

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

In the Matter of:)	
)	
Generating Systems, Inc.)	SETTLEMENT AGREEMENT
)	AED/MSEB # 7115
Respondent.)	
)	

This is the Second Settlement Agreement made and entered into by and between the United States Environmental Protection Agency (EPA) and Generating Systems, Inc., 13440 S.W. 29 Terrace, Miami, Florida 33175 (Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Parts 89 and 90.

Purpose

1. The purpose of this Settlement Agreement (Agreement) is to provide for resolution and remediation of any and all claims by EPA under the Act and 40 C.F.R. Parts 89 and 90, arising out of the importation of ninety-four nonroad engines and the equipment containing those engines, as described in Paragraph 14 of this Agreement (Subject Engines), while ensuring that future violations are avoided.

Definitions:

2. For purposes of this Agreement, the following definitions apply:
 - a. *This matter:* as used in this Agreement means Respondent's importation of the Subject Engines and any civil liability that may apply to such violations.
 - b. *Certificate of Conformity:* the document issued by EPA to an engine manufacturer under 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106, as applicable, after EPA determines that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Parts 89 or 90 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. *Certified engine*: a nonroad engine built after the applicable date of the regulations and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable date of the regulations but which 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 nonroad compression-ignition engines built after the applicability dates in 40 C.F.R. Part 89. 40 C.F.R. Part 90 is applicable to nonroad spark-ignition engines built after the applicability dates in 40 C.F.R. Part 90.

Statutory Authority:

- 3. Sections 203(a) and 213(d) of the 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 nonroad engines, including engines contained in nonroad equipment or nonroad vehicles, unless the engine or vehicle is covered by a Certificate of Conformity issued and in effect.

Nonroad Compression Ignition (CI) Engine Regulatory Authority

- 4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits the following act and the causation thereof: “the importation into the United States [of] any new nonroad [CI] engine manufactured after the applicable effective date under this part, or any nonroad vehicle or equipment containing such engine, unless such engine is covered by a certificate of conformity....”
- 5. C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad CI 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.
- 6. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad CI 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 nonroad CI 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. § 89.909(a) and 40 C.F.R. § 89.1004(d) require, inter alia, that a new nonroad engine intended solely for export must be so labeled or tagged on the outside of the container and on the engine itself, or the engine is subject to the prohibitions of the nonroad CI regulations.

Nonroad Spark Ignition (SI) Engine Regulatory Authority

9. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits the following act and the causation thereof: “the importation into the United States [of] any new nonroad [SI] engine manufactured after the applicable effective date under this part unless such engine is covered by a certificate of conformity....”
10. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI 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. § 90.114.
11. 40 C.F.R. § 90.3 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad SI engines or importing such engines for resale, or a person acting for, and under the control of such person.
12. 40 C.F.R. § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad SI 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.
13. 40 C.F.R. § 90.909(a) and 40 C.F.R. § 90.1004(d) require, inter alia, that a new nonroad engine intended solely for export must be so labeled or tagged on the outside of the container and on the engine itself, or the engine is subject to the prohibitions of the nonroad SI regulations.

Background

14. On or about June 5 through 7, 2005, Respondent imported into the United States ninety-four nonroad engines and the equipment containing such engines (Subject Engines), as described in the Table below. The Subject Engines were imported into Port Everglades, Florida.

**Generating Systems, Inc.
Customs Entry Number: #5003434-5
Subject Engines Table**

Entry Date	Model Number	Equipment Type	Engine Build Date	kW	# of Units	Certified (Y/N)	Label (Y/N)
Diesel Engines							
6/7/05	HDY300L	Generator	05/2005	3.5	14	N	N
6/7/05	HDY5000LX	Generator	05/2005	5	12	N	N
6/05/05	HDY5000 LXB	Generator	05/2005	5	4	N	N
6/05/05	HDP20G	Water Pump	06/2005	4	10	N	N
6/05/05	HDP30G	Water pump	05/2005	6.7	8	N	N
6/05/05	HDP40G	Water Pump	05/2005	10	2	N	N
6/05/05	DH178F	No chassis	05/2005	6.7	2	N	N
6/05/05	DH186F	No chassis	05/2005	10	2	N	N
Gasoline Engines							
6/7/05	DY950L	Generator	05/2005	.8	40	N	N
Total					94		

15. On or about June 13, 2005, an agent of the Respondent submitted to U.S. Customs and Border Protection (Customs) the EPA Importation of Nonroad Engines and Equipment

Declaration Form, EPA Form 3520-21, declaring that the subject engines were being temporarily imported under Customs bond for export to a country with nonroad engine emission standards different from EPA standards, and that both the engines and their container were labeled or tagged “solely for export”.

16. Customs determined that neither the imported Subject Engines nor the outside of their container were labeled or tagged “solely for export”, as is required for valid export-only engines pursuant to 40 C.F.R. § 89.909(a) and 40 C.F.R. § 89.1004(d) for nonroad CI engines, and 40 C.F.R. § 90.909(a) and 40 C.F.R. § 90.1004(d) for nonroad SI engines.
17. Customs also determined that none of the Subject Engines were equipped with the permanent, legible identification labels required pursuant to 40 C.F.R. § 89.110 or 40 C.F.R. § 90.114, as applicable.
18. On or about July 12, 2005, Customs seized the Subject Engines described in Paragraph 14, above, at Port Everglades, Florida. The Subject Engines continue to be held by Customs.
19. The Subject Engines are regulated by and subject to the requirements of 40 C.F.R. Parts 89 or 90, as applicable.
20. EPA has subsequently determined that: Respondent is the importer of the Subject Engines; none of the Subject Engines are certified as required pursuant to 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106, as applicable; none of the Subject Engines were equipped with the permanent, legible identification labels required pursuant to 40 C.F.R. § 89.110 or 40 C.F.R. § 90.114, as applicable; and none of the Subject Engines are valid export-only engines pursuant to 40 C.F.R. § 89.909(a) and 40 C.F.R. § 89.1004(d) for nonroad CI engines, or 40 C.F.R. § 90.909(a) and 40 C.F.R. § 90.1004(d) for nonroad SI engines.
21. Based upon the foregoing, EPA has determined that Respondent is liable for a minimum of ninety-four violations of Section 203(a) and 213(d) of the Clean Air Act, amounting to fifty-four violations of 40 C.F.R. § 89.1003(a)(1)(ii) and 40 C.F.R. § 89.1003(a)(4)(ii) for the nonroad CI engines, and forty violations of 40 C.F.R. § 90.1003(a)(1)(ii) and 40 C.F.R. § 90.1003(a)(4)(ii) for the nonroad SI engines.
22. In March 2006, Respondent requested penalty relief based on financial hardship considerations.

23. On or about January 12, 2005, the Respondent had previously entered into a Settlement Agreement with EPA (AED/MSEB # 7049) to resolve its prior violations of Sections 203 and 213 of the Act and the Nonroad CI Regulations.

Terms of Agreement

24. Respondent has agreed to pay a civil penalty of \$3,000 to EPA (the EPA penalty). It is EPA's understanding that Respondent will also pay a penalty of \$2000 to United States Customs and Border Protection (Customs). The EPA penalty takes into account Respondent's financial hardship considerations. Respondent shall pay the EPA penalty of \$3,000 to the United States of America within thirty days from the effective date of this Agreement (EPA 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 EPA penalty 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-7115

25. A copy of the check shall simultaneously be sent to Judy Lubow at the following address:

Judy Lubow, Attorney
U.S. Environmental Protection Agency
12345 West Alameda Parkway
Suite 214
Denver, CO 80228

26. Within thirty days from the date that Customs releases the Subject Engines, or from the effective date of this Agreement if Customs has released the Subject Engines prior to the effective date of this Agreement, whichever is applicable, Respondent shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of Customs. Within forty-five days from the applicable date under this Paragraph 26, the Respondent shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed under the supervision of Customs.

27. Within forty-five days of the date of this Agreement, Respondent shall provide EPA with a detailed compliance plan (Plan), which must be acceptable to EPA. The Plan must be implemented by Respondent within sixty days of the effective date of this Agreement. The submitted plan must be reasonably calculated to ensure that all nonroad engines imported into the United States after the date of this Agreement shall be imported in a manner that complies with all applicable EPA regulations, including 40 C.F.R. Parts 89 and 90. The Plan must specifically address the proper labeling of each nonroad engine imported by the Respondent which is intended for export only, with a label to that effect. Further, it must require that a similar label be installed on the container for such engine.
28. Responses to Paragraphs 26-27 shall be sent to Judy Lubow at the address listed in Paragraph 25, above. Within the time frame required pursuant to Paragraph 27, above, a copy of the Plan required by that Paragraph 27 must also be sent to the following Customs representative:

Rebecca Law, Attorney
U.S. Customs and Border Protection
Office of the Associate Chief Counsel
909 S.E First Avenue
Suite 206
Miami, Florida 33131

General Provisions

29. The effective date of this Agreement is the date that EPA executes the Agreement.
30. The Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
31. Notwithstanding any other provisions of this Agreement, upon Respondent's failure to timely perform pursuant to Paragraphs 24-27 of this Agreement, or default of 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. Parts 89 or 90, as

applicable. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation.

32. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representations to EPA and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties

33. 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 pay the penalty, or provide proof thereof, pursuant to Paragraphs 24 and 22, \$500.00 per day;
 - b. For failure to appropriately export or destroy the Subject Engines, and provide proof thereof, pursuant to Paragraph 26, \$500.00 per day; and
 - c. For failure to submit to EPA the Plan, acceptable to EPA, to prevent further violations; and for failure to timely implement the Plan; all pursuant to Paragraph 27, \$500.00 per day.
34. All stipulated penalties under Paragraph 33 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 in accordance with Paragraph 24 and shall be paid within five 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

35. 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:

Generating Systems, Inc.

By: Fernando Perez
Fernando Perez
President

6/14/06
Date

**Settlement Agreement In the Matter of Generating Systems, Inc.
AED/MSEB # 7115**

United States Environmental Protection Agency

by: 

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

Date: July 7, 2006