

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

TYM-USA, Inc.

Respondent

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) MSEB AED # 7137
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This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and TYM-USA, Inc. (Respondent) regarding compliance by Respondent with the requirements of section 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder at 40 C.F.R. Part 89.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Part 89 arising out of the importation of forty-three tractors containing nonroad engines described in Attachment I and to ensure that future violations are avoided.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - A. *Certified engine:* A "certified engine" is a nonroad engine that was built after the applicable effective dates of the Part 89 regulations and that is covered by a Certificate of Conformity.
 - B. *Dates of the Applicable Regulations:* The term "dates of the applicable regulations" means the date after which the certification requirement applies to an engine, as defined in Table 2 of 40 C.F.R. § 89.112.



- C. *Uncertified engine*: An “uncertified engine” is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.
- D. *This matter*: As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 89.
- E. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 after EPA has determined that the manufacturer’s application is complete and that the engine family meets the requirements of 40 C.F.R. Parts 89 and the Clean Air Act. Issuance of the Certificate of Conformity permits production of engines built in accordance with the manufacturer’s application provided that the production is within the period during which the Certificate of Conformity is valid.
- F. *Subject tractors*: The term “Subject Tractors” means the tractors whose serial numbers are listed in Attachment I.

Statutory and Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7542(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.
- 4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad engine manufactured after the applicable effective date of the regulations unless such engine is a certified engine.
- 5. 40 C.F.R. § 89.1003(b)(4) requires nonroad vehicle and equipment manufacturers to use certified engines in vehicles and equipment manufactured after the effective date.

6. 40 C.F.R. § 89.2 defines a nonroad vehicle or equipment manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person.
7. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified engine, a permanent and legible label which identifies the nonroad engine and provides the information specified in that section, including a statement that the engine is a certified engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.

Background

8. On January 5, 2006, U. S. Customs and Border Protection (Customs) seized the three tractors listed Attachment I as "In Customs Possession" at the port of Portland, Oregon.
9. On or about the dates listed in Attachment I under "Arrival In the USA," Respondent imported an additional forty tractors.
10. Respondent is the importer of the Subject Tractors.
11. The Subject Tractors contain nonroad compression ignition engines manufactured after the Dates of the Applicable Regulations. As a consequence, certified engines were required to be used in the Subject Tractors.
12. The Subject Tractors do not contain certified engines, and do not have affixed the certification label required by 40 C.F.R. § 89.110.
13. Respondent hereby represents that it has conducted a complete and thorough investigation of its prior importation of nonroad equipment by reviewing its records and interviewing all persons likely to possess relevant information, and, on the basis of its investigation Respondent represents that since April 1, 2001, it has imported no equipment containing uncertified nonroad diesel engines other than the equipment listed in Attachment I.



14. Respondent has provided documentation showing that it ordered tractors with certified engines and paid a premium for such certified engines.

Terms of Agreement

15. Within 90 days of the date of this Agreement, Respondent shall submit proof that each of the Subject Tractors has been exported to a location outside the North American continent.

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

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

17. Respondent shall pay to the United States sixty-two thousand dollars (\$62,000) within 30 calendar days of the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the amount by certified check or cashier's check payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB #

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 16 or faxed to (202) 564-0069 to the attention of David Alexander. Such check shall be identified with the case number and Respondent's name.

18. Respondent agrees that it will not import any nonroad vehicle or piece of equipment manufactured on or after the applicable model years set forth in 40 C.F.R. § 89.112 unless the nonroad vehicle or equipment is powered by a certified nonroad engine in accordance with 40 C.F.R. Parts 89 and 1039.

General Provisions

19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to the Respondent.
20. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
21. Notwithstanding any other provision of this agreement, upon Respondent's failure to perform, or default of or failure to comply with any terms of this Agreement, EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to Section 205 of the Act, 42 U.S.C. § 7524, and pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of the Act and Part 89. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.
22. The Effect of Settlement described in Paragraph 25 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Attachment I, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

23. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
 - A. For failure to timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 17, \$400 per day.
 - C. For failure to timely export the Subject Tractors, or provide proof of such

exportation, pursuant to Paragraph 15, \$500 per day.


24. All stipulated penalties under Paragraph 23 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 17 and shall be paid within five days of written demand by EPA. Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA from seeking any other remedy or sanction available by virtue of Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

Effect of Agreement

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

The following agree to the terms of this Agreement:

TYM-USA, Inc.

By: 

Robert Mullet

Title: President

4/18/06

Date

U.S. Environmental Protection Agency
In the Matter of TYM-USA, Inc.

By: 

April 26, 2006

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

Date



Attachment 1



Model	Serial Number	Arrival In USA	Dealer	John Deere Engine S/N	Engine Build Date	On Hand	Sold Used	Customs
T-700	X06 0008	8/2/2004	Pickles	CD3029T842660	2/9/2004	1		
T-700	X06 0010	8/2/2004	General Imp	CD3029T852044	3/31/2004	1		
T-700	X06 0016 Retailed/Paid?	11/12/2004	Consignment Yard	CD3029T858970	5/7/2004		1	
T-700	X09 0017	11/12/2004	Jim Seibel	CD3029T858967	5/7/2004	1		
T-700	X09 0018 Retailed/Paid?	11/12/2004	Chico	CD3029T858973	5/7/2004		1	
T-700	X09 0019 Retailed/Paid?	11/12/2004	Neff Equipment	CD3029T858969	5/10/2004		1	
T-700	X10 0020 Refilled/Paid?	12/3/2004	Neff Equipment	CD3029T872945	8/3/2004		1	
T-700	X10 0021	12/3/2004	Redmond	CD3029T872943	8/2/2004	1		
T-700	X10 0022	12/3/2004	Redmond	CD3029T872922	8/2/2004	1		
T-700	X10 0023 Retailed/Paid?	12/3/2004	395 Tractor	CD3029T872941	8/2/2004		1	
T-700	X10 0024	12/3/2004	Redmond	CD3029T872942	8/2/2004	1		
T-700	ON GE X10 0025	12/2/2004	Lanes	CD3029T872925	8/7/2004	1		
T-700	X10 0026	12/3/2004	Redmond	CD3029T872923	8/5/2004	1		
T-700	X10 0027	12/3/2004	Redmond	CD3029T872924	8/3/2004	1		
T-700	NOT PAID X10 0028	12/3/2004	Bonander	CD3029T872944	8/3/2004	1		
T-700	X12 0033	1/15/2005	General Imp	CD3029T886570	10/27/2004	1		
T-700	Retailed X12 0036	1/18/2005	Diamond B	CD3029T886659	10/28/2004		1	
T-700	X12 0037	1/18/2005	Redmond	CD3029T886658	10/28/2004	1		
T-700	X12 0038	1/15/2005	General Imp	CD3029T886563	10/27/2004	1		
T-700	X12 0039	1/18/2005	Redmond	CD3029T886663	10/28/2004	1		
T-700	X12 0040	3/10/2005	General Imp	CD3029T886702	10/28/2004	1		
T-700	X12 0042	1/15/2005	General Imp	CD3029T886568	10/27/2004	1		
T-700	X12 0043	3/10/2005	General Imp	CD3029T886564	10/27/2004	1		
T-700	Retailed X12 0045	1/18/2005	Diamond B	CD3029T886665	10/28/2004		1	
T-700	X12 0046	1/18/2005	Redmond	CD3029T886662	10/28/2004	1		
T-700	X12 0048	1/18/2005	Redmond	CD3029T886698	10/28/2004	1		
T-700	X12 0049	1/18/2005	Redmond	CD3029T886700	10/28/2004	1		
T-700	X12 0050 Retailed/PAID	1/18/2005	Consignment Yard	CD3029T886696	10/28/2004		1	
T-700	X12 0051	1/18/2005	Redmond	CD3029T886664	10/28/2004	1		
T-700	Y01 00103	3/10/2005	General Imp	CD3029T893513	12/8/2004	1		
T-700	Y01 00104	3/10/2005	General Imp	CD3029T893548	12/9/2004	1		
T-700	Y01 00106	3/3/2005	Redmond	CD3029Y893555	12/9/2004	1		
T-700	Y01 00108	3/3/2005	Redmond	CD3029T893188	12/8/2004	1		
T-700	Y01 00109	3/3/2005	Redmond	CD3029T892435	12/3/2004	1		
T-700	Y01 00110	3/3/2005	Redmond	CD3029T892455	12/3/2004	1		
T-700	Y01 00111	3/3/2005	Redmond	CD3029T893008	12/8/2004	1		
T-700	Y01 00112	3/3/2005	Pickles	CD3029T893396	12/8/2004	1		
T-700	Y01 00113	3/10/2005	General Imp	CD3029T893581	12/9/2004	1		
T-700	Y01 00114	3/10/2005	General Imp	CD3029T892594	12/4/2004	1		
T-700	X09 0015 Retailed/Paid?	11/12/2004	Adams Tractor	CD3029T858974	5/7/2004		1	
T700	Y03 00129	In Customs possession		CD3029T898273				1
T-700	Y04 00142	In Customs possession		CD3029T898867				1
T-700	Y03 00136	In Customs possession		CD3029T898319				1
	Year of manufacture s/n code					31	9	3
	W = 2003							
	X = 2004							
	Y = 2005							