



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 15 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frank Flowers
President
General Engines Company, Inc.
14893 Highway 27 South
Lake Wales, Florida 33853

Subject: Consent Agreement and Final Order
RCRA Docket No.: RCRA-04-2008-4020(b)
General Engines Company, Inc.
EPA ID Number: FLD 982 083 388

Dear Mr. Flowers:

Enclosed is a copy of the executed above referenced Consent Agreement and Final Order (CA/FO). In addition, this letter serves to inform you that the U. S. Environmental Protection Agency (EPA) received the penalty payment and the certification of compliance as required in the CA/FO.

If you have any questions or comments, please contact Javier Garcia of my staff, at (404) 562-8616, or me at (404) 562-8976.

Sincerely,

A handwritten signature in cursive script, appearing to read "Caroline Y. F. Robinson".

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and
Compliance Branch
RCRA Division

Enclosure

cc: Tim Bahr, Florida Department of Environmental Protection
Jim Dregne, FL DEP Southwest District

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2008-4020(b)
)	
General Engines Company, Inc.)	Proceeding under Section 3008(a)
14893 Highway 27 South)	of the Resource Conservation and
Lake Wales, FL 33853)	Recovery Act, 42 U.S.C. § 6928(a)
)	
EPA ID No.: FLD 982 083 388)	
)	
Respondent.)	
_____)	

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, et seq., and the Florida Statutes (Fla. Stat.), Part IV Resource Recovery and Management, Section 403-701 et seq. (LEXIS 2006). This action is seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270; and Fla. Stat. Sections 403-701 et seq., and regulations promulgated pursuant thereto and set forth at the Florida Administrative Code Annotated Rules (Fla. Admin. Code Ann. r.) 62-730 et seq.
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).

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5. Respondent is General Engines Company, Inc. (“GECI”) a corporation incorporated under the laws of the State of Florida. Respondent operates a facility at 14893 Highway 27 South, Lake Wells, Florida.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 12, 1985, the State of Florida (the State) received final authorization from EPA to enforce certain portions of the State hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in Fla. Stat. § 403.702 *et seq.* and Fla. Admin. Code Ann. r. 62-730 *et seq.*
7. Although EPA has granted the State of Florida authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State of Florida.
8. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Florida before issuance of this CA/FO.

IV. EPA ALLEGATIONS AND DETERMINATIONS

9. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10, as adopted by reference in Fla. Admin. Code Ann. r. 62-730.020.
10. Respondent is the "owner" and "operator" of a “facility” located at 14893 Highway 27 South, Lake Wells, Florida as those terms are defined in 40 C.F.R. § 260.10, as adopted by reference in Fla. Admin. Code Ann. r. 62-730.020.
11. Respondent generates hazardous wastes.
12. Storage of hazardous waste generated at the facility is subject to 40 C.F.R. Part 262, as adopted by reference, in pertinent part, in Fla. Admin. Code Ann. r. 62-730.160.
13. On January 5, 2004, representatives of Florida Department of Environmental Protection (FDEP) performed a RCRA compliance evaluation inspection (CEI) of the Facility and found several hazardous waste management violations, including unlabeled and open hazardous waste containers.
14. On February 20, 2008, representatives of the EPA and the FDEP performed a RCRA CEI of the Facility, and noted the following:
 - a. The container used for the accumulation of still bottoms was neither properly closed nor labeled.

- b. The Facility failed to conduct weekly inspections of the container storage area for over a year.
15. Pursuant to 40 C.F.R. § 262.34(c)(1) and F.A.C. Chapter 62-730.160, a generator can accumulate as much as 55-gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, without a permit or interim status, provided that the generator complies with, among other things, 40 C.F.R. § 265.173(a) and F.A.C. Chapter 62-730.160, which require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
 16. Pursuant to 40 C.F.R. § 262.34(c)(1)(ii) and F.A.C. Chapter 62-730.160, a generator can accumulate as much as 55-gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, without a permit or interim status, provided that the generator, among other things, mark the container with the words “Hazardous Waste” or with other words that identify the contents of the container.
 17. Pursuant to 40 C.F.R. § 262.34(d)(2) and F.A.C. 62-730.160, a small quantity hazardous waste generator may accumulate hazardous waste on-site for 180-days or less without a permit or interim status provided the facility inspects the containers storage area every week, as required in 40 C.F.R. § 265.174.
 18. Respondent was in violation of 40 C.F.R. § 262.34(c)(1) and F.A.C. Chapter 62-730.160, by failing to maintain a container holding hazardous waste properly closed, except when it is necessary to add or remove waste.
 19. Respondent was in violation of 40 C.F.R. § 262.34(c)(1)(ii) and F.A.C. Chapter 62-730.160 by failing to label or mark a hazardous waste accumulation container with the words “Hazardous Waste” or with other words that identify the contents of the container.
 20. Respondent was in violation of 40 C.F.R. § 262.34(d)(2) and F.A.C. 62-730.160, by failing to inspect the hazardous waste containers storage area every week.
 21. EPA therefore alleges that Respondent has violated Section 3005 of RCRA, 42 U.S.C. § 6925, and the corresponding section of the Fla. Stat., Section 403-701 et seq.

V. TERMS OF AGREEMENT

Based on the foregoing Allegations and Determinations, the parties agree to the following:

22. Within thirty (30) calendar days of receipt of a final copy of this CA/FO, Respondent shall submit to EPA a certification signed by a responsible corporate representative stating that the facility generates less than 1,000 kilograms per month of hazardous wastes and that it is in compliance with the standards in 40 C.F.R. Chapter 262, as applicable to Small Quantity Hazardous Waste Generators. This certification shall be as follows:

“I certify under penalty of law, to the best of my knowledge and belief, that General Engines Company, Inc. located at 114893 Highway 27 South, Lake Wells, Florida, which was the subject of Consent Agreement and Final Order, Docket Number: RCRA-04-2008-4020(b) (CA/FO) is in compliance with all RCRA regulations applicable to generators that generate between 100 and 1,000 kilograms of hazardous waste per month.

This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

23. The certifications required to be submitted under this CA/FO shall be mailed to:

Frank Ney, Acting Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and to:

Tim Bahr, Administrator, Hazardous Waste Programs
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

24. For the purpose of this CA/FO, Respondent admits the jurisdictional allegations set out above.
25. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent neither admits nor denies the factual allegations contained in this CA/FO.
26. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations contained herein, and its right to appeal this CA/FO.
27. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the violations alleged herein, on the basis of any issue related to the Paperwork Reduction Act.
28. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.

29. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
30. The parties agree that they will pay their own costs and attorney's fees.
31. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.

VI. CIVIL PENALTY

32. Respondent consents to the payment of a civil penalty in the amount of ONE THOUSAND NINE HUNDRED SIXTEEN DOLLARS (\$1,916) within thirty (30) calendar days of the effective date of this CA/FO.
33. Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. The facility name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Financial Center
P.O. Box 979077
St. Louis, Missouri 631971-9000

Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

Frank Ney, Acting Chief
South Section - RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

34. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. See 40 C.F.R. § 13.11 (b) and (c). Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within thirty (30) calendar days after the effective date of this CA/FO. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar day period over which an unpaid balance remains.
 - c. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
35. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 28 U.S.C. § 162(f).

VII. PARTIES BOUND

36. This CA/FO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, and agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
37. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
38. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to this CA/FO.

VIII. RESERVATION OF RIGHTS

39. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO.
40. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

41. Notwithstanding any other provisions of the CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.
42. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
43. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
44. The provisions of this CA/FO shall be deemed satisfied upon a determination by Complainant that Respondent has fully implemented the actions required in this CA/FO.

IX. OTHER APPLICABLE LAWS

45. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

46. A copy of any legal documents that Respondent files in this action should be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Mita Ghosh, Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9568

47. A copy of any documents that Complainant files in this action shall be sent to the following person who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Frank Flowers, President
General Engines Company, Inc.
14893 Highway 27 South
Lake Wales, FL 33853

XI. SEVERABILITY

48. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or


circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

49. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

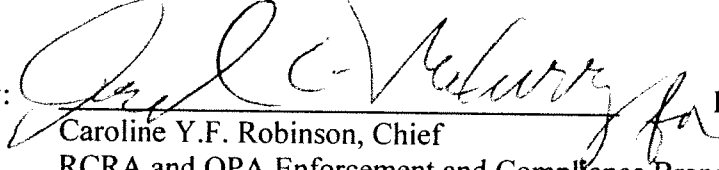
AGREED AND CONSENTED TO:

General Engines Company, Inc.

By: 
Frank Flowers
President

Dated: 8/29/08

U.S. Environmental Protection Agency

By: 
Caroline Y.F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Dated: 9/3/08

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

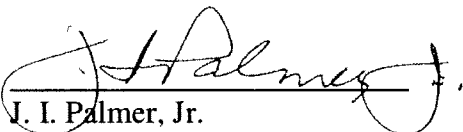
IN THE MATTER OF:)	Docket Number: RCRA-04-2008-4020(b)
)	
General Engines Company, Inc.)	Proceeding under Section 3008(a)
14893 Highway 27 South)	of the Resource Conservation and
Lake Wales, FL 33853)	Recovery Act, 42 U.S.C. § 6928(a)
)	
EPA ID No.: FLD 982 083 388)	
)	
Respondent.)	
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 11 day of September, 2008.

BY:



J. I. Palmer, Jr.
Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of General Engines Company, Inc., Docket Number: RCRA-04-2008-4020(b), on the parties listed below in the manner indicated:

Mita Ghosh
OEA – 13th Floor
U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

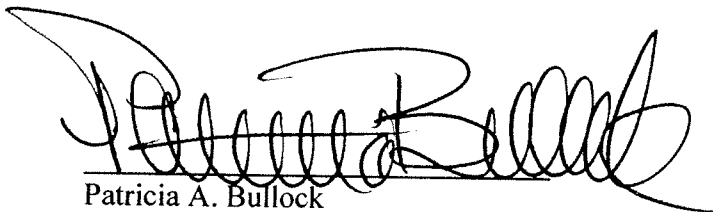
(Via EPA's internal mail)

General Engines Company, Inc
Frank Flowers, President
14893 Highway 27 South
Lake Wales, FL 33853

(Via Certified Mail- Return Receipt Requested)

Date

9-15-08



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511