

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

**ADMINISTRATIVE SETTLEMENT AGREEMENT**

In the Matter of:	)	
	)	
Meireles Truck Sales, Inc.	)	MSEB AED # 7258
	)	
Respondent	)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Meireles Truck Sales, Inc. (Respondent), of 4501 NW 27<sup>th</sup> Avenue, Miami, FL 33142, regarding compliance by Respondent with the requirements of sections 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 on or about May 28, 2007, of two generators containing nonroad diesel engines, described in Attachment 1, and to ensure that future violations are avoided.

**Definitions:**

2. For purposes of this Agreement, the following definitions apply:
  - a. *This matter:* As used in this Agreement, “this matter” means Respondent’s importation of the Subject Engines identified in Attachment 1 and any civil liability that may apply to violations of the Act and implementing regulations at 40 C.F.R. Part 89.
  - b. *Subject Engines:* The term “Subject Engines” means the engines contained in the equipment listed in Attachment 1.

- c. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to a compression ignition engine 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 applicable requirements of 40 C.F.R. Part 89 and the Act. Issuance of the Certificate of Conformity permits production 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.
- d. *Certified engine*: A “certified engine” is a nonroad engine built after the applicable effective dates of the regulations at Part 89 and that is covered by a Certificate of Conformity.
- e. *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 issued by EPA.
- f. *Date of Applicable Regulations*: The term “date of the applicable regulations” for a nonroad compression ignition engine means the date after which the certification requirement applies to the engine, as defined in Table 2 of 40 C.F.R. § 89.112.
- g. *Export*: The term “export” means to transport to a location outside of the United States and its territories, Canada, and Mexico.

**Statutory and Regulatory Authority:**

- 3. Sections 203(a) and 213(d) of the 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 non-road 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 compression ignition engine manufactured after the applicable effective date of the regulations, unless such engine is a certified engine, and bears a permanently affixed EPA Emissions Label or is properly exempted or excluded from the certification requirements.

5. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits an engine manufacturer of a new nonroad compression ignition engine manufactured after the effective date of the regulations from selling, offering for sale, introducing, or delivering into commerce a nonroad engine 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 compression ignition engine, a permanent and legible label identifying each nonroad engine which contains the information specified in that section, including a statement that the engine is a certified engine. The label must be readily visible to the average person after the engine is installed in the equipment, and must not be removable intact.
8. 40 C.F.R. §§ 89.110(d) requires each engine to have a legible, unique engine identification number permanently affixed to, or engraved on, the engine.
9. 40 C.F.R. §§ 89.909(a) requires that in order to be exempt from the regulations at § 89.1003, a new nonroad engine intended solely for export to a country, whose new nonroad engine emission standards differ from EPA standards, to be so labeled or tagged on the outside of the container and on the engine itself.
10. EPA has requested that on EPA form 3520-21 that engines imported “for export only” be secured by bond as per 40 C.F.R. §§ 89.611(b).

**Background:**

11. On or about June 13, 2007, U.S. Customs and Border Protection (CBP) seized the nonroad equipment listed in Attachment 1 at the Port of Miami, Florida.
12. Respondent is the importer of the nonroad equipment containing the Subject Engines.
13. The Subject Engines were manufactured after the Date of the Applicable Regulations. As a consequence, either the engines in the nonroad equipment were required to be certified and labeled, or proof was required at the time of import that the engines were eligible for



a regulatory exclusion or exemption.

14. The Subject Engines in the diesel generators listed in Attachment 1 are not certified engines, and are not affixed with the certification label required by 40 C.F.R. § 89.110. Furthermore, on the EPA Engine Declaration Form (Form 3520-21), the importer checked Box 5d, Export, but neither the containers nor the engines were labeled “solely for export” as required by 40 C.F.R. § 89.909(a). Finally, Respondent did not secure bond for the export only engines as required by 40 C.F.R. § 89.611(b) and Form 3520-21.

**Injunctive Relief/Corrective Action:**

15. No later than thirty days from the date that CBP releases the Subject Engines, or from the effective date of this Agreement if CBP has released the Subject Engines prior to the effective date of this Agreement, whichever is applicable, Respondent shall export the Subject Engines. This exportation shall be carried out under the supervision of CBP. Within forty-five days from the applicable date under this Paragraph 15, Respondent shall certify to EPA, at the address identified in Paragraph 16, below, and provide supporting documents that the Subject Engines were exported under the supervision of CBP.
16. All submissions to EPA shall be sent to the following address:

Jeff Kodish  
U.S. EPA, MSEB  
1234 W. Alameda Pkwy, Suite 214  
Lakewood, CO 80228  
facsimile: (303) 236-9514

**Civil Penalty:**

17. Respondent shall pay to the United States a civil penalty of \$18,000.
18. Respondent agrees to pay the EPA penalty to the United States of America within thirty calendar days of the effective date of this Agreement (penalty due date). 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  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63179-9000  
ATTN: AED/MSEB #7258

A photocopy of the check shall be telefaxed simultaneously to Jeff Kodish at the number specified in Paragraph 16. Alternatively, Respondent may affect an online payment by visiting [www.pay.gov](http://www.pay.gov), and entering "sfo 1.1" in the "Search Public Forms" field to access the EPA Payment Form.

**General Provisions:**

19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
20. 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.
21. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or 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 the right to assert that such action is barred by any applicable statute of limitation, *see, e.g.*, 28 U.S.C. § 2462.
22. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, and the prompt and complete remediation of any violations in accordance with this Agreement.

**Stipulated Penalties:**

23. 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:

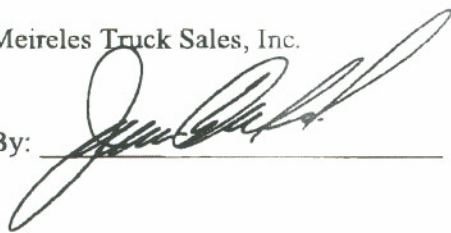
- a. For failure to timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 17 and 18, \$400 per day.
  - b. For failure to timely export the Subject Engines, or provide proof of such exportation, pursuant to Paragraph 15, \$500 per day.
24. All stipulated penalties under Paragraph 23 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 18 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 this Agreement is based.

**Effect of Agreement:**

25. Upon completion of the terms of the 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 laws or regulations, and does not address Respondent's potential liability to CBP for engines that are seized or detained.

The following agree to the terms of this Agreement:

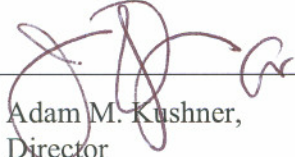
Meireles Truck Sales, Inc.

By: 

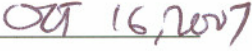
10-1-07  
Date

U.S. Environmental Protection Agency  
In the Matter of Meireles Truck Sales, Inc.

AED/MSEB # 7258

By:  \_\_\_\_\_

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

 \_\_\_\_\_  
Date



In the Matter of:  
Meireles Truck Sales, Inc.  
MSEB AED #7258

Attachment 1: Description of generators with nonroad diesel engines, imported by Meireles Truck Sales, Inc., detained June 13, 2007, at the Port of Miami, Florida

Entry Date	Entry Number	Equipment Manufacturer Engine Manufacturer	Equipment Model Engine Model	Qty
5/28/07	K51-0062025-8	Power Link (Shanghai) Machine CoLtd Cummins Engine Co. U.S.A.	GMS800C6 KTA38G2	1
5/28/07	K51-0062025-8	Power Link (Shanghai) Machine CoLtd Cummins Engine Co. U.S.A.	GMS800C6 KTA38G2	1