

5. 40 C.F.R. § 85.1513 prohibits the importation of a motor vehicle or motor vehicle engine that is not covered by a certificate of conformity unless the importation meets the requirements of 40 C.F.R. Part 85, Subpart P.
6. 40 C.F.R. § 86.095-35(a) requires the manufacturer of any motor vehicle engine subject to the emissions standards to affix at the time of manufacture a permanent EPA emissions label that contains certain specified information, e.g, engine displacement and engine family.
7. 40 C.F.R. § 85.1706 requires the engine manufacturer to permanently affix to each engine on pre-certification exemption status a readily visible EPA emissions information label that cannot be removed without destruction or defacement.

Definitions:

8. A COC means the document issued by EPA to a manufacturer under 40 C.F.R. Part 86 after EPA has determined that the manufacturer's application is complete and that the engine family meets the requirements of the applicable regulations and the Act. Issuance of the COC permits production of motor vehicles built in accordance with the manufacturer's application provided that the production is within the Model Year for which the COC is issued.
9. For purposes of this Agreement the term "export" means to transport to a location outside of the United States and its territories, Canada, and Mexico.
10. For purposes of this Agreement the term "destroy" means the complete destruction of the motor vehicle engine and the complete disassembly of the motor vehicle. 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 motor vehicle shall be disassembled and broken down in such a manner that it can never be reassembled.

Alleged Violations:

11. As described in the Table below, Respondent imported twelve on-highway heavy duty diesel engines into the United States (Subject Engines). On the EPA Declaration Form 3520-21, used to import the Subject Engines, Respondent declared that nine of the engines were covered under a current EPA-issued COC and bore an EPA emissions label, and three of the engines were manufactured-owned engines subject to the provisions of 40 C.F.R. § 85.1706.

Table

No.	Model OM-460	Model Year	Engine Serial Number
1	EPA 04 MBE 4000	2006	876595
2	EPA 04 MBE 4000	2006	875848
3	EPA 04 MBE 4000	2006	880072
4	EPA 04 MBE 4000	2006	883337
5	EPA 04 MBE 4000	2006	883861
6	EPA 04 MBE 4000	2006	883931
7	EPA 04 MBE 4000	2006	883991
8	EPA 04 MBE 4000	2006	884004
9	EPA 04 MBE 4000	2006	884154
10	EPA 07 MBE 4000	2006	879603
11	EPA 07 MBE 4000	2006	883668
12	EPA 07 MBE 4000	2006	884115

12. Nine of the Subject Engines bore defective EPA emissions information labels because the labels were not permanently affixed.
13. Three of the Subject Engines were not eligible for importation under the manufacturer-owned engine exemption, because the engines bore defective EPA exemption labels that could be removed without destruction or defacement.
14. During April 2007, the U.S. Customs and Border Protection seized the twelve Subject Engines at the port in Savannah, Georgia.
15. Since the Subject Engines bore defective EPA labels, Respondent imported the Subject Engines into the United States in violation of Section 203(a) of the CAA, and the applicable regulations, 40 C.F.R. Parts 85 or 86.
16. By entering into this Agreement, Respondent does not admit that it has committed any violation of the Clean Air Act or its implementing regulations.

Civil Penalty:

17. Respondent has agreed to pay to the United States of America a civil penalty of \$25,000 no later than thirty (30) days from the 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, plus the stipulated penalties as specified in Paragraph 23 of this Agreement. 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Attn: AED/MSEB - 7220

You may also pay online at www.pay.gov. From the "Agency List" select Environmental Protection Agency, then select "EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the "SFO Form Number 1.1".

Corrective Action:

18. Within thirty days of this Agreement, or such longer period of time as required by U.S. Customs, Respondent shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of U.S. Customs. Respondent shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.

Notice:

19. A copy of the payment(s) shall be sent by facsimile to Jocelyn Adair, Esq. at (202) 564-0069 within twenty-four hours of the payment(s). In addition, all correspondence to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Jocelyn Adair, Esq.
U.S. EPA (Mail Code: 2242A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attn: AED/MSEB-7220

(Courier Service)

Jocelyn Adair, Esq.
U.S. EPA
Ariel Rios South, Room 1109A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

General Provisions:

20. The effective date of this Agreement is the date that EPA signs the Agreement and provides a copy of the signed Agreement to Respondent.
21. 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.
22. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representation to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties:

23. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 17 through 19 of this Agreement, Respondent agrees to the following stipulated penalties:
 - (a) For the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to Paragraph 17 of this Agreement, Respondent shall pay a stipulated penalty of \$250 per day. However, if after sixty days of the due date, Respondent has failed to pay the civil penalty, Respondent shall be in default of this Agreement. Upon such default, Respondent shall pay a stipulated penalty of \$120,000.
 - (b) For the failure to export or destroy the Subject Engines, or provide proof of such action, pursuant to Paragraphs 18 and 19 of this Agreement, Respondent shall pay a stipulated penalty of \$32,500 for each engine that it fails to export or destroy.
24. All stipulated penalties shall be paid in the manner specified in Paragraph 17 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jocelyn Adair at the address specified in Paragraph 19 of this Agreement.
25. Respondent further agrees 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(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act; or pursue any other remedies available to it. Respondent expressly waives its right to assert that such engines bore complying EPA emissions labels, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

26. Respondent waive 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.
27. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.
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 settlement described in Paragraph 30 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.

Enforcement:

30. Upon completion of the terms of this Agreement, this civil matter 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; for violations of § 203 of the Clean Air Act, 42 U.S.C. § 7522, that 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. 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:

Detroit Diesel Corporation

By: Shawn K. Jacque


Date: 8/30/2007

Printed Name: Shawn K. Jacque

Printed Title: Corporate Counsel

**Administrative Settlement Agreement *In the Matter of:* Detroit Diesel Corporation;
AED-MSEB #: 7220**

U.S. Environmental Protection Agency

By:  _____
Adam Kushner
Director
Air Enforcement Division

Date: Sept 20, 2007