

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

**ADMINISTRATIVE SETTLEMENT AGREEMENT**

**In the Matter of:**

**Nasser Heavy Equipment, Inc.**

**Respondent**

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**MSEB AED # 7143**

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Nasser Heavy 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 on or about October 28, 2005 of two Volvo model A40D trucks, serial numbers 10134 and 10133 (the Subject Trucks), containing nonroad engines with serial number 228104 and 228109 respectively, and to ensure 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 Paragraph 1 and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 89.
- 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. Parts 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 Trucks:* The term “Subject Trucks” means the trucks whose serial numbers are listed in Paragraph 1.

**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.

#### **Background**

8. On December 2, 2005, U. S. Customs and Border Protection (Customs) seized the Subject Trucks at the port of Savannah, Georgia.
9. Respondent is the importer of the Subject Trucks.
10. The Subject Trucks contain nonroad compression ignition engines manufactured after the Dates of the Applicable Regulations. As a consequence, certified engines were required to be used in the Subject Trucks.
11. The Subject Trucks do not contain certified engines, and do not have affixed the certification label required by 40 C.F.R. § 89.110.

#### **Terms of Agreement**

12. Within 60 days of the date of this Agreement, Respondent shall submit proof that each of the Subject Trucks has been exported to a location outside the North American continent.



13. All submissions to EPA shall be sent to the following address:

David Alexander  
U.S. EPA, OECA/AED (mailcode 2242A)  
1200 Pennsylvania Ave NW (Rm. 1111A)  
Washington, DC 20460-0001  
facsimile: (202) 564-0069

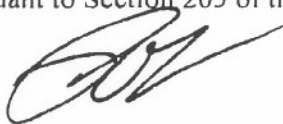
14. Respondent shall pay to the United States forty-five thousand dollars (\$45,000) within 30 calendar days of the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the amount by certified check 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 # 7143

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.

#### **General Provisions**

15. 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.
16. 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.
17. 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.

18. The Effect of Settlement described in Paragraph 21 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 Paragraph 1, and the prompt and complete remediation of any violations in accordance with this Agreement.


**Stipulated Penalties:**

19. 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 14, \$400 per day.
  - B. For failure to timely export the Subject Trucks, or provide proof of such exportation, pursuant to Paragraph 12, \$500 per day.
20. All stipulated penalties under Paragraph 19 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 14 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**

21. 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:  


Nasser Heavy Equipment, Inc.

By: 

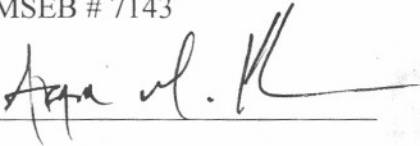
Paul Gibson

4-24-2006

Date

Title: General Mgr.

U.S. Environmental Protection Agency  
In the Matter of Nasser Heavy Equipment, Inc.  
AED/MSEB # 7143

By: 

4/28/06

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

Date