

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

In the Matter of:)
)

Simply Reliable Power, Inc.)

Respondent)
_____)

**SETTLEMENT AGREEMENT
AED/MSEB # 7207**

This Settlement Agreement is made and entered by and between the United States Environmental Protection Agency (EPA) and Simply Reliable Power, Inc. (Reliable) regarding compliance by Reliable with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 89.

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. Part 89 (Nonroad Regulations), arising out of the importation of twenty-seven compression-ignition (CI) nonroad engines and the equipment containing those engines, as described in Paragraph 9 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 Reliable'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 after EPA determines that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Part 89 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 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 CI engines built after the applicability dates in 40 C.F.R. Part 89.
- 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 engine and the complete disassembly of the generator. 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 generator shall be disassembled and broken down in such a manner that it can never be reassembled.

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
 - a. covered by a Certificate of Conformity issued and in effect, and
 - b. bears the required emissions label.

CI Engine Regulatory Authority

- 4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits the following acts 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. 40 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. § 89.11.

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) requires that a new nonroad engine intended solely for export be so labeled or tagged on the outside of the container and on the engine itself.

Background

9. On October 23, 2006, Reliable imported into Miami, Florida, twenty-seven generators containing CI (or diesel) nonroad engines (Subject Engines), as described in the Table below.

**Subject Engine Table
Generators with CI Engines Imported by Reliable
Customs Entry Number 081-0177309-4**

Quantity	Generator Model	Generator Manufacturer	Engine Manufacturer	Yr of Manuf	kW
5	P110E1	F.G. Wilson	Perkins	2006	80
6	P44E5	F.G. Wilson	Perkins	2006	80
16	P88E1	F.G. Wilson	Perkins	2006	80

10. The EPA Engine Declaration Forms submitted by Reliable stated the engines were for export only, but there were no such labels on either the boxes or the engines, in violation of 40 C.F.R. §89.909(a).
11. On or about October 23, 2006, the U.S. Customs and Border Protection (Customs) inspected the Subject Engines and EPA determined that they were uncertified in violation

of 40 C.F.R. § 89.1003(a)(1)(ii) and also failed to have the required permanent, legible label in violation of 40 C.F.R. § 89.110.

12. On or about January 4, 2007, Customs seized the Subject Engines described in Paragraph 9, above, for violations of EPA regulations. The Subject Engines continue to be held.
13. As a result of the foregoing investigation into Reliable's compliance with the CI Nonroad Regulations, EPA has determined that:
 - a. Reliable is the importer of the Subject Engines;
 - b. none of the Subject Engines were certified as required pursuant to 40 C.F.R. § 89.105;
 - c. none of the Subject Engines was equipped with the permanent, legible identification label required pursuant to 40 C.F.R. § 89.110;
 - d. none of the Subject Engines was labeled for export only; and
 - e. this is Reliable's first violation of the Clean Air Act and the Nonroad Regulations.
14. Based upon the foregoing, EPA has determined that Reliable is liable for a minimum of twenty-seven violations of Sections 203(a) and 213(d) of the Act, resulting from twenty-seven violations of 40 C.F.R. § 89.909(a) or, in the alternative, of 40 C.F.R. § 89.1003(a)(1)(ii) and 40 C.F.R. § 89.1003(a)(4)(ii) of the CI Nonroad Regulations.

Terms of Agreement

15. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Reliable.
16. Reliable shall pay to the United States a civil penalty of \$23,450 (EPA penalty) for the Subject Engine violations.
17. Reliable agrees to pay the EPA penalty to the United States of America within thirty days from the effective date of this Agreement (penalty due date). Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Reliable agrees to pay the EPA penalty 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 371099M

Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB # 7207

A photocopy of the check shall be telefaxed simultaneously to:

Angela Fitzgerald, Attorney
U.S. Environmental Protection Agency
202/564-0015

18. 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, Reliable 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 18, Reliable shall certify to EPA, at the address identified in Paragraph 19, below, and provide supporting documents that the Subject Engines were either exported or destroyed under the supervision of Customs.
19. In addition to the civil penalties set forth in Paragraphs 16 and 17, above, the parties acknowledge that Customs will require payment of a forfeiture remission amount for the disposition of the Customs Seizure case relating to the Subject Engines. EPA will recommend to Customs that it collect not less than \$23,500 as a forfeiture remission amount for the Customs cases relating to the Subject Engines, as long as Reliable fully complies with the terms of this Agreement.

Stipulated Penalties

20. For failure to comply with the terms of this Agreement on a timely basis, Reliable shall pay stipulated penalties to the United States as follows:
 - a. For failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraphs 16 and 17, \$100.00 per day;
 - b. For failure to appropriately export or destroy the Subject Engines, and provide proof thereof, pursuant to Paragraph 18, \$250.00 per day, per Subject Engine;

- c. All stipulated penalties under Paragraph 20 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 17 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 to seek any other remedy or sanction available by virtue of Reliable's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

General Provisions

21. Notwithstanding any other provisions of this Agreement, the parties agree that upon default or failure of Reliable 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. Reliable 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.
22. The parties represent that the individual or individuals executing this Agreement on behalf of the respective party are authorized to do so and that such execution is intended and is sufficient to bind the respective party
23. Reliable 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.
24. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

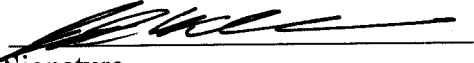
25. This settlement is contingent upon the truthfulness, accuracy and completeness of Reliable's disclosures and representations to EPA and the prompt and complete remediation of any violations in accordance with this Agreement.

Effect of the Agreement

26. 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 Reliable in the event of default or noncompliance with this Agreement; for violations of Section 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 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 Reliable of responsibility to comply with other state, federal or local laws or regulations.

The following agree to the terms of this Agreement:

Simply Reliable Power, Inc.


By:  Date: May 14th, 2007
Signature

Typed or Printed Name: CYRIL WILLIAMSON

Typed or Printed Title: TREASURER

**Settlement Agreement In the Matter of Simply Reliable Power, Inc.
AED/ MSEB # 7207**

U.S. Environmental Protection Agency

By:  _____ Date: 5.23.07 _____
Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance