

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

Lenar Equipment, Inc.

Respondent

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) AED/MSEB # 7140
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This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Lenar Equipment, 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 7 tractors containing the nonroad engines described in Attachment I (Subject Tractors) while ensuring that future violations are avoided. The respondent denies any wrong doing.

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 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, readily visible to the average person after the engine is installed in the equipment, and be attached in such a manner that it cannot be removed with destroying or defacing the label.

Background

8. On December 1, 2004, HHU, Inc. and EPA executed an agreement to settle violations of the Clean Air Act stemming from HHU, Inc.'s importation of tractors with uncertified diesel engines. This Administrative Settlement Agreement shall not be interpreted to imply any association, or lack of association, of any kind between Respondent and HHU, Inc. or any other entity.
9. On or about May 3, 2005, U. S. Customs and Border Protection (Customs) detained the Subject Tractors.
10. Respondent is the importer of the Subject Tractors.
11. The Subject Tractors contain nonroad compression ignition engines built in February 2005, which is after the effective date for the engines. As a consequence, certified

engines were required to be used in the Subject Tractors.

12. The Subject Tractors contain engines covered by the Certificate of Conformity issued for engine family 5JDGL2.233DN to Jiangsu Jiangdong for engines manufactured in model year 2005.
13. The Subject Tractors contained engines that did not have affixed the certification label required by 40 C.F.R. § 89.110(a)(1) in that the labels could be, and were, removed without destroying or defacing the label.

Terms of Agreement

14. Respondent, arranged with the manufacturer for relabeling each of the engines in the Subject Tractors in a manner that is compliant with 40 C.F.R. 89.110(a) by attaching, in the presence of Customs, a durable EPA approved certification label in a manner which cannot be removed without destroying or defacing the label. Relabeling occurred on October 12, 2005 and proof of same was submitted to EPA by Customs. Customs took possession of labels removed from the Subject Tractors, and one unused replacement label.
15. Upon ratification of this agreement EPA shall recommend that Customs release the Subject Tractors to Respondent forthwith.
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. Respondent shall pay to the United States a penalty of \$3500, within 30 calendar days of the date of EPA's ratification 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 # 7140

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 Street, 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..
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 in paragraphs 3 - 7 upon which this 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:

Lenar Equipment, Inc.

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By: Lorna Jean Powell Date: 3/8/06
Printed Name: Lorna Jean Powell Title: President

Administrative Settlement Agreement in the Matter of the United States v. Lenar Equipment, Inc.

case number AED/MSEB 7140

U.S. Environmental Protection Agency

By:  _____

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

7.14.06
Date

Attachment I

SUBJECT TRACTORS

Tractor Serial #	Tractor Brand	Engine Serial #	Engine Brand	Engine Model	kW
051610	Lenar	05B2300206	JIANGSU JIANGHUAI	TY395E1	25.8
051541	Lenar	05B2300179	JIANGSU JIANGHUAI	TY395E1	25.7
051537	Lenar	05B2300216	JIANGSU JIANGHUAI	TY395E1	25.7
051538	Lenar	05B2300207	JIANGSU JIANGHUAI	TY395E1	25.7
051536	Lenar	05B2300218	JIANGSU JIANGHUAI	TY395E1	25.7
051609	Lenar	05B2300206	JIANGSU JIANGHUAI	TY395E1	25.7
051540	Lenar	05B2300198	JIANGSU JIANGHUAI	TY395E1	25.7