

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

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In the Matter of:)
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Vidal Trading Company, L.L.C.) MSEB AED # 7238
)
)
Respondent)

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Vidal Trading Company, L.L.C. (Respondent), of Condomento Pasco Del Bosque #3-201, San Juan, PR 00906, regarding compliance by Respondent with the requirements of sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§7522 and 7547, and the regulations promulgated thereunder at 40 C.F. R. Part 89 and 40 C.F.R. Part 90.

Purpose:

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1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Parts 89 and 90 arising out of the importation on January 26, 2007 of nonroad engines contained in eighty generators described in Tables 1 and 2 of Attachment I, and to ensure that future violations are avoided.

Definitions:

2. For purposes of this Agreement, the following definitions apply:
 - a. *This matter:* As used in this Agreement, "this matter" means Respondent's importation of the Subject Engines identified in Tables 1 and 2 of Attachment I, and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 89 and 40 C.F.R. Part 90.
 - b. *Subject Engines:* The term "Subject Engines" means the engines contained in the equipment listed in Tables 1 and 2 of Attachment I.
 - c. *Certificate of Conformity:* A "Certificate of Conformity" means the document issued by EPA to a nonroad compression ignition engine manufacturer under 40

C.F.R. § 89.105 or to a nonroad spark ignition engine manufacturer under 40 C.F.R. § 90.106, after a determination that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Part 89 or 40 C.F.R. Part 90 and the Clean Air Act. Issuance of the Certificate of Conformity permits importation and sale of engines built in accordance with the manufacturer's application provided that the engines are produced in the time period within which the Certificate of Conformity is valid.

- d. *Certified engine:* A "certified engine" is a nonroad engine built after the applicable effective dates of the regulations at Part 89 or Part 90, and that is covered by a Certificate of Conformity.
- e. *Uncertified engine:* An "uncertified engine" is a nonroad engine built after the applicable effective date of the regulations at Part 89 or Part 90 but which is not covered by a Certificate of Conformity issued by EPA.
- f. *Dates of Applicable Regulations:* The term "dates of the applicable regulations" for a nonroad compression ignition engines means the date after which the certification requirement applies to the engine, as defined in Table 2 of 40 C.F.R. § 89.112. The term "dates of the applicable regulations" for a nonroad spark ignition engines means a date after the 1997 model year for those engines with a gross power output at or below 19 kilowatts.
- g. *Export:* The term "export" means to transport to a location outside of the United States and its territories, Canada, and Mexico.
- h. *Destroy:* The term "destroy" means the destruction of the engine in such a manner that the engine or its major parts can never be used for motive power.

Statutory and Regulatory Authority:

3. Sections 203(a) and 213(d) of the Clean Air 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 vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.
4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing, or causing the importation into the United States any new nonroad compression ignition engine

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manufactured after the applicable effective date of the regulations, unless such engine is a certified engine, and bears a permanently affixed EPA Emissions Label or unless the engine is properly exempted or excluded from the certification requirements.

5. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits an engine manufacturer of a new nonroad compression ignition engine manufactured after the effective dates of the regulations, from the sale, offer for sale, introduction, or delivery into commerce of such nonroad engine, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.
6. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of a new nonroad engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
7. 40 C.F.R. § 89.110 requires the engine manufacturer to affix an engine label at the time of manufacture. The regulations require the label to be permanently affixed to the engine for the life of the engine in such a manner that the label cannot be removed without destroying or defacing the label, and require that information including the manufacturer's name, trademark, engine family, fuel type, and date of manufacture (e.g., month and year), be included on the label.
8. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from the importing into the United States, or causing the importation, of any new nonroad spark ignition (SI) engine manufactured after the applicable effective date under Part 90 unless such engine is covered by an EPA-issued Certificate of Conformity or is properly exempted or excluded form the certification requirements.
9. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI 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. § 90.114.
10. 40 C.F.R. § 90.3 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad SI engines or importing such engines for resale, or a person acting for, and under the control of, any such person.

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11. 40 C.F.R. § 90.114 requires the engine manufacturer to affix, at the time of manufacture of a certified nonroad SI engine, a permanent and legible label identifying each nonroad engine. The regulations require the label to be permanently affixed to the engine for the life of the engine, in such a manner that the label cannot be removed without destroying or defacing the label, and require that information including the manufacturer's name, trademark, engine family, fuel type, and date of manufacture (e.g., month and year), be included on the label.

Background:

12. On January 26, 2007, Respondent imported the 80 generators containing nonroad diesel and gasoline Subject Engines listed in Table 1 and Table 2 of Attachment I into the Port of San Juan, Puerto Rico.
13. The Subject Engines were manufactured after the Dates of the Applicable Regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment, or proof that engines qualified for the exclusions or exemptions allowed by the regulations was necessary.
14. The Subject Engines in diesel generators listed in Table 1 of Attachment I are not covered by a current EPA-issued Certificate of Conformity, and do not bear a conforming EPA Emissions Label required by 40 C.F.R. § 89.110. The Certificate of Conformity submitted for the diesel engines is a tampered document that does not cover the Subject Engines. The engine labels are in violation of several provisions of 40 C.F.R. § 89.110 including: the label does not contain the full corporate name and trademark of the manufacturer required by 40 C.F.R. § 89.110(b)(2), the engine labels include the caption "This Engine Conform to 2006 US EPA Regulations," however the Certificate of Conformity submitted is for model year 2007, and the engine family is classified as model year 2005. In addition, unique serial numbers are not available for the 15kW and 24kW engine models.
15. The Subject Engines in gasoline generators listed in Table 2 of Attachment I are not covered by a current EPA-issued Certificate of Conformity, and do not bear the EPA Emissions Label required by 40 C.F.R. §§ 90.114. Also, the importer provided no proof

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that the engines were eligible for importation under any of the exclusions or exemptions allowed by the regulation (e.g., 40 C.F.R. § 90.909(a) and 40 C.F.R. § 90.1004(d)).

16. On February 22, 2007, Customs and Border Patrol (CBP) detained the items described in Table 1 and Table 2 of Attachment I and seized them on or about April 4, 2007.

Terms of Agreement:

17. Within 30 days of the date of this Agreement, or within 30 days of the date CPB releases the Subject Engines for export, whichever is later, Respondent shall submit to the address in paragraph 20 all emission-type labels from each of the Subject Engines. Within 30 days of the date of this Agreement, or within 30 days of the date CPB releases the Subject Engines for export, whichever is later, Respondent shall submit proof that each of the Subject Engines has been exported to a location outside of North and Central America including the Caribbean, or, within 60 days of the date of this Agreement, Respondent shall arrange for the destruction of the Subject Engines and equipment in their entirety.
18. Destruction of each of the Subject Engines and equipment shall be deemed complete only when the engine has been rendered useless by causing multiple breaks in the water jacket in the castings of the head, and by causing multiple breaks in the water jacket of the block, in such a manner, and to such an extent, that the head and the block cannot be thereafter made to retain coolant regardless of whether repair is attempted.
19. Within 70 days of the date of this Agreement, if the Subject Engines and equipment were destroyed, Respondent shall submit proof of the destruction in the form of an attestation by an authorized employee of CBP that destruction occurred in the manner specified in paragraph 18.
20. All submissions to EPA shall be sent to the following address:
- David Alexander
U.S. EPA, OECA/AED (mailcode 2242A)
1200 Pennsylvania Ave NW (Rm. 1111A)
Washington, DC 20460-0001
facsimile: (202) 564-0069
21. Respondent shall pay to the United States a civil penalty of thirty-four thousand two hundred dollars (\$34,200). Seventeen thousand one hundred dollars (\$17,100) shall be remitted within 30 calendar days of the effective date of this Agreement and an additional seventeen thousand one hundred dollars (\$17,100) shall be remitted within 90 days of the

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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. Respondent agrees to pay the amount by certified check or cashier's check payable to the "United States of America," and to mail each payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB #7238

Simultaneously with remission of payment, a photocopy of each check shall be mailed to EPA at the address specified in Paragraph 20 or faxed to (202) 564-0069 to the attention of David Alexander. Each such check shall be identified with the case number AED/MSEB #7238 and Respondent's name.

General Provisions:

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22. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to the Respondent.
 23. Respondent hereby represents 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.
 24. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default of or 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 Parts 89 and Part 90. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitations (*see* 28 U.S.C. § 2462).
 25. The Effect of Settlement described in Paragraph 28 of this Agreement is conditioned 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 Table 1 and Table 2 in Attachment I of the

Agreement, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

26. 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 timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 21, \$400 per day.
 - b. For failure to timely export the Subject Engines, or provide proof of such exportation, pursuant to Paragraph 17, \$500 per day.
 - c. For failure to timely destroy the Subject Engines and equipment, or provide proof of such destruction pursuant to Paragraphs 17 through 19 of this Agreement, \$500 per day.
27. All stipulated penalties under Paragraph 26 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 20 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 this Agreement is based.

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Effect of Agreement:

28. Upon completion of the terms of the Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

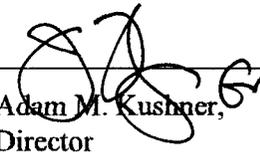
Vidal Trading Company, L.L.C.

By: Lisa Vidal

August 2, 2007

U.S. Environmental Protection Agency
In the Vidal Trading Company, L.L.C.

AED/MSEB # 7238

By:  _____

Adam M. Kushner,
Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

_____ Aug. 3, 2007
Date

