

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

In the Matter of:

PRAMAC DE PUERTO RICO, INC. and
PRAMAC INDUSTRIES, INC.,

Respondents.

Administrative Settlement Agreement
AED/MSEB # 7292

Purpose

1. The United States Environmental Protection Agency (EPA) and Respondents 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) and 1068.101(a)(1). Respondents in this matter are Pramac de Puerto Rico, Inc. (Pramac de Puerto Rico) and Pramac Industries, Inc. (Pramac Industries). Pramac de Puerto Rico was located at Carretera Number 2, Kilometer 15.8 Hato Tejas, Bayamon, Puerto Rico 00961. Pramac Industries is a corporation organized under the laws of the State of Georgia with an office at 1300 Gresham Road, Marietta, Georgia, 30062.

Governing Law

2. Stationary compression-ignition internal combustion engines (stationary CI ICEs):
 - a. Model year 2007 stationary CI ICEs with engine power less than 2,237 kilowatts and displacement less than 10 liters per cylinder must satisfy air pollutant emission standards in 40 C.F.R. §§ 89.112 and 89.113. 40 C.F.R. §§ 60.4201(a), 89.1, 1039.1; *see also* 40 C.F.R. §§ 60.4219, 1068.30 (defining *stationary internal*

combustion engine and *nonroad engine*, respectively). These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, particulate matter, and exhaust opacity.

- b. To demonstrate that a stationary CI ICE satisfies emission standards, it must be covered by an EPA-issued certificate of conformity (COC). *See* 40 C.F.R. § 60.4210(a) (deferring to the certification procedures in 40 C.F.R. Part 89); 40 C.F.R. Part 89, Subpart B (outlining emission standards and certification provisions).
- c. A person may not import a model year 2007 stationary CI ICE with engine power less than 2,237 kilowatts and displacement less than 10 liters per cylinder unless it is covered by a COC or otherwise exempt from the prohibition on importing uncertified stationary CI ICEs. 40 C.F.R. § 89.1003(a)(1)(ii); 40 C.F.R. § 60.4210(c) (subjecting manufacturers of stationary CI ICEs to, among others, the prohibited acts in 40 C.F.R. § 89.1003(a)(1)(ii)); *see also* 42 U.S.C. § 7550(1) and 40 C.F.R. § 60.4219 (defining *manufacturer* to include importers).
- d. Also, a person may not import a stationary CI ICE unless it bears an EPA label demonstrating its certified or exempt status. 40 C.F.R. § 89.1003(a)(4)(ii); 40 C.F.R. § 4210(c) (subjecting manufacturers of stationary CI ICEs to, among others, the label requirements in 40 C.F.R. § 89.110 and prohibited acts in 40 C.F.R. § 89.1003(a)(4)(ii)).
- e. A person who imports uncertified engines in violation of 40 C.F.R. § 89.1003(a)(1)(ii) or who imports unlabeled engines in violation of 40 C.F.R. § 89.1003(a)(4)(ii) between March 15, 2004, and January 12, 2009, is subject to a

civil penalty of not more than \$32,500 for each such engine. 40 C.F.R. § 89.1006(a)(1), (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 account for inflation).

3. Nonroad compression-ignition internal combustion engines (nonroad CI ICEs):
 - a. A person may not import a model year 2009 nonroad CI ICE with a maximum power less than 19 kilowatts unless that engine bears a compliant emission control label. 40 C.F.R. § 1068.101(a)(1); *see also* 40 C.F.R. § 1039.1 (providing model years when nonroad CI ICEs, depending on their power, become regulated under 40 C.F.R. Part 1039).
 - b. An emission control label for a model year 2009 new nonroad CI ICE with a maximum power less than 19 kilowatts is compliant only if it is affixed at the time of manufacture, secured to a part of the engine needed for normal operation and not normally requiring replacement, and states the information enumerated in 40 C.F.R. § 1039.135(c). 40 C.F.R. § 1039.135.
 - c. If the equipment in which a nonroad CI ICE is installed obscures the engine's emission control label such that it cannot be read during normal maintenance, then a duplicate label must be affixed to the equipment. 40 C.F.R. § 1039.135(g).
 - d. A person who imports unlabeled engines in violation of 40 C.F.R. § 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each such engine. 40 C.F.R. § 1068.101(a)(1).

4. 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), 1068.125(b); *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) as being a violation of 42 U.S.C §§ 7522 and 7547 for which the administrative penalty cap has been adjusted for inflation).

Violations

5. Stationary CI ICEs:
- a. On or about October 4, 2007, Pramac de Puerto Rico imported into the United States, at the Port of San Juan, Puerto Rico, the two stationary CI ICEs described in the following table (Subject Stationary Engines):

Subject Stationary Engines					
Entry Number	Engine Manufacturer, Model Number	Generator Manufacturer, Model Number	Engine Serial Number	Engine Power	Date of Manufacture
ALA-0020770-6	AB Volvo Penta, TAD941GE	Pramac, 330	7009152004	308 kilowatts	May 29, 2007
ALA-0020770-6	AB Volvo Penta, TAD1641GE	Pramac, 560	2016020970	473 kilowatts	May 29, 2007

- b. The Subject Stationary Engines are stationary CI ICEs governed by 40 C.F.R. Part 60 which, due to their size and model year, requires that they be certified according to the standards and procedures in 40 C.F.R. Part 89. 40 C.F.R. §§ 60.4201(a), 60.4210(c), 89.1, 1039.1.

- c. Pramac de Puerto Rico declared (on EPA Form 3520-21), and EPA confirmed, that the subject engines were neither covered by an EPA-issued COC nor exempt from the prohibition on importing uncertified engines.
- d. Therefore, EPA determined that Pramac de Puerto Rico committed two violations of 40 C.F.R. § 89.1003(a)(1)(ii) and 42 U.S.C. §§ 7522 and 7547 when it imported the uncertified Subject Stationary Engines.
- e. Based on reasonable belief and subject to further information, Pramac Industries is the successor in liability to Pramac de Puerto Rico, and therefore Pramac de Puerto Rico's liability, for these two violations.

6. Nonroad CI ICEs:

- a. On or about June 15, 2009, Pramac de Puerto Rico imported into the United States, at the Port of San Juan, Puerto Rico, the 36 nonroad CI ICEs described in the following table (Subject Nonroad Engines):

Subject Nonroad Engines					
Entry Number	Engine Manufacturer, Model Number	Generator Manufacturer, Model Number	Engine Power	Date of Manufacture	Quantity
ALA-0030128-5	Yanmar Co. Ltd, L100V6	Pramac, Protech P6000s	6.8 kilowatts	2009	36

- b. The Subject Nonroad Engines are nonroad CI ICEs regulated under 40 C.F.R. Parts 1039 and 1068, and therefore may not be imported unless labeled according to 40 C.F.R. § 1039.135. 40 C.F.R. §§ 1039.1, 1039.15(b).
- c. EPA, through consultation with those CBP officers who inspected the Subject Nonroad Engines, determined that the Subject Nonroad Engines bore no EPA emission control labels or any labels demonstrating that the Subject Nonroad

Engines were exempt. Moreover, the equipment in which the Subject Nonroad Engines were installed bore no supplementary emission control labels.

- d. Therefore, EPA determined that Pramac de Puerto Rico committed 36 violations of 40 C.F.R. § 1068.101(a)(1) when it imported the unlabeled Subject Nonroad Engines.
- e. Based on reasonable belief and subject to further information, Pramac Industries is the successor in liability to Pramac de Puerto Rico, and therefore Pramac de Puerto Rico's liability, for these 36 violations.

Civil Penalty

7. Respondents must pay to the United States a civil penalty of \$39,000 (EPA Penalty).
8. Respondents agree to pay the EPA Penalty to the United States within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 15). 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 Respondents on demand by the United States. Respondents agree 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, company 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 # 7292

This check must be identified with case number AED/MSEB # 7292 and state that it is remitted by Respondents. 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 # 7292. Within 24 hours of payment, scan and email a copy of the receipt to belser.evan@epa.gov.
9. Beside the EPA Penalty, Respondents acknowledge that CBP may assess separate penalties related to the Subject Stationary and Nonroad Engines.

Remedial Action

10. Respondents must submit to EPA a written certification that the Subject Stationary and Nonroad Engines were exported or destroyed and supporting documents issued by CBP proving exportation or destruction. This must be completed within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 15).

Stipulated Penalties

11. Respondents agree 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 ¶ 8; and

- b. \$1,000 per day for its failure to timely provide the certification and documentation required by ¶ 8.
- 12. Respondents must pay every stipulated penalty within 30 days of its corresponding precipitating event as listed in ¶ 11 and in the manner specified in ¶ 8 of this Agreement.

Effect of Agreement

- 13. 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 Respondents for their default or noncompliance with this Agreement, for violations of the 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

- 14. 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 # 7292

(Courier Service)
Evan Belser, U.S. EPA
Ariel Rios South, Room 1142C
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7292

- 15. 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 Respondents.

16. The individual or individuals executing this Agreement on behalf of Respondents are authorized to do so and such execution is intended to and does bind Respondents and its agents, successors, and assigns.
17. 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.
18. 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.
19. Respondents 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.
20. Notwithstanding any other provision of this Agreement, the parties agree that upon Respondents' 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(b) of the Act, 42 U.S.C. § 7524(b), to commence a civil action against Respondents in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. Respondents expressly waive its right to assert

that the Subject Stationary and Nonroad 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. Respondents acknowledge that EPA intends to use Respondents' tax identification numbers, which Respondents have appended to this Agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. 31 U.S.C. § 7701.

21. Respondents waive their 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.
22. 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 Respondents, any rights, remedies, or other benefits.
23. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
24. This Agreement is contingent on the truthfulness, accuracy, and completeness of Respondents' disclosures and representations to EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Engines.
25. This Agreement in no way affects or relieves Respondents of responsibility to comply with other federal, state, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

United States Environmental Protection Agency

Administrative Settlement Agreement

In the Matter of Pramac de Puerto Rico, Inc. and Pramac Industries, Inc.

AED/MSEB # 7292

The following agrees to the terms of this Agreement:

Pramac de Puerto Rico, Inc.

By:  _____

Typed or Printed Name: RICARDO NAVARRO

Typed or Printed Title: PRESIDENT

Federal Tax Identification Number: 66-0668579

Date: 10/2/2012

United States Environmental Protection Agency


Administrative Settlement Agreement

In the Matter of Pramac de Puerto Rico, Inc. and Pramac Industries, Inc.

AED/MSEB # 7292

The following agrees to the terms of this Agreement:

Pramac Industries, Inc.

By:  _____

Typed or Printed Name: RICARDO NAVARRO

Typed or Printed Title: PRESIDENT

Federal Tax Identification Number: 58-2274313

Date: 10/2/2012

United States Environmental Protection Agency

Administrative Settlement Agreement

In the Matter of Pramac de Puerto Rico, Inc. and Pramac Industries, Inc.

AED/MSEB # 7292

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By:  _____

Date: 10/25/2012

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