

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

In the Matter of:

Simply Reliable Power, Inc.

Respondent.

ADMINISTRATIVE
SETTLEMENT AGREEMENT

AED/MSEB - 7262

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency, and Simply Reliable Power, Inc., 10431 North Commerce Parkway, Miramar, Florida, regarding Simply Reliable Power, Inc.'s compliance with the requirements of the Clean Air Act and the regulations promulgated thereunder at 40 CFR Part 89.

Purpose:

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by United States Environmental Protection Agency (EPA) under the Clean Air Act, (Act), 42 U.S.C. §§ 7522 and 7547 and 40 CFR Part 89 (Nonroad CI Regulations) arising out of the importation(s) by Simply Reliable Power, Inc. (Reliable or Respondent) of 193 compression-ignition (CI or diesel) nonroad engines and the equipment containing those engines as described in Paragraph 9 of this Agreement (the Subject Engines).

Definitions

2. For purposes of this Agreement, the following definitions apply:
 - a. *This matter:* as used in this agreement means Reliable's importation of the Subject Engines and any civil liability that may apply to such violations.

- b. *Certificate of Conformity*: the document issued by EPA to an engine 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 applicable requirements of 40 C.F.R. Part 89 and the 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 date of the regulations that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable date of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
- e. *Applicable regulation and dates*: 40 C.F.R. Part 89 is applicable to nonroad CI engines built after the applicability dates in 40 C.F.R. Part 89.
- f. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy*: the complete destruction of the engine and the complete disassembly of the generator. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything, and the generator shall be disassembled and broken down in such a manner that it can never be reassembled.

Statutory Authority

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad engines, including engines contained in nonroad equipment or nonroad vehicles, unless the engine or vehicle is

- a. covered by a Certificate of Conformity issued and in effect, and
- b. bears the required emissions label.

CI Engine Regulatory Authority

4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits the following acts and the causation thereof:
“The importation into the United States [of] any new nonroad [CI] 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. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad CI 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. § 89.11.
6. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad CI engines or importing such engines for resale, or a person acting for, and under the control of, such person.
7. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad CI 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.
8. 40 C.F.R. §89.909(a) requires that a new nonroad engine intended solely for export be so labeled or tagged on the outside of the container and on the engine itself.

Violations:

9. Reliable imported into the United States the 193 Subject Engines described in the Table below:

Subject Engines Table

Quantity	Engine Manuf	Port & Date	Violation
124	Perkins	Miami 3/25/07	Engines had a certificate of conformity but labels could be removed without destroying or defacing them. OR Engines were declared exempt from certification but did not meet exemption requirements. Simply Reliable claimed engines were exempt because they were either for export only or replacement engines. The Export engines were missing a second label on the outside of the engine or container. The replacement engines: bore a label that was incorrectly worded, SR is not eligible for a replacement engine exemption, and the replacement engines were to be installed in new generators (which is not permissible).
56	Perkins	Miami 4/4/07	<i>Same as above.</i>
13	Perkins	Savannah 4/13/07	<i>Same as above.</i>

10. In June and August, the Department of Homeland Security's Customs and Border Protection (Customs) issued formal seizure notices to Reliable regarding the 193 Subject Engines described in the Table of Paragraph 9, above, for apparent violations of EPA regulations. The Subject Engines continue to be held.
11. EPA has determined that Respondent is the importer of the 193 Subject Engines.

Corrective Action:

12. Within thirty days from the date that Customs releases the Subject Engines, or from the effective date of this Agreement if Customs has released the Subject Engines prior to the effective date of this Agreement, whichever is applicable, Reliable shall export the Subject Engines to a country other than Canada or Mexico or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of Customs. Within forty-five days from the applicable date under this Paragraph, Reliable shall certify to EPA, at the address identified in Paragraph 16, below, and provide supporting documents that each of the Subject Engines has been either exported or destroyed under the supervision of Customs.

Civil Penalty:

13. Respondent shall pay to the United States a civil penalty of \$30,000 (EPA penalty) in satisfaction of the violations described herein, provided Respondent successfully completes the terms of this Agreement.

14. Respondent agrees to pay the \$30,000 EPA penalty to the United States of America within thirty calendar days of the effective date of this Agreement (EPA penalty due date), but not before the effective date. Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the EPA penalty by either:

a. Certified check or cashier's check payable to the "United States of America," and mailed via the United States Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000
Attn: AED/MSEB # 7262

Simultaneously, a photocopy of the check shall be faxed to Angela E. Fitzgerald at 202/564-0015. This check shall be identified with the case number and Respondent's name; or

b. Respondent may make an online payment through the Department of the Treasury by visiting WWW.PAY.GOV. In the "Search Public Forum" field enter "SFO1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center" and complete the "SFO Form Number 1.1." Within twenty-four hours of payment, Respondent shall fax a copy of the online payment receipt to Angela E. Fitzgerald at 202/564-0015. This check shall be identified with the case number and Respondent's name.

15. Separate and apart from this EPA penalty, Customs may require payment of a forfeiture remission amount for the release of the goods from seizure.

Notice

16. All correspondence, reports, and copies of payment checks concerning this Agreement shall be sent to:

(Regular Mail)

Angela E. Fitzgerald
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7241

(Courier Service)

Angela E. Fitzgerald
U.S. Environmental Protection Agency
Ariel Rios South, Rm 1117A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attn: AED/MSEB- 7241

Such correspondence, etc. may also be sent via telefax to 202/564-0015.

General Provisions:

17. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.
18. Notwithstanding any other provisions of this Agreement, the parties agree that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this Matter to the United States Attorney General for collection 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.
19. The parties represent that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.

20. 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 consented to herein.
21. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
22. This Agreement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in the Table in Paragraph 9, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

23. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
 - a. For failure to pay the civil penalty or provide proof thereof, pursuant to Paragraphs 13 and 14, \$250.00 per day; and
 - b. For failure to export the Subject Engines or provide proof thereof, pursuant to Paragraphs 12, \$250.00 per day.
24. All stipulated penalties under Paragraph 23 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 in accordance with Paragraph 13 and shall be paid within five days of written demand by EPA. 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:

25. 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, and does not address Respondent's potential liability to Customs for engines that are seized or detained.

**U.S. Environmental Protection Agency
Administrative Settlement Agreement
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The following agree to the terms of this Agreement:

Simply Reliable Power, Inc.

By: 

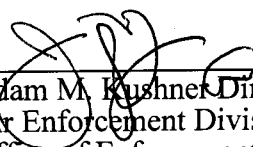
Date: *November 19, 2007*

Cyril Williamson,
Treasurer

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U.S. Environmental Protection Agency

By:  _____ Date: NOV 30, 2007
Adam M. Kushner Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U. S. Environmental Protection Agency