

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

_____)	
In the Matter of:)	
)	Administrative Settlement Agreement
Business World USA, LLC,)	
)	AED/MSEB # 7875
Respondent)	
_____)	

Purpose

1. The United States Environmental Protection Agency (EPA) and Business World USA, LLC (Business World) enter into this Administrative Settlement Agreement (Agreement) to resolve alleged violations of sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(a)(1)(ii).

Governing Law

2. A person may not import a new stationary compression-ignition internal combustion engine (stationary CI ICE) unless it is covered by an EPA-issued certificate of conformity (COC) or otherwise exempt from the prohibition on importing uncertified stationary CI ICEs. 40 C.F.R. § 60.4210(c) (subjecting manufacturers of stationary CI ICEs to, among others, the prohibitions in 40 C.F.R. §§ 89.1003(a)(1)(ii)); 40 C.F.R. § 60.4219 (defining *manufacturer* to include importers); *see also* 42 U.S.C. § 7411 (authorizing the stationary CI ICE regulations at 40 C.F.R. Part 60); 42 U.S.C. § 7547 (authorizing the nonroad CI engines regulations at 40 C.F.R. Part 89).
3. Each stationary CI ICE that falls within model years 2007–2011 and has a power output between 19 kilowatts and 56 kilowatts must be covered by a valid COC that conforms to

the standards and procedures in 40 C.F.R. Part 89. 40 C.F.R. §§ 60.4201(a), 60.4210(c), 1039.1; *see also* 40 C.F.R. §§ 60.4219, 1068.30 (defining *stationary internal combustion engine* and *nonroad engine*, respectively).

4. One may import an uncertified stationary CI ICE if it meets the “importing for eventual export” exemption from the certification requirement. This exemption exists for engines that will never be used in the United States. To invoke the exemption, the uncertified engine must be labeled prior to importation and ultimately exported according to the provisions in 40 C.F.R. § 1068.230. 40 C.F.R. § 60.4210(c), 60.4210(c)(3)(iii).

5. Under 40 C.F.R. § 1068.230, any engine that one imports into the United States for the purpose of exporting to a country with emission standards that differ from United States standards must bear a label showing that it is not certified for sale or use in the United States. If that engine label will be obscured by the shipping container, the container must also bear a label. The label or labels must include the manufacturer’s corporate name, its trademark, and one of the following statements (as applicable):

(1) THIS ENGINE IS SOLELY FOR EXPORT AND IS THEREFORE EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS.

(2) THIS EQUIPMENT IS SOLELY FOR EXPORT AND IS THEREFORE EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS.

40 C.F.R. § 1068.230(c).

6. The label or labels must be plainly visible, attached to prevent their being separated from the engines, and be sufficiently durable to remain attached and readable while the engine is in the United States. 40 C.F.R. § 1068.45(b).

7. A person who imports uncertified engines in violation of 40 C.F.R. § 89.1003(a)(1) is subject to a civil penalty of not more than \$37,500 for each such engine. 40 C.F.R.

§ 89.1006(a)(1), 89.1006(a)(3); *see also* 40 C.F.R. §§ 19.4, 89.1006(a), 89.1006(a)(6) (defining a violation of 40 C.F.R. § 89.1003(a)(1) as being a violation of 42 U.S.C. §§ 7522 and 7547 for which the penalty cap has been increased to \$37,500 per engine for violations after January 12, 2009).

8. Rather than referring a matter to the United States Department of Justice to commence a civil action, EPA may assess a civil penalty through its own administrative process if the penalty sought is less than \$295,000. 42 U.S.C. § 7524(c); 40 C.F.R. § 89.1006(c); *see also* 40 C.F.R. §§ 19.4, 89.1006(a), 89.1006(a)(6) (defining a violation of 40 C.F.R. § 89.1003(a)(1) as being a violation of 42 U.S.C §§ 7522 and 7547 for which the administrative penalty cap has been increased to \$295,500 for violations after January 12, 2009).

Violations

9. On or about August 18, 2010, Business World imported into the United States (specifically, the Miami Seaport in Florida) the 24 stationary CI ICEs (Subject Engines) described in the following table.

Entry Number	Generator Model	Engine Model	Power Rating	Qty
MT3-0106500-9	Powerlink GMS125C6S	Dongfeng Cummins 6BTAA5.9-G2	125 kW	12
MT3-0106501-7	Powerlink GMS125C6S	Dongfeng Cummins 6BTAA5.9-G2	125 kW	12

10. The Subject Engines are stationary CI ICEs governed by 40 C.F.R. Part 60, which requires that they be certified according to the standards and procedures in 40 C.F.R. Part 89 due to their size and model year. 40 C.F.R. §§ 60.4201(a), 60.4210(c), 1039.1.

11. Business World declared (on EPA Form 3520-21), and EPA has confirmed, that the subject engines were not and are not covered by an EPA-issued COC.
12. Therefore, absent an exemption or exclusion from the prohibition on importing uncertified stationary CI ICEs, Business World committed 24 violations of 40 C.F.R. § 89.1003(a)(1)(ii) and 42 U.S.C. §§ 7522 and 7547 when it imported the Subject Engines.
13. Business World declared on EPA Form 3520-21 (by checking code “13”) that the Subject Engines satisfied the “importing for eventual export” exemption to the certification requirement.
14. None of the Subject Engines were labeled to indicate that they are not certified for sale or use in the United States. There were labels attached to the clear plastic shipping cover over the generator enclosure which stated, “For Export Purposes Only,” however these stated neither the manufacturer’s corporate name and trademark nor the mandatory language from 40 C.F.R. § 1068.230. Moreover, these labels were constructed of letter grade paper housed in a plastic folder that could be easily defaced or destroyed during handling. The Subject Engines were not labeled as required, so they are not exempt from the prohibition on importing uncertified stationary CI ICEs under the “importing for eventual export” exemption. 40 C.F.R. §§ 60.4210(c), 60.4210(c)(3)(iii), 1068.45(b), 1068.230.
15. Business World indicated no other exemptions or exclusions. Therefore, the Subject Engines were not exempt from the prohibition on importing uncertified stationary CI ICEs. Business World committed 24 violations of 40 C.F.R. § 89.1003(a)(1)(ii) and 42 U.S.C §§ 7522 and 7547 when it imported the Subject Engines.



Civil Penalty

16. Business World must pay to the United States a civil penalty of \$21,000 (EPA Penalty). EPA lowered this amount based on Business World's size and the effect of a penalty on Business World's ability to continue in business.
17. Business World agrees to pay the EPA Penalty to the United States in installments as follows: first, Business World must pay \$7,000 within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 24); then Business World must pay \$7,000 by January 31, 2012; and then Business World must pay \$7,000 by July 31, 2012. Late payment is subject to interest and fees as specified in 31 U.S.C. § 3717, and such interest and fees must be paid by Business World on demand by the United States. Business World agrees to pay the EPA penalty in the manner specified in subparagraph a. or b. below:
 - a. Mail by United States Postal Service a certified check or cashier's check, payable to the United States of America, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7875

This check must be identified with case number AED/MSEB # 7875 and state that it is remitted by Business World. Simultaneously, scan and email a copy of the check to Evan M. Belser at belser.evan@epa.gov.
 - b. Pay online through the Department of the Treasury using www.pay.gov. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1. The



payment must be identified with case number AED/MSEB # 7875. Within 24 hours of payment, scan and email a copy of the receipt to belser.evan@epa.gov.

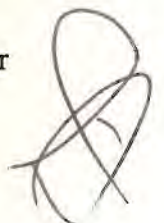
18. Beside the EPA Penalty, Business World acknowledges that the United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP) may assess separate penalties related to the Subject Vehicles.

Remedial Action

19. Business World must export or destroy all 24 of the Subject Engines. Exportation must be carried out under the supervision of CBP. Business World must submit to EPA a written certification that the Subject Engines were exported or destroyed and supporting documents issued by CBP proving exportation or destruction. Each action listed in this paragraph must be completed within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 24), or within 30 calendar days of CBP's release of the Subject Engines, whichever is later.

Stipulated Penalties

20. Time is of the essence to this Agreement. Business World agrees to pay a stipulated penalty of:
- a. \$1,000 per day for its failure to timely pay the civil penalty or provide proof of such payment according to ¶ 17;
 - b. \$12,500 for each Subject Engine that Business World distributes, offers for sale, or sells in the United States, United States territories, Canada, or Mexico; and
 - c. \$12,500 for each Subject Engine that Business World causes to be distributed, offered for sale, or sold in the United States, United States territories, Canada, or Mexico.



21. Every stipulated penalty must be paid within 30 days of its corresponding precipitating event as listed in ¶ 20 and in the manner specified in ¶ 17 of this Agreement.

Effect of Agreement

22. On completion of the terms of this Agreement, the alleged violations described in this Agreement will be deemed resolved. Nothing herein limits EPA's rights to proceed against Business World for its default or noncompliance with this Agreement, for violations of the Clean Air Act, 42 U.S.C. §§ 7401–7671q, or the Act's implementing regulations which are not the subject matter of this Agreement, for other violations of law, or with respect to other matters not within the scope of the Agreement.

General Provisions

23. All correspondence to EPA or notifications required by this Agreement must be in writing and emailed to belser.evan@epa.gov or mailed to:

(U.S. Postal Service Mail)
Evan Belser
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7875

(Courier Service)
Evan Belser
U.S. EPA
Ariel Rios South, Room 1111
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7875

24. This Agreement becomes effective on the date executed by EPA (effective date of the Agreement), at which time a fully executed electronic copy will be returned to Business World.
25. The individual or individuals executing this Agreement on behalf of Business World are authorized to do so and such execution is intended to and does bind Business World and its agents, successors, and assigns.



26. This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts. Any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement.
27. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
28. Business World may not delegate its duties under this Agreement to any other party without the written consent of EPA, which may be granted or withheld at EPA's sole discretion. If EPA so consents, the Agreement is binding on the party or parties to whom the duties are delegated.
29. Notwithstanding any other provision of this Agreement, the parties agree that on Business World's default or failure to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General pursuant to § 205(d) of the Act, 42 U.S.C. § 7524(d), to commence a civil action against Business World in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. Business World expressly waives its right to assert that the Subject Engines are certified or exempt from the certification requirements, or that such action is barred by 18 U.S.C. § 3282(a), other statutes of limitation, or other provisions limiting actions as a result of passage of time. Business



World acknowledges that EPA intends to use Business World's tax identification number, which Business World has appended to this Agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. 31 U.S.C. § 7701.

30. Business World waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
31. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than EPA and Business World, any rights, remedies, or other benefits.
32. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
33. This Agreement is contingent on the truthfulness, accuracy, and completeness of Business World's disclosures and representations to EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Engines.
34. This Agreement in no way affects or relieves Business World of responsibility to comply with other federal, state, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

A handwritten signature in black ink, consisting of a large, stylized loop at the top and several smaller loops and lines below it, resembling a cursive or calligraphic style.

United States Environmental Protection Agency

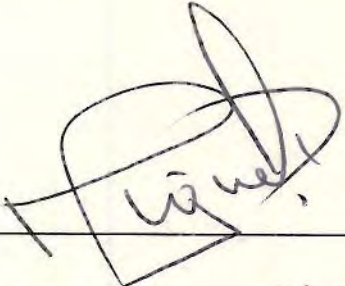
Administrative Settlement Agreement

In the Matter of Business World USA, LLC

AED/MSEB # 7875

The following agrees to the terms of this Agreement:

Business World USA, LLC

By:  _____

Typed or Printed Name: RICHAR H. DEIRMENTJIAN

Typed or Printed Title: HGRM

Federal Tax Identification Number: 26-1289891

Date: 06/02/2011



United States Environmental Protection Agency

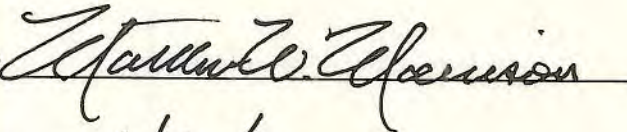
Administrative Settlement Agreement

In the Matter of Business World USA, LLC

AED/MSEB # 7875

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: 

Date: 6/26/11

for Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency