



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

JUN 21 2019

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Expedited Settlement Agreement National Program for Clean Air Act Vehicle and Engine Violations - Imports

FROM: Rosemarie A. Kelley, Director
Office of Civil Enforcement *Rosemarie Kelley*

TO: Air Enforcement Division
Regional Counsels
Enforcement and Compliance Assurance Divisions Directors

This memorandum describes a new Expedited Settlement Agreement (“ESA”) National Program for Clean Air Act (“CAA”) Vehicle and Engine Violations - Imports (“V/E Imports ESA Program”). The V/E Imports ESA Program is a tool to more efficiently resolve cases that involve certain violations of the CAA. This V/E Imports ESA Program rescinds and replaces the 2008 Expedited Settlement of Vehicle and Engine Violations Memorandum (“2008 ESA Memo”), which initially piloted and established an expedited settlement process for resolving violations of the vehicle and engine requirements of Part A of Title II of the CAA. The Air Enforcement Division (“AED”) intends to complete an evaluation of this Program three years from its effective date. After three years, the V/E Imports ESA Program may continue to be implemented unless otherwise revised or rescinded.

1. Purpose and Goals

The goal of the V/E Imports ESA Program is to expedite resolution of claims concerning illegal importations of vehicles and engines (a subset of violations which were covered by the 2008 ESA Memo) and to allow for nationwide use by Regional offices for cases which generally involve a civil penalty of \$50,000 or less. In a separate memorandum, the Office of Civil Enforcement (“OCE”) is launching an ESA Pilot for CAA violations concerning illegal tampering of vehicles and engines or the sale, offering for sale, or installation of what are commonly known as aftermarket defeat devices on vehicles and engines.

The V/E Imports ESA Program allows higher ESA penalties compared to the 2008 ESA Memo, provides an updated penalty approach which more accurately reflects enforcement experience to date, and facilitates the expansion of the vehicle and engine enforcement program to the Regions. It is also consistent with the 2014 Revised Guidance on the Use of Expedited Settlement Agreements.

To allow new Regional participants to gain sufficient experience with its implementation, this V/E Imports ESA Program will last for three years from the date of this memorandum. AED will then evaluate it with particular attention to those parameters that were changed from the 2008 ESA Memo

such as the added repeat violator provision (Section 4) and updated penalty caps and calculation procedures (Sections 2 and 5). Beginning in 2020, AED will conduct an annual check-in with participants to review adherence to the parameters outlined in this V/E Imports ESA Program.

Regions are expected to work with AED when using ESAs under this V/E Imports ESA Program. Unless AED has waived concurrence for a given Region, Regions shall obtain AED's concurrence on ESA packages under this V/E Imports ESA Program.

2. Covered Violations

Cases with the following parameters are generally suitable for ESA resolution under the V/E Imports ESA Program. Case teams are expected to exercise sound judgement on when to pursue a matter under this Program, versus use of other enforcement and compliance tools.

- a) The violation(s) are the importation of vehicles, engines, or equipment in violation of Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), or 40 C.F.R. § 1068.101(a);
- b) The case involves a first-time violator(s), rather than a repeat violator(s), or falls under the limited circumstances discussed in Section 4 below;
- c) Following the methodology described in Section 5 below, the total proposed penalty does not exceed \$50,000;¹
 - i) Matters for which the total proposed penalty is \$50,001 to \$100,000 may be resolved by an ESA only with concurrence from AED;
 - ii) Matters for which the total proposed penalty exceeds \$100,000² require an administrative resolution in accordance with the requirements of 40 C.F.R. Part 22 ("Part 22") or, in appropriate circumstances, a judicial resolution;
- d) The value for the goods at issue does not exceed \$500,000 or, with AED's concurrence, goods valued up to \$1,000,000;
- e) The importation violation(s) occur within the issuing office's geographic boundaries. For AED, the geographic boundaries are anywhere EPA has jurisdiction; for Regions, if the respondent's primary place of business is outside its geographic boundaries, the Region is expected to consult with the Region in which the respondent's primary place of business is located to coordinate regarding the enforcement action (AED may be consulted as needed); and
- f) The case does not involve indicia of criminal or fraudulent behavior³ (e.g., falsified Certificates of Conformity) and there are no apparent reasons why the case should not be resolved in an expedited manner.

3. Timely Return to Compliance

To ensure fast resolution, the respondent has 30 calendar days from receipt of the ESA offer letter to adequately respond before the ESA is automatically withdrawn. Extensions may be granted to extend

¹ The 2008 ESA Memo recommended using ESAs for matters with penalties below \$10,000. This V/E Imports ESA Program raises the penalty ceiling to allow EPA to increase its enforcement presence and operational efficiency for matters where an ESA is appropriate.

² This cap may be revisited in the future to account for inflation and other factors as appropriate.

³ Case teams should refer such suspected violations to EPA's Criminal Investigation Division or the appropriate criminal enforcement authorities.

the deadline up to an additional 60 days (total of 90 days) provided respondents timely request the extension and provide a reasonable justification for their request. Extensions must be requested within 30 days from the respondent's receipt of the ESA offer letter and documented by EPA when granted. An adequate response includes returning the signed agreement, paying the penalty, and providing documentation that the violations have been or will soon be corrected (e.g., Bill of Lading which shows that the violative goods have been exported to a country other than Mexico or Canada, or written affirmation from the U.S. Customs and Border Protection ("CBP") that the goods are in its possession and export or destruction is imminent). Signed and electronically transmitted versions of the agreement may be used to assist with the expedited time frame.

4. Repeat Violators

ESAs may not be offered to repeat violators, except for the limited circumstances described below.

For the purposes of this V/E Imports ESA Program, a repeat violator is defined as one who, in the past five years, has had the same or a closely-related violation(s) that was the subject of an enforcement action. A "closely-related" violation means any CAA Title II violation. In evaluating potential repeat violators, case teams should consider prior violation(s) of corporate predecessors in interest, and cases where a principal(s) or individual(s) involved in a different business or entity had similar violation(s). Prior enforcement actions include a previously ratified ESA, Consent Agreement/Final Order ("CA/FO"), Complaint, or judicial enforcement action. Prior enforcement actions with CBP may also be considered.

Limited circumstances when an ESA may be offered to repeat violators include instances where:

- 1) the respondent is an individual importing for personal use and is neither an employee nor agent of the manufacturer or certificate holder of the noncompliant vehicles or engines, or
- 2) the noncompliant goods were already in shipment before the respondent received notice of the previous violation(s) and the noncompliant goods cannot reasonably be redirected away from a United States port.

5. Penalty Reductions

To expedite settlements and encourage a timely return to compliance, this V/E Imports ESA Program provides an alternative penalty calculation approach, which generally results in a reduced amount compared to the minimum calculation derived from the applicable vehicle and engine penalty policy.

Historically, vehicle and engine ESAs have reduced penalties by over 50%. A primary goal for calculating a significantly reduced penalty is to provide case teams with the flexibility needed to expeditiously resolve matters under this V/E Imports ESA Program.

The first step is to determine an appropriate value of the goods. This is generally listed as the declared value in importation documents, however case teams should exercise due diligence to ensure declared values are appropriate to use. In exercising due diligence, case teams for example may consult CBP or publicly available advertised market value of goods for indicia that the value as declared by the importer is appropriate. Case teams shall set a penalty equal to at least ten percent (10%) of the value of the goods, and not more than thirty percent (30%) of the value of the goods. More egregious violations

could warrant penalties up to the thirty percent (30%) threshold. Egregiousness should be determined consistent with the factors laid out in the applicable vehicle and engine penalty policy. Where the violations involve no particular facts warranting a higher or lower penalty, case teams should default to a penalty equal to twenty percent (20%) of the value of the goods. Penalties outside the 10% - 30% range require concurrence from AED on a case-by-case basis. The rationale for the penalty is to encourage speedy resolution and provide an incentive for the respondent to enter into an ESA to resolve the violation(s).

Case teams are expected to document in the case file the factors considered in assessing the penalty.

Inflation adjustments do not need to be made because the penalty is tied to the value of the goods in the violative importation.

The approach described above is expected to simplify the penalty calculation for matters resolved under this V/E Imports ESA Program and eliminate the need for a more resource intensive analysis that comes with calculating economic benefit, gravity, and other penalty adjustments.

6. Model ESA Documents

See attached for a model ESA package for vehicle and engine importation violations based on AED's guidance.⁴ This package includes an ESA offer letter, template terms, and tables describing the information collected and violation(s) charged.

Questions about this Program may be directed to Evan Belser, Acting Associate Director, Air Enforcement Division. Mr. Belser can be reached at (202) 564-6850 and belser.evan@epa.gov.

⁴ Authorized by CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1), AED's model ESA package represents an informal administrative process to resolve matters under this V/E Imports ESA Program. The formal administrative process is described by Part 22. Participants choosing to resolve ESAs using the Part 22 procedures should make modifications to their ESA packages necessary to ensure compliance with Part 22.



CERTIFIED MAIL NO.
RETURN RECEIPT REQUESTED

Amy Doe
Big Company LLC
12345 Road
Big City, CA 00000

Re: Docket No. XX-XX-XXXX

Dear Ms. Doe:

An authorized representative of the United States federal government conducted an inspection to determine your company's compliance with the Clean Air Act (CAA) and regulations promulgated thereunder. The details of this inspection are outlined in the enclosed Clean Air Act Vehicle and Engine Expedited Settlement Agreement (Agreement). As a result of the inspection, it was determined that your company failed to comply with the CAA and the associated regulations. The Agreement describes the violations.

You may resolve violations using an expedited process that involves significantly lower penalties than those sought through the normal settlement process. The United States Environmental Protection Agency (EPA) is authorized to enter into the Agreement under the authority vested in the EPA Administrator by Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1). After the Agreement becomes effective, the EPA will take no further civil penalty action against your company for the violation(s) described in the Agreement. However, the EPA does not waive any rights to take an enforcement action for any other past, present, or future violations of the CAA or of any other federal statute or regulation.

If you do not sign and return the enclosed Agreement as presented within **30 calendar days** of its receipt, and meet all of your obligations under the Agreement, the proposed Agreement is withdrawn, with no need of additional notice to you, and without prejudice to the EPA's ability to file any other enforcement action for the violation(s) identified in the Agreement and seek penalties of up to \$**XX,XXX** per violation pursuant to 40 C.F.R. § 19.4. Please refer to "CAA Vehicle and Engine Expedited Settlement Agreement Instructions," attached, for instructions on accepting this Agreement.

Please contact [EPA contact name] at (123) 123-4567 or [EPA contact email] with any questions.

Sincerely,

[Delegated Official Name], [Title]
[EPA Program/Office/Division]

Enclosure

Enclosure

CLEAN AIR ACT VEHICLE AND ENGINE EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. **XX-XX-XXXX**

Respondent: **Big Company LLC**
12345 Road
City, State, Zip

1. The parties enter into this Clean Air Act Vehicle and Engine Expedited Settlement Agreement (Agreement) in order to settle the civil violation(s) discovered as a result of the inspection(s) specified in Table 1, attached, incorporated into this Agreement by reference. The civil violation(s) that are the subject of this Agreement are described in Table 2, attached, incorporated into the Agreement by reference, regarding the vehicle(s)/engine(s) specified therein.
2. Respondent admits to being subject to the Clean Air Act (CAA) and its associated regulations and that the United States Environmental Protection Agency (EPA) has jurisdiction over the Respondent and the Respondent’s conduct described in Table 2. Respondent neither admits nor denies the findings detailed therein, and waives any objections Respondent may have to the EPA’s jurisdiction.
3. Respondent certifies that payment of the penalty has been made in the amount of **\$X,XXX**. Respondent has followed the instructions in “CAA Vehicle and Engine Expedited Settlement Agreement Instructions,” attached, incorporated into this Agreement by reference. Respondent certifies that the required remediation, specified in Table 3 and incorporated into this Agreement by reference, has been carried out.
4. By its first signature below, the EPA approves the findings resulting from the inspection(s) and alleged violation(s) set forth in Table 1 and Table 2. Upon signing and returning this Agreement to the EPA, Respondent consents to the terms of this Agreement without further notice. Respondent acknowledges that this Agreement is binding on the parties signing below, and becomes effective on the date of the EPA Delegated Official’s ratifying signature.
5. The parties consent to service of this Agreement by electronic delivery at the Respondent’s e-mail noted below.

APPROVED BY EPA:

Delegated Official: **Name, Title**

Date: _____

APPROVED BY RESPONDENT:

Name (print): _____

Title (print): _____

Signature: _____

Email (print): _____

Date: _____

RATIFIED BY EPA:

Delegated Official: **Name, Title**

Date: _____

Table 1 - Inspection Information	
Inspection Date(s):	Docket Number:
<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>
Inspection Location Name:	Entry Number(s):
<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>
Address:	Date of Entry Detention by CBP:
<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>
City:	Inspector(s) Name(s):
<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>
State: Zip Code:	EPA Approving Official:
<input style="width:40%;" type="text"/> <input style="width:40%;" type="text"/>	<input style="width:98%;" type="text"/>
Importer Name (Respondent):	EPA Enforcement Contact:
<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>

Table 2 - Description of Violation and Vehicles/Equipment				
<p>Importer Name (Respondent) imported the engine(s) described at the bottom of Table 2 (the Subject Engine(s)) on or about date. Authorized federal inspectors examined the Subject Engine(s) and [e.g. took a catalyst/fuel tank sample OR were unable to find an Emission Control Information (ECI) label indicating EPA certification OR etc.]. [Insert case-specific facts such as information on: whether or not a Certificate of Conformity (COC) exists, import declaration forms, laboratory analysis, EPA VERIFY database info, etc]. The EPA has found no further evidence indicating the Subject Engine(s) is/are exempt or otherwise excluded from coverage under Title II the Clean Air Act (CAA) and its implementing regulations. Accordingly, by importing the Subject Engine(s), Respondent has committed XX violation(s) of CAA Section 203(a)(1) and 213(d), 42 U.S.C. §§ 7522(a)(1) and 7547(d), and the regulations codified at 40 C.F.R. § 1068.101(a)(1) and (b)(5).</p>				
Vehicle/Equipment Description	Observed Engine Manufacturer	Observed Model Year	Observed Engine Family	Quantity
<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>	<input style="width:98%;" type="text"/>

Table 3 - Penalty and Required Remediation	
Penalty	\$X,XXX
Required Remediation	In addition to paying the monetary penalty, Respondent must provide to the EPA documentation showing that the Subject Engine(s) has/have been destroyed, exported to a country other than Canada or Mexico, or are under exclusive control by U.S. Customs and Border Protection (CBP) pending exportation or destruction.

CAA VEHICLE AND ENGINE EXPEDITED SETTLEMENT AGREEMENT INSTRUCTIONS

Within 30 days from your receipt of the Agreement, you must pay the penalty as described below:

Payment method 1 – Preferred (electronic): 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 shall be identified in the online system with Docket Number listed below.

On the same day after submitting your payment, send an email to cinwd_acctsreceivable@epa.gov and the EPA contact email address noted below. Include in the subject line: “Payment Confirmation for [Respondent] Docket Number [XX-XX-XXXX].” Attach a copy of the Agreement and your payment receipt to the email.

Payment method 2 (check): Mail, via CERTIFIED MAIL, a certified check payable to the United States of America marked with [Respondent], and the Docket Number listed below, with a copy of the Agreement to:

U. S. Environmental Protection Agency Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Attn: Docket Number [XX-XX-XXXX]

Within 30 days from your receipt of the Agreement, you must email [insert EPA contact’s e-mail address] a scanned copy of the original signed Agreement, the documentation of your Required Remediation corrective action(s) taken, and proof of payment (meaning, as applicable, a photocopy of the original certified penalty check or confirmation of electronic payment). If you prefer to mail this information via CERTIFIED MAIL, you may contact the EPA at the number listed below to arrange (Note that mailed information must be postmarked within 30 days of your receipt of the Agreement).

If you have any questions or would like to request an extension due to extraordinary circumstances, you may contact [EPA contact name] at (123) 123-4567. The EPA will consider whether to grant an extension on a case-by-case basis where appropriate justification is provided. The EPA will not accept or approve any Agreement returned more than 30 days after the date of your receipt of the Agreement unless an extension has been granted by the EPA. If you believe that the alleged violations are without merit (and you can provide evidence contesting the allegations), you must provide such information to the EPA as soon as possible but no later than 30 days from your receipt of the Agreement.

Unless an extension has been granted in writing by the EPA, if you do not sign and return the Agreement with proof of payment of the penalty amount and a report detailing your corrective action(s) within 30 days of your receipt of the Agreement, the Agreement is automatically withdrawn, without prejudice to the EPA's ability to file an enforcement action for the above or any other violations. Failure to return the Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations, including correction of the violation(s) specifically identified in the enclosed Tables. If you choose not to enter into this Agreement and fully comply with its terms, the EPA may pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$XX,XXX per violation pursuant to 40 C.F.R. § 19.4.