

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

In the Matter of:	)	
	)	<b>ADMINISTRATIVE</b>
ALL-POWER AMERICA, LLC,	)	<b>SETTLEMENT AGREEMENT</b>
	)	
Respondent.	)	<b>AED/MSEB # 8008</b>
	)	

This Administrative Settlement Agreement (Agreement) is between the United States Environmental Protection Agency (EPA) and All-Power America, LLC (Respondent) having an office at 13980 Mountain Avenue, Chino, CA 91710.

**Respondent**

1. Respondent is a California corporation that wholesales electrical apparatus and equipment, specializing in generators.

**Purpose**

2. The purpose of this Agreement is to resolve 80 alleged violations of sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and the nonroad engine regulations promulgated thereunder at 40 C.F.R. Parts 1054 and 1068.

**Statutory Authority**

3. 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, introducing into commerce, or importing a new nonroad engine manufactured after the effective date of regulations applicable to such vehicle or engine unless such engine (a) is built in

conformity with and covered by an EPA-issued certificate of conformity (COC) and (b) bears the required EPA emissions information label.

4. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates section 203(a) of the CAA to a civil penalty for each motor vehicle or engine violation. The maximum civil penalty applicable to the alleged violations is \$37,500 per vehicle or engine based on the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the applicable regulations, 40 C.F.R. § 19.4, adjusting the statutory penalty from \$25,000 to \$37,500 for violations committed after January 12, 2009.

#### **Regulatory Authority**

5. 40 C.F.R. § 1068.101(a)(1) prohibits the sale, or the offering for sale, or the introduction, or the delivery into commerce, or the importation into the United States of any new engine/equipment, manufactured after the effective date of regulations applicable to such engine, unless such engine is covered by a COC and bears a permanently affixed EPA emissions control information label or is properly exempted or excluded from the certification requirements.
6. 40 C.F.R. § 1068.101(a)(1)(i) states that engines and equipment are considered not covered by a COC unless they are in a configuration described in the application for certification.
7. 40 C.F.R. § 1068.101(b)(5) prohibits the importation of an uncertified engine or piece of equipment if it is defined to be new in the standard-setting part with a model year for which emission standards applied.

#### **Background**

8. On or about March 5, 2011, under entry number ES2-0161071-5, Respondent imported 80 generators containing nonroad gasoline engines (the Subject Generators), model GG10000, into the United States.

9. The Subject Generators are powered by nonroad spark-ignition (SI) engines, which are subject to sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the regulations promulgated thereunder at Parts 1054 and 1068.
10. The Subject Generator engines are allegedly certified under EPA engine family BJDGS.4202GA (Generator COC). The Generator COC was issued by the EPA to Jiangsu Jiangdong Group Co. Ltd. of Yancheng, China, with an effective date of January 5, 2011, and covers engines produced no later than December 31, 2011.
11. The Certification Summary Information Report for the BJDGS.4202GA engine family states that the engines in this engine family are equipped with a 2-way oxidation catalyst for emission control.
12. On March 10, 2011, the EPA's inspectors removed the exhaust system from a sampled model GG10000, serial number 42010Z181760, and shipped it to the EPA's contractor The Bionetics Corporation of Yorktown, Virginia (Bionetics) for testing.
13. Upon inspection, Bionetics found no oxidation catalyst or any other emission control device present in the exhaust system. On the basis of this inspection, the EPA alleges that the Subject Generator engines do not conform to the design specifications of the Generator COC with respect to emission control device requirements because the Subject Generator engines are missing the required oxidation catalysts. Therefore, the Subject Generator engines are uncertified since they were not covered by a valid COC at the time of importation and were imported in violation of 40 C.F.R. § 1068.101(a)(1).

### **Violations**

14. The EPA alleges that Respondent is liable for 80 separate violations of sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§7522(a) and 7547(d), and the regulations at 40 C.F.R. Parts 1054 and 1068, for the introduction into commerce of the Subject Generator engines for all the reasons summarized above in ¶¶ 8 through 13.

### Civil Penalty

15. Respondent must pay to the United States a civil penalty of \$60,000 within 30 days of the Effective Date of this Agreement (defined below). 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 ¶¶ 18 and 19 of this Agreement and must be paid by Respondent upon demand. Respondent agrees to pay the civil penalty 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 # 8008

Respondent may also pay online at [www.pay.gov](http://www.pay.gov). From the "Search Public Form" field, enter "SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the "SFO Form Number 1.1."

### Notice

16. A copy of the payment check(s) and the transmittal letter(s) must be faxed to David Kim at (415) 947-3571 no later than 24 hours after mailing the payment.
17. All correspondence to the EPA concerning this Agreement must be sent to:

David Kim  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
Mailstop ORC-3  
San Francisco, CA 94105  
Attn: AED/MSEB-8008

### Stipulated Penalties

18. Respondent must pay a penalty of \$1,000 per day for failure to timely pay the penalty pursuant to ¶ 15 of this Agreement or provide proof thereof pursuant to ¶ 16 of this Agreement.
19. Stipulated penalties under ¶ 18 of this Agreement accrue on the day after performance is due and continue to accrue until the day compliance is achieved. Stipulated penalties must be paid upon demand in accordance with ¶ 15 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) must be sent to David Kim at the address specified in ¶ 17 of this Agreement.

### General Provisions

20. This Agreement becomes effective upon the date executed by the EPA (Effective Date of the Agreement), at which time an electronic copy will be returned to Respondent.
21. Respondent hereby represents that the individual or individuals 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 and its agents, assigns, affiliates and successors.
22. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default, or failure to comply with any term of this Agreement, the EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to section 205 of the CAA, 42 U.S.C. § 7524, commence an action to enforce this Agreement, recover the civil penalty pursuant to section 205 of the CAA, recover any stipulated penalties incurred under ¶ 18, or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, the EPA may proceed in an action based on the original claim of violations of the CAA and 40 C.F.R. Parts 89 and 1068. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, any applicable statute of limitation, or other provisions limiting actions as a result of passage of time. Respondent acknowledges that its tax identification numbers may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement. See 31 U.S.C. § 7701.

23. Respondent 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.
24. The validity, enforceability, and construction of all matters pertaining to this Agreement must be determined in accordance with applicable federal law.
25. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to the EPA under this Agreement.

**Effect of Agreement**

26. This Agreement resolves the EPA's civil claims for the violations alleged in ¶ 14. This resolution of claims will take effect when the United States receives the civil penalty payment required by ¶ 15. Nothing herein shall limit the right of the 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.
27. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal or local laws or regulations.
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 the EPA and the Respondent, any right, remedies, or other benefits.
29. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.
30. Respondent consents and submits to the jurisdiction and venue in United States Court; Respondent waives all objections to such jurisdiction and venue; and Respondent knowingly waives its due process rights in connection with its consent to jurisdiction and venue.
31. 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. The parties agree that a facsimile copy, photocopy, or electronic copy of this Agreement will be of full effect as the original document for all purposes.

The following agree to the terms of this Agreement:

Settlement Agreement  
In the Matter of All-Power America, LLC. AED/MSEB - 8008

All-Power America, LLC

By: 

Date: 09/10/2012

Typed name: Bin Zou


Typed title: CEO

Federal Tax Identification Number: 202564842



Settlement Agreement  
In the Matter of All-Power America, LLC. AED/MSEB - 8008

United States Environmental Protection Agency

By:   
Phillip A. Brooks, Director  
Air Enforcement Division

Date: 9/14/2012