

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Hamilton Sundstrand de Puerto Rico, Inc.
Santa Isabel, Puerto Rico,

Respondent,

In a proceeding under Section 113(d)
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT AND
FINAL ORDER**

CAA-02-2022-1207

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding pursuant to Section 113(d) of the Clean Air Act (the “CAA” or “Act”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), codified at 40 C.F.R. Part 22.
2. On behalf of the United States Environmental Protection Agency (“EPA” or “Complainant”), the Director of the Caribbean Environmental Protection Division (“CEPD”) for EPA Region 2 is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act. Specifically, pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the EPA Administrator has delegated to the Director of CEPD, through the Regional Administrator of EPA Region 2, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the Commonwealth of Puerto Rico, among other jurisdictions in EPA Region 2.

3. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person who has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V, or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit, or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 111, 112, and 114 of the Act, 42 U.S.C. §§ 7411, 7412, and 7414.

4. Pursuant to EPA Delegation of Authority 7-6-C, the EPA Administrator has delegated to the Regional Administrator of EPA Region 2 the authority to execute CAA Section 113(d) Final Orders.

5. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on January 20, 2022, the United States Department of Justice (“DOJ”) granted the EPA’s request for a waiver of the CAA Section 113(d) 12-month time limitation on the EPA’s authority to initiate an administrative penalty action in this matter.

6. Respondent is Hamilton Sundstrand de Puerto Rico, Inc. (“Respondent” or “Hamilton”), a corporation doing business in the Commonwealth of Puerto Rico.

7. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

8. EPA has determined that Hamilton violated the CAA and its implementing regulations promulgated under the CAA. The violations occurred at a Hamilton facility (the “Facility”) located at Felicia Industrial Park, PR-538, Km. 0.7, in Santa Isabel, Puerto Rico. Specifically, EPA has determined that Hamilton violated:

- a. the requirements of 40 C.F.R. Part 63 Subpart ZZZZ, the “National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines,” promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, and

- b. the requirements of 40 C.F.R. Part 60 Subpart III, the “New Source Performance Standards for Stationary Compression Ignition Internal Combustion Engines,” promulgated pursuant to Section 111 of the CAA, 42 U.S.C. § 7411.

The violations found by EPA are set forth in detail in Section E of this Consent Agreement, entitled “Conclusions of Law.”

B. JURISDICTION

9. This Consent Agreement is entered into pursuant to Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.
10. Pursuant to Section 113(d)(1)(C), the EPA Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty assessment. *See* 42 U.S.C. § 7413(d)(1)(C); *see also* 40 C.F.R. § 19.4.
11. The Regional Administrator is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.18(b)(3).
12. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b).

C. GOVERNING LAW

National Emissions Standards for Hazardous Air Pollutants – 40 C.F.R. Part 63 Subpart ZZZZ

13. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (“HAPs”), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emissions standards for each such category and subcategory. 42 U.S.C. §§ 7412(c)(1), (2).
14. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”). NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in

40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. Part 63 NESHAPs are sometimes known as maximum achievable control technology (“MACT”) standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the MACT. *See* 42 U.S.C. § 7412(d)(2).

15. Section 112(a) of the Act contains definitions relevant to Section 112. More specifically:
 - a) Section 112(a)(1) of the Act defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants.
 - b) Section 112(a)(2) of the Act defines “area source” as any stationary source of hazardous air pollutants that is not a major source.
 - c) Section 112(a)(3) of the Act defines “stationary source” as any building, structure, facility, or installation which emits or may emit any air pollutant.
 - d) Section 112(a)(9) defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.
16. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation, or regulation issued pursuant to Section 112, and directs the EPA Administrator to set a compliance deadline for existing sources that is no more than three years after the effective date of the standard.
17. EPA established NESHAPs and operating limitations for stationary reciprocating internal combustion engines (“RICE”) located at major and area sources of HAP emissions, which were promulgated at 40 C.F.R. Part 63 Subpart ZZZZ (“RICE NESHAPs”).

18. Pursuant to 40 C.F.R. § 63.6585, owners and operators of a stationary RICE at a major or area source of HAP emissions are subject to the RICE NESHAPs.

19. Pursuant to 40 C.F.R. § 63.6590(c), “Stationary RICE subject to Regulations under 40 CFR Part 60,” an affected source that meets any of the criteria in 40 C.F.R. § 63.6590(c)(1) through (7) must meet the requirements of 40 C.F.R. Part 60 Subpart IIII, for compression ignition engines, or 40 C.F.R. Part 60 Subpart JJJJ, for spark ignition engines. No further requirements apply for such engines under 40 C.F.R. § 63.6590(c). 40 C.F.R. §§ 63.6590(c)(1) through (7) include:

- a) A new or reconstructed stationary RICE located at an area source;
- b) A new or reconstructed 2SLB stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions;
- c) A new or reconstructed 4SLB stationary RICE with a site rating of less than 250 brake HP located at a major source of HAP emissions;
- d) A new or reconstructed spark ignition 4 stroke rich burn (“4SRB”) stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions;
- e) A new or reconstructed stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions which combusts landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis;
- f) A new or reconstructed emergency or limited use stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions;
- g) A new or reconstructed compression ignition (“CI”) stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions.

20. Pursuant to 40 C.F.R. § 63.6595(a)(1), owners and operators of an existing stationary CI RICE located at an area source of HAP emissions must have complied with the applicable emission limitations, operating limitations, and other requirements of the RICE NESHAPs no later than May 3, 2013. Owners and operators of an existing stationary spark ignition (“SI”) RICE located at an area source of HAP emissions must have complied with the applicable emission limitations, operating limitations, and other requirements of the RICE NESHAPs by no later than October 19, 2013.

21. Pursuant to 40 C.F.R. § 63.6595(a)(6), an owner or operator of a new or reconstructed stationary RICE located at an area source of HAP emissions that started up before January 18,

2008, must have complied with the applicable emission limitations and operating limitations in the RICE NESHAPs by no later than January 18, 2008.

22. Pursuant to 40 C.F.R. § 63.6595(a)(7), an owner or operator of a new or reconstructed stationary RICE located at an area source of HAP emissions that started up after January 18, 2008, must have complied with the applicable emission limitations and operating limitations in the RICE NESHAPs upon startup of the affected source.

23. Pursuant to 40 C.F.R. § 63.6603(a), an owner or operator of an existing stationary RICE located at an area source of HAP emissions must comply with the requirements in Table 2d and the applicable operating limitations in Table 2b to the RICE NESHAPs.

24. Pursuant to Table 2d(3) to the RICE NESHAPs, an owner or operator of an existing non-emergency, non-black start CI stationary RICE with a site rating of greater than 500 horsepower and located at an area source of HAP emissions must limit the concentration of CO in the stationary RICE exhaust to 23 parts per million by volume, dry (“ppmvd”) or less at 15 percent O₂, or reduce CO emissions by 70 percent or more.

25. Pursuant to 40 C.F.R. § 63.6675, “emergency stationary RICE” is defined as any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (1) through (3) of the definition. All emergency stationary RICE must comply with the requirements specified in 40 C.F.R. § 63.6640(f) to be considered emergency stationary RICE. If the engine does not comply with the requirements specified in 40 C.F.R. § 63.6640(f), then it is not considered an emergency stationary RICE under the RICE NESHAPs.

26. Paragraphs (1) through (3) of the definition of “emergency stationary RICE” provide:

- a) The stationary RICE is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary RICE used to pump water in the case of fire or flood, etc.

- b) The stationary RICE is operated under limited circumstances for situations not included in paragraph (1) of the definition, as specified in 40 C.F.R. § 63.6640(f).
- c) The stationary RICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of the definition only as allowed in 40 C.F.R. §§ 63.6640(f)(2)(ii) or (iii) and 40 C.F.R. §§ 63.6640(f)(4)(i) or (ii).

27. An owner or operator of an emergency stationary RICE must operate it according to the requirements contained in 40 C.F.R. § 63.6640(f). In order for the engine to be considered an emergency stationary RICE under the RICE NESHAPs, any operation other than: (1) emergency operation, (2) maintenance and testing, (3) emergency demand response, and (4) operation in non-emergency situations for 50 hours per year, is prohibited. If the engine is not operated in accordance with the requirements in 40 C.F.R. § 63.6640(f)(1) through (4), the engine will not be considered an emergency engine under the RICE NESHAPs and must meet all requirements for non-emergency engines.

28. 40 C.F.R. §§ 63.6640(f)(1) through (4) provide in relevant part:

- a) There is no time limit on the use of emergency stationary RICE in emergency situations.
- b) An emergency stationary RICE may be operated for any combination of the purposes specified in 40 C.F.R. § 63.6640(f)(2) for a maximum of 100 hours per calendar year. Any operation for non-emergency situations counts as part of the 100 hours permitted per calendar year.
- c) Emergency stationary RICE may be operated for maintenance and readiness testing, provided that the tests are recommended by government officials, the manufacturer, the vendor, the balancing authority and transmission operator, or the insurance company associated with the engine.
- d) Emergency stationary RICE may be operated for emergency demand response as specified by the North American Electric Reliability Corporation (“NERC”), or other authorized entity.
- e) Emergency stationary RICE may be operated for periods where there is a deviation of voltage or frequency of five percent or greater below standard voltage or frequency.
- f) Emergency stationary RICE located at area sources of HAP may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing and emergency demand response provided in 40 C.F.R. § 63.6640(f)(2). Except as provided in 40 C.F.R. § 63.6640(f)(4)(i) and (ii), the 50 hours per year for non-emergency situations cannot be used for peak shaving or non-

emergency demand response, or to generate income for a facility to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

New Source Performance Standards – 40 C.F.R. Part 60 Subpart III

29. Section 111 of the Act requires the EPA Administrator to set emission limits, known as “standards of performance,” for several categories of air pollution sources. *See* 42 U.S.C. §§ 7411(a), (b). It also permits the Administrator to promulgate design, equipment, work practice, or operational standards, or a combination thereof, in lieu of emission limits. *Id.* § 7411(h)(1). The Act provides that after the effective date of any emission limit or other standard promulgated pursuant to Section 111, it shall be unlawful for any owner or operator of a new source to operate that source in violation of the emission limit or standard. *Id.* §§ 7411(e), 7411(h)(5). A “new source” is one that is constructed or modified after the regulations are issued. *See* 42 U.S.C. § 7411(a)(2).

30. Under the authority of Section 111(b) of the Act, EPA promulgated “New Source Performance Standards for Stationary Compression Ignition Internal Combustion Engines,” 40 C.F.R. Part 60 Subpart III, §§ 60.4200 *et seq.*, otherwise known as the “CI ICE NSPS.”

31. Pursuant to 40 C.F.R. § 60.4200(a), manufacturers, owners, and operators of stationary compression ignition (“CI”) internal combustion engines (“ICE”) and other persons as specified in 40 C.F.R. §§ 60.4200(a)(1) through (4) are subject to the CI ICE NSPS. Pursuant to the CI ICE NSPS, the date that construction commences is the date the engine is ordered by the owner or operator.

32. Pursuant to 40 C.F.R. § 60.4200(a)(2), the CI ICE NSPS applies to owners and operators of stationary CI ICE that commence construction after July 11, 2005, where the stationary CI ICE are manufactured: (i) after April 1, 2006, and are not fire pump engines, or (ii) as a certified National Fire Protection Association (“NFPA”) fire pump engine after July 1, 2006.

33. Pursuant to 40 C.F.R. § 60.4200(a)(3), the CI ICE NSPS applies to owners and operators of any stationary CI ICE that are modified or reconstructed after July 11, 2005, and any person that modifies or reconstructs any stationary CI ICE after July 11, 2005.

34. Pursuant to 40 C.F.R. § 60.4204(b), owners and operators of stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests must ensure that the exhaust emissions do not exceed the not-to-exceed (“NTE”) standards for the same model year and maximum engine power as required in 40 C.F.R. §§ 1039.101 and 1039.102.

35. Pursuant to 40 C.F.R. § 60.4204(d), owners and operators of stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests must meet the NTE standards as indicated in 40 C.F.R. § 60.4212.

36. Pursuant to 40 C.F.R. §§ 1039.101 and 1039.102, exhaust emissions from new and in-use non-road compression-ignition engines may not exceed the applicable NTE standards set forth therein.

37. 40 C.F.R. § 1039.102(b) and Table 7 therein specifies the applicable interim Tier 4 exhaust emission standards for particulate matter (“PM”), nitrogen oxides (“NO_x”), nonmethane hydrocarbons (“NMHC”), and carbon monoxide (“CO”) for model years 2011-2014 for generator sets greater than 900 kilowatts.

38. “Emergency stationary ICE” is defined in 40 C.F.R. § 60.4219 as any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (1) through (3) of the definition. If the engine does not comply with the requirements specified in 40 C.F.R. § 60.4211(f), then it is not considered an emergency stationary ICE under the CI ICE NSPS.

39. The definition of “emergency stationary ICE” includes the following criteria:

- (1) The stationary ICE is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own

power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood.

- (2) The stationary ICE is operated under limited circumstances for situations not included in paragraph (1) of the definition, as specified in 40 C.F.R. § 60.4211(f).
- (3) The stationary ICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of the definition only as allowed in 40 C.F.R. §§ 60.4211(f)(2)(ii) or (iii), and (f)(3)(i).

40. Owners or operators of an emergency stationary ICE must operate it according to the requirements of 40 C.F.R. § 60.4211(f). In order for the engine to be considered an emergency stationary ICE under the CI ICE NSPS, any operation other than: (1) emergency operation, (2) maintenance and testing, (3) emergency demand response, and (4) operation in non-emergency situations for 50 hours per year, as described in 40 C.F.R. § 60.4211(f), is prohibited. If the engine is not operated in accordance with the requirements in 40 C.F.R. § 60.4211(f), the engine will not be considered an emergency engine under the CI ICE NSPS and must meet all requirements for non-emergency engines.

41. Pursuant to 40 C.F.R. § 60.4211(f)(1), there is no time limit on the use of emergency stationary ICE in emergency situations.

42. Pursuant to 40 C.F.R. § 60.4211(f)(2), owners or operators may operate the emergency stationary ICE for any combination of the purposes specified in 40 C.F.R. § 60.4211(f)(2)(i) through (iii) for a maximum of 100 hours per calendar year. Any operation for non-emergency situations as allowed by 40 C.F.R. § 60.4211(f)(3) counts as part of the permissible 100 hours per calendar year.

43. Pursuant to 40 C.F.R. § 60.4211(f)(2)(i), emergency stationary ICE may be operated for maintenance checks and readiness testing, provided that the tests are recommended by government officials, the manufacturer, the vendor, the balancing authority and transmission operator, or the insurance company associated with the engine.

44. Pursuant to 40 C.F.R. § 60.4211(f)(3), emergency stationary ICE may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing and emergency demand response provided in 40 C.F.R. § 60.4211(f)(2). Except as provided in 40 C.F.R. § 60.4211(f)(3)(i), the 50 hours per calendar year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to generate income for a facility to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

D. FINDINGS OF FACT

45. Respondent manufactures parts and components for the aerospace industry at the Facility.

46. Respondent is a for-profit corporation, incorporated under the laws of the State of Delaware in 1992.

47. On September 15, 2000, the Puerto Rico Department of Natural and Environmental Resources (“DNER”), formerly known as the Puerto Rico Environmental Quality Board, issued the Respondent a permit¹ for the construction and operation of several air emission sources. The following emergency engines are included in the permit: Caterpillar Engine Model 3512 of 1850 horsepower (“No. 53”), and Caterpillar Engine Model 3412C of 1200 horsepower (“No. 54”). Both No. 53 and No. 54 are subject to the RICE NESHAPs.

¹ Respondent provided a copy of the permit to construct air emission source issued by DNER, numbered PFE-LC-03-68-0900-0102-I-II-C, to the EPA via email on June 5, 2019.

48. On November 21, 2016, DNER issued the Respondent a permit² for the construction and operation of emergency engine Caterpillar Engine Model C32 (model year 2013) of 1474 horsepower and 1000 kilowatts) (“No. 55”). No. 55 is subject to the CI ICE NSPS.

49. Based on the manufacturer specifications provided by Respondent, No. 55 is a Tier 2-certified engine, subject to a Tier 2 emission standard for NO_x of 4.93 g/hp-hr. Engines 53, 54, and 55 each have a site rating of over 500 horsepower, with a displacement of less than 30 liters per cylinder.

50. On October 12, 2018, DNER issued the Respondent an air emission source operating permit³ covering all the emission sources operating at the Facility, providing specific conditions and emission limits for regulated pollutants.

51. On April 26, 2019, the Respondent notified DNER via letter transmitted by email that it intended to use emergency engines in order to conduct repairs of the two substations at the Facility that were damaged by Hurricane María⁴ on September 20, 2017.

² Respondent provided a copy of the permit to construct air emission source issued by DNER, numbered PFE-LC-RG-68-1116-0903-II-C, to EPA via email on June 5, 2019.

³ Respondent provided a copy of the permit to operate air emission source issued by DNER, numbered PFE-RG-68-1014-1007-I-II-O, to EPA via email on June 5, 2019.

⁴ Hurricane María was a Category 5 hurricane that struck Puerto Rico on September 20, 2017, and was declared an emergency by the Federal Emergency Management Agency (“FEMA”) for the period between September 17, 2017 through November 15, 2017. *See* FEMA, *Puerto Rico Hurricane Maria*, <https://www.fema.gov/disaster/4339>. The storm was the third costliest on record of all United States hurricanes. *See* National Oceanic and Atmospheric Administration - National Hurricane Center, *Costliest U.S. tropical cyclones tables updated* (1/26/2018), <https://www.nhc.noaa.gov/news/UpdatedCostliest.pdf>. The storm caused extensive damage to the electrical power grid and other infrastructure on the island, and a loss of power across the island. On August 14, 2018, the Puerto Rico Electric Power Authority (“PREPA”) announced that it had completed reconnection of all customers. *See* Vox, *It Took 11 months to restore power to Puerto Rico after Hurricane Maria. A similar crisis could happen again.* (8/15/2018) (<https://www.vox.com/identities/2018/8/15/17692414/puerto-rico-power-electricity-restored-hurricane-maria>). The repaired grid remains trouble-prone, and prone to outages. *See* NBC News, *How Puerto Rico is still recovering four years after Hurricane Maria*, (9/20/21), <https://www.nbcnews.com/news/latino/puerto-rico-four-years-hurricane-maria-far-recovery-rcna2073>

52. On April 26, 2019, DNER acknowledged the receipt of Respondent's notification via email. DNER also informed Respondent that if it was defining the intended use of the engines as non-emergency, according to 40 C.F.R. § 60.4211(f)(3), Respondent could use an emergency engine only for non-emergency periods of up to a maximum of 50 hours. DNER requested the Facility to provide an estimate of the number of hours the Facility required to operate the engines in order to complete the project. DNER also recommended that the Facility submit a formal variance request pursuant to Rule 302 of DNER's Regulations for the Control of Atmospheric Pollution ("RCAP").

53. On May 20, 2019,⁵ Respondent submitted a letter to DNER detailing the damage from María to the substations. The letter stated that Respondent had been able to make only temporary repairs due to unavailability of necessary materials and Puerto Rico Electric Power Authority (PREPA) equipment, the damage had created health and safety risks for Facility and PREPA employees, and now that the material and equipment necessary for the repairs had become available, there was an urgent need to carry out the repairs. The letter further stated Respondent's understanding that given these conditions, use of Facility emergency engines to provide electricity to the buildings served by the substations while they were under repair constituted emergency use, and did not require a waiver from the 50-hour limit in federal regulations for non-emergency use. In particular, the Respondent proposed to use a combination of three emergency engines (No. 53, No. 54, and No. 55) in order to continuously manufacture products and components at the Facility's buildings PR4, PR5, and PR6 while the two electrical substations providing electricity to those buildings were under repair, and while the Facility was not connected to the electrical supply from the Puerto Rico Electric and Power Authority

⁵ Respondent's May 20, 2019 letter to DNER was stamped as received by DNER on May 22, 2019.

(“PREPA”). Respondent further stated that if DNER understood that the proposed engine use did not constitute emergency use, Respondent requested that DNER grant an emergency waiver pursuant to RCAP Rule 302.

54. Respondent’s May 20, 2019 letter informed DNER that it planned to repair the substation in two phases from May 19, 2019 through August 19, 2019. Respondent explained that while it repaired the substations, it would operate two emergency engines alternately (one in the morning, and the other at night), in order to perform the repairs.

55. Respondent’s May 20, 2019 letter explained that during the first phase of the project (“Phase I”), Respondent would repair the substations servicing buildings PR4 and PR5, using emergency engines No. 53 and No. 55 to power those buildings. Each emergency engine would be used for 12 hours per day for a period of 14 days. The second phase of the project (“Phase II”) would consist of repairing building PR6’s substation, using emergency engines No. 54 and No. 55 to power that building. In Phase II, each emergency engine would be used for 12 hours per day for a period of 14 days.

56. The May 20, 2019 letter estimated that the emergency engines would not exceed the following hours of operation:

- a) No. 53 – 168 hours,
- b) No. 54 – 168 hours; and
- c) No. 55 – 336 hours.

57. On May 30, 2019, DNER informed Respondent via email that EPA does not consider a planned suspension of electrical service for maintenance purposes to be an emergency under the relevant regulations. DNER explained that it does not have the delegation and/or the authority to provide a waiver under 40 C.F.R. Part 60 Subpart IIII and 40 C.F.R. Part 63 Subpart ZZZZ. DNER directed Respondent to contact the EPA Region 2 Caribbean Environmental Protection Division (“CEPD”) for further information.

58. On May 31, 2019, Respondent sent an email to CEPD to request a meeting to discuss the use of emergency engines for a prolonged period of time for the substation repair project.

59. CEPD responded via email on the same day, requesting the following:

- a) A description of the situation that was affecting the Facility's power supply system;
- b) A copy of the waiver request submitted to DNER;
- c) A copy of the issued air emission source operating permit;
- d) Technical information, specifications, and certificates of the emergency engines that the Facility proposed to use during the non-emergency event, including each engine's manufacturer, model, serial number, site-rated horsepower, and construction date;
- e) Information concerning how the Facility planned to operate such engines (*i.e.*, alternately or simultaneously);
- f) The calculation of estimated emissions resulting from the use of the emergency engines.
- g) The date the Facility began operations; and
- h) A description of the Facility's operations.

60. On June 7, 2019, Respondent emailed a letter providing the requested information and documents to CEPD. CEPD acknowledged receipt of the email, and requested additional information, including the proposed schedule for completion of the substation repair project. In addition, CEPD inquired whether the proposed project would require PREPA's endorsement, inspection, and/or final approval to allow the reconnection to the grid. CEPD also requested Respondent to explain its claim that PREPA's employees would be at risk if the project were not completed.

61. On June 10, 2019, CEPD acknowledged receiving the waiver request letter and requested the information that remained outstanding.

62. On June 11, 2019, Respondent emailed CEPD, informing it that Phase I of the project to repair the substation serving PR4 and PR5 started on May 19, 2019, and was completed on June 2, 2019. Respondent stated that Phase II of the project was scheduled to begin on July 4, 2019, and end on July 18, 2019 as a target date. Respondent also confirmed that the project would require PREPA's inspection and certification to reconnect to the grid. Respondent provided

further detail regarding the Hurricane María damage to the substations and temporary post-María repairs, and stated that attempting permanent repair of the substations while powered would place both the Facility's and PREPA's employees in physical danger.

63. On June 12, 2019, CEPD emailed Respondent to request confirmation of which emergency engines were used to complete Phase I of the project and their hours of operation.

64. Respondent responded via email on the same day, confirming that No. 55 was used for a total of 196.3 hours and No. 53 was used for a total of 139 hours during Phase I.

65. On July 9, 2019, CEPD sent an email to Respondent requesting a status report of Phase II of the project.

66. On July 15, 2019, Respondent conveyed to CEPD that Phase II began on July 8, 2019, but the electrical portion was rescheduled for July 21. Respondent also informed CEPD that Phase II electrical work was estimated to be completed in one week and to require about 168 hours of emergency engine operation.

67. On August 5, 2019, CEPD again requested a status report for Phase II of the project.

68. On the same day, Respondent informed CEPD that due to PREPA's availability to inspect and certify Phase II of the project, it was rescheduled to begin on August 11, 2019.

69. On August 27, 2019, CEPD sent a follow-up email to Respondent, requesting a status report of Phase II of the project. On the same day, Respondent informed CEPD that Phase II was completed on August 24, 2019, and the estimated hours of operation of the two emergency engines totaled 312 hours. Respondent stated that it would provide CEPD with the exact number of hours of operation of each engine by August 28, 2019.

70. On August 30, 2019, CEPD sent a follow-up email to Respondent, requesting the number of hours of operation of each engine during Phase II. On that same day, Respondent confirmed that No. 55 was used for a total of 149.1 hours and No. 54 was used for a total of 174 hours. In

addition, Respondent confirmed that Phase II started on August 11, 2019, and was completed on August 24, 2019.

71. On August 30, 2019, CEPD also requested the number of non-emergency hours of operation that emergency engine Nos. 53, 54, and 55 had been used thus far in 2019, along with an estimate of the number of non-emergency hours of operation that would be required through December 31, 2019.

72. On September 5, 2019, Respondent provided the following information:

- i. Number of non-emergency hours of operation used in 2019:
 - a. Engine No. 53: 11
 - b. Engine No. 54: 6
 - c. Engine No. 55: 0.2

- ii. Estimated number of non-emergency hours of operation needed through December 31, 2019:
 - a. Engine No. 53: 4
 - b. Engine No. 54: 4
 - c. Engine No. 55: 4

73. On September 11, 2020, CEPD sent an email to Respondent, requesting the number of emergency and non-emergency hours of operation related to Nos. 53, 54, and 55 from January 1, 2019 through December 31, 2019.

74. On September 21, 2020, Respondent provided the following summary of the number of emergency and non-emergency hours of operation for Nos. 53, 54, and 55 for 2019. In its summary, Respondent characterized the substation repair project hours as emergency hours:

Respondent's Submission	Engine No. 53	Engine No. 54	Engine No. 55
Emergency Hours	168.0	201.0	368.8
Non-emergency hours	15.0	11.0	1.0
Total hours for 2019	183.0	212.0	369.8

E. CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

75. Respondent is a “person” within the meaning of Section 302(e) of the Act.
76. Respondent is the owner and operator of the Facility.
77. The Facility is located at an area source of HAPs pursuant to Section 112(a)(2) of the Act and 40 C.F.R. § 63.2.
78. The Facility (including Nos. 53, 54, and 55), is subject to the RICE NESHAPs and the CI ICE NSPS.
79. Respondent’s substation repair project, including both Phases I and II, did not constitute an emergency, as that term is used in the RICE NESHAPs and the CI ICE NSPS. *See* 40 C.F.R. §§ 63.6640(f); 63.6675; 40 C.F.R. §§ 60.4211(f); and 4219.
80. Since Respondent operated engine Nos. 53, 54, and 55 under a non-emergency scenario, it was required to operate the engines pursuant to the operating parameters in the RICE NESHAPs at 40 C.F.R. § 63.6603(a) (Tables 2b and 2d); the CI ICE NSPS at 40 C.F.R. §§ 60.4204(b); 60.4201(a); and the Tier 4 Exhaust Emissions Standards included in 40 C.F.R. § 1039.102(b) (Table 7).
81. No. 53 was out of compliance with the applicable RICE NESHAPs requirements, and No. 55 was out of compliance with the CI ICE NSPS requirements during Phase I, from May 19, 2019 through June 2, 2019, because Respondent operated the engines in excess of the allowance of 50 non-emergency hours per year, causing excess emissions.
82. No. 54 was out of compliance with the applicable RICE NESHAPs requirements, and No. 55 was out of compliance with the CI ICE NSPS requirements during Phase II, from August 11, 2019 through August 24, 2019, because Respondent operated the engines in excess of the allowance of 50 non-emergency hours per year, causing excess emissions.

83. Based on EPA’s review of the information provided by Respondent, Respondent’s emergency and non-emergency hours for 2019 are:

Number of Hours	Engine No. 53	Engine No. 54	Engine No. 55
Emergency Hours	29.0	27.0	23.4
Non-emergency hours	154.0 Phase I: 139 Other: 15.0	185.0 Phase II:174 Other: 11.0	346.4 Phase I: 196.3 Phase II: 149.1 Other: 1.0
Total hours for 2019	183.0	212.0	369.8

84. Respondent operated No. 53 CI RICE for 154 non-emergency hours from January 1, 2019 through December 31, 2019, totaling 104 hours in excess of the operating limitation of 50 non-emergency hours per year.

85. Respondent operated No. 54 CI RICE for 185 non-emergency hours from January 1, 2019 through December 31, 2019, totaling 135 hours in excess of the operating limitation of 50 non-emergency hours per year.

86. Respondent operated No. 55 CI ICE for 346.4 non-emergency hours from January 1, 2019 through December 31, 2019, totaling 296.4 hours in excess of the operating limitation of 50 non-emergency hours per year.

87. EPA has concluded that Respondent’s operation of Nos. 53, 54 and 55 under the circumstances described above did not constitute use in an emergency situation.

88. EPA has concluded that based on Respondent’s non-emergency hours of operation and the engine specifications provided by Respondent, No. 55 exceeded the NOx emission standards established by the CI ICE NSPS, 40 C.F.R. §§ 60.4204(b), 60.4201(a); and 40 C.F.R.

§ 1039.102, Table 7. Instead of operating with a Tier 4 NOx emission standard of 0.67 g/kW-hr (0.5 g/hp-hr), Respondent operated No. 55 subject to a Tier 2 NOx emission standard of 4.93 g/hp-hr.

89. EPA has concluded that based on Respondent's non-emergency hours of operation, Respondent operated No. 53 and No. 54 without the proper control equipment to meet the CO limit and emissions reduction established in Table 2d of the RICE NESHAPs, in contravention of 40 C.F.R. § 63.6603(a).

F. TERMS OF CONSENT AGREEMENT

90. For purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;
- b. neither admits nor denies the factual allegations and alleged violations of law stated in sections A through E above;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the issuance of any specified compliance or corrective action order, as applicable;
- d. consents to the conditions specified in this Consent Agreement;
- f. consents to any stated "permit action" (as that term is defined in 40 C.F.R. § 22.3(a) of the Consolidated Rules), as applicable; waives any right to contest the conclusions of law set forth in Section E of this Consent Agreement; and
- f. waives its right to appeal the Final Order accompanying this Consent Agreement.

91. For purposes of this proceeding, Respondent:

- a. agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

- c. consents to the issuance of the attached Final Order;
- d. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- e. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Puerto Rico; and
- f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

Civil Penalty

92. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), Respondent shall pay the civil penalty of \$200,000 (“EPA Penalty”) within 30 calendar days of the effective date specified in Section H of this Consent Agreement (“Effective Date”). Respondent shall pay the EPA Penalty using a method provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, identifying each and every payment with “Docket No. CAA-02-2022-1207.” Within 24 hours of payment of the EPA Penalty, Respondent shall send proof of payment according to the instructions contained in the paragraph directly below.

93. Proof of payment and any other written notices to be provided by this Order shall be submitted to:

Nancy Rodríguez, Chief
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
City View Plaza II – Suite 7000
#48 Road. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8073
rodriguez.nancy@epa.gov

and

Liliana Villatora, Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007
villatora.liliana@epa.gov

94. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer in the amount due, identified with “Docket No. CAA-02-2022-1207,” and any other information required to demonstrate that payment has been made according to the applicable payment method.

95. If Respondent fails to timely pay the full amount of the EPA Penalty assessed under this Consent Agreement, the EPA may:

- a. request the Attorney General to 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 percent quarterly nonpayment penalty, pursuant to 42 U.S.C. § 7413(d)(5);
- b. refer the debt to a credit reporting agency or a collection agency, or the Department of Justice, pursuant to 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 Government), which includes, but is not limited to, referral to the

Internal Revenue Service for offset against income tax refunds, pursuant to 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, pursuant to 40 C.F.R. § 13.17.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

96. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability to the United States for federal civil penalties for the violations and facts specifically alleged above.

97. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

98. This Consent 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.

99. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Administrator or other delegate.

100. Any violation of this Consent Agreement and Final Order may result in EPA pursuing a civil judicial action for an injunction or civil penalties of up to \$109,024 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) (as adjusted for inflation pursuant to 40 C.F.R. § 19.4), as well as criminal sanctions, as provided in Section 113 (c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Consent Agreement and Final Order in an administrative, civil judicial, or criminal action. Respondent reserves and may assert any available argument and defense, and may use any

information submitted under this Consent Agreement and Final Order, in response to any such action pursued by the EPA.

101. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and 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 permit.

102. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

103. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Under such circumstance, Respondent reserves the right to assert any available argument and defense to any such claim by the EPA. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

104. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Administrator, on the date of filing with the Hearing Clerk.

SIGNATURES

The foregoing Consent Agreement in the Matter of Hamilton Sundstrand de Puerto Rico, Inc.,
Docket No. CAA-02-2022-1207, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

DocuSigned by:

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7/6/2022
_____, 2022

Mr. Javier Ramis, Director, Manufacturing and Operations
Hamilton Sundstrand de Puerto Rico, Inc.
P.O. Box 2805
Santa Isabel, P.R. 00757

FOR COMPLAINANT

_____, 2022

Carmen R. Guerrero
Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2

In the Matter of Hamilton Sundstrand de Puerto Rico, Inc.

CAA-02-2022-1207

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA’s Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Regional Administrator of EPA Region 2 concurs in the foregoing Consent Agreement, *In the Matter of Hamilton Sundstrand de Puerto Rico, Inc.*, CAA-02-2022-1207. The attached Consent Agreement resolving this matter, entered into by the parties, is incorporated by reference into this Final Order and is hereby approved, ratified, and issued.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED.

Lisa F. Garcia
Regional Administrator
United States Environmental Protection Agency, Region 2

Date: _____