

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

**In the Matter of:**

**Cummins Inc.**

**Respondent.**

**ADMINISTRATIVE  
SETTLEMENT AGREEMENT  
AED/MSEB No. EF-2008-7278**

The United States Environmental Protection Agency (EPA or the Agency) and Cummins Inc. (Respondent) enter into this Administrative Settlement Agreement (Agreement) to resolve allegations of non-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**

The purpose of this Agreement is to resolve all claims by EPA under Sections 203 & 213 of the Act, 42 U.S.C. §§ 7522 & 7547, and the implementing regulations that control emissions from compression-ignition (CI) nonroad engines, found at 40 C.F.R. Part 89, arising out of the failure to properly certify three hundred and twenty-three (323) engines.

**Definitions**

1. For purposes of this agreement, the following definitions apply:
  - a. *Certified engine* means a CI nonroad engine built after the applicable date(s) of the Part 89 regulations and which is covered by a valid certificate of conformity as defined in 40 C.F.R. § 89.2.
  - b. *Uncertified engine* means a CI nonroad engine built after the applicable date(s) of the Part 89 regulations but which is not covered by a valid certificate of conformity issued by EPA as described in 40 C.F.R. § 89.105.

### **Regulatory Authority**

2. 40 C.F.R. § 89.1003(a)(1)(i) prohibits manufacturers from commercial distribution or sale of a new nonroad engine manufactured after the applicable effective date, or any nonroad equipment containing such engine, unless such engine is covered by a certificate of conformity issued under 40 C.F.R. § 89.105.
3. 40 C.F.R. § 89.102 establishes requirements under the Flexibility for Equipment Manufacturers Program (commonly referred to as TPEM) that provides for flexibility to manufacturers in the phased implementation of Subpart B Emission Standard and Certification Provisions applying to new nonroad compression-ignition engines.
4. 40 C.F.R. § 89.1006 authorizes penalties for violations of these prohibitions and requirements.

### **Background**

5. Cummins Inc., the Respondent, is a manufacturer of engines, is located at 500 Jackson Street, Columbus, Indiana 47201, and for the purposes of the Agreement is considered to include all of its subsidiaries and other affiliates, including any distributors.
6. This matter rises from a variety of activities occurring subsequent to entry of a 1998 consent decree (CD) between EPA and Respondent, regarding Respondent's use of defeat devices in on-road engines. That CD includes negotiated injunctive relief requiring Respondent to certify certain nonroad CI engines manufactured in 2005 to comply with Model Year 2006 requirements. The substance of this Agreement does not involve those engines or any other specific obligation rising from the CD.
7. As a result of self-policing done subsequent to entry of the CD, Respondent determined that it had sold 135 generator sets (gensets) containing non-conforming engines,

informing EPA of same within 30 days of its initial discoveries. Respondent addressed this finding by replacing the 135 gensets with fully certified units, with the exception of four units that had been stolen and subsequently replaced by the owners with fully certified units. On April 19, 2007, Respondent reported to EPA that it had completed full remediation of all units. It took a loss of \$2,000 per engine for the replacement, obviating any economic benefit from the original sale.

8. In February, 2007, Respondent notified EPA that during its annual review of its internal TPEM accounting, it identified errors that disclosed it had exceeded its allowable production limits for two periods. Respondent identified 188 gensets that were not qualified under the TPEM program. Respondent also investigated the degree to which it could swap-out these gensets, much as it had previously identified non-conforming units. Because the replacement genset has a substantially different footprint, and because many of the non-conforming gensets had been built into structures from which their removal would require major construction, Respondent determined it could not replace these 188 units.
9. Respondent also determined that, in comparison with certified engines, full life-cycle use of the 188 gensets will result in a net excess of 34.32 tons of NO<sub>x</sub>, a net reduction of 72.42 tons of CO, and a net reduction of 1.51 tons of PM.
10. The parties, desiring to settle and resolve the violations that could be alleged based on the facts alleged in paragraphs 7 and 8 (alleged violations), in consideration of the mutual covenants and agreements contained herein, and which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

11. By entering into this Agreement, Respondent does not admit that it is responsible for the alleged violations or that any alleged violations have occurred.

**Terms of Agreement**

12. The parties stipulate and agree to the matters identified in this Paragraph. It is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty arising out of this Agreement or the subject matter of this Agreement:
  - a. The parties agree that the settlement of this matter is in the public interest and that this Agreement is the most appropriate means of resolving the matter;
  - b. Jurisdiction to settle this matter exists pursuant to Section 213 of the Act, 42 U.S.C. § 7547, 40 C.F.R. Part 89 and other provisions of law;
  - c. At all relevant times, Respondent was an engine manufacturer within the meaning of 40 C.F.R. § 80.2;
  - d. The Agreement resolves, as to the Respondent, the alleged violations of this Agreement.
13. Respondent asserts herein that it has corrected its practices to address the conditions that created the alleged violations.
14. Under this Agreement, Respondent agrees to pay a civil penalty of \$270,000 to the United States of America by no later than thirty days from the effective date of this Agreement. Late payment of the civil penalty is subject to interest pursuant to Paragraph 15 and stipulated penalties pursuant to Paragraph 17 of this Agreement. The civil penalty shall be paid by:
  - a. Certified check or cashier's check payable to the "United States of America," and

mailed via United States Postal Service to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
ATTN: AED/MSEB No. EF-2007-7278

Simultaneously, a photocopy of the check shall be faxed to (202) 564-0015 to the attention of David Schnare. This check shall be identified with the case number and Respondent's name; or

- b. An online payment through the Department of the Treasury by visiting 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." Within twenty-four hours of payment, Respondent shall fax a copy of the online payment receipt to David Schnare at No. EF-2007-7278. Upon signing, the Respondent shall mail this **Agreement** to:

David W. Schnare, Esq. Ph.D., Attorney-Advisor  
U.S. Environmental Protection Agency (2242A)  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

15. Interest, at the statutory judgment rate provided for in 31 U.S.C. §3717, will begin to accrue the day after the civil penalty agreed to herein is due. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 (a)(1). Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a).

16. Under 28 U.S.C. § 162(f), penalties paid pursuant to this Agreement are not deductible for federal tax purposes.
17. Respondent agrees to pay stipulated penalties of \$1,000 per day for failure to timely pay the penalty, or provide proof thereof, pursuant to Paragraph 14.
18. Respondent shall permanently retire 35 tons of NOx within 180 days after the Effective Date.
19. The 35 tons shall come only from one or more of the following sources: (i) Cummins' off-road AB&T accounts; or (ii) currently valid stationary source NOx tons purchased on the open market through a licensed broker.
20. By 210 days after the Effective Date, Cummins shall transmit proof of its compliance with Paragraphs 18 and 19, *supra*, to the address provided in Paragraph 14(b), *supra*.
21. The parties further agree that upon default or failure to comply with Paragraphs 14, 17, 18, and/or 20, EPA may refer this matter to the United States Department of Justice for collection pursuant to Section 213(d) of the Act, 42 U.S.C. § 7547(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 211 of the Act; or pursue any other remedies available to it.
22. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of Section 213 of the Act, 42 U.S.C. § 7547, which are not the subject matter of this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement.
23. Respondent specifically agrees that in the event of such default or failure to comply with this Agreement, EPA may proceed in an action based on the allegations set forth herein, and Respondent expressly waives its right to assert that any action based upon the

- allegations set forth herein is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.
24. If any provision or provisions of this Agreement are held to be invalid, illegal, or unenforceable, Respondent expressly waives its right to assert that any action based upon the allegations set forth herein is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.
  25. This Agreement becomes effective upon the date signed by the EPA, after which time a copy will be forwarded to the Respondent.
  26. Each party hereby represents to the other that the individuals executing this Agreement on behalf of the party are authorized to do so and that such execution is intended and is sufficient to bind the party and, as applicable, its officers, agents, directors, owners, heirs, assigns, and successors.
  27. Respondent waives its rights, if any, to a hearing, trial, or any other proceeding on any issue of fact or law relating to matters agreed to herein.
  28. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable Federal law.
  29. The effect of the settlement described in this Agreement is conditional upon the accuracy of Respondent's disclosures and representations made in Paragraphs 10 and 13.
  30. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved.
  31. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal, or local law or regulations.

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The following agree to the terms of this Agreement:

**Cummins, Inc.**

By: Tony Sath July 23, 2008  
(name) Date  
President - Cummins Power Generation  
(title)

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**United States Environmental Protection Agency**

By: Adam M. Kushner

Adam M. Kushner  
Director  
Air Enforcement Division  
Office of Civil Enforcement

Date: July 25, 2008

