

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

In the Matter of:)	
Guascor, Inc.)	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
)	AED/MSEB-7806
Respondent.)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Guascor, Inc., 143 Millard Street, Suite F, St. Rose, LA 70087 (Guascor or Respondent).

Purpose:

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve sixty-two alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), the compression-ignition (CI) marine engine regulations, 40 C.F.R. Part 94, and/or the spark-ignition (SI) nonroad engine regulations, 40 C.F.R. Parts 1048 and 1068.

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit a manufacturer of a new nonroad engine from distributing into commerce, selling, offering for sale, or introducing into commerce a new nonroad engine, unless the new nonroad engine (a) is covered by an EPA-issued certificate of conformity issued and in effect, and (b) bears the required EPA emissions information label.

Regulatory Authority:

CI Marine Engine Regulations

3. 40 C.F.R. § 94.1 provides that the CI marine engine regulations in 40 C.F.R. Part 94 are applicable to marine engines that are manufactured (or otherwise become new) on or after January 1, 2004.

4. 40 C.F.R. § 94.1103(a)(1)(i)(A) prohibits a manufacturer of a new engine subject to federal emission standards from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce, a new marine engine unless such engine is covered by an effective EPA-issued certificate of conformity (EPA-COC).
5. 40 C.F.R. § 94.1103(a)(4)(i) prohibits a manufacturer of a new engine subject to federal emission standards from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce, a new CI marine engine unless the manufacturer complies with the warranty provisions of 40 C.F.R. § 94.1107.
6. 40 C.F.R. § 94.1107 requires the manufacturer of each engine to warrant to the ultimate purchaser and each subsequent purchaser or owner that the engine is designed, built, and equipped to comply with EPA emission standards and is free from defects in material and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period.
7. 40 C.F.R. § 94.10 provides that the warranties imposed by 40 C.F.R. § 94.1107 for Category 1 engines shall apply for a period of operating hours equal to at least 50 percent of the useful life in operating hours or a period of years equal to at least 50 percent of the full useful life in years, whichever comes first. However, the warranties shall apply for a period not less than any mechanical warranties provided by the manufacturer to the owner.
8. 40 C.F.R. § 94.1103(a)(4)(ii) prohibits a manufacturer of a new CI marine engine subject to federal emission standards from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce, a new CI marine engine unless the manufacturer affixes the required labels or tags in accordance with 40 C.F.R. § 94.212.
9. 40 C.F.R. § 94.212 requires the original engine manufacturer to affix, at the time of manufacture of a certified CI marine engine, a permanent and legible label that contains specified information.

SI Nonroad Engine Regulations:

10. 40 C.F.R. § 1048.1 provides that the large SI nonroad engine regulations apply to new SI nonroad engines with maximum engine power above 19 kilowatts and that were built on or after January 1, 2004.
11. 40 C.F.R. § 1048.20 requires excluded stationary engines to bear a permanent label that meets certain durability and information requirements.
12. 40 C.F.R. § 1068.101(a)(1) prohibits any person from importing into the United States any SI nonroad engine manufactured after the effective dates of the regulations, unless such engine is covered by a certificate of conformity issued by EPA.
13. 40 C.F.R. § 1068.30 excludes engines from the definition of nonroad engines if the engine will remain in a single location for more than twelve consecutive months. A location is any single site at a building, structure, facility, or installation.
14. 40 C.F.R. § 1068.101 provides that a stationary engine may not be moved or installed in any mobile equipment.
15. 40 C.F.R. § 1068.310(b) provides that stationary engines are not subject to the restrictions on imports, but only if they are properly labeled and used in a stationary application.

Definitions:

16. For the purposes of this Agreement, the following definitions apply:
 - a. *Annex VI Technical Code:* the “Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines,” adopted by the International Maritime Organization and incorporated into the CI marine engine regulations at 40 C.F.R. § 94.5.
 - b. *Certified Engine:* A nonroad engine that is covered by an EPA-COC.
 - c. *Uncertified Engine:* A nonroad engine that is not covered by an EPA-COC.

- d. *Category 1:* A marine engine with a rated power greater than or equal to 37 kilowatts and a specific engine displacement less than 5.0 liters per cylinder.
- e. *This matter:* Respondent's manufacture and introduction into commerce the sixty-two engines described in paragraphs 17 and 18 of this Agreement, the corrective action required by this Agreement, and any liability that may apply to such alleged violations.

Alleged Violations:

- 17. During 2005 through 2006, Respondent manufactured and introduced into commerce in the United States sixteen marine engines as described in Appendix 1 to this Agreement (subject engines). Although Respondent certified with the American Bureau of Shipping that the subject engines comply with the NOx Technical Code requirements, Respondent failed to submit the required application to EPA for certification and failed to obtain an EPA-COC for an EPA engine family that would cover the subject engines. As the manufacturer who introduced into commerce in the United States sixteen uncertified marine engines, Guascor committed sixteen violations of Sections 203 and 213 of the CAA, 42 U.S.C. §§ 7522 and 7547, and the CI marine engine regulations, 40 C.F.R. Part 94.
- 18. During 2006 through 2008, Respondent manufactured and introduced into commerce in the United States forty-six SI stationary natural gas engines, as described in Appendix 2 to this Agreement (subject engines), that did not bear the stationary label required pursuant to 40 C.F.R. § 1048.20. As the manufacturer who introduced into commerce in the United States forty-six uncertified stationary natural gas engines that did not bear the required stationary label, Guascor committed forty-six violations of Sections 203 and 213 of the CAA, 42 U.S.C. §§ 7522 and 7547, and the SI nonroad engine regulations, 40 C.F.R. Parts 1048 and 1068.

Corrective Action:

- 19. Guascor shall undertake the following corrective action:

- a. With respect to the CI marine engines, Guascor has demonstrated to EPA that the subject engines comply with the EPA Tier 1 emissions standards. Guascor shall also comply with all the other requirements of the CI marine engine regulations, 40 C.F.R. Part 94, except for the requirement to seek and obtain an EPA-COC to retroactively cover the subject engines. Guascor shall also affix to each subject engine a label that meets the requirements of 40 C.F.R. § 94.212, except the label shall not specify the EPA engine family as required by § 94.212(b)(5) and, rather than making the unconditional statement required by § 94.212(b)(6), the label shall state that “Pursuant to Administrative Settlement Agreement AED/MSEB-7806, this engine complies with the U.S. Environmental Protection Agency standards that apply to marine compression-ignition engines.”
- b. With respect to the natural gas SI engines, Guascor shall affix to each subject engines the label required pursuant to 40 C.F.R. § 1048.20.

Civil Penalty:

20. Respondent shall pay a civil penalty of \$240,000 to the United States of America in six consecutive monthly payments of \$40,000 each. The first payment shall be due no later than thirty days from the effective date of this Agreement. Similarly, the second payment shall be due no later than sixty days, the third payment no later than ninety day, *etc.* The final payment shall be due no later than 180 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 22 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 -7806

Respondent may also pay online at www.pay.gov. From the “Search Public Form” field, Respondent shall enter “SFO 1.1”, click “EPA Miscellaneous Payments - Cincinnati Finance Center”, and complete the SFO Form Number 1.1.

Notice:

21. A copy of the payment shall be faxed to Jocelyn Adair, Esq., at (202) 564-0069 no later than twenty-four (24) hours after mailing the payment. A copy of the payment and all correspondence to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

(Courier Service)

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

Stipulated Penalties:

22. 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 undertake the corrective action pursuant to paragraph 19 of this Agreement, \$32,500 per engine.
 - b. For failure to timely pay the civil penalty or provide proof thereof, pursuant to paragraphs 20 and 21 of this Agreement, \$500.00 per day.
23. All stipulated penalties under paragraph 22 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 the manner specified in paragraph 20 of this Agreement. In addition, a copy of the transmittal letter(s) and payment(s) shall be sent to Jocelyn Adair, Esq., at the address specified in paragraph 21. All stipulated penalties shall be paid to the United States of America within five days of written demand by EPA (“the due date”). Late payment of

the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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.

General Provisions:

24. The effective date of this Agreement is the date that EPA executes the Agreement, at which time a copy will be returned to Respondent.
25. 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.
26. Notwithstanding any other provision 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(c) of the CAA, 42 U.S.C. § 7524(c), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the CAA, or pursue any other available remedies. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, or other statutes of limitation. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement, *see* 31 U.S.C. § 7701.
27. 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.

Effect of Enforcement:

28. 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 the U.S. Department of Homeland Security's Bureau of Customs and Border Protection for engines that are seized or detained now or in the future.

The following agree to the terms of this Agreement:

Administrative Settlement Agreement - *In the Matter of Guascor, Inc., AED/MSEB-7806*

U.S. Environmental Protection Agency

By: Pamela J. Mazakas Date: 7/6/09

Pamela J. Mazakas
Acting Director
Air Enforcement Division

Administrative Settlement Agreement - In the Matter of Guascor, Inc., AED/MSEB - 7806

Appendix 1

Manufacturing Facility	Manufacture Date	Engine Model	Serial Number	Disp.	# of Cyl.	Liters / Cylinder	Engine Power (kW)	Fuel	Cooling System	Engine Application
Guascor S.A. **	14-Feb-05	SF 240TA	170185	23.96L	8	3.0 L	585	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	14-Feb-05	SF 130TA	160080	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	14-Feb-05	SF 130TA	160081	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	14-Jun-05	SF 130TA	160097	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	14-Jun-05	SF 150TA	160098	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	14-Jun-05	SF 180TA	160999	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	14-Jun-05	SF 180TA	160100	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	14-Jun-05	SF 180TA	160101	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	17-Aug-05	SF 130TA	160103	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	17-Aug-05	SF 240TA	170211	23.96L	8	3.0 L	585	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	21-Oct-05	SF 240TA	170158	23.96L	8	3.0 L	585	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	21-Oct-05	SF 240TA	170159	23.96L	8	3.0 L	585	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	31-Mar-06	SF 360TA	76636	35.93	12	3.0 L	878	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	31-Mar-06	SF 360TA	76637	35.93	12	3.0 L	878	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	31-Mar-06	SF 130TA	160118	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION
Guascor S.A.	31-Mar-06	SF 180TA	160119	17.96L	6	3.0 L	439	DIESEL	LIQUID / H2O	MARINE PROPULSION

** Barrio de Oñcia 64 - 20759 Zumalac. Gipuzkoa. Spain

Administrative Settlement Agreement - In the Matter of Guascor, Inc., AED/MSEB - 7806

Appendix 2

Mfg. Facility	Mfr. Date	Engine Model	Serial Number	Disp.	# of Cyl.	Liters / Cylinder	Engine Power (kW)	Fuel	Cooling System	Engine Application
Guascor S.A.	23-May-06	SFGLD 480	283356	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	23-May-06	SFGLD 480	283357	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	12-Jul-06	SFGLD 480	283363	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	12-Jul-06	SFGLD 480	283362	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	12-Jul-06	SFGLD 240	263197	23.96L	8	3.0 L	335	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	20-Jul-06	SFGLD 240	263198	23.96L	8	3.0 L	335	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	21-Sep-06	SFGLD 180	253146	17.96L	6	3.0 L	251	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	24-Oct-06	SFGLD 240	263205	23.96L	8	3.0 L	335	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	23-Jan-07	SFGLD 240	263215	23.96L	8	3.0 L	335	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	25-Jul-07	SFGLD 480	283374	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	25-Jul-07	SFGLD 480	283375	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	25-Jul-07	SFGLD 180	253154	17.96L	6	3.0 L	251	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	18-Sep-07	SFGLD 240/50	263221	23.96L	8	3.0 L	335	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	27-Sep-07	SFGLD 550/55	330414	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	15-Nov-07	SFGLD 550/55	330425	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET

Administrative Settlement Agreement - In the Matter of Guascor, Inc., AED/MSEB - 7806

Appendix 2

Mfg. Facility	Mfr. Date	Engine Model	Serial Number	Disp.	# of Cyl.	Liters / Cylinder	Engine Power (kW)	Fuel	Cooling System	Engine Application
Guascor S.A.	20-Nov-07	SFGLD 480	283382	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	20-Nov-07	SFGLD 480	283383	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	20-Nov-07	SFGLD 480	283384	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	21-Nov-07	SFGLD 240	263234	23.96L	8	3.0 L	335	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	21-Nov-07	SFGLD 180	253163	17.96L	6	3.0 L	251	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	18-Dec-07	SFGLD 560	33426	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	18-Dec-07	SFGLD 560	33483	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	18-Dec-07	SFGLD 560	33439	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	28-Dec-07	SFGLD 480	283386	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	21-Feb-08	SFGLD 560	330453	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	21-Feb-08	SFGLD 560	330454	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	21-Feb-08	SFGLD 560	330455	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	22-Feb-08	SFGLD 560	330456	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	26-Mar-08	SFGLD 560	330464	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	26-Mar-08	SFGLD 480	283390	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	26-Mar-08	SFGLD 360	273317	35.93L	12	3.0 L	502	NG	LIQUID / H2O	STATIONARY GENSET

Administrative Settlement Agreement - In the Matter of Guascor, Inc., AED/MSEB - 7806

Appendix 2

Mfg. Facility	Mfr. Date	Engine Model	Serial Number	Disp.	# of Cyl.	Liters / Cylinder	Engine Power (kW)	Fuel	Cooling System	Engine Application
Guascor S.A.	24-Apr-08	SFGLD 180	253172	17.96L	6	3.0 L	251	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	25-Apr-08	SFGLD 560	330467	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	25-Apr-08	SFGLD 560	330468	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	30-Apr-08	SFGLD 240	330464	23.96L	8	3.0 L	335	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	12-May-08	SFGLD 560	330473	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	13-May-08	SFGLD 560	330475	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	16-May-08	SFGLD 360	273321	35.93L	12	3.0 L	502	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	26-May-08	SFGLD 240	263247	23.96L	8	3.0 L	335	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	29-May-08	SFGLD 560	330474	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	29-May-08	SFGLD 560	330476	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	4-Jun-08	SFGLD 560	330483	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	4-Jun-08	SFGLD 560	330484	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	4-Jun-08	SFGLD 480	283401	47.9L	16	3.0 L	670	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	18-Jun-08	SFGLD 550	330494	56.3L	16	3.5L	788	NG	LIQUID / H2O	STATIONARY GENSET
Guascor S.A.	24-Jun-08	SFGLD 360	273327	35.93L	12	3.0 L	502	NG	LIQUID / H2O	STATIONARY GENSET