

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

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| |) | |
| In the Matter of: |) | ADMINISTRATIVE |
| |) | SETTLEMENT AGREEMENT |
| |) | AND AUDIT POLICY |
| |) | DETERMINATION |
| NISSAN FORKLIFT CORPORATION, |) | |
| NORTH AMERICA |) | AED/MSEB #7841 |
| |) | |
| Respondent. |) | |
| |) | |

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Nissan Forklift Corporation, North America (Respondent) having an office at 240 N. Prospect Street, Marengo, IL 60152.

Respondent

1. Nissan Motor Co., Ltd (Nissan Motor), a corporation organized and existing under the laws of Japan, manufactures forklift engines and is the certificate holder for Nissan engine families 7NSXB02.147C and 7NSXB2.548C.
2. Respondent, an Illinois corporation, is a wholly-owned subsidiary of Nissan Motor.

3. Respondent is an equipment manufacturer of Nissan forklift nonroad vehicles and imports and installs, among others, Nissan engines from families 7NSXB02.147C and 7NSXB2.548C into Nissan forklift vehicles.

Purpose

4. The purpose of this Agreement is to resolve 115 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 spark-ignition nonroad engine regulations, 40 C.F.R. Parts 1048 and 1068.

Statutory Authority

5. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. § 7522(a) and 7547(d), prohibit a manufacturer of a new nonroad engine from distributing into commerce, selling, offering for sale, introducing into commerce, or importing a new nonroad engine, unless the new nonroad engine (a) is built in conformity with and covered by a valid EPA-issued certificate of conformity (COC) and (b) bears the required EPA emissions information label.
6. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates § 7522(a) to a civil penalty for each motor vehicle or engine violation. The maximum civil penalty applicable to the alleged violations is \$32,500 per vehicle or engine based on the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the applicable regulations, 40 C.F.R. § 19.4, adjusting the statutory penalty of \$25,000 to

\$32,500 for violations committed between March 15, 2004 and January 12, 2009. These dates are relevant to the subject violations, which occurred in 2007.

Regulatory Authority

7. 40 C.F.R. § 1068.101(a)(1) prohibits the sale or introduction into commerce of any new large nonroad spark-ignition (LSI) engines regulated under 40 C.F.R. Part 1048 without the emission components required by the applicable COC.
8. 40 C.F.R. § 1048.1 defines LSI engines as nonroad spark-ignition engines with a maximum engine power above 19 kW (25 horsepower).
9. 40 C.F.R. § 1048.15 extends the prohibitions of Part 1068 to anyone who manufactures, imports, or installs any engines subject to Part 1048, or equipment containing these engines.
10. 40 C.F.R. § 1048.105(a)(2) specifies the evaporative emissions standards for all new LSI engines that are run on liquid volatile fuel (such as gasoline), starting in the 2007 model year, and requires that the manufacturer specify and use nonmetallic fuel hose meeting category 1 specifications of the Society of Automotive Engineers (SAE) standard J2260.

Background

11. Nissan Motor's application for its COC requires that, beginning in 2007, the nonmetallic fuel hose SAE 30R12 be used in engine families 7NSXB02.147C and 7NSXB2.548C.
12. On October 17, 2007, Respondent disclosed to EPA that 115 model year 2007 LSI engines (Subject Engines) in engine families 7NSXB02.147C and 7NSXB2.548C were

introduced into commerce with fuel hoses meeting the specifications of SAE standard 30R9.

13. Fuel hose SAE 30R9 is materially different from fuel hose SAE 30R12, and fuel hose SAE 30R9 was not listed in Nissan Motor's application for the COC for the Subject Engines.
14. Engines that are not built in all material respects as described in the application for the COC are not covered by such COC.
15. Respondent initiated a recall program to locate the Subject Engines and replace incorrect fuel hose SAE 30R9 with fuel hose SAE 30R12 at no charge to the owners.
16. Respondent has located and replaced the incorrect fuel hoses in 112 of the 115 Subject Engines as listed in the attachment to this Agreement; and
17. Respondent was unable to remediate three of the Subject Engines as listed in the attachment to this Agreement.

Violations

18. Respondent is liable for 115 separate violations of Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and the LSI regulations, 40 C.F.R. Parts 1048 and 1068, for the introduction into commerce of the Subject Engines for all the reasons disclosed by Respondent and summarized above in Paragraphs 11 through 17.

Audit Policy Determination

19. On April 11, 2000, EPA issued the Final Policy Statement entitled “Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations” 65 Fed. Reg. 19618 (Audit Policy).
20. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for regulated entities to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties; however, EPA retains discretion to recover any economic benefit gained as a result of any non-compliance.
21. Where the disclosing party establishes that it satisfies all of the conditions set forth in the Audit Policy, EPA will not seek gravity-based civil penalties. Where the disclosing party establishes that it satisfies all of the conditions except for the first condition, systematic discovery of the violations, the disclosing party is eligible for a 75% reduction of the gravity-based civil penalties.
22. Upon consideration of relevant information regarding Respondent’s disclosed violations, EPA concludes that Respondent has satisfied all of the conditions set forth in the Audit Policy except for systematic discovery of the violations.

Civil Penalty

23. For the disclosed violations of the CAA and the regulations promulgated thereunder at 40 C.F.R. Parts 1048 and 1068 arising from the introduction into commerce of the Subject

Engines, Respondent shall pay to the United States a total of \$74,000.00 within 30 days of the date of 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 Paragraphs 25 and 26 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 # 7841

Respondent may also pay online at www.pay.gov. From the "Search Public Form" field, enter "SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the "SFO Form Number 1.1."

Notice

24. A copy of the payment check(s) and the transmittal letter(s) shall be faxed to Robert G. Polin at (202) 564-0015 no later than 24 hours after mailing the payment. All correspondence to EPA concerning this Agreement shall be sent to:

Regular Mail

Robert G. Polin
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7841

Courier Service

Robert G. Polin
U.S. Environmental Protection Agency
Ariel Rios South, Room 1117A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attn: AED/MSEB-7841

Stipulated Penalties

25. Respondent must pay a penalty of \$500 per day for failure to timely pay the penalty pursuant to Paragraph 23 of this Agreement or provide proof thereof pursuant to Paragraph 24 of this Agreement.
26. Stipulated penalties under Paragraph 25 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. Stipulated penalties shall be paid in accordance with Paragraph 23 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Robert G. Polin at the address specified in Paragraph 24 of this Agreement.

General Provisions

27. This Agreement becomes effective upon the date executed by EPA (Effective Date of the Agreement), at which time an electronic copy will be returned to Respondent.
28. Respondent hereby represents that the individual or individuals 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 and its agents, assigns, and successors.
29. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default, or failure to comply with any term 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 CAA, 42 U.S.C. § 7524, commence an action to enforce this Agreement, recover the civil penalty pursuant to Section 205 of the CAA, or 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 violations of the CAA and 40 C.F.R. Parts 1048 and 1068. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, any applicable statute of limitation, or other provisions limiting actions as a result of passage of time. Respondent acknowledges that its tax identification numbers may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement. *See* 31 U.S.C. § 7701.

30. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
31. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
32. 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.

Effect of Agreement

33. Upon completion of the terms of this Agreement, the violations described in this Agreement shall be deemed resolved by EPA. 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.

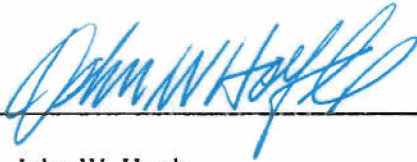
The following agree to the terms of this Agreement:

Settlement Agreement

*In the Matter of Nissan Motor Co., Ltd. and Nissan Forklift Corporation, North America
AED/MSEB - 7841*

Nissan Forklift Corporation, North America

By: _____



Date: _____



Typed name: John W. Hoyle

Typed title: Vice President, Corporate Administration

Federal Tax Identification Number: 13-3008567

Settlement Agreement

*In the Matter of Nissan Motor Co., Ltd. and Nissan Forklift Corporation, North America
AED/MSEB - 7841*

United States Environmental Protection Agency

By: Matthew W. Thompson Date: 5/7/10
Phillip E. Brooks, Director
Air Enforcement Division