

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

Cummins Power Generation, Inc.
1400 73rd Ave. NE
Fridley, MN 55432

Respondent.

)
) **DOCKET NO.: CAA-03-2020-0048**
)
) **EXPEDITED SETTLEMENT**
) **AGREEMENT**
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U.S. EPA-REGION 3-RHC
FILED-6FEB2020pm1:26

EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited Settlement Agreement ("Agreement") is entered into by the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Cummins Power Generation, Inc. ("Respondent"), pursuant to Section 205(c)(1) of the Clean Air Act ("CAA"), as amended, 42 U.S.C § 7524(c)(1), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)). The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant.
2. EPA alleges that Respondent, a manufacturer (importer) of new engines, failed to comply with specific requirements of Title II of the CAA, 42 U.S.C. §§ 7521 *et seq.*, and implementing regulations at 40 C.F.R. Part 1068.
3. EPA has jurisdiction over the above-captioned matter pursuant to Section 205(c)(1) of the CAA, 42 U.S.C § 7524(c)(1), and 40 C.F.R. §§ 22.1(a)(2) and 22.4 of the Consolidated Rules of Practice.
4. Respondent is a "person" as defined under Section 302(e) of the CAA, 42 U.S.C § 7602(e), and a "manufacturer" as defined under Section 216(1) of the CAA, 42 U.S.C § 7550(1) and 40 C.F.R. § 1068.30.
5. Respondent imported engines through the Port of Norfolk, Virginia as described below:
 - a. On June 29, 2019, 28-partially complete model year 2019 Tata Cummins Ltd. (model 5364165) engines under Entry No. 231-87212688;
 - b. On August 24, 2019, 28-partially complete model year 2019 Tata Cummins Ltd. (model 5364165) engines under Entry No. 231-87250779;
 - c. On August 31, 2019, 28-partially complete model year 2019 Tata Cummins Ltd. (model 5364165) engines under Entry No. 231-87258061; and
 - d. On September 3, 2019, 28-partially complete model year 2019 Tata Cummins Ltd. (model 5364165) engines under Entry No. 231-87258046.

6. The engines described in Paragraph 5 above were not covered by a certificate of conformity, and were not exempt either as partially complete engines under 40 C.F.R. § 1068.260(c) or otherwise. As a result, by importing the engines described in Paragraph 5 above, EPA finds that Respondent committed 112 violations of Section 203(a)(1) of the CAA, 42 U.S.C § 7522(a)(1), and 40 C.F.R. Part 1068.101(a)(1).
7. After taking into account the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), EPA and Respondent agree that settlement of this matter for a penalty of **NINETY-FOUR THOUSAND FIFTY DOLLARS (\$94,050)** is in the public interest and has been calculated pursuant to EPA's June 21, 2019 *Recommendation to Approve Expedited Settlement Agreement National Program for Clean Air Act Vehicle and Engine Violations – Imports* policy.
8. Respondent certifies that it has paid the aforesaid penalty in the amount of **NINETY-FOUR THOUSAND FIFTY DOLLARS (\$94,050)** and that it has provided EPA with true and accurate documentation demonstrating completion of remedial measures to correct the violations alleged above and come into compliance with the CAA.
9. In signing this Agreement, the Respondent: admits the jurisdictional allegations set forth in this Agreement; neither admits nor denies the specific factual allegations and conclusions of law set forth in this Agreement, except as provided in the jurisdictional admission above; agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement; expressly waives its right to a hearing on any issue of law or fact set forth in this Agreement and any right to appeal the accompanying Final Order; consents to the issuance of the Agreement and agrees to comply with its terms; and bear its own costs and attorney's fees.
10. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Agreement are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
11. This Agreement and attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
12. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the

reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement, following its filing with the Regional Hearing Clerk.

13. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.
14. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind Cummins Power Generation, Inc.

For Respondent: Cummins Power Generation, Inc.

Name (print): Doug Surkel

Title (print): Plant Manager

Signature: 

Date 1/30/20

For Complainant: U.S. Environmental Protection Agency, Region III

After reviewing the Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

FEB 5 2020
Date


Karen Melvin, Director
Enforcement and Compliance Assurance Division

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REGION III
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Philadelphia, Pennsylvania 19103-2029**

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DOCKET NO.: CAA-03-2020-0048

FINAL ORDER

U.S. EPA-REGION 3-RHC
FILED-6FEB2020pm1:28

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency - Region III, and Respondent, Cummins Power Generation, Inc., have executed a document entitled “Expedited Settlement Agreement,” which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Expedited Settlement Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

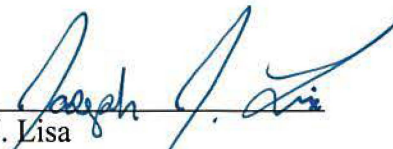
Based upon the representations of the parties in the attached Expedited Settlement Agreement, after taking into account the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), the penalty agreed to therein is in the public interest and has been calculated pursuant to EPA’s June 21, 2019 *Recommendation to Approve Expedited Settlement Agreement National Program for Clean Air Act Vehicle and Engine Violations – Imports* policy.

NOW, THEREFORE, PURSUANT TO Section 205(c)(1) of the Clean Air Act (“CAA”), as amended, 42 U.S.C § 7524(c)(1), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***NINETY-FOUR THOUSAND FIFTY DOLLARS (\$94,050)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Expedited Settlement Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of Title II of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7521 *et seq.*, and the regulations promulgated thereunder.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Feb. 6, 2020
Date



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III

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CERTIFICATE OF SERVICE

I certify that on FEB 06 2020, the original and one (1) copy of foregoing *Expedited Settlement Agreement (ESA) and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid,**

Samina M. Bharmal
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(Attorney for Respondent)

Copy served via **Hand Delivery or Inter-Office Mail to:**

Jennifer M. Abramson
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: FEB 06 2020 Bevin Esposto
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 700425100004 79032039