

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

In the Matter of:)	
B. B. C. Investments, Inc.)	ADMINISTRATIVE
Respondent.)	SETTLEMENT AGREEMENT
)	AED/MSEB # 7112

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and B. B. C. Investments, Inc. (Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 89.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to provide for resolution and remediation of any and all claims by EPA under the Act and 40 C.F.R. Part 89 arising out of the importation of 113 generators containing the nonroad engines described in Paragraph 8 of this Agreement (Subject Engines), while ensuring that prior violations are identified and resolved, and future violations are avoided.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* as used in this Agreement means Respondent's importation of the Subject Engines and any civil liability that may apply to such violation.
 - b. *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 Act.

Issuance of the Certificate of Conformity permits production 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.

- c. *Certified engine*: a nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable dates of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
- e. *Random sample*: a sample drawn from a population so that each member of the population has an equal chance to be drawn.
- f. *Applicable regulation and dates*: 40 C.F.R. Part 89, is applicable to compression-ignition nonroad engines built after the applicability dates in 40 C.F.R. Part 89.

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 nonroad engines, including engines contained in nonroad equipment or nonroad vehicles, unless such engine or vehicle is covered by a Certificate of Conformity issued and in effect.
- 4. C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
- 5. C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad engine manufactured after the applicable effective

date of the regulations, unless a label 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 a person acting for, and under the control of such person.
7. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.

Background

8. On March 11, 2005, Respondent imported 113 generators containing nonroad compression ignition (diesel) engines with serial numbers CG8501-6573 through CG8501-6685, inclusive, (Subject Engines) at Port Everglades, Florida.
9. On May 6, 2005, U. S. Customs and Border Protection (Customs) seized the equipment containing the Subject Engines described in Paragraph 8, above, at Port Everglades, Florida, where it is presently being held.
10. EPA has subsequently determined that Respondent is the importer of the Subject Engines and the Subject Engines are uncertified.
11. The Subject Engines are subject to the requirements of 40 C.F.R. Parts 89.
12. Based on the above, EPA has determined that Respondent is liable for 113 violations of Section 203(a) and 213(d) of the Clean Air Act, and 40 C.F.R. Parts 89.1003(a)(1)(ii).
13. Respondent asserts that this is its first importation of nonroad engines since January 1, 1996.

Terms of Agreement

14. Within 30 days of the date this Agreement is executed by EPA (the date of this Agreement), or such longer period of time if required by Customs, Respondent shall permanently export the Subject Engines. This exportation shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the Subject Engines were exported. Exportation of the Subject Engines shall be to any country other than Canada or Mexico.
15. EPA has determined to reduce the civil penalty for the 113 violations identified in Paragraph 12 of this Agreement to \$ 4,600, provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$4,600 to the United States of America within 30 days from the date of this Agreement (the 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
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 7112
16. A copy of the check shall be sent to Angela E. Fitzgerald via facsimile at telephone number 202/564-0015 or via courier delivery at the address specified in Paragraph 20 of this Agreement.
17. Respondent agrees to conduct an audit of Respondent's stock and records, within 90 days from the date of this Agreement, of all nonroad engines and equipment powered by nonroad engines that were imported by Respondent during the 5 years prior to date of this

Agreement. The audit shall include but is not limited to any generator sets containing gasoline engines imported on March 11, 2005 and importations of equipment powered by nonroad engines that were classified as being "for export only." The audit shall include an evaluation of all records available to Respondents after a diligent search. Respondent shall, within 120 days from the date of this Agreement, submit a report on the audit to EPA, which includes at a minimum the following information for each nonroad engine and piece of equipment powered by a nonroad engine that was imported by Respondent:

- a. Engine manufacturer name, address and telephone number;
- b. Type of engine (spark or compression);
- c. Type of vehicle or equipment (generator, tractor, pump, etc.);
- d. Engine serial number;
- e. Date of manufacture of the engine;
- f. Horsepower rating of the engine;
- g. A statement that the engine was or was not manufactured under a Certificate of Conformity, and, if certified, the engine family name, date of the certificate and certificate number;
- h. Date of importation;
- i. A copy of the EPA Form 3520-21 for each engine; and
- j. An original certification signed by an officer of the corporation or owner or principal of the business that the submitted information is true, complete and accurate.

The Report shall be submitted in the form of a signed and dated written summary with copies of original supporting documents attached.

18. Respondent agrees to locate and physically inspect 10% of the certified spark ignition and compression ignition nonroad engines imported by the Respondent during the five years

prior to date of Agreement, for the purpose of determining whether an EPA emission label is present, legible, and readily visible. The engines in the 10% sample shall be chosen at random. To the extent that these samples include equipment that, after diligent search and negotiation, Respondent is unable to locate or otherwise gain access to, Respondent shall randomly pick another engine for inclusion in such sample. Each engine included in the initial sample, and any subsequent samples shall be accompanied by the attached Affirmation of Inspection of EPA Emissions Label, with clear and legible digital pictures of same. The results of the inspection shall be submitted to EPA within 90 days from the date of this Agreement.

19. Within 90 days of the date of this Agreement, Respondent shall provide EPA with a detailed plan reasonably calculated to ensure that all nonroad engines imported after the date of this Agreement into the United States by Respondent have proper EPA emission information labels affixed to each engine, and are imported in a manner that complies with all other applicable regulations, including Parts 89.
20. Responses to Paragraphs 17-19 shall be sent via courier delivery to Angela E. Fitzgerald, at the following address:

Angela E. Fitzgerald, Attorney
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
1200 Pennsylvania Avenue, NW
Ariel Rios South, (1117A)
Washington, DC 20004

General Provisions

21. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.

22. Respondent hereby represents 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.
23. Notwithstanding any other provisions of this Agreement, upon Respondent's failure to timely perform pursuant to Paragraphs 14-20 of this Agreement, or default of 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.
24. Violations disclosed to EPA as a result of this Agreement may fall under EPA's Self-Disclosure Policy "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," see 65 Fed. Reg. 19,618 (April 11, 2000). It is anticipated that violations discovered in the course of the audit and inspection required under Paragraphs 17-18 of this Agreement may be deemed to have been systematically and voluntarily discovered independent of a government or third party plaintiff. It is anticipated that violations reported in the audit report may be deemed to have been disclosed promptly, notwithstanding the passage of more than 21 days from their actual discovery, provided that Respondent delivers the audit report to EPA on or before the time provided in this Agreement (or any extension thereof).

25. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representations to EPA and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties


26. 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 penalty, or provide proof thereof, pursuant to Paragraphs 15 & 16, \$250.00 per day;
 - b. For failure to export the Subject Engines, and provide proof thereof, pursuant to Paragraph 14, \$250.00 per day;
 - c. For failure to conduct the audit and inspection required by Paragraph 17 & 18, and to submit to EPA, in writing, the results of this audit, \$250.00 per day; and
 - d. For failure to submit to EPA, in writing, a plan to prevent further violations, pursuant to Paragraph 19, \$250.00 per day.
27. All stipulated penalties under Paragraph 26 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 accordance with Paragraph 15 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 the Agreement is based.

Enforcement

28. Upon completion of the terms of this 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 law or regulations.

The following agree to the terms of this Agreement:

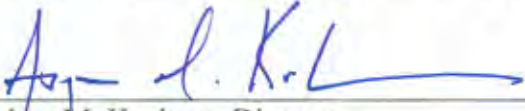
BBC Investments

By: 
(Typed name) STEVEN SAILER
(Typed title) PRESIDENT

7/14/05
Date

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United States Environmental Protection Agency

by:  _____

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

Date: 7/22/05

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Administrative Settlement Agreement

AFFIRMATION OF INSPECTION
OF EPA EMISSION LABEL

I, _____ hereby attest and affirm that I personally inspected engine model _____, bearing serial number(s) _____ and found the EPA emission label was:

1. Attached so that it cannot be removed without being destroyed or defaced:
(Yes _____/No _____)
2. Durable and readable for the entire engine life:
(Yes _____/No _____)
3. Secured on a part of the engine required for normal engine operation which does not normally require replacement during the life of the engine:
(Yes _____/No _____)
4. Written in English:
(Yes _____/No _____)
5. Located where it is readily visible to an average person after the engine is installed in a piece of equipment:
(Yes _____/No _____)

I hereby attest and affirm that the foregoing information is true and correct.

In witness whereof, I have hereunto set my hand on: Date: _____

Signature

Name and Title:
Address:

Phone number:
Model:
Build Date:
EPA Family: