

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

In the Matter of:)	
)	ADMINISTRATIVE
Caterpillar Inc.,)	SETTLEMENT AGREEMENT
)	
)	AED/MSEB - 7249
Respondent.)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Caterpillar Inc., 100 North Adams, Peoria, Illinois 61629 (Caterpillar or Respondent).

Purpose:

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve seven 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 applicable regulations 40 C.F.R. Part 89.

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit any person from importing, selling, or leasing any new nonroad vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued and in effect, and bears the required EPA emissions information label.

Regulatory Authority:

3. 40 C.F.R. § 89.1003(a)(1)(ii) and § 1068.101(b)(5) prohibit any person from importing into the United States a CI nonroad engine manufactured after the effective dates of the regulations, unless such engine is covered by a certificate of conformity issued by EPA, or is excluded from complying with the Federal emission standards.
4. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, or delivery into commerce by an engine manufacturer of a certified nonroad CI engine manufactured after

the effective dates of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.

5. 40 C.F.R. §§ 89.909 and 89.1004 provide that a new nonroad engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, is subject to the provisions of § 89.1003, unless the importing country has new nonroad engine emission standards which differ from EPA standards.
6. 40 C.F.R. § 89.2 provides that the term “new” means an engine that is not covered by a certificate of conformity issued under this part at the time of importation, and that is manufactured after the effective date of the regulation issued under this part which is applicable to such engine had it been manufactured for importation into the United States.
7. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified CI engine, a permanent and legible label identifying each nonroad engine and containing certain information. The label must be readily visible after the engine is installed in the equipment.
8. 40 C.F.R. § 89.2 provides that an internal combustion engine is not a nonroad engine if, among other reasons, the engine will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.
9. 40 C.F.R. § 1068.301(b) provides that 40 C.F.R. Part 1068, Subpart D describes the limited conditions for exempting or excluding engines from meeting the regulatory requirements.
10. 40 C.F.R. § 1068.310(b) provides that stationary engines are not nonroad engines, and stationary engines are not subject to the restrictions on imports in § 1068.301(b), but only if they are properly labeled.
11. 40 C.F.R. § 1068.101(b)(3) restricts the use of stationary engines for non-stationary purposes.

12. 40 C.F.R. § 60.4210(b)(1) provides that stationary CI internal combustion engines manufactured between January 1, 2006 and March 31, 2006, other than those that are part of certified engines families under the nonroad CI engine regulations, must be labeled according to 40 C.F.R. § 1039.20.
13. 40 C.F.R. § 1039.20(a) provides that stationary engines built on or after January 1, 2006 must have affixed a permanent label or tag. In addition, the label cannot be removed without destroying or defacing the label and must be durable and readable for the entire engine life.

Definitions:

14. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulation and dates:* 40 C.F.R. Part 89 is applicable to compression-ignition nonroad engines built after the applicability dates.
 - b. *Certified Engine:* A nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
 - c. *Certificate Holder:* The manufacturer to whom EPA has issued the Certificate of Conformity.
 - d. *Certificate of Conformity:* The document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Part 89 and the CAA.
 - e. *Corrective Action:* Action taken by Respondent to remedy the violations alleged by EPA in this Agreement.
 - f. *Export:* To transport to a location outside of the United States and its territories, Canada, and Mexico.

- g. *Destroy*: The complete destruction of the Subject Engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.
- h. *This matter*: As used in this Agreement means Respondent's importation of the seven CI nonroad engines or stationary engines as described in Paragraph 15 of this Agreement (Subject Engines), the injunctive relief/corrective action required by this Agreement, and any liability that may apply to such alleged violations.

Alleged Violations:

- 15. On or about April 14, 2007, Caterpillar imported seven diesel engines (the Subject Engines) into Savannah, Georgia. The Subject Engines are described in Appendix A to this Agreement. The Subject Engines were manufactured by Caterpillar. On the EPA Declaration Form 3520-21 that Caterpillar used to import the Subject Engines, Caterpillar checked Boxes 1 and 20. By checking Box 1, Caterpillar declared that the Subject Engines were U.S. certified engines, and bore an EPA emissions information label. By checking Box 20, Caterpillar declared that the Subject Engines were excluded from compliance with the Federal emission standards because the engine would be used for a stationary purpose and remain at a single site for more than 12 consecutive months throughout its lifetime, or remain at a seasonal source during its annual operating period.
- 16. The EPA and U.S. Customs and Border Protection (Customs) review of the materials submitted, photographs taken, and a search of EPA's certification database showed no EPA-issued Certificate of Conformity for the Subject Engines, model, and horsepower shown in the documentation. In addition, no EPA emission control information labels or stationary engine labels were found on the engines during the U.S. Customs inspections.
- 17. On July 10, 2007, EPA requested that the U.S. Customs Port in Savannah, Georgia seize the Subject Engines.

18. Subsequent to the inspection and detention or seizure of the Subject Engines, Caterpillar confirmed that the Subject Engines were not covered by an EPA- issued certificate of conformity. Caterpillar also explained that the Subject Engines were defective and/or severely damaged and were being imported for donation to a school.
19. Based on the forgoing, EPA alleges that Caterpillar committed seven violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), and the CI Nonroad Engine Regulations, 40 C.F.R. Part 89.
20. By entering into this Agreement, Respondent does not admit that it has committed any violation of the Clean Air Act or its implementing regulations.

Corrective Action:

21. No later than thirty (30) days from the effective date of this Agreement, or such longer period of time if required by U.S. Customs, Respondent shall export or destroy the Subject Engines. The exportation or destruction of the Subject Engines shall be carried out under the supervision of U.S. Customs. Respondent shall also submit to EPA a written report no later than fifteen (15) days from the date of the corrective action that fully describes the corrective action taken, and certifies that such corrective action was conducted as described. The report shall also include supporting documents that confirm that the Subject Engines were either exported or destroyed.
22. Respondent agrees to accept civil liability for all fines, penalties or forfeitures resulting from the re-importation of any of the Subject Engines by Caterpillar or any of its affiliates. Respondent further agrees with respect to any contract of sale of a Subject Engine by Respondent or its affiliates to put the buyer on notice that the Subject Engine is not covered by an EPA-issued certificate of conformity and may not lawfully be imported or used in the United States and its territories.

Civil Penalty:

23. Respondent has agreed to pay to the United States of America a civil penalty of \$96,750 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 29 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 - 7249

Respondent 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."

Notice:

24. 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
Attn: AED/MSEB-7249

(Courier Service)

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

General Provisions:

25. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.

26. 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.
27. Notwithstanding any other provisions of this Agreement, upon Respondent's default 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 40 C.F.R. Parts 89. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
28. 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:

29. 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 export or destroy a Subject Engine or provide proof thereof, pursuant to Paragraphs 21 and 24, \$32,500 per engine; and
 - b. For failure to timely pay the civil penalty or provide proof thereof, pursuant to Paragraphs 23 and 24, \$250.00 per day. However, if after sixty (60) days from the effective date of this Agreement Respondent has failed to pay the civil penalty Respondent shall be in default of this Agreement. Upon such default, Respondent agrees to pay a stipulated penalty of \$227,500.
30. All stipulated penalties under Paragraph 29 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 23 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 24. All stipulated penalties shall be paid to the United States of America within five (5) 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.

Enforcement:

31. 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 U.S. Customs for engines that are seized or detained.

The following agree to the terms of this:

Caterpillar Inc.

By: Richard J Reynolds Date: January 25, 2008
Printed Name: Richard J. Reynolds
Printed Title: Customer Services Manager

penalties for separate violations of this Agreement. All stipulated penalties shall be paid in the manner specified in Paragraph 23 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 24. All stipulated penalties shall be paid to the United States of America within five (5) 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.

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The following agree to the terms of this:

Caterpillar Inc.

By: Richard J Reynolds

Date: January 25 2008

Printed Name: Richard J Reynolds

Printed Title: Customer Services Manager

Appendix A to AED/MSEB-7249

Entry Number: 004-4679477-8
Detention Number: 200717030119

No.	Engine Serial No.	Engine Manufacturer	Engine Model	Horsepower
1	STH01648	Caterpillar	C18	660
2	STH01649	Caterpillar	C18	660
3	STH01670	Caterpillar	C18	660
4	STH01837	Caterpillar	C18	660
5	STH01839	Caterpillar	C18	660
6	STH01846	Caterpillar	C18	660
7	STH01857	Caterpillar	C18	660