

**COPY FOR YOUR
INFORMATION**

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

)	
In the Matter of:)	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
CATERPILLAR INC.)	
)	
)	
)	AED/MSEB #7870
)	
Respondent.)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Caterpillar Inc. (Respondent) having an office at 100 NE Adams Street, Peoria, IL 61629.

Respondent

1. Respondent is a Fortune 500 company headquartered in Peoria, Illinois. Respondent is one of the world's largest manufacturers of construction and mining equipment, diesel and natural gas engines and industrial gas turbines.
2. Respondent manufactures diesel engines, including an electric power generator set engine - model C175-16.

Purpose

3. The purpose of this Agreement is to resolve one alleged violation of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and the nonroad engine regulations promulgated thereunder at 40 C.F.R. Parts 89 and 1068 (and in the alternative, the regulatory Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (Stationary CI ICE) promulgated at 40 C.F.R. § 60, Subpart III).

Statutory Authority

4. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. § 7522(a) and 7547(d), prohibit a manufacturer of a new nonroad engine from distributing into commerce, selling, offering for sale, introducing into commerce, or importing a new nonroad engine manufactured after the effective date of regulations applicable to such vehicle unless such engine (a) is built in conformity with and covered by a EPA-issued certificate of conformity (COC) and (b) bears the required EPA emissions information label.
5. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates § 203(a) of the CAA to a civil penalty for each motor vehicle or engine violation. The maximum civil penalty applicable to the alleged violations is \$37,500 per vehicle or engine based on the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the applicable regulations, 40 C.F.R. § 19.4, adjusting the statutory penalty from \$25,000 to \$37,500 for violations committed after January 12, 2009. These dates are relevant to the subject alleged violation, which occurred in August of 2009.

Regulatory Authority

6. 40 C.F.R. § 89.1003(a) and 40 C.F.R. § 1068.101(a) prohibit the sale, or the offering for sale, or the introduction, or the delivery for introduction, into commerce of any new Compression-Ignition (CI) nonroad engine manufactured after the effective date of regulations applicable to such engine, unless such engine is covered by a COC and bears a permanently affixed EPA Emissions Control Information Label or is properly exempted or excluded from the certification requirements.
7. 40 C.F.R. § 89.110 and 40 C.F.R. § 1068.45 require the engine label to be permanently affixed for life in such a manner that the label cannot be removed without destroying or defacing the label, and must include, among other things, the manufacturer's name, trademark, engine family name, engine displacement, fuel type, advertised power, and the date of manufacture.
8. 40 C.F.R. § 89.906 outlines records and labeling requirements for a manufacturer to qualify for a manufacturer-owned exemption and precertification exemption from the requirements of 40 C.F.R. § 89.1003. A manufacturer, who holds a current COC, can obtain an exemption if such manufacturer complies with the applicable criteria and requirements, which includes affixing onto the engine a permanent label with the proper information.
9. 40 C.F.R. § 1068.215 establishes the requirements to obtain and comply with a manufacturer-owned exemption, which includes holding a current COC and labeling the

engine with the requisite information. The exemption only applies to nonconforming engines under the manufacturer's ownership, possession, and control.

10. 40 C.F.R. § 1068.30 defines "nonroad engine" as any internal combustion engine:
 - (i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or
 - (ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
 - (iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.
11. 40 C.F.R. § 1068.30 excludes from the definition of "nonroad engine" any internal combustion engine that is otherwise included in paragraph 10 (iii) above that "remains or will remain at a location for more than 12 consecutive months".
12. 40 C.F.R. § 60, Subpart III, The Standards of Performance for Stationary CI Internal Combustion Engines (Stationary CI ICE), govern stationary source violations. Pursuant to 40 C.F.R. § 60.4210(c)(3)(I), no Stationary CI ICE manufactured after January 1, 2007 may be imported into the United States unless it meets the standards in Subpart III and is labeled properly.
13. 40 C.F.R. § 60.4248 defines "stationary internal combustion engine" as any internal combustion engine that is not a nonroad engine as defined at 40 C.F.R. § 1068.30.
14. 40 C.F.R. § 60, Subpart III incorporates the requirements and compliance provisions of 40 C.F.R. Part 89 and 40 C.F.R. Part 1068 in full.

Background

15. On August 29, 2009, Respondent imported one 3,353 horsepower diesel engine, model year 2007, model number C175-16, serial number WYB00107 (the Subject Engine), into the Port of West Palm Beach, Florida.
16. The Subject Engine is a nonroad CI engine, which is subject to Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the regulations promulgated thereunder at Parts 89 and 1068 (and, in the alternative, if deemed a Stationary CI ICE, the Subject Engine is subject to 40 C.F.R. § 60, Subpart III).
17. Respondent submitted EPA Declaration Form 3520-21 with Box 1 marked for “Stationary compression-ignition engines with displacement below 30 liters per cylinder” and Box 3 marked for “Manufacturer-owned engine. Importing a labeled engine by a manufacturer holding a current COC.”
18. On September 9, 2009, U.S. Customs and Border Protection (CBP) inspected the Subject Engine. CBP did not locate an EPA emission control information label or any exemption label on the Subject Engine.
19. Respondent stated that the Subject Engine is a newer technology engine that failed catastrophically overseas and was being imported to assess the root cause of the failure.
20. During subsequent communications between Respondent and EPA, CBP and EPA were not provided with documentation that demonstrated that the Subject Engine bore a

permanently affixed EPA Emission Control Information Label indicating that the engine was manufacturer owned.

Alleged Violations

21. EPA asserts that Respondent is liable for one violation of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the CI Nonroad Regulations, 40 C.F.R. Parts 89 and 1068 (and 40 C.F.R. § 60, Subpart IIII if the Subject Engine is deemed a "stationary source"), for the importation into the United States of the Subject Engine for all the reasons disclosed by Respondent and summarized above in Paragraphs 15 through 20.

Civil Penalty

22. For the alleged violation of the CAA and the regulations promulgated thereunder at 40 C.F.R. Parts 89 and 1068 arising from the importation and introduction into commerce of the Subject Engines, Respondent shall pay to the United States a total of \$20,000.00 within 30 days of the date 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 24 and 25 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 payment to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7870

Respondent may also pay online at www.pay.gov. From the "Search Public Form" field, enter "SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the "SFO Form Number 1.1."

Notice

23. A copy of the payment check(s) and the transmittal letter(s) shall be faxed to Robert G. Polin at (202) 564-0015 no later than 24 hours after mailing the payment. All correspondence to EPA concerning this Agreement shall be sent to:

Regular Mail

Robert G. Polin
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7870

Courier Service

Robert G. Polin
U.S. Environmental Protection Agency
Ariel Rios South, Room 1117A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attn: AED/MSEB-7870

Stipulated Penalties

24. Respondent must pay a penalty of \$1,000 per day for failure to timely pay the penalty pursuant to Paragraph 22 of this Agreement or provide proof thereof pursuant to Paragraph 23 of this Agreement.
25. Stipulated penalties under Paragraph 24 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. Stipulated penalties shall be paid in accordance with Paragraph 22 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Robert G. Polin at the address specified in Paragraph 23 of this Agreement.

General Provisions

26. This Agreement becomes effective upon the date executed by EPA (Effective Date of the Agreement), at which time an electronic copy will be returned to Respondent.
27. Respondent hereby represents that the individual or individuals 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 and its agents, assigns, and successors.
28. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default, or failure to comply with any term 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 CAA, 42 U.S.C. § 7524, commence an action to enforce this

Agreement, recover the civil penalty pursuant to Section 205 of the CAA, or 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 violations of the CAA and 40 C.F.R. Parts 89 and 1068. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, any applicable statute of limitation, or other provisions limiting actions as a result of passage of time. Respondent acknowledges that its tax identification numbers may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement. *See* 31 U.S.C. § 7701.

29. 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 agreed to herein.
30. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
31. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement and the prompt and complete remediation of any violations in accordance with this Agreement.
32. By entering into this Agreement, Respondent does not admit that it has committed any violation of the Clean Air Act or its implementing regulations and does not admit any liability to the United States arising out of the occurrences alleged in this Agreement. Respondent enters into this Agreement in good faith to avoid litigation with the United States.

Effect of Agreement

33. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed resolved by EPA. 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 laws or regulations.

The following agree to the terms of this Agreement:

Settlement Agreement
In the Matter of Caterpillar Inc. AED/MSEB – 7870

Caterpillar Inc.

By: 

Date: March 19, 2012


Typed name: Timothy A. Zaspal

Typed title: DPP General Manager

Federal Tax Identification Number: 37-0602744

*Settlement Agreement
In the Matter of Caterpillar Inc.
AED/MSEB - 7870*

United States Environmental Protection Agency

By: 
Phillip A. Brooks, Director
Air Enforcement Division

Date: 5/2/2012