

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

In the Matter of:)	
)	
Kupey Auto Distributors, Inc.)	SETTLEMENT AGREEMENT
Respondent.)	AED/MSEB # 7124
)	

This Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Kupey Auto Distributors, Inc., Central Plaza, Industrial Park, 869 Street, Km. 2.6, Palmas Catano, Puerto Rico 00921, (Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Parts 89 and 90.

Purpose

1. The purpose of this Settlement Agreement (Agreement) is to provide for resolution and remediation of any and all claims by EPA under the Act and 40 C.F.R. Parts 89 and 90, arising out of the importation of 2741 nonroad engines and the generator sets containing those engines, as described in Paragraph 16 of this Agreement (Subject Engines), while ensuring that future violations are avoided.

Definitions:

2. For purposes of this Agreement, the following definitions apply:
 - a. *This matter:* as used in this Agreement means Respondent's importation of the Subject Engines and any civil liability that may apply to such violations.
 - b. *Certificate of Conformity:* the document issued by EPA to an engine manufacturer under 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106, as applicable, after EPA determines that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Parts 89 or 90 and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of engines built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.

- c. *Certified engine*: a nonroad engine built after the applicable date of the regulations and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable date of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
- e. *Applicable regulation and dates*: 40 C.F.R. Part 89 is applicable to nonroad compression-ignition engines built after the applicability dates in 40 C.F.R. Part 89. 40 C.F.R. Part 90 is applicable to nonroad spark-ignition engines built after the applicability dates in 40 C.F.R. Part 90.

Statutory Authority:

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522 (a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad engines, including engines contained in nonroad equipment or nonroad vehicles, unless such engine or vehicle is covered by a Certificate of Conformity issued and in effect.

Regulatory Authority - Nonroad Compression Ignition (CI) Engines

- 4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits the following act and the causation thereof: “the importation into the United States [of] any new nonroad [CI] engine manufactured after the applicable effective date under this part, or any nonroad vehicle or equipment containing such engine, unless such engine is covered by a certificate of conformity....”
- 5. C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad CI engine manufactured after the applicable effective date of the regulations, unless a label is affixed to the engine in accordance with 40 C.F.R. § 89.110.
- 6. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad CI engines or importing such engines 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 nonroad CI engine, a permanent and legible label identifying each nonroad 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. § 89.1003(b)(4) requires manufacturers, including importers, of equipment that is self-propelled, portable, transportable, or intended to be propelled, to use certified nonroad engines in that equipment unless the manufacturer can prove that the equipment will be used in a manner consistent with the stationary use exclusion found in the definition of Nonroad Engine of 40 C.F.R. § 89.2
9. 40 C.F.R. § 89.2 excludes from the definition of nonroad engine those stationary engines which, *inter alia*, will remain at a single site at a building location for more than 12 consecutive months.

Regulatory Authority - Nonroad Spark Ignition (SI) Engines

10. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits the following act and the causation thereof: “the importation into the United States [of] any new nonroad [SI] engine manufactured after the applicable effective date under this part unless such engine is covered by a certificate of conformity...”
11. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI engine manufactured after the applicable effective date of the regulations, unless a label is affixed to the engine in accordance with 40 C.F.R. § 90.114.
12. 40 C.F.R. § 90.3 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad SI engines or importing such engines for resale, or a person acting for, and under the control of such person.
13. 40 C.F.R. § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad SI engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.

14. 40 C.F.R. § 90.1004(b)(4) requires manufacturers, including importers, of equipment that is self-propelled, portable, transportable, or intended to be propelled, to use certified nonroad engines in that equipment unless the manufacturer can prove that the equipment will be used in a manner consistent with the stationary use exclusion found in the definition of nonroad engine of 40 C.F.R. § 90.3.
15. 40 C.F.R. § 90.3 excludes from the definition of nonroad engine those stationary engines which, *inter alia*, will remain at a single site at a building location for more than 12 consecutive months.

Background

16. During the period from August 8 through September 26, 2005, Respondent imported into the United States 2741 nonroad engines and the electrical generating equipment containing such engines, as described in Table 1, below. The Subject Engines were imported into the Port of San Juan, Puerto Rico.

**DESCRIPTION OF SUBJECT ENGINES
TABLE 1**

Date of Entry	Entry Number	Model	Quantity	Manufacturer
8/8/2005	256-02660463	GFS 6.5 (Diesel)	288	Fujian Tianlon
8/8/2005	256-02660463	GFS 15 (Diesel)	48	Fujian Tianlon
8/8/2005	256-02660166	GFS 10 (Diesel)	43	Fujian Tianlon
8/8/2005	256-02660166	TL1500I (Gasoline)	516	Fujian Tianlon
8/8/2005	256-02660166	GFS 15 (Diesel)	10	Fujian Tianlon
8/8/2005	256-02660166	GFS 6.5 (Diesel)	144	Fujian Tianlon
8/8/2005	256-02669358	Option 6500D (Diesel)	264	China Pack Ningbo
8/19/2005	256-02662709	Option 6500D (Diesel)	432	China Pack Ningbo
8/23/2005	256-02668698	Option 6500D (Diesel)	132	China Pack Ningbo

9/26/05 (awaiting Customs examination)	BOU- 10001478	Option 6500D (Diesel)	864	China Pack Ningbo
Total			2741	

17. On the dates listed in Table 2, below, for the respective entries listed below, the Respondent submitted to U.S. Customs and Border Protection (CBP) the EPA Importation of Nonroad Engines and Equipment Declaration Form, EPA Form 3520-21, declaring that the subject engines were excluded from EPA emissions standards because they were stationary engines. For the Subject Engines in the entry with CBP Number BOU-10001478, Respondent has not presented any EPA Form 3520-21 nor has it made any assertions that the Subject Engines were excluded from EPA emissions standards. The Subject Engines contained in this entry are being detained subject to examination by CBP.

SUBMISSION DATES FOR EPA FORM 3520-21

TABLE 2

CBP Entry Number	Form Submission Date
256-02660463	August 29, 2005
256-02660166	September 12, 2005
256-02662709	September 16, 2005
256-02668698	September 16, 2005
256-02669358	September 19, 2005

18. Respondent offered no proof to CBP that the Subject Engines fit the stationary use exclusions found in 40 C.F.R. § 89.2 or 40 C.F.R. § 90.3, as applicable. CBP inspection of a sample of the Subject Engines revealed that these engines were portable or capable of transport.

19. On or about the dates listed in Table 3, below, in San Juan, Puerto Rico, CBP seized the Subject Engines described in Paragraph 16 of this Agreement, with the exception of those in CBP Entry Number BOU-10001478. As of the date of this Agreement, the Subject Engines continue to be constructively seized by CBP. The engines in CBP Entry Number BOU-10001478 have not been seized by CBP but are being held subject to examination by CBP.

DATES OF SEIZURE

TABLE 3

CBP Entry Number	CBP Seizure Date
256-02660463	September 1, 2005
256-02660166	October 12, 2005
256-02662709	October 7, 2005
256-02668698	October 7, 2005
256-02669358	October 14, 2005

20. The Subject Engines are regulated by, and subject to, the requirements of 40 C.F.R. Parts 89 or 90, as applicable.
21. EPA has determined the following: Respondent is the importer of the Subject Engines; none of the Subject Engines are certified as required pursuant to 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106, as applicable; and none of the Subject Engines were accompanied by any proof at the time of entry that they were subject to the stationary use exclusion from EPA emissions standards found in 40 C.F.R. § 89.2 or 40 C.F.R. § 90.3, as applicable.
22. Based upon the foregoing, EPA has determined that Respondent is liable for 2741 violations of Section 203(a) and 213(d) of the Clean Air Act, amounting to 2225 violations of 40 C.F.R. § 89.1003(a)(1)(ii) and 40 C.F.R. § 89.1003(a)(4)(ii) for the nonroad CI engines, and 516 violations of 40 C.F.R. § 90.1003(a)(1)(ii) and 40 C.F.R. § 90.1003(a)(4)(ii) for the nonroad SI engines.

Terms of Agreement

23. Respondent agrees to submit to Judy Lubow of EPA at the address specified in Paragraph 31 of this Agreement, a spreadsheet or list (hereinafter spreadsheet) identifying each of the generator sets containing the Subject Engines. Each generator set shall be identified on the spreadsheet by manufacturer and model number, and shall be grouped and identified by the applicable CBP entry number. Each generator set also shall be identified on the spreadsheet by an identification number that is unique to each generator set. This unique identification number shall be either either the serial number already on the Subject Engine, or by another unique number created by Respondent. The unique identification number also shall be permanently affixed to each Subject Engine on a part of the engine that is not normally replaced, and shall be clearly visible and readable on the Subject Engine while it is installed in the generator. Prior to any installation of the serial number labels, the label design, materials and method of application must be approved by Anne Wick of EPA, at the address and phone number listed in Paragraph 24 of this Agreement. The spreadsheet must be submitted to EPA prior to any exportation, destruction or sale for stationary use occurring pursuant to this Agreement, and in no event later than one week from the date of this Agreement.
24. On each generator set containing a Subject Engine that is not exported or destroyed, Respondent shall affix onto a part of the engine that is not normally replaced, a permanent, legible, conspicuous and readable label containing the following language, in English and in Spanish:

WARNING

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGULATIONS REQUIRE THAT THIS ENGINE MUST BE
USED ONLY IN A STATIONARY LOCATION. MOVEMENT
OF THIS ENGINE FROM ITS STATIONARY LOCATION
MAY BE A VIOLATION OF FEDERAL LAW. ANY PERSON
WHO MOVES THIS ENGINE MAY BE SUBJECT TO CIVIL
PENALTIES UP TO \$32,500.

(40 C.F.R. § 89.1003 AND 90.1003)

The label must be installed on the generator prior to its entry into commerce or sale in the United States by the Respondent, and in no event later than one week from the release of the generator to the Respondent by CBP. Prior to installation, the label design, materials and method of application must be approved by Anne Wick of EPA at the following address and phone number:

Anne Wick
U.S. Environmental Protection Agency
Ariel Rios Building (Room 1117A)
1200 Pennsylvania Avenue, NW
Washington, DC 20004-2403
Phone: 202-564-2063

25. Respondent agrees to remove the wheels from each generator set containing a Subject Engine which is equipped with wheels, and which is imported into the United States. The wheels must be removed from each such generator prior to its sale or disposal in the United States by the Respondent, and in no event later than one week from the release of the generator by CBP.
26. Within 90 days of this Agreement, for each generator set containing a Subject Engine, the Respondent shall:
 - a. Export the Subject engine. This exportation shall be carried out under the supervision of CBP and shall be to any country other than Canada or Mexico; or
 - b. Destroy the Subject Engine under the supervision of CBP; or
 - c. If permitted under the CBP terms of release, sell a Subject Engine only to the ultimate purchaser who intends to use the generator for its functional purposes at the site and location stated in the affidavit that Respondent shall obtain from the

purchaser prior to the sale. No later than the time of sale of each generator containing a Subject Engine, the Respondent shall obtain proof from the purchaser that the Subject Engine qualifies for the stationary use exemption under 40 C.F.R. §§ 89.2 or 90.3, as applicable. The proof shall be in the form of a bona fide affidavit, which shall be in the language and format identified in Attachment 1 to this Agreement, which must be signed and dated both by the customer and a responsible official of the Respondent.

27. Respondent agrees to submit to Mark Siegler of EPA at the address listed in this Paragraph 27, in one week intervals starting one week after the date of this Agreement, a report of the generators exported, destroyed, or sold for stationary use with an appropriate affidavit, within the past one week period.
 - a. Each report shall identify each generator disposed of, through the identification number listed in the initial spreadsheet submitted pursuant to Paragraph 23 of this Agreement, and the CBP entry number, manufacturer and model number also supplied on that spreadsheet.
 - b. For each such generator in the report, the Respondent shall also: Indicate the date of disposal; whether such disposal was by export, destruction or sale for stationary use of each generator; whether wheels had been removed from imported generators prior to disposal, and that a stationary affidavit was obtained if a sale occurred.
 - c. Included with each weekly report, the Respondent shall present proof that each of the Subject Engines that were imported by Respondent, qualified for the

stationary use exclusion under 40 C.F.R. § 89.2 or 40 C.F.R. § 90.3, as applicable. This proof shall consist of the bona fide stationary use affidavit prepared pursuant to Paragraph 26(c) of this Agreement for that generator, in the language of Attachment 1, herein, signed by both the purchaser and Respondent. Affidavits required under this Paragraph 27 and Paragraph 26(c) of this Agreement shall not be considered bona fide if EPA investigation establishes that they were inauthentic, fraudulent or prepared in an incomplete manner.

- d. Each weekly report shall be submitted to Mark Siegler, by overnight courier shipped on the date of the report, to the following address:

Mark Siegler
U.S. Environmental Protection Agency
Air Enforcement Division
Ariel Rios Building (Room 1117A)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004-2403

28. Within 90 days of the date of this Agreement, Respondent shall submit a written certification to Judy Lubow of EPA, that all of the Subject Engines identified in the Spreadsheet required pursuant to Paragraph 23 of this Agreement, were exported, destroyed or sold for stationary use with the appropriate stationary affidavits being acquired; and that all of the Subject Engines have been accounted for in the weekly reports required under Paragraph 27 of this Agreement.
29. Respondent shall maintain the stationary use affidavits created pursuant to the requirements of Paragraph 26(c) of this Agreement for a period of 5 years from the date

of this Agreement, and upon request shall make these affidavits available for inspection by EPA.

30. EPA has determined to reduce the civil penalty for the 2741 violations identified in Paragraph 22 of this Agreement to \$100,000, provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$100,000 to the United States of America within 60 days from the date of this Agreement (the Agreement due date). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay this 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 - 7124

31. A copy of the check shall be simultaneously sent to Judy Lubow at the following address:

Judy Lubow, Attorney
U.S. Environmental Protection Agency
12345 West Alameda Parkway
Suite 214
Denver, CO 80228

32. It is EPA's understanding that, in regard to the Subject Engines, CBP intends to require payment of a forfeiture remission amount of at least \$65,000, for the release of the Subject engines and generators into the commerce of the United States or for their CBP supervised exportation or destruction.
33. Within 60 days of the date of this Agreement, Respondent shall provide EPA with a detailed plan, which must be acceptable to EPA, and must be implemented by

Respondent within 90 days of the effective date of this Agreement, that is reasonably calculated to ensure that all nonroad engines imported after the date of this Agreement into the United States by Respondent shall comply with all EPA applicable regulations, including Parts 89 or 90.

34. Respondent's response to Paragraphs 23 and 28 of this Agreement shall be sent to Judy Lubow at the address listed in Paragraph 31 of this Agreement, unless otherwise required in the paragraph.

General Provisions

35. The effective date of this Agreement is the date that EPA executes the Agreement.
36. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
37. Notwithstanding any other provisions of this Agreement, upon Respondent's failure to timely perform pursuant to Paragraphs 23 - 31 this Agreement, 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 40 C.F.R. Parts 89 or 90, as applicable. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation.

38. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representations to EPA and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties

39. 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 pay the penalty, or provide proof thereof, pursuant to Paragraphs 30 and 31, \$250.00 per day;
 - b. For failure to export or destroy or the Subject Engines, and provide proof thereof, pursuant to Paragraph 26, \$250.00 per engine per day;
 - c. For failure to remove the wheels from Subject Engines that are imported into the United States, as required by Paragraph 25, \$250 per engine per day;
 - d. For failure to identify each Subject Engine pursuant to Paragraph 23, or for failure to attach the stationary use label or tag pursuant to Paragraph 24, \$250 per engine per day;
 - e. For failure to appropriately sell for stationary use, and provide bona fide proof thereof, pursuant to Paragraph 26, \$5000 per engine per day;
 - f. For failure to submit to EPA a written, approved plan to prevent further violations, and or failure to implement such a plan, all pursuant to Paragraph 33, \$250.00 per day; and

- g. For failure to submit to EPA the weekly reports required pursuant to Paragraph 27 or the written certification required pursuant to Paragraph 28, \$250.00 per day.
40. All stipulated penalties under Paragraph 39 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 simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 39 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.

Enforcement

41. 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

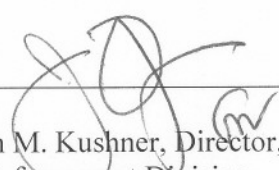
Settlement Agreement In the Matter of Kupey Auto Distributors, Inc.

AED/MSEB # 7124

United States Environmental Protection Agency

by: _____

Date: 11.10.05


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