

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

In the Matter of:

Aggreko, LLC,

Respondent.

Administrative Settlement Agreement
AED/MSEB-8044

Purpose

1. The United States Environmental Protection Agency (EPA) and Aggreko, LLC, (Aggreko) enter into this Administrative Settlement Agreement (Agreement) to resolve 77 alleged violations of sections 203 and 213(d) of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547(d), the large spark-ignition (LSI) nonroad engine regulations, 40 C.F.R. Part 1048, and the general compliance provisions, 40 C.F.R. Part 1068.

Governing Law

2. Congress authorized the EPA to regulate emissions from nonroad vehicles and engines to protect public health and welfare. 42 U.S.C. § 7547. Accordingly, EPA has set two tiers of air pollutant emission standards for combined hydrocarbons and oxides of nitrogen, and carbon monoxide for LSI nonroad engines. The Tier 1 standards apply to model year 2004 through 2006 LSI nonroad engines. The Tier 2 standards apply to model year 2007 and later model year LSI nonroad engines.
3. Pursuant to paragraph (1)(iii) of the definition of a nonroad engine in 40 C.F.R. § 1068.30, a nonroad engine is an internal combustion engine that, among other things, is

portable or transportable. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

4. Pursuant to paragraph (2)(iii) of the definition of a nonroad engine in 40 C.F.R. § 1068.30, an internal combustion engine is excluded from being a nonroad engine if, among other things, it remains or will remain at a location for more than 12 consecutive months. This is known as the residence-time requirement.
5. Pursuant to 40 C.F.R. § 1048.1, the LSI nonroad engine regulations are not applicable to engines that are used in a stationary application and meet the labeling requirements of 40 C.F.R. § 1048.20.
6. Pursuant to 40 C.F.R. § 1048.20, the manufacturer or importer must affix to each stationary engine that it produced or imported a permanent label or tag that, among other things, must state the following: "THIS ENGINE IS EXCLUDED FROM THE REQUIREMENTS OF 40 CFR PART 1048 AS A 'STATIONARY ENGINE' AND THE OWNER/OPERATOR MUST COMPLY WITH THE REQUIREMENTS OF 40 CFR PART 60. INSTALLING OR USING THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."
7. Pursuant to 40 C.F.R. § 1068.31(a), changing the status of a stationary engine to be a new nonroad engine is a violation of 40 C.F.R. § 1068.101(a)(1) or (b)(3) unless the engine has been certified to be compliant with all the requirements of 40 C.F.R. Parts 1048 and 1068.
8. Pursuant to 40 C.F.R. § 1068.31(d), changing the status of a nonroad engine to be a new stationary engine as described in 40 C.F.R. § 1068.31(e), is a violation of 40 C.F.R.

- § 1068.101(a)(1) unless the engine complies with the requirements for stationary engines in 40 C.F.R. Part 60, subpart JJJJ.
9. Pursuant to 40 C.F.R. § 1068.31(e), a nonroad engine ceases to be a nonroad engine and becomes a new stationary engine if, among other things, it remains at a location for over 12 months.
 10. Pursuant to 40 C.F.R. § 1068.101(a)(1), a manufacturer may not sell, offer for sale, introduce into commerce or deliver into commerce in the United States, or import into the United States any new engine/equipment after emission standards take effect for such engine/equipment, unless the engine/equipment is covered by a valid certificate of conformity (COC) for its model year and has the required label or tag.
 11. Pursuant to 40 C.F.R. § 1068.101(b)(3), anyone is prohibited from circumventing the residence-time requirement for stationary engines, and is deemed to be a manufacturer in violation of 40 C.F.R. § 1068.101(a)(1).
 12. A manufacturer or anyone who violates 40 C.F.R. § 1068.101(a)(1) or (b)(3) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each engine in violation. 40 C.F.R. § 1068.101(a)(1).
 13. 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 penalty sought is less than \$295,000. 42 U.S.C. § 7524(c), 40 C.F.R. § 19.4, and 40 C.F.R. § 1068.125(b).

Background

14. On or about July 23, 2012, and September 14, 2012, Aggreko reported to the EPA pursuant to the EPA Audit Policy of April 11, 2000, that it was auditing its entire United States fleet of portable gas-fired generators to determine the applicability of and status of compliance with the LSI nonroad engine regulations.
15. Aggreko emphasized that its customers are demanding natural gas and/or propane fired generators for use in applications for less than 12 consecutive months in one location.
16. As a result of its audit, Aggreko reported to the EPA the following:
 - (a) Seventy-eight of its model year 2006 through 2012 engines (the Subject Engines), as described in Attachment 1 of this Agreement, were not certified to comply with the LSI nonroad engine regulations;
 - (b) Aggreko imported 39 of the Subject Engines into the United States;
 - (c) All of the Subject Engines bore a stationary label;
 - (d) Seventy-seven of the Subject Engines have been rented for periods less than 12 consecutive months; and,
 - (e) Aggreko sold three of the Subject Engines (*i.e.*, GN0416N, GN0444N, and GN0452N described in Attachment 1 of this Agreement) to a used equipment broker; and, with regards to the three sold Subject Engines, Aggreko cannot perform any of the corrective actions described in paragraph 18 of this Agreement.

Alleged Violations

17. As one who either changed the status of 77 stationary engines to be uncertified new nonroad engines or circumvented the residence-time requirement for 77 stationary engines, Aggreko, pursuant to 40 C.F.R. § 1068.31(a), committed 77 violations of 40

C.F.R. § 1068.101(a)(1) or (b)(3). Aggreko makes no admission of fact or liability with respect to these alleged violations.

Corrective Action

18. Within 30 days immediately following the effective date of the Agreement (as defined in paragraph 26), Aggreko shall take one or more of the following corrective actions: (a) Give notice to the EPA that it will export the Subject Engine(s) to a location outside of Canada, Mexico, and the United States and its territories, and Export the Subject Engine(s) within 30 days following the notice; (b) Destroy the Subject Engine(s). The term “destroy” means the complete destruction of the engine. The engine shall be crushed or broken in such a manner that the engine block, crankshaft, and cylinder head(s) can never be used to power anything; (c) Convert the Subject Engine(s) from nonroad use to stationary use only; (d) Implement the compliance plan in paragraph 20 of this Agreement if the Subject Engine(s) is used or will be used as both a stationary engine and a nonroad engine, *i.e.*, not meet the residence-time requirement for a stationary engine.
19. Within 10 days of taking the corrective action, Aggreko shall submit a report to the EPA to document and attest that it took the corrective action. The report shall identify the Subject Engine, describe the corrective action, and provide supporting documents. For example, (a) if the Subject Engine is exported, provide a copy of the freight documents; (b) if the Subject Engine is destroyed, provide a photograph of the destroyed engine block, crankshaft, and cylinder heads and document when, where, and who destroyed the Subject Engine(s); and (c) if the Subject Engine is converted to stationary use only, provide a sample of the leasing language that addresses the leasing period and provide test results showing that the Subject Engine(s) meets the emission standards for stationary

engines in Table 1 to Subpart JJJJ of Part 60. For each Subject Engine converted to stationary use only pursuant to paragraph 18(c) of this Agreement, Aggreko shall provide the test results within 30 days from the date of the initial performance test required under Part 60.

Compliance Plan

20. Aggreko shall implement the following compliance plan if one or more of the Subject Engines is used or will be used both as a stationary engine and a nonroad engine. Within 30 calendar days immediately following the effective date of this Agreement, Aggreko shall:

- a. Categorize the engines into engine families based on the requirements of 40 C.F.R. § 1048.230(b);
- b. Select a representative worst case engine from the fleet of each engine family for testing (the Test Engine);
- c. Install or retrofit the Test Engine with appropriate emission control equipment that is necessary for the Test Engine to meet the required emission standards;
- d. Conduct emissions testing as follows:

Use test equipment that meets the requirement of 40 C.F.R. Part 1065, subpart D (note that Portable Emissions Sampling Equipment may meet this requirement for steady-state testing), test the Test Engine under the conditions specified in 40 C.F.R. Part 1065, subpart F, use the five mode steady state test cycle found in 40 C.F.R. Part 1039, Appendix II(a)(1) or (2) at the governed speed, or if the governed speed is selectable, at the worst case governed speed. If the worst case governed speed cannot be

determined, test at all possible selectable governed speeds. Aggreko shall report both composite¹ and modal results. If the Test Engine has fewer than 2,500 hours of service life at the commencement of the testing, Aggreko must utilize an appropriate emission deterioration factor (DF)² to extrapolate the emission test results to the end of the useful life. The composite emission results with the DF applied³ (as applicable) must be lower than the emission standards in 40 C.F.R. § 1048(101)(a)(3). All modal test results must be lower than the field testing emission standards (see 40 C.F.R. § 1048.101(c)). In addition, conduct performance tests on the Test Engine following the procedures specified in 40 C.F.R. § 60.4244(a)-(f).

- e. Within 30 calendar days of conducting the above described emission tests, Aggreko shall provide to Jocelyn Adair at Adair.Jocelyn@epa.gov and Cleophas Jackson at Jackson.Cleophas@epa.gov the following information: (i) A list of the Test Engines, the associated engine families, and Subject Engines; (ii) A list of the emission control equipment installed on the Test Engine; (iii) A description of the adjustments made to the Test Engine; (iv) The test fuel specifications; (v) A full description of the elected test method; and (vi) All test results.
- f. Where the Subject Engine fails to meet any of the nonroad emission standards as described above, Aggreko shall either export/destroy the Subject Engine and all the other engines within the engine family or convert the Subject Engine and all

¹ Determine composite results in accordance with 40 C.F.R. § 1065.650(g) equations 17-19.

² Obtain an appropriate emission DF from the engine manufacturer or EPA will provide an appropriate emission DF based upon a composite of DFs for similar engines and technology.

³ Apply the DF to the modal and composite results as specified in 40 C.F.R. § 1048.240(c)(1) and (2).

- the other engines within the engine family to stationary use only providing the Subject Engine complies with the above described stationary emission standards.
- g. Within 60 calendar days of conducting the required emission test for an engine family, Aggreko shall adjust and equip each Subject Engine within the engine family to be identical to the Test Engine. If the Subject Engine meets the nonroad and the stationary emission standards as described above, Aggreko shall affix to each Subject Engine the label described in Attachment 2 of this Agreement.
 - h. Within 15 days of making the adjustments and installations (if any), and affixing the labels, Aggreko shall submit a report to the EPA to document and attest that the work was done. The report shall also include a photograph of each Subject Engine.

Civil Penalty

21. Aggreko must pay to the United States a civil penalty of \$75,000 (the EPA Penalty). The EPA penalty reflects the economic benefit resulting from the violations, and the application of the EPA Audit Policy. Aggreko agrees to pay the EPA Penalty to the United States within 30 calendar days immediately following the effective date of this Agreement. 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 Aggreko on demand by the United States. Aggreko 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, cashier's, or company 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-8044

This check must be identified with case number AED/MSEB-8044 and state that it is remitted by Aggreko. Simultaneously, scan and email a copy of the check to Jocelyn Adair at Adair.Jocelyn@epa.gov.

- b. Pay online through Department of the Treasury using 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-8044. Within 24 hours of payment, scan and e-mail a copy of the receipt to Adair.Jocelyn@epa.gov.

Stipulated Penalty

22. Aggreko agrees to pay a stipulated penalty of \$500 per day for its failure to: (a) Perform the corrective action in paragraph 18, or provide proof thereof pursuant to paragraph 19, or subparagraphs 20(e) and (f); and (b) Pay the civil penalty in paragraph 21 or provide proof thereof.
23. Every stipulated penalty must be paid within 30 calendar days of the day that Aggreko receives a demand letter from the EPA, and in the manner specified in paragraph 21 of this Agreement.

Effect of Agreement

24. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement will be deemed resolved. Nothing herein limits EPA's rights to proceed against Aggreko for its default or noncompliance with this Agreement, for violations of the 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

25. All correspondence to EPA or notifications required by this Agreement must be in writing and emailed to Adair.Jocelyn@epa.gov or mailed to:
- | | |
|----------------------------|--|
| (U.S. Postal Service Mail) | (Courier Service) |
| U.S. EPA | U.S. EPA |
| Mail Code 2242A | William Jefferson Clinton South Building |
| 1200 Pennsylvania Ave., NW | 1200 Pennsylvania Avenue, NW, Room 2117A |
| Washington, D.C. 20460 | Washington, D.C. 20004 |
| AED/MSED-8044 | AED/MSEB-8044 |
26. 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 Aggreko.
27. The individual or individuals executing this Agreement on behalf of Aggreko are authorized to do so and such execution is intended to and does bind Aggreko and its agents, successors, and assigns.
28. 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.
29. 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.

30. Aggreko 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.
31. Notwithstanding any other provision of this Agreement, the parties agree that on Aggreko'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(d) of the Act, 42 U.S.C. § 7524(d), to commence a civil action against Aggreko in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. Aggreko expressly waives its right to assert 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. Aggreko acknowledges that EPA intends to use Aggreko's tax identification number, which Aggreko 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.
32. Aggreko 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.
33. 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 Aggreko, any rights, remedies, or other benefits.
34. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.

35. This Agreement is contingent on the truthfulness, accuracy, and completeness of Aggreko's disclosures and representations to EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Engines.
36. This Agreement in no way affects or relieves Aggreko of responsibility to comply with other federal, state, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

**United States Environmental Protection Agency
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AED/MSEB-8044**

The following agrees to the terms of this Agreement:

Aggreko, LLC.

By:  _____

Typed or Printed Name: DAVID A BOUCHNER

Typed or Printed Title: GENERAL COUNSEL

Federal Tax Identification Number: 72-0692213

Date: SEPT 9, 2013

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The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: 

Date: 9/12/2013

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