

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

In the Matter of:

Bob and Nancy's Tools & Equipment Sales

Respondent.

ADMINISTRATIVE  
SETTLEMENT AGREEMENT  
AED/MSEB # 7126

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Bob and Nancy's Tools & Equipment Sales (Respondent) regarding compliance by Respondent 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 Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Part 89 arising out of the importation of 62 generator sets containing the nonroad engines described in Attachment 1 (the Subject Engines), while ensuring that future violations are avoided.

**Definitions:**

2. For the purposes of this Agreement, the following definitions apply:
  - a. This matter: as used in this Agreement means Respondent's importation of the Subject Engines and any civil liability that may apply to such violation.
  - b. Certificate of Conformity: the document issued by EPA to a 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 requirements of Part 89 and the Clean Air 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 dates of the regulations and that is covered by a Certificate of Conformity.
- d. Uncertified engine: a nonroad engine built after the applicable dates of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
- e. Random sample: a sample drawn from a population so that each member of the population has an equal chance to be drawn.
- f. Applicable regulation and dates: 40 C.F.R. Part 89, is applicable to compression-ignition nonroad engines built after the applicability dates in 40 C.F.R. Part 89.

**Regulatory Authority:**

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. § 7522(a), and 42 U.S.C. § 7547 (d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.
- 4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits the following act, and the causation thereof: “the importation into the United States [of] any new nonroad 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. Under 40 C.F.R. § 89.1003(b)(4), “Certified nonroad engines shall be used in all vehicles and equipment . . . unless the manufacturer of the vehicle or equipment *can prove* that the vehicle or equipment will be used in a manner consistent with paragraph (2) of the definition of nonroad engine in § 89.2.” (emphasis added). 40 C.F.R. § 89.2, under the definition of “nonroad engine,” reads that an engine is not considered a nonroad engine if “the engine . . . will remain at a location for more than 12 consecutive months or a shorter

period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation.”

6. C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad 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. § 89.110.
7. C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or a person acting for, and under the control of such person.
8. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified 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.

### **Background**

9. On September 19, 2005, U. S. Customs and Border Protection (Customs) detained the generator sets containing the Subject Engines at Port Everglades, Florida.
10. Upon entry into the United States, the Respondent claimed the Subject Engines qualified for exemption status “Other” by checking Box 27 on EPA Form 3520-21, dated September 15, 2005.
11. Respondent is the importer of the Subject Engines.
12. The Subject Engines were built in 2005 with a rated power of 4 kW and 6 kW, and consequently they are subject to the requirements of 40 C.F.R. Part 89.
13. The Subject Engines are uncertified. Respondent did not provide proof at the time of importations that the generator sets would be used consistent with the stationary use exemption at 40 C.F.R. § 89.2.

14. Based on the above, Respondent is liable for 62 violations of Section 203(a) and 213(d) of the Act, and the applicable regulations thereunder.

**Terms of Agreement**

15. Within 30 days of this Agreement, or such longer period of time if required by Customs, Respondent shall place the Subject Engines under Customs bond, and for each generator set containing a Subject Engine either export or destroy the Subject Engine. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the subject engines were either exported or destroyed. Exportation of the Subject Engines shall be to any country other than Canada or Mexico.
16. Certifications and documentation in response to Paragraph 15 shall be sent via courier delivery to Angela E. Fitzgerald, at the following address:

Angela E. Fitzgerald, Attorney  
U.S. Environmental Protection Agency  
Mobile Source Enforcement Branch  
Ariel Rios South, (1117A)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

**General Provisions**

17. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondents.
18. Respondent hereby represents that the individual 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, Respondent's agents, assigns, or successors.
19. Notwithstanding any other provisions of this Agreement, upon Respondent's default of failure to comply with any terms 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 Act, 42 U.S.C. § 7524, and 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 violation of the Act and 40 C.F.R. Part 89. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.

20. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representations to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

**Stipulated Penalties**

21. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States for failure to export or destroy the Subject Engines and provide proof thereof, pursuant to Paragraph 15, \$250.00 per day.
22. All stipulated penalties under Paragraph 21 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 to the United States of America within 5 days of written demand by EPA (the due date). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn: AED/MSEB - 7126

Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA from seeking any other remedy or sanction available by virtue of Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

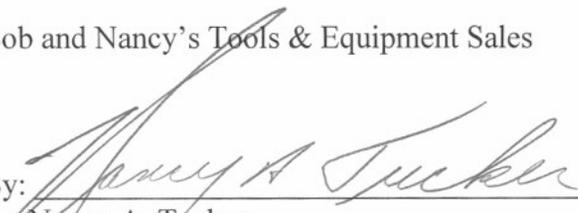
Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA from seeking any other remedy or sanction available by virtue of Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

**Enforcement**

23. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed terminated and resolved. 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 law or regulations.

The following agree to the terms of this Agreement:

Bob and Nancy's Tools & Equipment Sales

By:   
Nancy A. Tucker  
Owner

Date: 5/24/06

**Administrative Settlement Agreement  
In the Matter of United States v. Bob and Nancy's Tools & Equipment Sales**

U.S. Environmental Protection Agency

By: Adam Kushner Date: 6/8/06  
Adam Kushner  
Director  
Air Enforcement Division

USEPA ASA  
AED/MSEB # 7126

Attachment 1

**Attachment 1**  
USEPA ASA  
AED/MSEB # 7126  
Importer: Nancy Tucker

**SUBJECT ENGINES**

<b>Number</b>	<b>Engine Brand</b>	<b>Engine Serial Number</b>	<b>Generator Model</b>	<b>kW</b>
1	DEK	6505565	DEK6000SL	6.0
2	DEK	6505612	DEK6000SL	6.0
3	DEK	6505599	DEK6000SL	6.0
4	DEK	6505556	DEK6000SL	6.0
5	DEK	6505608	DEK6000SL	6.0
6	DEK	6505592	DEK6000SL	6.0
7	DEK	6506560	DEK6000SL	6.0
8	DEK	6505545	DEK6000SL	6.0
9	DEK	6506014	DEK6000SL	6.0
10	DEK	6506012	DEK6000SL	6.0
11	DEK	6505576	DEK6000SL	6.0
12	DEK	6505609	DEK6000SL	6.0
13	DEK	6505573	DEK6000SL	6.0
14	DEK	6505665	DEK6000SL	6.0
15	DEK	6505610	DEK6000SL	6.0
16	DEK	6505601	DEK6000SL	6.0
17	DEK	6505562	DEK6000SL	6.0
18	DEK	6505021	DEK6000SL	6.0
19	DEK	6505563	DEK6000SL	6.0
20	DEK	6506019	DEK6000SL	6.0
21	DEK	6505219	DEK6000SL	6.0
22	DEK	6505606	DEK6000SL	6.0
23	DEK	6505569	DEK6000SL	6.0
24	DEK	6505589	DEK6000SL	6.0
25	DEK	6505564	DEK6000SL	6.0
26	DEK	6505572	DEK6000SL	6.0

27	DEK	6505590	DEK6000SL	6.0
28	DEK	6505593	DEK6000SL	6.0
29	DEK	6505600	DEK6000SL	6.0
30	DEK	6505561	DEK6000SL	6.0
31	DEK	6505591	DEK6000SL	6.0
32	DEK	6506011	DEK6000SL	6.0
33	DEK	6506015	DEK6000SL	6.0
34	DEK	6505586	DEK6000SL	6.0
35	DEK	6506016	DEK6000SL	6.0
36	DEK	6505579	DEK6000SL	6.0
37	DEK	6505594	DEK6000SL	6.0
38	DEK	6505578	DEK6000SL	6.0
39	DEK	6505607	DEK6000SL	6.0
40	DEK	6505616	DEK6000SL	6.0
41	DEK	6505611	DEK6000SL	6.0
42	DEK	6505597	DEK6000SL	6.0
43	DEK	6505586	DEK6000SL	6.0
44	DEK	6505577	DEK6000SL	6.0
45	DEK	6506013	DEK6000SL	6.0
46	DEK	6505596	DEK6000SL	6.0
47	DEK	6505544	DEK6000SL	6.0
48	DEK	6506001	DEK4000XL	4.0
49	DEK	6506006	DEK4000XL	4.0
50	DEK	6506014	DEK4000XL	4.0
51	DEK	6506003	DEK4000XL	4.0
52	DEK	6506010	DEK4000XL	4.0
53	DEK	6506004	DEK4000XL	4.0
54	DEK	6506007	DEK4000XL	4.0
55	DEK	6506002	DEK4000XL	4.0
56	DEK	6506009	DEK4000XL	4.0
57	DEK	6506005	DEK4000XL	4.0

<b>58</b>	<b>DEK</b>	<b>6506008</b>	<b>DEK4000XL</b>	<b>4.0</b>
<b>59</b>	<b>DEK</b>	<b>6506015</b>	<b>DEK4000XL</b>	<b>4.0</b>
<b>60</b>	<b>DEK</b>	<b>6506013</b>	<b>DEK4000XL</b>	<b>4.0</b>
<b>61</b>	<b>DEK</b>	<b>6506012</b>	<b>DEK4000XL</b>	<b>4.0</b>
<b>62</b>	<b>DEK</b>	<b>6506011</b>	<b>DEK4000XL</b>	<b>4.0</b>