

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

In the Matter of:)	
)	Administrative Settlement
Astec Industries, Inc.)	Agreement
)	
Respondent)	AED/MSEB # 7819
)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Astec Industries, Inc. (Astec).

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under Title II of the Clean Air Act, 42 U.S.C. § 7401 *et. seq.*, and EPA's regulations at 40 C.F.R. Part 89 resulting from Astec's production of equipment with prior year (Tier) engines in excess of that allowed under the Transition Program for Equipment Manufacturers (TPEM).

Statutory Authority

2. Section 213 of the Clean Air Act (Act), 42 U.S.C. § 7547, authorizes the EPA Administrator to promulgate rules regulating emissions from new nonroad engines.
3. Section 216(1) of the Act, 42 U.S.C. § 7550(1), defines a manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or new nonroad engines.

4. Sections 216(10) and (11) of the Act, 42 U.S.C. §§ 7550(10) and (11), define a nonroad engine as an engine that is not used in a motor vehicle, a competition vehicle, or a stationary source.
5. Under sections 205(a) and 213(d) of the Act, 42 U.S.C. §§ 7524(a) and 7547(d), any person who violates section 203(a)(1), 42 U.S.C. § 7522(a)(1), is subject to a civil penalty of (i) not more than \$32,500 for each nonroad vehicle manufactured between March 15, 2004 and through January 12, 2009; and, (ii) not more than \$37,500 for each nonroad vehicle manufactured after January 12, 2009.

Regulatory Authority

6. 40 C.F.R. § 89.102 establishes effective dates by which equipment manufacturers must use current year (Tier) engines to manufacture their equipment.
7. Section 89.102(d) provides flexibility (the TPÉM) for nonroad equipment manufactures that establishes a percentage-based cap on the number of Tier I and Tier II engines that may be used in the manufacture of new nonroad equipment after the effective date of the Tier II and III requirements.

Definitions

8. *Manufacturer* has the meaning given in section 216(1) of the Act, 42 U.S.C. § 7550(1). In general, this term includes any person who manufactures an engine or piece of equipment for sale in the United States or otherwise introduces a new engine or piece of equipment into U.S. commerce. The term manufacturer includes any person who imports new engines or new equipment into the United States for resale.
9. *Nonroad equipment manufacturer* has the meaning given in 40 C.F.R. § 98.2. That section defines a nonroad equipment manufacturer as any person engaged in the

manufacturing or assembling of new nonroad equipment.

10. *Nonroad equipment* has the meaning given in 40 C.F.R. § 98.2. That section defines nonroad equipment as equipment powered by nonroad engines.

Violations

11. Astec produced fifty-one (51) pieces of nonroad equipment using Tier I and II engines in excess of their allowance for Tier II and III requirements, as shown in Table I.

Table I

Subsidiary	Required Tier	Tier Used	HP	Quantity
Kolberg	II	I	80	11
Kolberg	II	I	99	4
American Augers	III	II	61	6
American Augers	III	II	114	4
American Augers	III	II	173	5
American Augers (2008)	III	II	180	5
American Augers (2009)	III	II	180	4
Roadtec	III	II	200	4
Astec Underground	III	II	630	4
Astec Underground	III	II	250	3
Astec Mobil Screens	II	I	225	1

12. 40 C.F.R. § 89.1003 prohibits the sale of any nonroad equipment that does not use an engine covered by a certificate of conformity in effect for that year.

13. 40 C.F.R. § 89.102(d) allows nonroad equipment manufacturers to use an engine from a previous Tier, even though prohibited under section 89.1003, but only within the production allowances established in subsection 89.102(d).
14. The fifty-one (51) engines identified in Table I above were not covered by a valid certificate of conformity and were in excess of the number allowed under 40 C.F.R. § 102(d).
15. Manufacture of the nonroad equipment using non-certified engines constitutes 51 violations of sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1) and 7547(d).

Audit Policy Determination

16. EPA issued a Final Policy Statement entitled “Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations” 65 FR 19618, on April 11, 2000 (Audit Policy).
17. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties; however, EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.
18. Where the disclosing party establishes that it satisfies all of the conditions set forth in the Audit Policy, EPA will not seek gravity-based civil penalties. Where the disclosing party establishes that it satisfies all of the conditions except for the first condition, systematic discovery, the disclosing party is eligible for a seventy five percent (75%) reduction of

the gravity-based civil penalties.

19. Upon consideration of relevant information about Astec's self-disclosed violations, EPA concludes that it has satisfied all of the conditions set forth in the Audit Policy.

Civil Penalty

20. Astec shall pay to the United States a civil penalty of twenty-seven thousand dollars (\$27,000) (EPA penalty).
21. Astec agrees to pay the EPA penalty to the United States within thirty (30) calendar days of the effective date of this Agreement (penalty due date), but not before the effective date. Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Astec agrees to pay the amount in the manner specified in paragraph (a) or (b) below:
- a. Send a certified check or cashier's check payable to the United States of America, and mailed via United States Postal Service to:
- U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7819
- Simultaneously, fax a photocopy of the check to (202) 564-0069 to the attention of David Schnare, or scan and email a copy of the check to schnare.david@epa.gov. This check shall be identified with case number AED/MSEB # 7819, and Astec's name; or
- b. Pay online through the Department of the Treasury using WWW.PAY.GOV. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments -

Cincinnati Finance Center and complete the SFO Form Number 1.1. The payment shall be identified with case number AED/MSEB # 7819. Within twenty-four hours of payment, fax a photocopy of the receipt of payment to (202) 564-0069 to the attention of David Schnare, or scan and email a copy of the receipt to schnare.david@epa.gov.

Notice

22. All written correspondence to EPA concerning this Agreement shall be sent to:

(Postal Service Mail)

David W. Schnare
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7819

(Courier Service)

David W. Schnare
U.S. EPA
Ariel Rios South, Room 2117B
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7819

General Provisions

23. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time an electronic copy will be returned to Astec.
24. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Astec to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to section 205 of the Act, or pursue any other remedies available to it. Astec expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time. Astec acknowledges that EPA intends to use Astec's tax identification

number, which Astec has appended to this agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. (31 U.S.C. § 7701)

25. The parties represent that the individual or individuals executing this Agreement on behalf of Astec are authorized to do so on behalf of Astec and that such execution is intended and is sufficient to bind Astec, its agents, assigns, or successors.
26. Astec waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
27. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
28. This Agreement is contingent upon the truthfulness, accuracy and completeness of Astec's disclosures and representations to EPA including, but not limited to, representations regarding nonroad equipment manufacture and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties

29. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to paragraphs 20 and/or 21 of this Agreement, Astec agrees to the following stipulated penalties:
 - a. For the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to paragraphs 20 and/or 21 of this Agreement, Astec shall pay a stipulated penalty of \$250 per day.
 - b. All stipulated penalties shall be paid in the manner specified in paragraph 22

- c. of this Agreement. In addition, a copy of the transmittal letter(s) and receipts(s) shall be sent to David W. Schnare in the manner specified in paragraph 21.

Effect of Agreement

- 30. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Astec in the event of default or noncompliance with this Agreement, for violations of sections 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, which are not the subject matter of this Agreement, 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 Astec of responsibility to comply with other state, federal, or local laws or regulations.

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of

Astec Industries, Inc., respondent

AED/MSEB # 7819

The following agrees to the terms of this Agreement:

By: Stephen C. Anderson Date: 11/22/10

Typed or Printed Name: STEPHEN C. ANDERSON

Typed or Printed Title: SECRETARY

Federal Tax Identification Number: NOT APPLICABLE

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of

Astec Industries, Inc., respondent

AED/MSEB # 7819

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: _____



Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: 12/30/10