



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**NOV 21 2012**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Junji Imai  
General Manager  
Customer Support & Operations  
Mitsubishi Engine North America, Inc.  
1250 N. Greenbriar Drive  
Addison, Illinois 60101

Dear Mr. Imai:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Mitsubishi Engine North America, Inc. (MENA), Clean Air Act Docket No. CAA-05-2013-0004. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on NOV 21 2012.

Pursuant to paragraph 28 of the CAFO, SMSC must pay the civil penalty within 30 days of NOV 21 2012. Your check or electronic funds transfer must display the case name Mitsubishi Engine North America, Inc., the docket number, CAA-05-2013-0004, and the billing document number, CAA-05-2013-0004.

Please direct any questions regarding this case to Christine Liszewski, Associate Regional Counsel, (312) 886-4670.

Sincerely,

A handwritten signature in blue ink, appearing to read "Reza R. Bagherian".

Reza R. Bagherian  
Acting Chief  
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2013-0004</b>
	)	
<b>Mitsubishi Engine North America, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Addison, Illinois</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>
	)	<b>42 U.S.C. § 7413(d)</b>
<b>Respondent.</b>	)	
<hr/>	)	

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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Mitsubishi Engine North America, Inc. (MENA), a corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Under Section 111 of the CAA, EPA promulgated the Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, 40 C.F.R. Part 60, Subpart III, at 40 C.F.R. §§ 60.4200 through 60.4219.

10. Subpart III applies to manufacturers, owners, and operators of stationary compression ignition (CI) internal combustion engines (ICE).

11. A “manufacturer” is defined at 40 C.F.R. § 60.4219 as any person who manufactures a stationary engine for sale in the United States or otherwise introduces a new stationary engine into commerce in the United States. This includes importers who import stationary engines for sale or resale.

12. Subpart III, at 40 C.F.R. § 60.4210(a), requires manufacturers of stationary CI ICE to certify their stationary CI ICE with a displacement of less than 10 liters per cylinder to the emission standards specified in § 60.4201(a) through (c) and § 60.4202(a), (b) and (d) using the certification procedures required in 40 C.F.R. Part 89, Subpart B, or 40 C.F.R. Part 1039, Subpart C, as applicable.

13. Subpart III, at 40 C.F.R. § 60.4210(c), requires, among other things, that manufacturers of stationary CI ICE place labels on such engines that refer to stationary engines, rather than or in addition to nonroad or marine engines, as appropriate.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for Subpart IIII violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for Subpart IIII violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

17. MENA is a sales and service subsidiary of Mitsubishi Heavy Industries, Ltd. of Japan. MENA sells CI engines for dual use nonroad/stationary applications in the United States that are manufactured by Mitsubishi Heavy Industries, Ltd. MENA is located at 1250 N. Greenbriar Drive in Addison, Illinois.

18. MENA is a "manufacturer" as defined at 40 C.F.R. § 60.4219.

19. As a "manufacturer" of stationary CI ICE, MENA is subject to the provisions of 40 C.F.R. Part 60, Subpart IIII.

20. In an August 5, 2010 letter, MENA submitted a self disclosure to EPA, Region 5. In its self disclosure, MENA disclosed that it had sold approximately 805 CI engines for model years 2007 to 2009 for dual use nonroad/stationary applications that it had not certified for stationary use and had not labeled for stationary use as required by 40 C.F.R. Part 60, Subpart III. Subsequently, MENA disclosed that it had sold 20 CI engines for model year 2010 for dual use nonroad/stationary applications that it had not certified for stationary use and had not labeled for stationary use as required by 40 C.F.R. Part 60, Subpart III.

21. The engine families and engine codes that are subject to the self disclosure are:

Engine Code	Engine Family			
	2007	2008	2009	2010
S6R- Y2PTAW-1	7MVXL24-5BBA	8MVXL24-5BBA	9MVXL24-5BBA	
S12A2- Y2PTAW-2	7MVXL33-9BBA	8MVXL33-9BBA	9MVXL33-9BBA	
S12H- Y2PTAW-1	7MVXL37.1BBA	8MVXL37.1BBA	9MVXL37.1BBA	AMVXL37.1BBA
S12R- Y2PTAW-1	7MVXL49.0BBA	8MVXL49.0BBA	9MVXL49.0BBA	AMVXL49.0BBA
S16R- Y2PTAW-1	7MVXL65.4BBA	8MVXL65.4BBA	9MVXL65.4BBA	AMVXL65.4BBA
S16R- Y2PTAW2-1	7MVXL65.4BBA	8MVXL65.4BBA	9MVXL65.4BBA	AMVXL65.4BBA

22. In its self disclosure, MENA stated that it had certified the engines described in paragraph 21, above, as meeting the emission standards in 40 C.F.R. Part 89 for non road CI engines and labeled the engines as prescribed by 40 C.F.R. Part 89.

23. MENA represents that the engines described in paragraph 21, above, fully conform to the emission standards at 40 C.F.R. § 60.4201.

24. MENA did not certify the engines described in paragraph 21, above, as required by 40 C.F.R. § 60.4210(a).

25. MENA did not label the engines described in paragraph 21, above, as required by 40 C.F.R. § 60.4210(c).

26. EPA's Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (April 11, 2000) commonly referred to as the "Audit Policy" requires a regulated entity to meet all nine conditions in the Audit Policy in order for EPA to decline to seek (or to reduce) gravity-based civil penalties under the Audit Policy. If the regulated entity meets all of the conditions except for systematic discovery, EPA will reduce gravity-based penalties by 75%.

27. EPA has determined that MENA has met all of the conditions in the Audit Policy except for systematic discovery.

#### **Civil Penalty**

28. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, the conditions for penalty mitigation in the Audit Policy and the cooperation of the Respondent, Complainant has determined that an appropriate civil penalty to settle this action is \$15,000.00.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000.00 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

30. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Christine Liszewski (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

### **General Provisions**

34. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

35. The effect of the settlement described in paragraph 34, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 20, 21, 22 and 23 of this CAFO and letters dated August 5, 2010 and November 12, 2010 submitted on behalf of the Respondent by Robert E. Burke of Barnes Richardson & Colburn.

36. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

37. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 34, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

38. Respondent certifies that it is complying fully with the regulations applicable to manufacturers of CI ICE at 40 C.F.R. §§ 60.4200 through 60.4219.

39. The effect of this settlement is conditioned upon Respondent's implementation of the following actions related to re-labeling of the engines described in paragraph 21, above:

- a. Within 30 days of the effective date of this CAFO, MENA must identify and prepare a list of all 2007 through 2010 CI ICE for the Engine Codes and Engine Families listed in paragraph 21, above, that have been labeled for non-road use only. This list must identify each engine by engine serial number, be kept for five



years, notwithstanding any corporate document retention policies, and must be provided to EPA upon request.

- b. Within 90 days of the effective date of this CAFO, MENA shall mail letters and permanent supplemental labels to each of its distributors and direct customers who purchased the engines identified by MENA pursuant to Subparagraph 39.a., above. The letter must request the distributors and direct customers to affix the supplemental labels to any engine that is returned for warranty work or servicing. The letter must also inform the recipient that the label must be secured to a part of the engine that does not normally require replacement and in a location that is easily visible. The supplemental labels issued by MENA must meet the labeling requirements of 40 C.F.R. § 60.4210(c). In addition, the label must state that it has been issued pursuant to an agreement with EPA in connection with settlement of an enforcement action under the Clean Air Act.
- c. Within 90 days of the effective date of this CAFO, MENA shall submit to EPA at the addresses provided in paragraph 30, above, a copy of the letter issued by MENA, a list of the names and addresses of the recipients of the letter, and a copy of the supplemental label.

40. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).


41. The terms of this CAFO bind Respondent, its successors and assigns.

42. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and attorneys fees in this action.
44. This CAFO constitutes the entire agreement between the parties.

**Mitsubishi Engine North America, Inc., Respondent**

Oct 15th 2012  
Date

  
\_\_\_\_\_  
Junji Imai  
General Manager  
Customer Support & Operations  
Mitsubishi Engine North America, Inc.

**United States Environmental Protection Agency, Complainant**

11/7/12  
Date


  
\_\_\_\_\_  
George T. Czerniak  
Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Mitsubishi Engine North America, Inc.**  
**Docket No. CAA-05-2013-0004**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11-9-12  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**

**In the Matter of: Mitsubishi Engine North America, Inc.**

**Docket No. CAA-05-2013-0004**

**Certificate of Service**

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2013-0004 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Junji Imai  
General Manager  
Customer Support & Operations  
Mitsubishi Engine North America, Inc.  
1250 N. Greenbriar Drive  
Addison, Illinois 60101

and

Robert E. Burke  
Barnes, Richardson & Colburn  
303 East Wacker Drive  
Chicago, Illinois 60601

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I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard / Mail Code C-14J  
Chicago, Illinois 60604

On the 21 day of November 2012.



Loretta Shaffer  
Administrative Program Assistant  
AECAB, Planning and  
Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7667 4904