



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.**

In the Matter of:

Municipality of Villalba, Puerto Rico,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8366

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA or Agency) and the Municipality of Villalba, Puerto Rico (Respondent or Villalba) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations by Respondent(s). Villalba's mailing address is P.O. Box 1506, Villalba, Puerto Rico 00766.
2. Respondent is a Municipality of Puerto Rico that purchased a new Model Year 2017 Caterpillar Backhoe Loader, Model No. 424B2, equipped with a new nonroad Caterpillar compression ignition (CI) engine manufactured in India, S/N: CAT0424BLJTH00753 (Subject Equipment), in order to facilitate the Municipality's recovery from the devastation of hurricanes, including Hurricane Maria which struck Puerto Rico in September of 2017.
3. The delegated official of the EPA and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to

sections 205(c), 211(d) and 213(d) of the CAA, 42 U.S.C. §§ 7524(c), 7545(d) and 7547(d), and 40 C.F.R. § 1068.125.

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen (NO_x) and particulate matter (PM).
5. The Alleged Violations of Law, stated below, apply to new Compression-Ignition (CI) Nonroad Engines. This section of the Agreement summarizes the law that governs these allegations.
6. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer from selling, offering for sale, introducing, or delivering for introduction into commerce, or any person from importing, any new motor vehicle or new motor vehicle engine manufactured after the effective date of the applicable regulations, unless such vehicle or engine is covered by a certificate of conformity (COC) issued by the EPA.
7. Section 213(d) of the Act, 42 U.S.C. § 7547(d), states that nonroad vehicle and engine standards “shall be enforced in the same manner as the standards prescribed under section 202 [of the Act]” for motor vehicles and motor vehicle engines, and “the Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under [Section 213].”
8. A “Certificate of Conformity” is a document issued by EPA to a manufacturer after EPA determines that the manufacturer’s application is complete and that the engine family

meets the requirements of its applicable regulations and the Act. Issuance of the Certificate of Conformity permits production, importation and introduction into commerce of engines built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.

9. All nonroad diesel engines are now regulated by 40 C.F.R. Part 1039. Under 40 C.F.R. § 1039.801(*new nonroad engine*)(5)(iii), an imported engine with a maximum engine power between 37 kW and 75 kW that is not covered by a certificate of conformity at the time of importation is considered to be new if it was produced after January 1, 1998.
10. Under 40 C.F.R. § 1039.801(*manufacturer*), a manufacturer is any person who manufactures an engine, vehicle, or piece of equipment for sale in the United States or otherwise imports or introduces a new nonroad engine into commerce in the United States. A manufacturer of nonroad diesel engines is also subject to the *General Compliance Provisions for Highway, Stationary, and Nonroad Programs*, 40 C.F.R. Part 1068.
11. Importation into the United States of a new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year, is prohibited under 40 C.F.R. § 1068.101(a)(1). Also, 40 C.F.R. § 1068.101(b)(5) prohibits any person from importing into the United States any uncertified engine or piece of equipment if it is defined to be new by the standards for its model year.
12. U.S. Customs and Border Protection (Customs) may prevent any person from importing engines or equipment if they do not meet the requirements of Part 1068. In addition,

Customs regulations may contain other requirements for engines/equipment imported into the United States (*see* 19 C.F.R. Chapter I). 40 C.F.R. § 1068.301(c)

Factual Background

13. On or about February 19, 2018, Respondent purchased the Subject Equipment at an auction in Davenport, Florida, from Ritchie Bros. Auctioneers located at 700 Ritchie Road, Davenport, Florida.
14. Villalba purchased the Subject Equipment for emergency recovery work due to the destruction caused by hurricanes including Hurricane Maria.
15. Villalba reports that, at the time of purchase, the Subject Equipment was physically located at, or being transferred to, the Port of Tampa, Florida, Foreign Trade Zone (FTZ). The entity that initiated Subject Equipment's admittance into the FTZ was India Machine Mart PVT LTD.
16. Respondent purchased the Subject Equipment with the intent to ship it to Puerto Rico for the Municipality's emergency recovery work.
17. The Subject Equipment is subject to the CAA's certification requirements.
18. Upon processing paperwork to arrange for the transfer of the Subject Equipment from the Port of Tampa FTZ for release in Puerto Rico, Respondent was informed that the Subject Equipment was not EPA Compliant.
19. The label on the Subject Equipment's uncertified engine indicates that it was manufactured in India, provides an Engine Number 4H32011721781, Chassis Number B M1 12 17 05671, but does not provide a month/year of manufacture.

20. Respondent asserts that upon discovery of the Subject Equipment's nonconforming status, the Mayor of Villalba, Luis Javier Hernandez-Ortiz, contacted EPA Region 2's Caribbean Environmental Protection Division and notified the Agency of the circumstances surrounding the purchase of the Subject Equipment.
 21. The Mayor submitted a letter to EPA in which he indicated that the Subject Equipment will be used to clean roads from debris left by Hurricane Maria, and to make dirt pathways for the installation of electric poles and lines. In addition, it will be used to gain access to communities that have become isolated due to Hurricane Maria.
 22. The Governor of Puerto Rico, Ricardo Rossello Nevaes, by letter, has expressed his support for the importation of the Subject Equipment so long as it is not sold or used for commercial purposes and is used only for the recovery efforts of the municipality.
 23. EPA has received confirmation that the Subject Equipment is currently located in the Port of Tampa FTZ.
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Alleged Violations of Law

24. Importation of the Subject Equipment is a violation of the Clean Air Act. Respondent agrees that it has caused the importation of the Subject Equipment thus violating CAA Section 203(a)(1) and 42 U.S.C. § 7522(a)(1), and the implementing regulations codified at 40 C.F.R. §§ 1068.101(a)(1) and (a)(1)(i).
25. Respondent has not submitted any documentation to demonstrate the Subject Equipment is eligible for any exemptions or exclusions.

Terms of Agreement

26. Respondent:

- (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c);
- (b) admits to the Factual Background stated above;
- (c) neither admits nor denies the Alleged Violations of Law stated above;
- (d) agrees to pay the civil penalty stated below;
- (e) agrees that the Subject Equipment shall not be sold or used for commercial purposes;
- (f) agrees that the Subject Equipment will be used only for the recovery efforts of the municipality;
- (g) waives any right to any hearing, trial, adjudication, or proceeding (including review under sections 205(c) and 307(b)(1) of the CAA, 42 U.S.C. §§ 7534(c) and 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law and Factual Background stated above;
- (h) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
- (i) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which may be granted, conditionally granted, or withheld at EPA's unfettered discretion;

- (j) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
 - (k) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
 - (l) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (*see* 31 U.S.C. § 7701);
 - (m) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and
 - (n) acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment (*see* 18 U.S.C. § 1001).
27. For purposes of this proceeding, the Parties, desiring to settle this matter, each agree that:
- (a) this Agreement is in the public interest and is an appropriate way to resolve this matter;
 - (b) 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;
 - (c) 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 and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;

- (d) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Agreement and to execute it on behalf of that Party;
 - (e) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and
 - (f) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.
28. EPA is not requiring remediation via export. The Subject Equipment can be transferred to Puerto Rico and entered under the terms of this resolution of claims arising under the CAA.
29. Respondent agrees to pay to the United States a civil penalty of \$2,000.00 (the Civil Penalty).

30. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement. EPA agrees to provide to Respondent(s) at the email address provided on Respondent's signature page, below, a copy of the executed Agreement within 5 calendar days of that date.
31. Respondent agrees to pay the Civil Penalty in the manner specified below:
- (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with "AED/MSEB 8366"; and
 - (c) Within 24 hours of payment, email proof of payment to Jacqueline Robles Werner at werner.jacqueline@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB 8366").
32. Respondent acknowledges that Customs may assess penalties and fees (that are separate and in addition to the Civil Penalty here) based on the facts including those stated in this Agreement.
33. Respondent agrees to pay the following stipulated penalties to the EPA in the manner specified by Paragraph 31, not more than 30 days after receipt of written demand by the EPA for such penalties:
- (a) \$500 per day to the United States if and when it fails to timely pay the Civil Penalty, or provide proof thereof, in accordance with Paragraph 31; and

Effect of Agreement

34. By its signature below, the EPA covenants not to sue Respondent for “civil penalties” for the Alleged Violations of Law stated above, but such covenant automatically terminates 90 days after the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraph 30, or if on that date Respondent has failed to pay any and all stipulated penalties demanded under Paragraph 33. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA, as a matter of contract, or both.
35. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; and a 10% quarterly nonpayment penalty (*see* 42 U.S.C. § 7524(c)(6));
 - (b) refer the debt to a credit reporting agency or a collection agency (*see* 40 C.F.R. §§ 13.13, 13.14, and 13.33);
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H); and

- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 40 C.F.R. § 13.17).
36. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
37. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent or if they continue a substantive portion of Respondent's business that is regulated under the CAA. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
38. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.
39. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was or is materially false or inaccurate. If and when such termination occurs, the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

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By my signature, I execute this Agreement on behalf of the Municipality of Villalba, Puerto Rico, and thereby enter the Municipality of Villalba, Puerto Rico, into this Agreement and bind the Municipality of Villalba, Puerto Rico, to this Agreement.



Signature

3 | 22 | 18
Date

Printed Name: 

Title: 

Address: Calle Muñoz Rivera # 39 Villalba, P.R. 00766

Respondent's Federal Tax Identification Number: 

Email address for receipt of copy of Agreement: 

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By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.



Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

3/23/2018
Date