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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:	)	
Bryan's Farm and Industrial Supply Ltd.	)	**MSEB AED # 7218**
Respondent	)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Bryan's Farm and Industrial Supply Ltd. (Respondent), of R.R.#2, Highway #6, Puslinch, Ontario, Canada N0B 2J0, (domestic address c/o Norman Jensen, Inc., 181 Cooper Avenue, Tonawanda, NY, 14150, regarding compliance by Respondent with the requirements of section 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder at 40 C.F.R. Part 89.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Part 89 arising out of the importation on or about November 2, 2006 of nonroad engines contained in six generators and one water pump described in Attachment 1, and to ensure that future violations are avoided.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:

   a. *Certified engine*: A "certified engine" is a nonroad engine that was built after the applicable effective dates of the regulations at Part 89 and that is covered by a Certificate of Conformity.

b. *Dates of the Applicable Regulations*: The term "dates of the applicable regulations" for a nonroad compression ignition engine means the date after which the certification requirement applies to the engine, as defined in Table 2 of 40 C.F.R. § 89.112. For nonroad spark-ignition engines rated at or below 19 kW, the applicable effective date is January 1, 1997.

c. *Uncertified engine*: An "uncertified engine" is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.

d. *This matter*: As used in this Agreement, "this matter" means the Respondent's importation of the Subject Engines identified in Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 89.

e. *Certificate of Conformity*: A "Certificate of Conformity" means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 for compression ignition engines after EPA has determined that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Part 89 and the Clean Air Act. Issuance of the Certificate of Conformity permits production of engines built in accordance with the manufacturer's application provided that the production is within the period during which the Certificate of Conformity is valid.

f. *Subject engines*: The term "Subject Engines" means the engines contained in the equipment listed in Attachment I.

Statutory and Regulatory Authority:

3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7542(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into

commerce, or the importation of any nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.

4. 40 C.F.R. §§ 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad compression ignition engine manufactured after the applicable effective date of the regulations unless such engine is a certified engine.

5. 40 C.F.R. §§ 89.2 defines a nonroad vehicle or equipment manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person.

6. 40 C.F.R. §§ 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified compression ignition engine, a permanent and legible label which identifies the nonroad engine and provides the information specified in that section, including a statement that the engine is a certified engine. The label must be legible, eadily visible to the average person after the engine is installed in the equipment, and must not be removable intact.

7. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless an emissions label which complies with 40 C.F.R. §§ 89.110 is affixed to the engine.

Background

8. On December 6, 2006, U. S. Customs and Border Protection (CPB) seized the nonroad equipment listed in Attachment I at the Port of Buffalo, New York.

9. Respondent is the importer of the nonroad equipment containing the Subject Engines.

10. The Subject Engines and nonroad equipment were manufactured after the Dates of the Applicable Regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment.

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11. The Subject Engines in equipment listed in rows 1 and 2 of Attachment I are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §§ 89.110.

12. The Subject Engines listed in rows 3 through 7 of Attachment I were manufactured under a certificate of conformity, but bear labels that do not comply with 40 C.F.R. § 89.110(a) and (b).

Terms of Agreement

13. Within 30 days of the date of this Agreement, or within 30 days of the date CPB releases the Subject Engines and Subject Equipment for export, whichever is later, Respondent shall submit proof that each of the Subject Engines has been exported to a location outside of North and Central America including the Caribbean.

14. All submissions to EPA shall be sent to the following address:

David Alexander
U.S. EPA, OECA/AED (mailcode 2242A)
1200 Pennsylvania Ave NW (Rm. 1111A)
Washington, DC 20460-0001
facsimile: (202) 564-0069

15. Respondent shall pay to the United States a civil penalty of twelve hundred dollars ($1,200) within 30 calendar days 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. 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 # 7218

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 14 or faxed to (202) 564-0069 to the attention of David Alexander. Such check shall be identified with the case number and Respondent's name.

General Provisions

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

17. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.

18. Notwithstanding any other provision of this agreement, upon Respondent's failure to perform, 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 Part 89. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.

19. The Effect of Settlement described in Paragraph 22 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Attachment I, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

20. 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 timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 15, $400 per day.

    b. For failure to timely export the Subject Engines, or provide proof of such

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exportation, pursuant to Paragraph 13, $500 per day.

21. All stipulated penalties under Paragraph 20 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 the 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.

Effect of Agreement

22. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

Bryan's Farm and Industrial Supply Ltd.

By: Ken Lillycrop

Ken Lillycrop, President

April-17-2007

Date

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U.S. Environmental Protection Agency
In the Matter of Bryan's Farm and Industrial Supply Ltd.

AED/MSEB # 7218

By: _____ 4.19.07

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

ATTACHMENT I

In the Matter of Bryan's Farm and Industrial Supply Ltd.

	Equipment Description	Serial #	Engine Family	Equipment Model
1 2	Diesel Generator	0509137 1205066556	none	Everlasting DG5500S
3 4 5 6	Diesel Generator	06070487 06070484 06070486 06070483	7UPML.418F86 7UPML.418F86 7UPML.418F86 7UPML.418F86	Everlasting DG5500S
7	Diesel Water Pump	06050210	7UPML.418F86	Everlasting UDP100

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

MODIFICATION OF ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:	)
Bryan's Farm and Industrial Supply Ltd.	) MSEB AED # 7218
Respondent	)

This Modification of Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Bryan's Farm and Industrial Supply Ltd. (Respondent), of R.R.#2, Highway #6, Puslinch, Ontario, Canada N0B 2J0, (domestic address c/o Norman Jensen, Inc., 181 Cooper Avenue, Tonawanda, NY, 14150), regarding compliance by Respondent with the requirements of section 203 of the Clean Air Act (Act), 42 U.S.C. §§7522 and 7547, and the regulations promulgated thereunder at 40 C.F. R. Part 89.

Purpose:

1. The purpose of this Modification of Administrative Settlement Agreement (Modification) is to amend Paragraph 13 of the Administrative Settlement Agreement (Agreement) executed between the EPA and Respondent on April 19, 2007 to permit Respondent to destroy the non-road engines contained in six generators and one water pump described in Attachment I of the Agreement.

Definitions:

2. For the purposes of this Modification, the definitions in the Agreement shall apply.

Statutory and Regulatory Authority:

3. Sections 203(a) and 213(d) of the Clean Air 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 non-road vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.
4. The regulations at 40 C.F. R. Part 89 described in the Agreement also apply to the

Modification.

Background:

5. On April 19, 2007 the EPA ratified the Agreement with Respondent for violation of Sections 203(a) and 213(d) of the Clean Air Act and the regulations at 40 C.F.R. Part 89.
6. Paragraph 13 of the Agreement required the Subject Engines and the equipment containing them to be exported to a location outside of North and Central America including the Caribbean.
7. After the Agreement was executed, Respondent requested permission to destroy the Subject Engines and equipment instead of exporting them.

Terms of Agreement:

8. Within 60 days of the date of this Modification, Respondent shall arrange for the destruction of the Subject Engines and equipment in their entirety.
9. Destruction of each of the Subject Engines and equipment shall be deemed complete only when the engine has been rendered useless by causing multiple breaks in the water jacket of the head, and by causing multiple breaks in the water jacket of the block, in such a manner, and to such an extent, that it cannot be thereafter made to retain coolant regardless of whether repair is attempted.
10. Within 70 days of the date of this Modification, Respondent shall submit proof of the destruction of the Subject Engines and equipment in the manner described in Paragraph 11 and 12 below to EPA.
11. Proof of destruction of Subject Engines and Subject Equipment shall be in the form of an attestation by an authorized employee of CBP.
12. All submissions to EPA shall be sent to the following address:

    David Alexander
    U.S. EPA, OECA/AED (mailcode 2242A)
    1200 Pennsylvania Ave NW (Rm. 1111A)
    Washington, DC 20460-0001
    facsimile: (202) 564-0069

13. All other terms in the Agreement shall apply other than Paragraphs 13 and 20(b).

General Provisions:

14. The effective date of this Modification is the date that EPA executes this Modification

and provides a copy of the executed Modification to the Respondent.

15. Respondent hereby represents that the individual or individuals executing this Modification on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.

16. Nothwithstanding any other provision of this Modification, upon Respondent's failure to perform, or default of or failure to comply with any terms of this Modification, 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, EOA may proceed in an action based on the original claim of violation of the Act and Part 89. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.

17. The Effect of Settlement described in Paragraph 22 of this Modification is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Modification, including but not limited to representations regarding importations contained in Attachment I of the Agreement, and the prompt and complete remediation of any violations in accordance with this Modification.

Stipulated Penalties:

18. For failure to comply with the terms of this Modification on a timely basis, Respondent shall pay stipulated penalties to the United States as follows:

    a. For failure to timely destroy the Subject Engines and equipment, or provide proof of such destruction pursuant to Paragraphs 8 through 12 of this Modification, $500 per day.

19. All other stipulated penalties in the Agreement shall apply, except that Subparagraph 18(a) of this Modification replaces Subparagraph 20(b) of the Agreement. All stipulated penalties under Paragraph 18 of this Modification 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Modification. All stipulated penalties shall be paid in accordance with Paragraph 21 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 Modification or of the statutes or regulations upon which the Modification of Agreement is based.

21. Respondent agrees to pay the amount of any stipulated penalties 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/SMEB # 7218

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 12 of this Modification or faxed to (202) 564-0069 to the attention of David Alexander. Such check shall be identified with the case number and Respondent's name.

Effect of Agreement:

22. Upon completion of the terms of the Agreement and this Modification, the alleged violations described in the Agreement shall be considered resolved.

The following agree to the terms of this Modification:

Bryan's Farm and Industrial Supply Ltd.

By: _____ June-27-2007

Ken Lillycrop, President Date

U.S. Environmental Protection Agency
In the Matter of Bryan's Farm and Industrial Supply Ltd. (Modidification of Administrative Settlement Agreement)

AED/MSEB # 7218

By: _____ 8·1·07
Date

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