holder. Such report shall include example(s) of new or redesigned label(s) identified for use by the Certificate Holder as a result of the Root Cause Analysis and Corrective Action Plan.

24. Compliance Certification: For the two (2) years following the effective date of this Agreement, MAN, as the Certificate Holder, shall prepare and submit to EPA, at the address provided in Paragraph 26, a signed certification of compliance with EPA's Marine CI Regulation label requirements, as described in Paragraphs 5 and 6 of this Agreement. This certification shall include the following:



- a. Number of marine engines manufactured by the Certificate Holder that were imported to the U.S. in the preceding calendar year (“Imported Engines”);
- b. Number of EPA compliant labels attached to the Imported Engines at the time of manufacture;
- c. A description of the type of label applied to the Imported Engines, and any changes made to the label or to the method of application during the preceding calendar year;
- d. A description of the quality assurance/quality control procedures at locations where the Certificate Holder’s marine engines are manufactured and/or assembled for shipment to the United States, including the name and position of the person(s) whose primary responsibility is to ensure that engine labels are properly affixed and to ensure that the quality assurance/quality controls are properly implemented;
- e. The name(s) and location(s) of the facility(s) where the Certificate Holder’s non-road equipment is manufactured and/or assembled for shipment to the United States; and
- f. A statement signed by the responsible company official that all labels applied to the Imported Engines in the preceding calendar year were compliant with applicable EPA label requirements for marine engines

**Civil Penalty**

25. Respondent shall pay to the United States a civil penalty of thirty thousand dollars (\$30,000.00) (“EPA penalty”) in satisfaction of the violations described herein, provided Respondent successfully completes the terms of this Agreement.
26. Respondent agrees to pay the \$30,000 EPA penalty to the United States of America within thirty (30) calendar days of the effective date of this Agreement. 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 Paragraphs 33 and 34 of this Agreement. Respondent

agrees to pay the amount by certified check or cashier's check payable to the United States of America and mail to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251  
Attn: AED/MSEB - 7253

Alternatively, the Certificate Holder may make an electronic funds transfer in the amount of \$30,000 with the notation "MAN Engines and Components, Inc. Administrative Settlement Agreement for Case No.: AED/MSEB-7253" by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010727
Bank Holding Account:	Treas_NYC
Routing Number:	021030004

The costs of such electronic funds transfer shall be the Certificate Holder's responsibility.

### **Notice**

27. All correspondence, reports, and copies of payment checks concerning this Agreement shall be sent to:

Meredith G. Miller  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Ariel Rios South Building Room 2119C  
Mail Code 2242A  
Washington, DC 20460  
Tel: (202) 564-4184

### **General Provisions**

28. This Agreement becomes effective upon the date executed by EPA ("effective date of the Agreement"), at which time a copy will be returned to Respondent.
29. Respondent hereby represents that the individual executing this Agreement on behalf of MAN is authorized to do so and that such execution is intended and is sufficient to bind Respondent and Respondent's agents, assigns, or successors.

30. Notwithstanding any other provision of this Agreement, the parties agree 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.
31. The 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.
32. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
33. This Settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Tables 1 and 2, and the prompt and complete remediation of any violations in accordance with this Agreement.

#### **Stipulated Penalties**

34. 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 penalty, or provide proof of such payment, pursuant to Paragraphs 25, 26 and 27, \$250.00 per day; and
  - b. For failure to timely export, destroy or relabel the Subject Engines, or provide proof of such relabeling, pursuant to Paragraphs 17 through 22, \$250.00 per day, per Subject Engine.
35. All stipulated penalties under Paragraph 34 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 26 and shall be paid within five (5) days of written demand by EPA. 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**

36. 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, and does not address Respondent's potential liability to CBP for engines that are seized or detained.

The following agree to the terms of this Agreement:

**U.S. Environmental Protection Agency  
Settlement Agreement In the Matter of MAN Engines and Components, Inc.**

**AED/MSEB # 7253**

**For MAN Engines and Components, Inc.:**

By: SVEN VON SAALFELD  
Typed or Printed Name:  
Typed or Printed Title: CEO

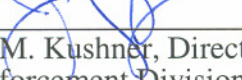
Date: 08/30/07

A handwritten signature in black ink, appearing to read "Saafeud", written in a cursive style.

**U.S. Environmental Protection Agency  
Settlement Agreement In the Matter of MAN Engines and Components, Inc.**

**AED/MSEB # 7253**

**For the Environmental Protection Agency:**

By:   
Adam M. Kushner, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance

Date: 9.17.07



*In the Matter of MAN Engines and Components, Inc.*  
AED/MSEB # 7253

**TABLE 1**

<u>Entry Date</u>	<u>Entry Number</u>	<u>Engine Model Number</u>	<u>Quantity</u>
7/14/2007	U52/57006416	R 6-800	6
		V 12-1550	4
		V 8-900	2
		V 10-1100	4
7/22/2007	U52/57006549	R 6-800	6
		V 12-1550	4
		V 8-900	4
		V 10-1100	2

**TABLE 2**

<u>Entry Date</u>	<u>Entry Number</u>	<u>Engine Model Number</u>	<u>Quantity</u>
Estimated 8/4/2007	N/A	R 6-800 12 V	4
		V 8-900	4
		V 10-1100	4
		V12-1360	4
Estimated 8/11/2007	N/A	R 6-800	2
		R 6-800 12 V	4
		V 8-900	4
		V 10-1100	4
		V12-1550	2