

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

HHU, Inc.  
d/b/a Mazama Products

Respondent

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AED/MSEB - 7045

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and HHU, Inc., d/b/a Mazama Products (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 46 tractors containing the nonroad engines described in Attachment 1 (Subject Tractors), while ensuring that prior violations are identified and resolved, and 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 governing importation of nonroad engines.
- E. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 or § 90.108 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 or 90 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 L.

**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.
8. 40 C.F.R. § 89.102 sets forth a program to provide transitional flexibility for nonroad equipment manufacturers, the Transition Provisions for Equipment Manufacturers (TPEM). The TPEM provides a limited opportunity for the manufacture or importation of equipment containing certain engines that otherwise do not comply with the emission standards of 40 C.F.R. Part 89. Limitations of the TPEM include, but are not limited to, use of engines that are produced after the applicable effective date of the regulations for the engines contained in the equipment being manufactured or imported, a limit of 200 engines per year per power category, and use of only one engine manufacturer per power category for the duration of the program.

#### **Background**

9. On and after September 14, 2004, Respondent imported the Subject Tractors.



10. On October 4, 2004, U. S. Customs and Border Protection (Customs) detained at the port of Portland, Oregon the Subject Tractors identified in Attachment 1 as "held by Customs." Thereafter Respondent imported the remaining tractors which had been previously ordered and advised EPA that the remaining tractors were being held without sale or offer for sale.
11. Respondent is the importer of the Subject Tractors.
12. The Subject Tractors contain nonroad compression ignition engines built in Model Years 2003 and 2004, which is after the effective date for the engines. As a consequence, certified engines were required to be used in the Subject Tractors.
13. The Subject Tractors do not contain certified engines, and do not have affixed the certification label required by 40 C.F.R. § 89.110.
14. For 2004 Respondent imported 215 tractors in the power category greater than or equal to 19 kW and less than 37 kW, as shown in Attachment II. Respondent failed to comply with 40 C.F.R. § 89.102(d)(2)(ii) and is liable for fifteen violations of Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(a)(2).
15. For the duration of the TPEM Respondent imported twenty seven tractors in the power category greater than or equal to 8 kW and less than 19 kW with engines made by a manufacturer other than Yangdong, as shown in Attachment II. Respondent failed to comply with 40 C.F.R. § 89.102(d)(2)(iii) and is liable for 27 violations of Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(a)(2).
16. For the duration of the TPEM Respondent imported 105 tractors in the power category greater than or equal to 19 kW and less than 37 kW with engines made by a manufacturer other than Changchai, as shown in Attachment II. Thirty two of those tractors are Subject Tractors. Respondent failed to comply with 40 C.F.R. § 89.102(d)(2)(iii) and is liable for

105 violations of Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(a)(2).

**Terms of Agreement**

17. Within 30 days of the date of this Agreement, Respondent shall provide EPA with a plan reasonably calculated to insure that all nonroad engines imported by Respondent into the United States after the date of this Agreement shall be imported in a manner that complies with the requirements of the Act and 40 C.F.R. Parts 89 and 90.
18. Respondent shall decrease its 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines rated equal to or above 8 kW and less than 19 kW, under 40 C.F.R. § 89.102(d)(2) by twenty seven.
19. Respondent shall decrease its 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines rated equal to or above 19 kW and less than 37 kW, under 40 C.F.R. § 89.102(d)(2) by seventy three.
20. Respondent shall export to a country other than Canada and Mexico the 32 Subject Tractors marked for "Export" in Attachment 1 and shall submit documentary proof thereof within 30 days of the date of this agreement.
21. Respondent shall submit reports showing compliance with the TPEM requirements under 40 C.F.R. § 89.102(d). Such reports shall contain, for each piece of equipment imported by Respondent under the TPEM, the name of the engine and chassis manufacturer, engine and chassis serial numbers, engine and chassis date of manufacture, engine power rating, engine power category under 40 C.F.R. § 89.112, and the date of importation. Notwithstanding 40 C.F.R. §89.102(e)(1), three such reports, covering Respondent's importation for the previous calendar year, shall be submitted on or before January 30, 2005, January 30, 2006, and January 30, 2007.
22. All submissions shall be sent to EPA at the following address:

David Alexander  
U.S. EPA, OECA/AED (mailcode 2242A)

Room 1111A  
1200 Pennsylvania Ave NW  
Washington, DC 20037-0001  
facsimile: (202) 564-0069

23. Respondent shall pay to the United States \$16,000 within 30 calendar days of the 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 # 7045

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 22 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.

24. 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 certified nonroad engine, or contains a nonroad engine that was manufactured after the applicable effective date of the regulations and is otherwise imported in compliance with 40 C.F.R. § 89.102(d).

#### General Provisions

25. 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.
26. 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.
27. 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.

28. The Effect of Settlement described in Paragraph 31 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 II, and the prompt and complete remediation of any violations in accordance with this agreement.

**Stipulated Penalties:**

29. 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 23, \$400 per day.
  - B. For failure to submit to EPA, in writing, a plan to prevent future violations, and reduce importations pursuant to flexibility provisions pursuant to Paragraphs 17 through 19, \$400 per day.
  - C. For failure to submit reports, including failure to submit timely reports, of importations under 40 C.F.R. § 89.102 in accordance with Paragraph 21, \$300 per day.
  - D. For failing to export 32 tractors in accordance with Paragraph 20, or failing to provide proof thereof, \$500 per day.
  - E. For importing a piece of nonroad equipment containing an uncertified engine that does not qualify for the TPEM, \$10,000 per violation.

30. All stipulated penalties under Paragraph 29 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 23 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**

31. 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:

**HHU, Inc.  
d/b/a Mazama Products**

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By: *Roger M Powell*  
Roger Powell, President

11-29-04  
Date

**U.S. Environmental Protection Agency**

By: *Adam M. Kushnetz*  
Adam M. Kushnetz  
Acting Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance

12/1/04  
Date

## Attachment I

## SUBJECT TRACTORS HELD BY CUSTOMS

Tractor Serial #	Engine Serial #	Engine Make	Engine Model	kW	TPEM	Export
43407	Y40600864A	YANGDONG	Y385T	18.6	YES	NO
43455	Y04610636A	YANGDONG	Y385T	18.6	YES	NO
43458	Y40610650A	YANGDONG	Y385T	18.6	YES	NO
43454	Y40610643A	YANGDONG	Y385T	18.6	YES	NO
43691	C40500761A	CHANGCHAI	ZN390T	23.5	YES	NO
43722	C40601172A	CHANGCHAI	ZN390T	23.5	YES	NO
43615	04F0404603	JIANGSSU JIANGHUAI	TY395 IT	25.8	NO	YES
43637	04F0404595	JIANGSSU JIANGHUAI	TY395 IT	25.8	NO	YES
43655	04F0404645	JIANGSSU JIANGHUAI	TY395 IT	25.8	NO	YES
43433	04F0404652	JIANGSSU JIANGHUAI	TY395 IT	25.8	NO	YES
C1490	C1490	JIANGLING	NJ385	20.6	NO	YES
C1488	C1488	JIANGLING	NJ385	20.6	NO	YES
C1266	C1266	JIANGLING	NJ385	20.6	NO	YES
C1470	C1470	JIANGLING	NJ385	20.6	NO	YES
C1478	C1478	JIANGLING	NJ385	20.6	NO	YES
C1369	C1369	JIANGLING	NJ385	20.6	NO	YES
C1356	C1356	JIANGLING	NJ385	20.6	NO	YES
C1464	C1464	JIANGLING	NJ385	20.6	NO	YES
C1357	C1357	JIANGLING	NJ385	20.6	NO	YES
C1469	C1469	JIANGLING	NJ385	20.6	NO	YES

## SUBJECT TRACTORS HELD AT MAZAMA PRODUCTS

Tractor Serial #	Engine Serial #	Engine Make	Engine Model	kW	TPEM	Export
44861	C408052219A	CHANGCHAI	ZN390T	23.5	YES	NO
45120	C40900939A	CHANGCHAI	ZN390T	23.5	YES	NO

45116	C40900938A	CHANGCHAI	ZN390T	23.5	YES	NO
45118	C40902629A	CHANGCHAI	ZN390T	23.5	YES	NO
45115	C40805217A	CHANGCHAI	ZN390T	23.5	YES	NO
45056	C40902628A	CHANGCHAI	ZN390T	23.5	YES	NO
44857	C40805223A	CHANGCHAI	ZN390T	23.5	YES	NO
45058	C40900934A	CHANGCHAI	ZN390T	23.5	YES	NO
45117	C40900941A	CHANGCHAI	ZN390T	23.5	YES	NO
45057	C40805224A	CHANGCHAI	ZN390T	23.5	YES	NO
44995	04F0405876	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
45088	04H0408168	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
45086	04H0408280	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
45111	04H0408305	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
45112	04H0408275	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44835	04H0407763	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44996	04F0405869	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44840	04F0405860	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
45110	04F0405874	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
45114	04H0408298	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
43720	C40601185A	CHANGCHAI	ZN390T	23.5	YES	NO
43690	C40601169A	CHANGCHAI	ZN390T	23.5	YES	NO
43718	C40601162A	CHANGCHAI	ZN390T	23.5	YES	NO
43496	C40601053A	CHANGCHAI	ZN390T	23.5	YES	NO
44860	C40805220A	CHANGCHAI	ZN390T	23.5	YES	NO
44859	C40805218A	CHANGCHAI	ZN390T	23.5	YES	NO
44856	C40805221A	CHANGCHAI	ZN390T	23.5	YES	NO
44858	C40805216A	CHANGCHAI	ZN390T	23.5	YES	NO
44721	04F0405859	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44718	04F0404622	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES

44809	04H0407767	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44837	04H0407760	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44719	04F0405861	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44717	04F0405870	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44720	04F0405861	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES
44722	04F0405872	JIANGSU JIANGHUAI	TY395IT	25.8	NO	YES



Attachment II

HHU, Inc., tractors imported under small volume allowance 2003-2004

All Shipments arrive at Port # 2904 in Portland, Oregon unless noted otherwise

Lenar 254-II, Manufacturer Jiangling Tractor Company; Engine By Jiangling Tractor Co.

Purchase Order #	1239	1238	2004 Total
Quantity Imported	14	13	27
Imported Date	5/2/2004	4/4/2004	
Engine NJ385B KW Rate	18.4	18.34	
Entry No.	0455352-0	0455271-2	

Lenar 274-I, Manufacturer Jiangling Tractor Company; Engine By Jiangling Tractor Co.

Purchase Order #	40113	126	2003 Total
Quantity Imported	4		4
Date Imported	11/12/2003	12/20/2003	2004 Total
Engine NJ385T-1 KW Rate	20.6		10
Entry No.	0454818-1		

TaskMaster 426E, Manufacturer Changzhou Tractor Plant; Engine By China Yangdong Co. Ltd.

Purchase Order #	1172	1230-1*	1230-4*	1230-4*	1230-4*	1230-8	1243	1246-1	1246-2		2003 Total
Quantity Imported	16	13	13	13	13	32	26	19	4		16
Date Imported	11/6/2003	1/26/2004	1/27/2004	1/27/2004	1/27/2004	1/27/2004	7/21/2004	8/11/2004	8/11/2004		2004 Total
Engine Y385T KW Rate	18.6	18.6	18.6	18.6	18.6	18.6	18.6	18.6	18.6		137
Entry No.	0454808-2	3454316-9*	3454088-4	3454085-0	3454091-8	0455064-1	9509114-2	9516495-6	9533583-8		

\* This shipment was misrouted to 3004 and upon entry into the US each container was assigned an entry number  
\* PO # 1230-1 was misrouted to Port # 3004

TaskMaster 432E, Manufacturer Changzhou Tractor Plant; Engine By Changchai Engine Co.

Purchase Order #	1172	1230-4*	1230-4*	1230-4*	1230-4*	1230-8	1257	1246-1	1246-2		1254	1257	1257	2003 Total
Quantity Imported	10	13	13	13	13	25	10	10	10		2			10
Date Imported	11/6/2003	1/27/2004	1/16/2004	1/27/2004	1/16/2004	1/27/2004	8/11/2004	7/26/2004	8/11/2004		9/1/2004			2004 Total
Engine ZH380 KW Rate	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5		23.5			127
Entry No.	0454808-2	3454083-5	3254090-0	3454083-5	3254090-0	0455064-1	9516520-1	9516495-6	9533563-8		9533624-0			2402965-6

\* This shipment was misrouted to 3004 and upon entry into the US each container was assigned an entry number

[REDACTED]											
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91

	2003	2004	Total	units to be released	2004 Total
8>19 kw units received	16	160	176	4	164
19>37kw units received	27	163	190	20	183

8>19kw

EPA Will Release

4

Units to be returned 19>37kw

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Units to be released 19>37kw

[REDACTED]	[REDACTED]	[REDACTED]

20

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