

- 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 Tractors 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, as applied to the Subject Tractors.
- 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. Part 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 containing engines with serial numbers 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.
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 December 1, 2004, the parties executed an agreement to settle violations of the Clean Air Act stemming from Respondent's importation of tractors with uncertified diesel

engines. The tractors did not qualify for the TPEM because they contained engines made by more than one manufacturer per power category.

10. Subsequent to the agreement of December 1, 2004, Respondent disclosed and the United States became aware that Respondent imported the Subject Tractors containing uncertified Jiangsu engines. Respondent has selected Changchai engines for use in 19 - 37 kW TPEM equipment, and therefore the Subject Tractors do not qualify for the TPEM, and consequently, may not be imported.
11. On or about Dec. 15, 2004, U. S. Customs and Border Protection (Customs) detained the Subject Tractors, which are at Respondent's premises.
12. Respondent is the importer of the Subject Tractors.
13. The Subject Tractors contain nonroad compression ignition engines built in Model Year 2003, which is after the effective date for the engines. As a consequence, certified engines were required to be used in the Subject Tractors.
14. The Subject Tractors do not contain certified engines, and do not have affixed the certification label required by 40 C.F.R. § 89.110. However, the respondent denies any wrong doing.

Terms of Agreement

15. Respondent shall destroy the engines in the Subject Tractors under Customs supervision. Within 60 days from the date EPA ratifies this agreement, Respondent shall submit to EPA documentary proof of destruction. All costs in connection with such destruction and Customs supervision shall be borne by Respondent. Proof of destruction shall be an attestation by an authorized Customs employee that (s)he observed that each engine in the subject tractors was rendered useless by breaking the water jackets in the head and the block, resulting in observable loss of substantially all coolant, and breaking the fuel

injection unit, all in such a manner and to such an extent that no breakage can thereafter be repaired or made to retain coolant, regardless of the extent of effort to effect any repair.

16. 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

17. Under this Agreement respondent shall pay to the United States a penalty of \$5000, within 30 calendar days of the date of this Agreement. Late payment of the 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 # 7139

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, 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

19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a hard copy, electronic copy or fax of the executed Agreement to the Respondent's counsel, Elon A. Pollack, c/o Stein Shostak Shostak Pollack & O'Hara, LLP, 865 S Figueroa Stree, Suite 1388, Los Angeles, CA 90017
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 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 regarding 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.

- B. For failing to destroy the engines in the Subject Tractors, in accordance with Paragraph 15, or failing to provide proof thereof, \$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 30 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 in paragraphs 3 -8 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.

Release of Claims

26. The undersigned agrees to release and forever discharge the United States, its officers, agents, servants, and employees, their heirs, successors, or assigns, from any and all action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and/or demands whatsoever in law or equity which I, my heirs, successors, or assigns, ever had, now have, or may have in the future in connection with the detention, seizure, and/or destruction by United States Customs and Border Protection of the Subject Tractors. The undersigned further agrees to hold and save the United States, its officers, agents, servants and employees, their heirs, successors, or assigns, harmless from any claims by any others, including costs and expenses for or on account of any and all lawsuits or claims of any character whatsoever in connection with the detention, seizure, and/or destruction by United States Customs and Border Protection of the Subject Tractors.

The following agree to the terms of this Agreement:

HHU, Inc.
d/b/a Mazama Products

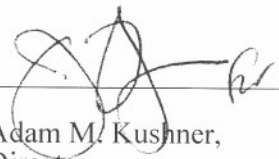
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By: *Roger M Powell*
Roger Powell, President *pres*

3-15-06
Date

Administrative Settlement Agreement in the Matter of the United States v. HHU, Inc.
case number AED/MSEB7139

U.S. Environmental Protection Agency

By:  _____

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

4.14.06
Date

Attachment I

SUBJECT TRACTORS

Tractor Serial #	Tractor Brand	Engine Serial #	Engine Brand	Engine Model	kW
43213	Dongfeng	04F0404607	JIANGSU JIANGHUAI	TY395IT	25.8
43257	Dongfeng	04F0404618	JIANGSU JIANGHUAI	TY395IT	25.8
43231	Dongfeng	04F0404602	JIANGSU JIANGHUAI	TY395IT	25.8
43216	Dongfeng	04F0404610	JIANGSU JIANGHUAI	TY395IT	25.8
43215	Dongfeng	04F0404581	JIANGSU JIANGHUAI	TY395IT	25.8
43212	Dongfeng	04F0404592	JIANGSU JIANGHUAI	TY395IT	25.8
43254	Dongfeng	04F0404627	JIANGSU JIANGHUAI	TY395IT	25.8
43219	Dongfeng	04F0404591	JIANGSU JIANGHUAI	TY395IT	25.8
43214	Dongfeng	04F0404579	JIANGSU JIANGHUAI	TY395IT	25.8
43218	Dongfeng	04F0404609	JIANGSU JIANGHUAI	TY395IT	25.8