

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

_____)	
In the Matter of:)	
)	
)	ADMINISTRATIVE
Isuzu Motors Ltd.,)	SETTLEMENT AGREEMENT
)	
and)	
)	AED/MSEB-7228
)	
Deere-Hitachi Construction Machinery)	
)	
Respondents.)	
_____)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA), Isuzu Motors Ltd. (Isuzu), 6-26-1 Minami-oi, Shinagawa-ku, Tokyo 140-8722, Japan, and Deere-Hitachi Construction Machinery (Deere-Hitachi), 1000 Deere Hitachi Road, Kernersville, NC 27284 (Respondents).

Purpose:

1. The purpose of this Administrative Settlement Agreement is to resolve six alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a), and 7547(d), and the implementing Compression-Ignition (CI) nonroad engine regulations, 40 C.F.R. Part 89 (CI Non-Road Regulations).

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), prohibit any person from causing the importation or importing any new nonroad vehicle or engine

unless such vehicle or engine is covered by a certificate of conformity issued and in effect, and bears the required EPA emissions label.

Regulatory Authority - CI Non-Road Regulations:

3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from causing the importation or importing into the United States any CI engine manufactured after the effective dates of the regulations, unless such engine is covered by a certificate of conformity issued by EPA.
4. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, delivery into commerce, or the causing thereof by an engine manufacturer of a nonroad CI engine manufactured after the effective dates of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.
5. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of a new nonroad engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
6. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified CI engine, a permanent and legible label identifying each nonroad engine and containing certain information. The label must readily be visible after the engine is installed in the equipment.
7. 40 C.F.R. §§ 89.110(a)(1), (2), and (5) require the label to be attached in such a manner that it cannot be removed without destroying or defacing the label; be durable and

readable for the entire engine life; and be located so as to be readily visible to the average person after the engine is installed in the equipment.

Definitions:

8. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulation and dates:* 40 C.F.R. Part 89 is applicable to compression-ignition nonroad engines built after the applicability dates.
 - b. *Certified Engine:* A nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
 - c. *Certificate Holder:* The manufacturer who obtained from EPA a Certificate of Conformity.
 - d. *Certificate of Conformity:* The document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Part 89 and the CAA.
 - e. *Corrective Action:* Action taken by one or more Respondents to remedy the violations alleged by EPA in this Agreement.
 - f. *Export:* To transport to a location outside of the United States and its territories, Canada, and Mexico.
 - g. *Observer:* A U.S. Customs and Border Protection (U.S. Customs) representative or an independent board-certified licensed professional engineer.
 - h. *This matter:* As used in this Agreement means Respondents' importation of the six nonroad engines as described in Paragraph 9 of this Agreement (Subject Engines), the injunctive relief/corrective action required by this Agreement, that may apply to such

alleged violations.

Alleged Violations:

9. On or about March 16, 2007, Deere-Hitachi imported into Savannah, Georgia six excavators containing CI non-road engines (the Subject Engines). The Subject Engines are described in Appendix A to this Agreement. The Subject Engines were manufactured by Isuzu and Isuzu is the Certificate Holder for the Subject Engines.
10. The U.S. Customs and Border Protection (Customs) inspection of the Subject Engines revealed that the engines bore a metal Emissions Information Labels that could be removed without destroying or defacing the label, in violation of 40 C.F.R. § 89.110(a)(1).
11. On or about April 23, 2007, EPA requested that the Customs Port in Savannah, Georgia seize the Subject Engines.
12. Based on the foregoing, EPA alleges that Respondents committed six violations of 40 C.F.R. § 89.110(a)(1), which EPA asserts are enforceable pursuant to Sections 203(a) and 213(d) of the CAA.
13. By entering into this Agreement, Respondents do not admit that they have committed any violation of the Clean Air Act or its implementing regulations, including any of the violations alleged in paragraph 12. Respondents also do not admit that they have committed any violation of any provision of law administered by United States Customs and Border Protection.

Injunctive Relief/Corrective Action:

14. The Certificate Holder for the Subject Engines shall:

- a. Remove each original label from the Subject Engine and affix a complying EPA emissions information label to each of the Subject Engines (replacement label). A copy of the form of emissions label EPA has agreed complies with 40 C.F.R. § 89.110(a)(1) is attached hereto as Appendix B to this Agreement.
- b. Provide to EPA a technical description of the method and procedures that the Certificate Holder shall use to affix the replacement label to the Subject Engines to ensure that each replacement label is permanently affixed and cannot be removed without destroying or defacing the label.
- c. Establish and fully document a chain of custody for the replacement labels from the time of production until the time of installation on the Subject Engines, and destruction of any unused replacement labels.
- d. Perform this injunctive relief/corrective action under the direction of the Observer. The injunctive relief/corrective action shall be completed no later than thirty (30) days from the effective date of this Agreement, or such longer period of time if requested by Respondents and approved by EPA for good cause shown.
- e. Remove each original label and give it to the Observer, and shall attach the replacement label in accordance with the method and procedures submitted to EPA in the above Subparagraph "b".
- f. Contact EPA for relabeling procedures in the event that an original label on any Subject Engine is not accessible. The Certificate Holder shall identify the equipment and Subject Engine by Model and serial number, and provide such

information (e.g., photographic evidence) as may be requested by EPA demonstrating engine label inaccessibility.

15. The Certificate Holder shall ensure that the Observer destroys all the removed labels no later than the day the last Subject Engine receives a replacement label.
16. After the replacement label has been affixed to each of the six (6) Subject Engines, the Certificate Holder shall have the Observer randomly select one Subject Engine from each equipment model (the Test Sample Engines) to determine whether or not the replacement label is permanently affixed to the Subject Engine and cannot be removed without destroying or defacing the replacement label. Any Test Sample Engines whose replacement label is destroyed or defaced during this test must be relabeled by the Certificate Holder.
17. Where the replacement label on a Test Sample Engine can be removed without destroying or defacing the replacement label, the Test Sample Engine and the related equipment shall be exported.
18. Where the replacement label on a Test Sample Engine contains all the specified information and is permanently affixed and cannot be removed without destroying or defacing the label, the Test Sample Engine and the related equipment model Subject Engines is deemed to comply with 40 C.F.R. § 89.110 and may be released by Customs.
19. No later than thirty (30) days from the effective date of this Agreement (or such longer period of time if requested by Respondents and approved by EPA for good cause shown), Respondents shall provide EPA with a written report that fully describes the injunctive

relief/corrective action taken, and certifies that such injunctive relief/corrective action was conducted as described. The report must include the following:

- a. An affidavit from the Certificate Holder who has performed the corrective action work. The affidavit shall certify the date, time, and place of the injunctive relief/corrective action work, identify each person doing the work, identify the serial number of each Subject engine that was re-labeled, provide a clear readable picture of the replacement label affixed to each model of the Subject Engines, and provide the results of any tests performed to determine whether or not the replacement label was permanent and could not be removed without destroying or defacing the label; and
- b. An unconditional statement from the Certificate Holder certifying that the Subject Engines comply with all requirements of the Clean Air Act and 40 C.F.R. Part 89.

Civil Penalty:

20. Respondents have agreed to pay to the United States of America a civil penalty of \$45,800.00 no later than thirty (30) days from 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, plus the stipulated penalties as specified in Paragraph 26 of this Agreement. Respondents agree to pay the amount by certified check or cashier's check payable to the United States of America, and mail to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 7228

Alternatively, Respondents may affect an electronic funds transfer in the amount of \$45,800.00 with the notation "Isuzu Motors LTD and Deere-Hitachi Construction Machinery Administrative Settlement Agreement for Case No.: AED/MSEB-7228" by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010727
Bank Holding Account:	Treas_NYC
Routing Number:	021030004

The costs of such electronic funds transfer shall be Respondents' responsibility.

Notice:

21. All correspondence, reports, and copies of payment checks concerning this Agreement shall be sent to:

(Regular Mail)

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7228

(Courier Service)

Jocelyn Adair, Esq.
U.S. EPA
Ariel Rios South, Room 1109A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

General Provisions:

22. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondents.
23. Respondents hereby represent that the individual executing this Agreement on behalf of each Respondent is authorized to do so on behalf of each Respondent and that such execution is intended and is sufficient to bind Respondents, Respondents' agents, assigns, or successors.

24. Notwithstanding any other provisions of this Agreement, upon Respondents' default 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. Respondents specifically agree 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 40 C.F.R. Part 89. Respondents expressly waive Respondents' right to assert that such action is barred by any applicable statutes of limitation, *see, e.g.*, 28 U.S.C. § 2462.
25. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondents' disclosure and representation to EPA, and the prompt completion of the injunctive relief/corrective action in accordance with this Agreement.

Stipulated Penalties:

26. For failure to comply with the terms of this Agreement on a timely basis Respondents shall pay stipulated penalties to the United States as follows:
- a. For failure to provide the report specified in Paragraph 19, \$250.00 per day; and,
 - b. For failure to pay the civil penalty or provide proof thereof, pursuant to Paragraph 20, \$250.00 per day.
27. All stipulated penalties under Paragraph 26 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 simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in the manner specified in Paragraph 20 of this Agreement. In addition, a copy of the

transmittal letter(s) and check(s) shall be sent to the EPA representative at the address specified in Paragraph 21. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by EPA. Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedy or sanction available by virtue of Respondents' violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

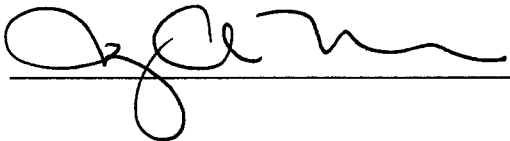
Enforcement:

28. Upon completion of the terms of this Agreement, the alleged violations identified in Paragraphs 9 through 12 of this Agreement shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against each Respondent in the event of default or noncompliance with this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects, or relieves Respondents of responsibility to comply with other state, federal or local law or regulations, and does not address Respondents' potential liability to Customs for engines that are seized or detained.

The following agree to the terms of this Agreement:

**Administrative Settlement Agreement - In the Matter of Isuzu Motors Ltd. , and
Deere-Hitachi Construction Machinery, AED/MSEB - 7228**

Isuzu Motors Ltd.:

By:  _____

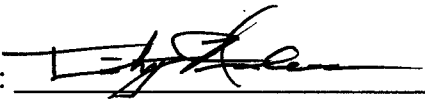
Date: 6/29/07

Printed Name: JEFFREY A. MARSEE.

Printed Title: Chief Representative.

**Administrative Settlement Agreement - In the Matter of Isuzu Motors Ltd. , and
Deere-Hitachi Construction Machinery, AED/MSEB - 7228**

Deere-Hitachi Construction Machinery:

By: 

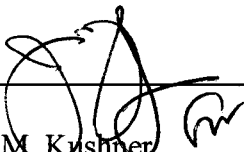
Date: 7/12/2007

Printed Name: Timothy C. Anderson

Printed Title: Customs Analyst

Administrative Settlement Agreement - *In the Matter of Isuzu Motors Ltd. , and Deere-Hitachi Construction Machinery, AED/MSEB - 7228*

U.S. Environmental Protection Agency:

By:  _____
Adam M. Kushner
Director
Air Enforcement Division

Date: 8-1-07

Appendix A

Table 1:

Entry Number: AJ6-0208134-8

AH-6WG1XYSA-03

Entry Date	Horse Power (HP)	No.	Engine Serial Number	Model No.
3/16//07	532 HP	1	20280	Zaxis 850LC-3
3/16/07	532 HP	2	20279	Zaxis 850LC-3

Table 2:

Entry Number: AJ-0208282-5

AH-6WG1XYSA-02

Entry Date	Horse Power (HP)	No.	Engine Serial Number	Model No.
3/22//07	463 HP	3	20224	Zaxis 650LC-3

Table 3:

Entry Number: AJ6-0208289-0

Engine: AH-6WG1XYSA-01

Entry Date	Horse Power (HP)	No.	Engine Serial Number	Model No.
3/22//07	348 HP	4	Unknown	Zaxis 450LC-3
3/22/07	348 HP	5	Unknown	Zaxis 40LC-3
3/22/07	348 HP	6	Unknown	Zaxis 40LC-3