



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

In the Matter of:

Brookville Equipment Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.  
AED/MSEB #8191

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Brookville Equipment Corporation (Respondent) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations by Respondent.
2. Respondent in this matter is Brookville Equipment Corporation. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania with an office at 175 Evans Street, Brookville, PA 15825. Respondent manufactures equipment of various kinds, including diesel-electric passenger locomotives.
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) and 213(d) of the CAA, 42 U.S.C. §§ 7524(c) 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. The Alleged Violations of Law, stated below, regard freshly manufactured locomotives for which 40 C.F.R. Part 1033 sets exhaust emission standards and 40 C.F.R. Part 1068 sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.
5. Model year 2012–2014 locomotives must satisfy Tier 3 air pollutant exhaust emission standards in 40 C.F.R. Part 1033, Subpart B. These exhaust emission standards impose limits on emissions of hydrocarbons, oxides of nitrogen, carbon monoxide, and particulate matter. 40 C.F.R. § 1033.101.
6. The EPA's certification program is designed to ensure that every locomotive introduced into United States commerce conforms in all material respects to a design that has been approved by the EPA. The EPA approves locomotives by issuing certificates of conformity (COCs).
7. To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and for each model year that it intends to introduce into United States commerce. 40 C.F.R. Part 1033, Subpart C (outlining emission certification requirements).
8. The COC application must describe the locomotives' specifications and demonstrate with test data that its exhaust emissions satisfy applicable emission standards. 40 C.F.R. § 1033.205.

9. Once issued, a COC covers only those locomotives produced during the period of time specified in the application for that COC, and covers no engine produced before the date that the manufacturer submitted the application for that COC nor any engine produced after December 31 of the calendar year for which the model year is named. 40 C.F.R. §§ 1033.201(a), 1068.103(a), (c), (d).
10. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a new locomotive, unless it is covered by a COC or is otherwise exempt from certification requirements. 40 C.F.R. § 1068.101(a)(1).
11. A person who violates 40 C.F.R. § 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each violation. 40 C.F.R. § 1068.101(a)(1).

### **Factual Background**

12. On or about February 2011, Respondent entered a contract to manufacture diesel-electric passenger locomotives to sell to the South Florida Regional Transportation Authority (SFRTA).
13. Respondent manufactured 12 diesel-electric passenger locomotives (Subject Locomotives) under this contract. The Subject Locomotives were fully assembled by May 2014.
14. Respondent delivered 11 of the 12 Subject Locomotives to SFRTA between September 2013 and May 2014. SFRTA received them, and conditionally accepted them for on-site inspection and testing pursuant to the contract.

15. In February and March 2014, for the first time, Respondent submitted to the EPA's Office of Transportation and Air Quality (OTAQ) an application for a model year 2014 COC to cover the Subject Locomotives. During its review of this application, OTAQ requested that Respondent provide additional information in support of its application. Respondent provided some but not all of the requested information in April and May 2014. Respondent provided the remainder of the requested information in December 2014. In December 2014, OTAQ requested more information necessary for its review, and Respondent provided this information in December 2014 and January 2015. On December 31, 2014, the COC application was incomplete and OTAQ had not issued the requested COC. Since December 31, 2014, consistent with law and guidance, OTAQ has not issued any model year 2014 COCs.
16. On or about December 18, 2014, in a meeting between OTAQ and Respondent concerning the pending application, Respondent for the first time informed the EPA that 11 of the 12 Subject Locomotives had been delivered to SFRTA. Prior to December 18, 2014, Respondent had not informed anyone at the EPA that any Subject Locomotives had been delivered.
17. Respondent has not delivered the twelfth and final Subject Locomotive to SFRTA as of the time of its signature of this Agreement. Respondent intends to deliver this last Subject Locomotive, but agreed with the EPA that it would first resolve the Alleged Violations of Law and deliver it consistent with this Agreement.
18. Respondent has applied supplemental labels to each Subject Locomotive. Each label is adjacent to the existing emission control information labels that are required by 40 C.F.R. § 1033.135, will be durable throughout the Subject Engines' useful life, and cannot be



removed without being destroyed or defaced. Each label states: “This locomotive is not EPA certified, but is legal for sale pursuant to the terms of a settlement agreement with the US EPA, Docket AED/MSEB #8191. Brookville Equipment Corporation has committed to perform any and all requirements under the Clean Air Act and applicable regulations as though it was a certified model year 2014 locomotive.”

### **Alleged Violations of Law**

19. Respondent violated 40 C.F.R. § 1068.101(a)(1) when it sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) the 12 Subject Locomotives. The Subject Locomotives are not covered by a COC because the EPA never issued the COC for which Respondent applied, and because Respondent produced the majority of the Subject Locomotives before the date that Respondent submitted the application for that COC.

### **Terms of Agreement**

20. 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 to any conditions specified in this Agreement;

- (f) 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;
- (g) 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;
- (h) 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 the EPA's unfettered discretion;
- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- (j) 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;
- (k) 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);
- (l) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

- (m) 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).
21. 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 the 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.
22. Respondent agrees to pay to the United States a civil penalty of \$202,000 (the Civil Penalty).
23. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement. The EPA agrees to provide to Respondent at the email address provided on Respondent's signature page, below, a copy of the executed Agreement within 5 calendar days of that date.
24. 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 #8191"; and
  - (c) Within 24 hours of payment, email proof of payment to Evan Belser at [belser.evan@epa.gov](mailto:belser.evan@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 #8191").



25. Respondent commits to perform any and all responsibilities it would otherwise have had if the Subject Locomotives had been covered by an EPA-issued COC. This includes all post-certification compliance obligations required of the certifying manufacturer that are specified in 40 C.F.R. Parts 1033 and 1068, including requirements concerning in-use testing, defect reporting, warranty, remanufacturing, and recordkeeping and reporting.
26. Respondent agrees to perform Production Line Testing according to 40 C.F.R. Part 1033, Subpart D on one of the Subject Locomotives that was not already tested for emissions. Respondent agrees to perform this testing, and submit the report required by 40 C.F.R. § 1033.320(e) within 120 calendar days following the date that the EPA signs this Agreement. Respondent agrees to simultaneously send a copy of the report to Evan Belser at [belser.evan@epa.gov](mailto:belser.evan@epa.gov).
27. Respondent agrees to pay the following stipulated penalties to the EPA in the manner specified by Paragraph 24, not more than 30 days after receipt of written demand by the EPA for such penalties:
  - (a) \$3,000 per day if and when it fails to timely pay the Civil Penalty, or provide proof thereof, in accordance with Paragraph 24; and
  - (b) \$1,000 per day if and when it fails to timely complete the terms required by Paragraph 26.

#### **Effect of Agreement**

28. 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 pay the Civil Penalty required by Paragraphs 22–24 or pay any and all stipulated penalties demanded under Paragraph 27(a); or 180 days after the date that the EPA signs this Agreement if on that date Respondent has failed to complete the non-penalty terms of settlement required by Paragraph 26 or pay any and all stipulated penalties demanded under Paragraph 27(b). 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.

29. 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. § 7413(d)(5));
  - (b) refer the debt to a credit reporting agency or a collection agency (see 42 U.S.C. § 7413(d)(5), 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).

30. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes.  
28 U.S.C. § 162(f).
31. 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.
32. 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.
33. 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 Brookville Equipment Corporation and thereby enter Brookville Equipment Corporation into this Agreement and bind Brookville Equipment Corporation to this Agreement.

  
Signature \_\_\_\_\_ Date 13 July 2015

Printed Name: Marion H. Van Fosson

Title: President

Address: 175 Evans Street/PO Box 130, Brookville, PA 15825

Respondent's Federal Tax Identification Number: 251259897

Email address for receipt of copy of Agreement: mvanfosson@brookvillecorp.com




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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

July 30, 2015  
Date