

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

In the Matter of:

CASCO Sales Company, Inc.,

Respondent.

ADMINISTRATIVE
SETTLEMENT AGREEMENT

AED/MSEB - 7241

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA), and CASCO Sales Company, Inc., #101 Conquistadores Avenue, Catano, Puerto Rico (CASCO or Respondent).

Purpose:

1. The purpose of this Agreement is to resolve 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 implementing Compression-Ignition (CI or diesel) nonroad engine regulations, 40 C.F.R. Part 89 (CI Non-Road Regulations).
2. Whereas, as both the EPA and CASCO desire to completely and fully resolve and settle this Matter and for the purpose of avoiding the expense, burdens and inconveniences present in all actual or potential controversies between the parties, the parties have agreed to enter into the instant Agreement.

Statutory Authority:

3. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), prohibit any person from causing the importation or importing 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 label.

Regulatory Authority - CI Non-Road Regulations:

4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from causing the importation or importing into the United States any CI engine manufactured after the effective dates of the regulations, unless such engine is covered by a certificate of conformity issued by EPA, as described in 40 C.F.R. §§ 89.105 and 89.116.
5. 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 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.
6. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
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. §§ 89.110(a)(1), (2), and (5) require the label to be attached in such a manner that it cannot be removed without destroying or defacing the label; be durable and readable for the entire engine life; and be located so as to be readily visible to the average person after the engine is installed in the equipment. A supplemental label meeting all the requirements may be attached to a location other than the engine, in cases where the required label must be obscured after the engine is installed in the equipment.

Definitions:

9. 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 who obtained from EPA a 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. *Observer:* A U.S. Customs and Border Protection (Customs) representative or an independent board certified licensed professional engineer.
 - h. *This Matter:* As used in this Agreement means Respondent's importation of the thirty-three nonroad engines first described in Paragraph 10 of this Agreement (Subject Engines), the injunctive relief/corrective action required by this Agreement, and any liability that may apply to such alleged violations.

Background:

10. On two occasions, as described in Subparagraphs a. and b. below, CASCO imported generators containing CI (or diesel) nonroad engines (Subject Engines) into San Juan, Puerto Rico:

- a. On or about August 28, 2006, CASCO imported fifteen generators containing CI (or diesel) nonroad engines (Subject Engines), as described in Table 1, below:

Subject Engine Table 1
Importation Date: August 28, 2006
Generators with CI Engines Imported by CASCO
Customs Case 2007-4909-00000201

Quantity	Generator Manufacturer	Equip Model	Engine Manufacturer	EPA Engine Family	Yr of Manuf	Engine kW
6	GENMAC Generating Machinery	RGU 30	John Deere	none	2006	22.5
9	GENMAC Generating Machinery	HSD 20	Lombardini	6LBDL2.19CHP	2006	22.5

- b. On or about September 5, 2006, CASCO imported eighteen generators containing CI (or diesel) nonroad engines (Subject Engines), as described in Table 2, below:

Subject Engine Table 2
Importation Date: September 5, 2006
Generators with CI Engines Imported by CASCO
Customs Case Number 2007-4909-00000901

Quantity	Generator Manufacturer	Equip Model	Engine Manufacturer	EPA Engine Family	Yr of Manuf	Engine kW
18	GENMAC Generating Machinery	HSD 20	Lombardini	6LBDL2.19CHP	2006	22.5

11. On or about October 11 - 13, 2006, Customs seized the Subject Engines described in Tables 1 and 2 of Paragraph 10, above, for apparent violations of EPA regulations. The Subject Engines continue to be held.
12. Six of the Subject Engines were manufactured by John Deere, as identified in Table 1, above. Deere & Company is the Certificate Holder for those six Subject Engines. Twenty-seven of the Subject Engines were manufactured by Lombardini, as identified in Tables 1 and 2, above. Lombardini is the Certificate Holder for those twenty-seven Subject Engines.
13. Respondent concedes the six John Deere engines are uncertified.

14. After inspection, Customs claims that the Lombardini engines bore Emissions Information Labels that were not permanently affixed, and could be removed without destroying or defacing the label, in violation of 40 C.F.R. § 89.110(a)(1).
15. As a result of EPA's investigation into CASCO's compliance with the CI Nonroad Regulations, EPA alleges that:
 - a. CASCO is the importer of all of the Subject Engines;
 - b. The six John Deere CI Subject Engines in Table 1 are uncertified in violation of 40 C.F.R. § 89.105; and
 - c. The twenty-seven Lombardini Subject Engines are improperly labeled in violation of 40 C.F.R. § 89.110.
16. Based upon the foregoing, EPA alleges that:
 - a. CASCO is liable for thirty-three violations of Sections 203(a) and 213(d) of the Act, resulting from the importation of
 - i. six uncertified John Deere CI Nonroad engines; and
 - ii. twenty-seven improperly labeled Lombardini Subject engines.
17. CASCO contests EPA's and Customs' claims and findings.

Injunctive Relief/Corrective Action:

18. No later than thirty days from the date that Customs releases the Subject Engines, or from the effective date of this Agreement if Customs has released the Subject Engines prior to the effective date of this Agreement, whichever is applicable, CASCO shall export or destroy the six John Deere Subject Engines. This exportation or destruction shall be carried out under the supervision of Customs. Within forty-five days from the applicable date under this Paragraph 18, CASCO shall certify to EPA, at the address identified in Paragraph 20, below, and provide supporting documents that the Subject Engines were either exported or destroyed under the supervision of Customs. A list of the serial numbers of six exported or destroyed Deere engines is attached as Appendix A.

19. In lieu of exporting or destroying the twenty-seven Lombardini Subject Engines, the Certificate Holder (Lombardini) or its authorized representative, may remove each non-complying label from these Subject Engines and affix a complying EPA emissions information label (replacement label) to each of them. This corrective action shall be accomplished in the following manner:
- a. No later than thirty days from the effective date of this Agreement, the Certificate Holder shall send to EPA six samples of the proposed replacement label and a technical description of the method and procedures that the Certificate Holder will use to affix the replacement label to the Lombardini Subject Engines. The replacement label must contain all the information specified at 40 C.F.R. § 89.110. In addition, the replacement label and method and procedures used to affix the label must be designed to ensure that the replacement label is permanently affixed and cannot be removed without destroying or defacing the label. This submission, affidavit, and all other correspondence concerning this Agreement shall be sent to Angela E. Fitzgerald, at the address specified in Paragraph 20 of this Agreement.
 - b. No later than three days from the receipt of such sample labels, EPA shall notify to CASCO if the labels are deficient. Where EPA determines that the proposed sample label is deficient, EPA shall provide comments on the deficiency of the label or process for affixing the label to the Certificate Holder who shall revise its label and/or process according to EPA's comments or provide EPA with an explanation as to why the label/or process is not deficient.
 - c. The Certificate Holder shall establish and fully document a chain of custody for the replacement labels from the time of production until the time of installation on the Lombardini Subject Engines, and destruction of any unused replacement label.
 - d. This corrective action shall be conducted under the observation of Customs, or a board certified licensed professional engineer (Observer) not employed directly by

either CASCO or the Certificate Holder. The corrective action shall be completed within thirty days following the date that the EPA gives notice of the labels being deficient, as set forth in Subparagraph 19(b) above, or such longer period of time if requested by Respondents and approved by EPA for good cause shown.

- e. The Certificate Holder shall remove the non-complying label and give it to the Observer, and shall attach the replacement label in accordance with the procedure submitted to EPA in the above Subparagraph 19(a).
- f. After the replacement label has been affixed to each of the Lombardini Subject Engines, the Observer shall randomly select one Subject Engine from each model (the Test Sample Engines) to determine whether or not the replacement label is permanently attached to the Subject Engine and cannot be removed without destroying or defacing the replacement label. Any Test Sample Engines whose replacement label is destroyed or defaced during this test must be relabeled by the Certificate Holder. However, where the replacement label on a Test Sample Engine can be removed without destroying or defacing the replacement label, the Test Sample Engine and the related model Subject Engines must be exported or destroyed.
- g. Where a replacement label on a Test Sample Engine contains all the specified information and cannot be removed without destroying or defacing the replacement label, the Test Sample Engine (once re-labeled, if necessary) and the related model Subject Engines may be sold or introduced into commerce.
- h. Within thirty days from the day of affixing the last replacement label or otherwise exporting or destroying the Subject Engines as set forth on Subparagraphs 19(e) and 19(f), above (or such longer period of time if requested by Respondents and approved by EPA for good cause shown), Respondents shall provide EPA with a

report that fully describes and certifies the corrective action taken. The report must include the following:

- i. An affidavit from the Certificate Holder (or its authorized representative) who has performed the corrective action work. The affidavit shall certify the date, time, and place of the corrective action work, identify each person doing the work, identify the serial number of each Subject engine that was re-labeled, provide a clear readable picture of the replacement label affixed to each model of the Subject Engines, and provide the results of any tests performed to determine whether or not the replacement label was permanent and could not be removed without destroying or defacing the label;
- ii. An unconditional statement from the Certificate Holder certifying that the Lombardini Subject Engines comply with all requirements of the Clean Air Act and 40 C. F. R. Part 89;
- iii. Where the Observer determines that a replacement label is non-complying, or can be removed without destroying or defacing the label, or the corrective action work has not been performed, the Observer will report his or her findings to EPA and Respondents shall either export or destroy the Subject Engines; and
- iv. The Observer shall destroy all but one of the removed labels no later than the day the last Subject Engine receives a replacement label. The Observer shall cut the remaining labels in half and give them to the Certificate Holder. The Certificate Holder will retain the remaining one label for purposes of further analysis by the Certificate Holder.

20. All correspondence, reports, and copies of payment checks concerning this Agreement shall be sent to:

(Regular Mail)

(Courier Service)

Angela E. Fitzgerald
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7241

Angela E. Fitzgerald
U.S. Environmental Protection Agency
Ariel Rios South, Rm 1117A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attn: AED/MSEB- 7241

Such correspondence, etc. may also be sent via telefax to 202/564-0015.

Civil Penalty:

21. Respondent shall pay to the United States a civil penalty of \$35,000 (EPA penalty) for the thirty-three Subject Engine violations alleged by EPA which are the subject of the Agreement.
22. Respondent agrees to pay the EPA penalty to the United States of America within thirty days from the date that Customs issues its decision letter relating to the seizure of the Subject Engines (EPA penalty due date). Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the EPA 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
PO Box 979077
St. Louis, MO 63197-9000
Attn: AED/MSEB # 7241

A photocopy of the check shall be telefaxed simultaneously to:

Angela Fitzgerald, Attorney
U.S. Environmental Protection Agency
202/564-0015

Alternatively, Respondent may

- a. affect an electronic funds transfer in the amount of \$35,000 with the notation "CASCO Sales Company, Inc., Administrative Settlement Agreement for Case No.: AED/MSEB-7241" by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010727
Bank Holding Account:	Treas_NYC

Routing Number:

021030004

The costs of such electronic funds transfer shall be Respondent's responsibility.

or

b. make an online payment through the Department of the Treasury by visiting 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." Within twenty-four hours of payment, Respondent shall fax a copy of the online payment receipt to Angela E. Fitzgerald at 202/564-0015.

23. The civil penalty required under Paragraph 21 of this Agreement may be reduced by the forfeiture remission amount, storage fees and civil penalty, if any, assessed by Customs and arising from the disposition of the Customs seizure case relating to the Subject Engines. Within thirty days from the date that Customs issues its decision letter, Respondent shall provide EPA with a copy of the Customs decision letter and proof of Respondent's payment of the forfeiture remission amount, storage fees and civil penalty, if any, assessed by Customs.

General Provisions:

24. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
25. Respondent hereby represent that the individual executing this Agreement on behalf of Respondent is authorized to do so and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
26. 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. Part 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.

27. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representation to EPA, and the prompt completion of the injunctive relief/corrective action in accordance with this Agreement.

Stipulated Penalties:

28. 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 pay the civil penalty or provide proof thereof, pursuant to Paragraphs 21 - 23, \$250.00 per day;
 - b. For failure to export or relabel the Subject Engines or provide proof thereof, pursuant to Paragraphs 19 - 20, \$250.00 per day, and
 - c. For failure to provide the report specified in Paragraph 19(h), \$250 per day.
29. All stipulated penalties under Paragraph 27 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 one of the manners specified in Paragraph 22 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to the EPA representative at the address specified in Paragraph 20. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by EPA. 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:

30. Upon completion of the terms of this Agreement, the alleged violations identified in Paragraph 16 of 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 Customs for engines that are seized or detained.

**U.S. Environmental Protection Agency
Administrative Settlement Agreement
*In the Matter of CASCO Sales Company, Inc., AED/MSEB -7241***

The following agrees to the terms of this Agreement:

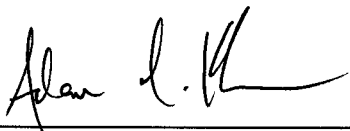
CASCO Sales Company, Inc.

By: Johanna Rive Date: 10/30/07
Johanna Rive
Vice President of Operations

Administrative Settlement Agreement
In the Matter of CASCO Sales Company, Inc., AED/MSEB -7241

The following agrees to the terms of this Agreement:

U.S. Environmental Protection Agency

By:  _____ Date: 11/12/07
Adam M. Kushner
Director
Air Enforcement Division

**CASCO SALES COMPANY, INC.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ADMINISTRATIVE SETTLEMENT AGREEMENT #AED/MSEB - 7241
APPENDIX A**

JD3029DF128 installed on 6 GENMAC RGU30

	John Deere Engine S/No.'s	Genmac Generator S/No.'s	**Engine Production Date**
1	CD3029C013409	06-02011	June 2, 2006
2	CD3029C013406	06-02012	June 2, 2006
3	CD3029C013408	06-02013	June 2, 2006
4	CD3029C013404	06-02014	June 2, 2006
5	CD3029C013410	06-02015	June 2, 2006
6	CD3029C013403	06-02016	June 2, 2006