

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

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In the Matter of:	)	
	)	<u>Administrative Settlement Agreement</u>
HD Power Systems, Inc.,	)	
	)	AED/MSEB # 8026
Respondent.	)	
_____	)	

**Purpose**

1. The United States Environmental Protection Agency (EPA) and HD Power Systems, Inc. (HD Power) enter into this Administrative Settlement Agreement (Agreement) to resolve alleged violations of sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. Parts 1039, 1054, and 1068.

**Governing Law**

2. Section 203(a)(1) of the Act prohibits “the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce . . . of any new motor vehicle or new motor vehicle engine” by a manufacturer, unless that new motor vehicle or engine is covered by an EPA-issued certificate of conformity (COC). 42 U.S.C. § 7522(a)(1).
3. “Manufacturer” is defined broadly to include “any person engaged in . . . importing such vehicles or engines for resale.” 42 U.S.C. § 7550(1).
4. The Act also prohibits “any person” from importing a new motor vehicle or new motor vehicle engine unless that vehicle or engine is covered by a COC. 42 U.S.C. § 7522(a)(1).

5. Section 213(d) of the Act and corresponding regulations at 40 C.F.R. Part 1068 extend the prohibitions enumerated in section 203 to nonroad engines and vehicles. 42 U.S.C. § 7547(d); 40 C.F.R. § 1068.101(a)(1), (b)(5).
6. Nonroad Compression-Ignition (CI) Engines:
  - a. Beginning with engines of model year 2008, EPA regulates new nonroad CI engines with power less than 19 kW under 40 C.F.R. Parts 1039 and 1068. 40 C.F.R. §§ 1039.1, 1039.15, 1068.1(a)(2).
  - b. The text of every COC states that only engines that “conform, in all material respects, to the design specifications” in the application are covered. *See also* 40 C.F.R. § 1068.101(a)(1)(i) (requiring that an engine be “in a configuration described in the application for certification” in order to be certified).
  - c. The importation of a new nonroad CI engine that is not covered by a COC is prohibited. 40 C.F.R. § 1068.101(a)(1).
  - d. A manufacturer must affix to each imported CI engine a compliant Emission Control Information (ECI) label, which must display certain information about the engine, including the appropriate engine family. 40 C.F.R. § 1039.135.
  - e. If an engine’s ECI label is obscured by the equipment into which the engine is installed, a duplicate label must be affixed to the equipment. 40 C.F.R. § 1039.135(g).
  - f. ECI labels and duplicate labels must “not [be] removable without being destroyed or defaced.” 40 C.F.R. § 1039.135(b)(1).
  - g. The importation of CI engines without compliant labeling is prohibited. 40 C.F.R. § 1068.101(a)(1).

7. Nonroad Spark-Ignition (SI) Engines:
  - a. Beginning with engines of model year 2011, EPA regulates new nonhandheld nonroad SI engines with displacement greater than or equal to 225 cubic centimeters (cc) under 40 C.F.R. Parts 1054 and 1068. 40 C.F.R. §§ 1054.1, 1054.15, 1068.1(a)(9).
  - b. A manufacturer must affix to each imported SI engine a compliant ECI label, which must display certain information about the engine, including the appropriate emission control system. 40 C.F.R. § 1054.135(c)(7).
  - c. The importation of nonroad SI engines without compliant labeling is prohibited. 40 C.F.R. § 1068.101(a)(1).
8. Those who import uncertified nonroad CI engines or nonroad CI or SI engines without compliant labels after January 12, 2009, are subject to a civil penalty of up to \$37,500 per engine. 40 C.F.R. § 1068.101(a)(1).
9. Rather than referring a matter to the United States Department of Justice to commence a civil action, EPA may assess a civil penalty through its own administrative process if the total penalty sought is less than \$295,000. 42 U.S.C. § 7524(c); 40 C.F.R. § 1068.125(b).

#### **Violations**

10. Nonroad CI Engines:
  - a. On or about May 6, 2011, HD Power imported generators under Entry M42-1242852-6 containing 64 nonroad CI engines (Subject CI Engines) with an advertised power output of 9 horsepower.
  - b. These engines are subject to 40 C.F.R. Parts 1039 and 1068 and, although not labeled as such, they are purportedly covered by the COC for engine family

BCZKL.418F86. A sample catalyst randomly chosen from the Subject CI Engines was measured as having a casing with an inside diameter of 69.21 mm and substrate material of 69.94 mm in length. The volume of this cylindrical catalyst is approximately 263 cc. The calculated volume for the catalyst described in the COC application for engine family BCZKL.418F86 is 452 cc.

- c. Accordingly, the volume of the sample catalyst is approximately 40 percent less than that which is specified in the COC application for engine family BCZKL.418F86. This is a material difference between the Subject CI Engines and the specifications of the COC application.
- d. Because of this material difference, the Subject CI Engines are not covered by the COC for engine family BCZKL.418F86, nor are they covered by any other COC. Therefore, HD Power committed 64 violations of 42 U.S.C. §§ 7522 and 7547 and 40 C.F.R. § 1068.101(a)(1) by importing them.
- e. In addition, the ECI labels on the Subject CI Engines were obscured by the equipment into which the Subject CI Engines were installed. The manufacturer accordingly affixed additional labels to the exterior of the generators in an apparent attempt to meet the requirements of 40 C.F.R. § 1039.135(g).
- f. During inspection, EPA determined that the additional labels peeled off with minimal effort. Removal also caused no damage to the labels, in violation of the requirement under 40 C.F.R. § 1039.135(b)(1) that such labels “not [be] removable without being destroyed or defaced.”
- g. In addition, the ECI labels contained inaccurate information. They asserted that the Subject CI Engines were of engine family 9JCGL0.42D1N, a 2009 engine

family whose COC is held by Jiangsu Changfa Group. The Subject CI Engines were, however, manufactured in 2011 by Changzhou Changchai Group Kaito Electricity Machinery Co. Ltd.

- h. Because the labels were not properly affixed and contained inaccurate information, they did not comply with the provisions of 40 C.F.R. § 1039.135. Therefore, HD Power committed 64 violations of 42 U.S.C. §§ 7522 and 7547 and 40 C.F.R. § 1068.101(a)(1) by importing the Subject CI Engines.

11. Nonroad SI Engines:

- a. Between August 2011 and November 2011, HD Power imported generators containing 240 nonroad SI engines (Subject SI Engines) in entries M42-1244732-8, M42-24497-04, M42 1246018-0, M42 1245908-3, and M42 1246192-3, each with an advertised power output of 15 horsepower and engine displacement of 420 cc.
- b. The Subject SI Engines are regulated by 40 C.F.R. Parts 1054 and 1068, and appear to be covered by the COC for engine family BJDGS.4202GB.
- c. EPA has determined that the Subject SI Engines have ECI labels that contain incorrect information. These labels state that the Subject SI Engines include PAIR, short for “pulse air injection reactor,” as an emission control system. However, the application for certification for engine family BJDGS.4202GB reveals that the certified configuration of the generators does not include PAIR, but instead only has a 2-way oxidation catalyst as the emission control system. Appropriately, the sample label submitted with the application for certification does not list PAIR. EPA concludes that the listing of PAIR as an ECS on the ECI

label renders those labels nonconforming with the labeling requirements of 40 C.F.R. § 1054.135(c)(7).

- d. Therefore, HD Power committed 240 violations of 42 U.S.C. §§ 7522 and 7547 and 40 C.F.R. § 1068.101(a)(1) by importing the Subject SI Engines.

#### Civil Penalty

12. HD Power agrees to pay the United States a civil penalty of \$24,000 (EPA Penalty).
13. HD Power agrees to pay the EPA Penalty to the United States within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 21). Late payment is subject to interest and fees as specified in 31 U.S.C. § 3717, and such interest and fees must be paid by HD Power on demand by the United States. HD Power agrees to pay the EPA penalty in the manner specified in subparagraph a. or b. below:

- a. Mail by United States Postal Service a certified check or cashier's check, payable to the United States of America, to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
ATTN: AED/MSEB # 8026

This check must be identified with case number AED/MSEB # 8026 and state that it is remitted by HD Power. Simultaneously, scan and email a copy of the check to John Keenan, at [keenan.john@epa.gov](mailto:keenan.john@epa.gov).

- b. Pay online through the Department of the Treasury using [www.pay.gov](http://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 must be identified with case number AED/MSEB # 8026. Within 24 hours of payment, scan and email a copy of the receipt to [keenan.john@epa.gov](mailto:keenan.john@epa.gov).

14. HD Power acknowledges that the United States Customs and Border Protection (CBP) may assess separate penalties related to the Subject SI Engines and the Subject CI Engines in addition to those assessed by EPA under this Administrative Settlement Agreement.

#### **Remedial Action**

15. HD Power must submit to EPA a written certification that the Subject CI Engines were exported or destroyed and copies of supporting documents issued by CBP proving exportation or destruction. This must be completed within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 21).
16. HD Power must submit to EPA a written certification and supporting documentation that demonstrate that HD Power relabeled the 144 Subject SI Engines in entries M42 1246018-0, M42 1245908-3, and M42 1246192-3 with compliant ECI labels. This must be completed within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 21).

#### **Stipulated Penalties**

17. HD Power agrees to pay a stipulated penalty of:
  - a. \$1,000 per day for its failure to timely pay the civil penalty or provide proof of such payment according to ¶ 12 and ¶ 13; and
  - b. \$1,000 per day for its failure to timely provide the certification and documentation required by ¶ 15 or ¶ 16.

18. Every stipulated penalty must be paid within 30 days of demand by the United States and in the manner specified in ¶ 13 of this Agreement.

#### **Effect of Agreement**

19. This Agreement resolves the EPA's civil claims for the violations alleged in ¶¶ 10 and 11. The resolution of claims will take effect when the United States receives the civil penalty payment required by ¶ 12 and when the remedial actions required by ¶¶ 15 and 16 are completed. Nothing herein limits EPA's rights to proceed against HD Power for its default or noncompliance with this Agreement, for violations of the Clean Air Act, 42 U.S.C. §§ 7401–7671q, or the Act's implementing regulations which are not the subject matter of this Agreement, for other violations of law, or with respect to other matters not within the scope of the Agreement.

#### **General Provisions**

20. All correspondence to EPA or notifications required by this Agreement must be in writing and emailed to [keenan.john@epa.gov](mailto:keenan.john@epa.gov) or mailed to:

John Keenan  
Office of Compliance and Enforcement (OCE -127)  
U.S. EPA Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

21. This Agreement becomes effective on the date executed by EPA (effective date of the Agreement), at which time a fully executed electronic copy will be returned to HD Power.



22. The individual or individuals executing this Agreement on behalf of HD Power are authorized to do so and such execution is intended to and does bind HD Power and its agents, successors, and assigns.
23. This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts. Any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement.
24. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
25. HD Power may not delegate its duties under this Agreement to any other party without the written consent of EPA, which may be granted or withheld at EPA's sole discretion. If EPA so consents, the Agreement is binding on the party or parties to whom the duties are delegated.
26. Notwithstanding any other provision of this Agreement, the parties agree that on HD Power's default or failure to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General pursuant to § 205 of the Act, 42 U.S.C. § 7524, to commence a civil action against HD Power in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. HD Power expressly waives its right to assert that the Subject

Engines are certified or exempt from the certification requirements, or that such action is barred by 18 U.S.C. § 3282(a), other statutes of limitation, or other provisions limiting actions as a result of passage of time. HD Power acknowledges that EPA intends to use HD Power's tax identification number, which HD Power has appended to this Agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. 31 U.S.C. § 7701.

27. HD Power waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
28. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than EPA and HD Power, any rights, remedies, or other benefits.
29. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
30. This Agreement is contingent on the truthfulness, accuracy, and completeness of HD Power's disclosures and representations to EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Engines.
31. This Agreement in no way affects or relieves HD Power of responsibility to comply with other federal, state, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

United States Environmental Protection Agency

**Administrative Settlement Agreement**

*In the Matter of HD Power Systems, Inc.*

AED/MSEB # 8026

The following agrees to the terms of this Agreement:

**HD Power Systems, Inc.**

By: Antonio La Petina

Typed or Printed Name: ANTONIO LA PETINA

Typed or Printed Title: OWNER (C.E.O)

Federal Tax Identification Number: 26-4116692

Date: 10/30/2012

**United States Environmental Protection Agency**

**Administrative Settlement Agreement**

*In the Matter of HD Power Systems, Inc.*

**AED/MSEB # 8026**

The following agrees to the terms of this Agreement:

**United States Environmental Protection Agency**

By: 

Date: 11/13/2012

Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency