

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

Florida Detroit Diesel-Allison, Inc.

Respondent

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AED/MSEB #7248

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Florida Detroit Diesel-Allison, Inc. (Respondent) regarding compliance by Respondent with the requirements of section 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.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Part 89 arising out of the importation of 15 model D706LTE engines, and one model D703LTE engine contained in U.S. Customs and Border Protection (Customs) entry number 016-1112023-7.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - A. *Certified engine:* A “certified engine” is a nonroad engine that was built after the applicable effective dates of the Part 89 regulations and that is covered by a Certificate of Conformity.
 - B. *Dates of the Applicable regulations:* The term “dates of the applicable regulations” means the date after which the certification requirement applies to an engine, as defined in Table 2 of 40 C.F.R. § 89.112.

- C. *Uncertified engine*: An “uncertified engine” is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.
- D. *This matter*: As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Paragraph 1 above, and any civil liability that may apply to violations of the Clean Air Act and implementing regulations governing importation of nonroad engines.
- E. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 after EPA has determined that the manufacturer’s application is complete and that the engine family meets the requirements of 40 C.F.R. Parts 89 and the Clean Air Act. Issuance of the Certificate of Conformity permits production and sale of engines built in accordance with the manufacturer’s application, provided that the production is within the period during which the Certificate of Conformity is valid.

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 into the United States any new nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is a certified engine.
- 5. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing, assembling or importing of new nonroad engines for resale, or a person acting for, and under the control of such person.

6. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified engine, a permanent and legible label which identifies the nonroad engine and provides the information specified in that section, including a statement that the engine is a certified engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.
7. 40 C.F.R. § 89.102 sets forth a program to provide transitional flexibility for nonroad equipment manufacturers, the Transition Provisions for Equipment Manufacturers (TPEM). The TPEM provides a limited opportunity for the manufacture or importation of certain engines that otherwise do not comply with the emission standards of 40 C.F.R. Part 89.

Background

8. On May 11, 2007, Respondent imported the engines identified in Paragraph 1 (the Subject Engines).
9. On May 11, 2007, Customs detained the Subject Engines at the port of Savannah, Georgia.
10. Respondent is the importer of the Subject Engines.
11. The Subject Engines are nonroad compression-ignition engines built in Model Year 2006, which is after the date of the applicable regulations for the engines. As a consequence, certified engines were required to be used in the Subject Engines unless exemptions such as those at 40 C.F.R. §§89.102(d) or 89.908(a)(2) are applicable.
12. The model D706LTE Subject Engines are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §89.110.
13. The model D704LTE Subject Engine is certified but does not have affixed a certification label as required by 40 C.F.R. §89.110.

Terms of Agreement

14. Respondent shall pay to the United States \$44,000 within 30 calendar days of the 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 the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB # 7248

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 15 or faxed to (202) 564-0069 to the attention of David Alexander. Such check shall be identified with the case number and Respondent's name.

15. All submissions shall be sent to EPA at the following address:

David Alexander
U.S. EPA, OECA/AED (mailcode 2242A)
Room 1111A
1200 Pennsylvania Ave NW
Washington, DC 20037-0001
facsimile: (202) 564-0069

16. Within 30 days of the date of this Agreement Respondent will apply for a national security exemption under 40 C.F.R. § 89.908. Upon issuance of the exemption and labeling of the engines as required by 40 C.F.R. §89.908(c) EPA will recommend that Customs release the Subject Engines. If EPA does not issue the national security exemption, Respondent shall export the Subject Engines to a location outside of North America. Exportation, if required under this paragraph, and submission of proof thereof, shall occur within 30 days of EPA's denial of a national security exemption.

General Provisions

17. 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.

18. 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.
19. 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 Part 89. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.
20. The Effect of Settlement described in Paragraph 22 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 the Subject Engines imported under entry # 016-1112023-7 and described in Paragraph 1, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties:

21. 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 14, \$500 per day.
 - b. For failure to apply for a national security exemption, or for failure to export the Subject Engines as required by Paragraph 16, \$100 per engine per day.

All stipulated penalties under Paragraph 21 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

14 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 the Agreement is based.

Effect of Agreement

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

The following agree to the terms of this Agreement:

Florida Detroit Diesel-Allison, Inc.)

By: Donald F. Mann

8/2/07

Printed Name: Donald F. Mann

Date

Title of Corporate Officer: Sr. Vice President, Operations

U.S. Environmental Protection Agency
In the Matter of Florida Detroit Diesel-Allison, Inc.
AED/MSEB # 7248

By:  _____

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

Dec. 3, 2007

Date