

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

| | | |
|----------------------------------|---|---------------------------|
| In the Matter of: |) | |
| |) | Administrative Settlement |
| |) | Agreement |
| Roberts Land & Equipment, L.L.C. |) | |
| |) | AED/MSEB # 7290 |
| Respondent |) | |

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Roberts Land & Equipment, L.L.C. (Roberts or Respondent), located at 985 CR7, Clovis, NM 88101, regarding Respondent's compliance with Section 203(a) of the Clean Air Act (Act), 42 U.S.C. § 7522(a), and the regulations governing Importation of Motor Vehicles and Motor Vehicle Engines, codified at 40 C.F.R. Part 85, Subpart P.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and the regulations governing Importation of Motor Vehicles and Motor Vehicle Engines, codified at 40 C.F.R. Part 85, Subpart P, resulting from Respondent's importation of motor vehicles (Subject Vehicles) that are identified in Attachment I. By entering into this Agreement, Respondent does not admit that it has committed any of the alleged violations or that the alleged violations occurred. The Respondent wishes to settle this matter but denies any wrongdoing.

Statutory Authority

2. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits the importation into the United States of any new motor vehicle manufactured after the effective date of the regulations unless the motor vehicle is covered by an EPA certificate of conformity that is issued, and in effect.

3. Under Section 205(a) of the Act, 42 U.S.C. § 7524(a), any person who violates Section 203(a)(1), 42 U.S.C. § 7522(a)(1), is subject to a civil penalty of not more than \$32,500 for each motor vehicle.
4. 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 motor vehicles, or importing such motor vehicles for resale.
5. Section 216(2) of the Act, 42 U.S.C. § 7550(2), defines a motor vehicle as any self-propelled vehicle designed for transporting persons or property on a street or highway.

Regulatory Authority

6. 40 C.F.R. § 85.1501 applies to motor vehicles which are offered for importation or imported into the United States and for which the Administrator has promulgated regulations under Part 86 prescribing emissions standards.
7. EPA promulgated emission regulations for model year 1977 and later model year new motor vehicles including emission standards and requirements that the manufacturer obtain certificates of conformity. Those regulations are codified at 40 C.F.R. Part 86, Subparts A - C.
8. 40 C.F.R. § 85.1513 prohibits the importation of a motor vehicle that is not covered by a certificate of conformity unless the importation meets the requirements of 40 C.F.R. Part 85, Subpart P.
9. 40 C.F.R. § 85.1703(a) sets forth the criteria for deeming a vehicle to be a nonroad vehicle rather than a motor vehicle subject to the motor vehicle requirements. If a vehicle displays specified features making highway travel unsafe, impractical, or unlikely, the vehicle is not defined as a motor vehicle, but is, instead, defined and regulated as a nonroad vehicle. In addition, a vehicle which is not capable of travel at a speed in excess of 25 mile per hour is generally not a motor vehicle.

Definitions

10. For the purposes of this Agreement, the following definitions apply:
- a. *Applicable regulation and date:* Applicable regulation means 40 C.F.R. Part 86, Subpart A, and applicable date means December 31, 1976.
 - b. *Certificate of Conformity:* The document issued by EPA to a manufacturer of motor vehicles after EPA has determined that the manufacturer's application is complete and that the engine family meets the applicable requirements of the Act and the regulations promulgated at 40 C.F.R. Part 86. Issuance of the Certificate of Conformity permits production and introduction into commerce of vehicles or engines built in accordance with the manufacturer's application as long as they are built after the effective date of the certificate and before the end of the calendar year for which the model year indicated on the certificate is named.
 - c. *Export:* To permanently remove from the United States, Canada, or Mexico.
 - d. *Modify:* To permanently install a steel restrictor plate, with or without a supporting steel box, all elements of which are made only of hardened (or case hardened) steel whose thickness is no less than one eighth of an inch at any point. The restrictor plate, and if applicable the supporting steel box, shall be deemed installed only when it has been continuously welded on all sides of the perimeter of each element using high temperature welding to its neighboring element. No attachment method of the restrictor plate, or the supporting steel box, to the vehicle is acceptable other than continuous welding to the structural chassis or frame (frame) of the vehicle. No screws or bolts or other devices are permitted to secure the restrictor plate or supporting box. Welding to parts other than the frame such as, but not limited to, the floor pan, is not permitted. A steel plate shall be deemed a restrictor plate only when it irrevocably prevents use of driving in gears other than 1st gear and reverse.

- e. *Modified vehicle*: Means a vehicle that has a steel restrictor plate installed in accordance with subparagraph d, above.
- f. *Sells*: Means to transfer for consideration the ownership, title, possession, or right to use a vehicle for any period of time.
- g. *Ultimate Purchaser*: Means the first person who in good faith purchases a modified vehicle for purposes other than resale.
- h. *This matter*: Respondent's importation of the Subject Vehicles and any civil liability arising therefrom under the Clean Air Act and implementing regulations at 40 C.F.R. Parts 85 and 86.

Alleged Violations

- 11. By checking box H on EPA import form #3520-21, Respondent represented that the Subject Vehicles were nonroad spark ignition engines governed by 40 C.F.R. Part 1048. However, inspection by the United States Customs and Border Protection (CBP) and review by EPA has determined that the restrictor plates on the Subject Vehicles do not meet EPA standards for restrictor plate thickness, permanence, and tamper-resistance.
- 12. Accordingly, the Subject Vehicles are motor vehicles as defined in 40 C.F.R. § 85.1703 and their importation is a violation of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1).
- 13. Based on the forgoing, EPA alleges that Respondent committed 13 violations of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1).

Civil Penalty

- 14. Respondent shall pay to the United States a civil penalty of thirty two thousand dollars (\$32,000) (EPA penalty).
- 15. Respondent agrees to pay the EPA penalty to the United States of America 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. Respondent agrees to pay the amount in the manner specified in paragraphs 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: AEC/MSEB #7290

Simultaneously, fax a photocopy of the check to (202) 564-0069 to the attention of David Alexander, or scan and email a copy of the check to alexander.david@epamail.epa.gov. This check shall be identified with the case number, AED/MSEB #7290, and Respondent'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 # 7290. Within twenty-four hours of payment, fax a photocopy of the receipt of payment to (202) 564-0069 to the attention of David Alexander, or scan and email a copy of the receipt to alexander.david@epamail.epa.gov.

16. Respondent shall export the Subject Vehicles in accordance with Paragraph 10(c) within 30 days of their release for export-only by CBP. Exportation shall be carried out under the supervision of CBP. For all exported Subject Vehicles Respondent shall, within 30 days of the release of the Subject Vehicle(s) for export-only by CBP, certify to EPA that the Subject Vehicles have been exported and Respondent shall provide written documentation issued by CBP which shows that such exportation was in accordance with Paragraph 10(c).

17. Before Respondent sells a modified vehicle to an ultimate purchaser Respondent shall secure a Disclosure and Certification (Attachment II) which is completed and executed by the ultimate purchaser of the vehicle. Note that the term “sells” is defined in Paragraph 10(f) of this Agreement. In the event Respondent sells a modified vehicle to a person or entity other than an ultimate purchaser, such as a dealer, wholesaler, or recycler, Respondent shall ensure that the entity or person secures said Disclosure and Certification, completed and executed by the ultimate purchaser and returns it to the Respondent. Respondent shall submit all completed and executed Disclosure and Certifications collected during the six months following the effective date of this agreement by December 1, 2008. On June 1, 2009, December 1, 2009, and June 1, 2010, Respondent shall submit all completed and executed Disclosure and Certifications secured since the previous submission. On each of the above dates Respondent shall provide a list of modified vehicles, if any, for which Respondent did not secure a completed and executed Disclosure and Certification with the purchaser’s name, address and telephone number, and the make, model, vehicle identification number, date of purchase and purchase price, and a receipt showing payment of the penalty paid in the manner specified in Paragraph 15, in the amount specified in Paragraph 25(c). Time is of the essence to this paragraph.

Notice

18. All written correspondence and submissions to EPA concerning this Agreement shall be sent to:

(Postal Service Mail)

David E. Alexander
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7290

(Courier Service)

David E. Alexander
U.S. EPA
Ariel Rios South, Room 1111A
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7290

General Provisions

19. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.
20. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Respondent 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(c) of the Act, 42 U.S.C. § 7524(c), 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. Respondent 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.
21. The parties represent 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.
22. Respondent 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.
23. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
24. This Settlement is contingent 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, and the prompt and complete remediation of any violations in accordance with each and every term of this Agreement.

Stipulated Penalties

25. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 14 through 18 of this Agreement, Respondent 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 14, 15, and 18 of this Agreement, Respondent shall pay a stipulated penalty of \$500 per day.
 - b. For the failure to timely export any Subject Vehicle, or provide proof of such exportation as required by Paragraphs 10(c), 16, and 18 of this Agreement, Respondent shall pay a stipulated penalty of \$2,500.
 - c. For the failure to timely secure or submit a completed and executed Disclosure and Certification under Paragraphs 17 and 18, Respondent shall pay a stipulated penalty of \$3,500 per vehicle.
26. All stipulated penalties shall be paid in the manner specified in Paragraph 15 of this Agreement. In addition, a copy of the transmittal letter(s) and receipts(s) shall be sent to David E. Alexander in the manner specified in Paragraph 18.

Effect of Agreement


27. 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 Respondent 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 Respondent of responsibility to comply with other state, federal, or local laws or regulations.

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of Roberts Land & Equipment, L.L.C., Respondent

AED/MSEB #7290

The following agrees to the terms of this Agreement:

By:  Date: 6 6 08
Typed or Printed Name: Bobby Roberts
Typed or Printed Title: President
Federal Tax Identification Number: 20-4028564

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of Roberts Land & Equipment, L.L.C., Respondent

AED/MSEB #7290

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: Adam M. Kushner

Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: June 12, 2008

ATTACHMENT I

Subject Vehicles

Entry #BAE-007327-1

| Make | Truck Model | Type | Engine model | serial number |
|------------|-------------|-----------------|--------------|---------------|
| Suzuki | DD51T | truck | F6A | 132742 |
| Subaru | K84 | truck | EN07 | 317625 |
| Subaru | K84 | truck | EN07 | 249733 |
| Mitsubishi | U421 | truck | 3G83 | 0127567 |
| Daihatsu | S110P | truck | EF | 011466 |
| Mitsubishi | U421 | truck | 3G83 | 0133697 |
| Mitsubishi | H5BA | automatic truck | 4A30 | 5014098 |
| Mitsubishi | U62 | truck | 3G83 | 0104581 |
| Mitsubishi | U421 | truck | 3G83 | 0127567 |
| Suzuki | DJB11 | truck | F6A | 391404 |
| Suzuki | DC511 | truck | F6A | 403573 |
| Daihatsu | S82P | truck | EF | 135285 |
| Honda | HH6 | truck | HH6 | 5000207 |

DISCLOSURE AND CERTIFICATION

For Purchase of "KEI" Minitruck

I, [insert name] _____, of [insert home address (post office box not acceptable)] _____,

and [insert phone number] _____, state that I am the purchaser of the [insert brand, model and model year] _____ vehicle, whose Vehicle Identification Number is _____ [the truck]. I

understand that the truck has been modified to prevent it from using forward drive gears other than 1st gear. This modification was made in order to permit importation of the truck as a nonroad vehicle, consistent with the limits of the Clean Air Act, 42 United States Code §§ 7521 *et. seq.* I also understand that removing or disabling this modification is illegal, and that anyone who modifies, or causes modification of the truck so that additional drive gears can be used is subject to a penalty of up to \$32,500 because they are deemed to be a manufacturer of a motor vehicle which is not certified by the United States Environmental Protection Agency (EPA). Lastly, I understand that this Disclosure and Certification will be submitted to EPA, and that making a false statement which will be relied upon by the EPA is a violation of 18 United States Code § 1001, and may be punished by a fine of up to \$10,000 or imprisonment as long as 5 years, or both.

Purchaser:

Signature: _____

Date: _____

Printed Name: _____

Roberts Land & Equipment, L.L.C.

By: 

Date: 6-6-08

Typed or Printed Name: Bobby Roberts

Typed or Printed Title: President

Federal Tax Identification Number: 20-4028564