

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

In the Matter of:	}	
Komatsu America Corporation	}	ADMINISTRATIVE SETTLEMENT AGREEMENT
Respondent	}	AED/MSEB -7224

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Komatsu America Corporation, 1 Continental Towers, 1701 West Golf Road Rolling Meadows, Illinois 60008 (Komatsu or Respondent), a wholly-owned subsidiary of Komatsu Ltd., 2-3-6 Akasaka, Minato-ku, Tokyo 107-8414, Japan.

Purpose:

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve nineteen alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a), and 7547(d), and the implementing Compression-Ignition (CI) nonroad engine regulations, 40 C.F.R. Part 89 (CI Non-Road Regulations).

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), prohibit any person from importing, selling, or leasing any new nonroad vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued and in effect, and bears the required EPA emissions label.

Regulatory Authority - CI Non-Road Regulations:

3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any CI engine manufactured after the effective dates of the regulations, unless such engine is covered by a certificate of conformity issued by EPA.

4. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad CI engine manufactured after the effective dates of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.
5. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
6. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified CI engine, a permanent and legible label identifying each nonroad engine and containing certain information. The label must be readily visible after the engine is installed in the equipment.
7. 40 C.F.R. §§ 89.110(a)(1), (2), and (5) require the label to be attached in such a manner that it cannot be removed without destroying or defacing the label; be durable and readable for the entire engine life; and be located so as to be readily visible to the average person after the engine is installed in the equipment. A supplemental label meeting all the requirements may be attached to a location other than the engine, in cases where the required label must be obscured after the engine is installed in the equipment.

Definitions:

8. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulation and dates:* 40 C.F.R. Part 89 is applicable to compression-ignition nonroad engines built after the applicability dates.
 - b. *Certified Engine:* A nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
 - c. *Certificate Holder:* The manufacturer to whom EPA has issued the Certificate of Conformity.

- d. *Certificate of Conformity*: The document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Part 89 and the CAA.
- e. *Corrective Action*: Action taken by Respondent to remedy the violations alleged by EPA in this Agreement.
- f. *Export*: To transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Observer*: A U.S. Customs and Border Protection (U.S. Customs) representative or an independent board certified licensed professional engineer.
- h. *This matter*: As used in this Agreement means Respondent's importation of the nineteen nonroad engines as described in Paragraph 9 of this Agreement (Subject Engines), the injunctive relief/corrective action required by this Agreement, and any liability that may apply to such alleged violations.

Alleged Violations:

9. On March 23 and 26, 2007, Respondent imported into Savannah, Georgia the twelve excavators and seven bulldozers containing CI non-road engines (the Subject Engines), as described in Appendix A of this Agreement. The Subject Engines were manufactured by Komatsu and Komatsu is the Certificate Holder for the Subject Engines.
10. The U.S. Customs and Border Protection (Customs) inspection of the Subject Engines revealed that the engines bore Emissions Information Labels that were not permanently affixed, and could be removed without destroying or defacing the label, in violation of 40 C.F.R. § 89.110(a)(1).
11. On April 19, 2007, EPA requested that the Customs Port in Savannah, Georgia seize the Subject Engines.

12. Based on the forgoing, EPA alleges that Respondent committed nineteen violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the CI Non-Road Regulations, 40 C.F.R. Part 89.
13. By entering into this Agreement, Respondent does not admit that it has committed any violation of the Clean Air Act or its implementing regulations.

Injunctive Relief/Corrective Action:

14. The Certificate Holder for the Subject Engines identified in Appendix A shall:
 - (a) Remove each non-complying label from the Subject Engine and affix a complying EPA emissions information label to each of the Subject Engines (replacement label). A copy of the replacement label is attached in Appendix B to this Agreement.
 - (b) Provide to EPA a technical description of the method and procedures that the Certificate Holder shall use to affix the replacement label to the Subject Engines to ensure that each replacement label is permanently affixed and cannot be removed without destroying or defacing the label.
 - (c) Establish and fully document a chain of custody for the replacement labels from the time of production until the time of installation on the Subject Engines, and destruction of any unused replacement labels.
 - d. Perform this corrective action under the direction of the Observer. The corrective action shall be completed no later than thirty (30) days from the effective date of this Agreement, or such longer period of time if requested by Respondent and approved by EPA for good cause shown.
 - (e) Remove each non-complying label and give it to the Observer, and shall attach the replacement label in accordance with the method and procedures submitted to EPA in the above Subparagraph “(b)”.

- (f) Ensure that the Observer destroys all the removed labels no later than the day the last Subject Engine receives a replacement label.
15. After the replacement label has been affixed to the Subject Engines, the Certificate Holder shall have the Observer randomly select one Subject Engine from each equipment model (the Test Sample Engines) to determine whether or not the replacement label is permanently affixed to the Subject Engine and cannot be removed without destroying or defacing the replacement label. Any Test Sample Engines whose replacement label is destroyed or defaced during this test must be relabeled by the Certificate Holder.
 16. Where the replacement label on a Test Sample Engine can be removed without destroying or defacing the replacement label, the Test Sample Engine and the related equipment shall be exported.
 17. Where the replacement label on a Test Sample Engine contains all the specified information, is permanently affixed and cannot be removed without destroying or defacing the label, the Test Sample Engine and the related equipment model Subject Engines may be deemed to comply with 40 C.F.R. § 89.110 and may be released by U.S. Customs.
 18. No later than thirty (30) days from the effective date of this Agreement (or such longer period of time if requested by Respondent and approved by EPA for good cause shown), Respondent shall provide to EPA with a written report that fully describes the corrective action taken, and certifies that such corrective action was conducted as described. The report must include the following:
 - (a) An affidavit from the Certificate Holder who has performed the corrective action work. The affidavit shall certify the date, time, and place of the corrective action work, identify each person doing the work, identify the serial number of each Subject Engine that was re-labeled, provide a clear readable picture of the replacement label affixed to each model of the Subject Engines, and provide the

results of any tests performed to determine whether or not the replacement label was permanent and could not be removed without destroying or defacing the label; and

- (b) An unconditional statement from the Certificate Holder certifying that the Subject Engines comply with all applicable requirements of the Clean Air Act and 40 C.F.R. Part 89.

Civil Penalty:

- 19. Respondent has agreed to pay to the United States of America a civil penalty of \$162,000 no later than thirty (30) days from 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, plus the stipulated penalties as specified in Paragraph 26 of this Agreement. Respondent agrees to pay the amount by certified check or cashier's check payable to the United States of America, and mail to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 7224

Alternatively, Respondent may effect an electronic funds transfer in the amount of \$162,000 with the notation "Komatsu America Corporation Administrative Settlement Agreement for Case No.: AED/MSEB-7224" by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010727
Bank Holding Account:	Treas NYC
Routing Number:	021030004

Notice:

- 20. A copy of the payment check and all correspondence to EPA concerning this Agreement shall be sent to:

(Regular Mail)

(Courier Service)

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7224

Jocelyn Adair, Esq.
U.S. EPA
Ariel Rios South, Room 1109A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Root Cause Analysis and Corrective Action Compliance Plan:

21. No later than thirty (30) days from the effective date of this Agreement, the Certificate Holder shall initiate a thorough review and assessment of its non-road engine labeling practices and procedures to ensure that all labels are permanently affixed on the Certificate Holder's engines and/or equipment at the time of manufacture and otherwise comply with the requirements of 40 C.F.R. § 89, in particular to ensure that labels once affixed cannot be removed without being destroyed or defaced at any point during the life of the engines, and during the manufacturing and assembly process (including during overseas shipment for assembly, and for importation into the United States). The Certificate Holder shall, as part of such review:
- (a) Review regulatory requirements for labels on non-road engines;
 - (b) Analyze a representative sample of the Subject Engines and labels to determine the potential cause(s) of label noncompliance;
 - (c) Review current labeling procedures and associated quality assurance and/or control practices, including label installation procedures, label design and label performance characteristics; and
 - (d) Identify and implement corrective action(s) to label installation procedure/design/performance as well as quality assurance/quality control procedures at locations where the Certificate Holder's non-road equipment is manufactured and/or assembled, and for shipment to the United States, to ensure that labels remain permanently affixed and attached such that they cannot be removed without their being defaced or destroyed.

- (e) Complete the review and analysis required by this Paragraph 21 and implement all corrective actions, no later than 180 days of the effective date of this Agreement. The Certificate Holder shall, no later than 210 days of the effective date of this Agreement, submit a report to EPA of the Root Cause Analysis and Corrective Action Plan detailing the analysis, cause(s) of noncompliance, and all corrective actions implemented by the Certificate Holder. Such report shall include example(s) of new or redesigned label(s) identified for use by the Certificate Holder as a result of the Root Cause Analysis and Corrective Action Plan.

General Provisions:

- 22. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
- 23. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
- 24. Notwithstanding any other provisions of this Agreement, upon Respondent's default 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. Part 89. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.

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

Stipulated Penalties:

26. 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 civil penalty or provide proof thereof, pursuant to Paragraphs 19 and 20, \$250.00 per day;
 - b. For failure to export or relabel the Subject Engines or provide proof thereof, pursuant to Paragraphs 14 - 18, \$250.00 per day, and
 - c. For failure to provide the reports specified in Paragraphs 18 and 21, \$250 per day.
27. All stipulated penalties under Paragraph 26 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 the manner specified in Paragraph 19 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jocelyn Adair at the address specified in Paragraph 20. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by EPA (the due date). Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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:

28. 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; or 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 law or regulations, and does not address Respondent's potential liability to Customs for engines that are seized or detained.

The following agree to the terms of this Agreement:

Komatsu America Corporation

By: David D. Nardo

Date: July 3, 2007

Printed Name: DAVID D. NARDO

Printed Title: VICE PRESIDENT/
GENERAL COUNSEL

**Administrative Settlement Agreement - *In the Matter of Komatsu America Corporation,*
AED/MSEB - 7224**

U.S. Environmental Protection Agency

By:  _____ Date: July 5, 2007

Adam M. Kushner
Director
Air Enforcement Division

Appendix A to AED/MSEB-7224

1. Entry Number: 500-5001137-4

No.	Entry Date	Excavator Model	Machine Serial No.	Engine No.
1	3/23/2007	PC200LC-8B	C60907	6D10726504695
2			C60908	6D10726504886
3			C60909	6D10726504860
4			C60910	6D10726504864
5			C60911	6D10726504981
6			C60912	6D10726505872
7			C60913	6D10726505870
8			C60918	6D10726504963

**2. Entry Number: 500-5001058-2
Bulldozer D155AX-6**

No.	Entry Date	Engine Model	Equipment Serial No.	Engine Serial No.
9	3/26/2007	SAA6D140E-5	80251	532006

**3. Entry Number: 500-5001060-8
Bulldozer D155AX-6**

No.	Entry Date	Engine Model	Equipment Serial No.	Engine Serial No.
10	3/26/2007	SAA6D140E-5	80271	532153
11	3/26/2007	SAA6D140E-5	80272	532164

**4. Entry Number: 500-5001046-7
Bulldozer D375A-5EO**

No.	Entry Date	Engine Model	Equipment Serial No.	Engine Serial No.
12	3/23/2007	SAA6D170E-5	50049	510570

**5. Entry Number: 500-5001051-7
Bulldozer D375A-5EO**

No.	Entry Date	Engine Model	Equipment Serial No.	Engine Serial Number
13	3/26/2007	SAA6D170E-5	50045	510540
14			50048	510555

Appendix A to AED/MSEB-7224 (Continued)

6. Entry Number: 500-5001052-5
Excavator PC308USLC-380

No.	Entry Date	Engine Model	Equipment Serial No.	Engine Serial No.
15	3/26/2007	SAA6D107E-1	30091	26506829

7. Entry Number: 500-5001054-1
Excavator PC600LC-8

No.	Entry Date	Engine Model	Equipment Serial No.	Engine Serial Number
16	3/26/2007	SAA6D140E-5	55083	532074
17	3/26/2007	SAA6D140E-5	55084	532083
18	3/26/2007	SAA6D140E-5	55085	532127

8. Entry Number: 500-5001059-0
Bulldozer D115AX-6

No.	Entry Date	Engine Model	Equipment Serial No.	Engine Serial Number
19	3/26/2007	SAA6D140E-5	80252	532005

Appendix B to AED/MSEB-7224

**Jonathan
Martel/Atty/DC/ArnoldAndPort
er**
DC - 1179 202-942-5470
06/13/2007 01:52 PM

To Adair.Jocelyn@epamail.epa.gov
cc DNardo@komatsuna.com, pbadgley@komatsuna.com, Judy
Harvey/SumAssoc/DC/ArnoldAndPorter@APORTER,
NOkamoto@komatsuna.com, Joseph
bcc

Subject Komatsu Labeling 

Jocelyn --

As we have described in separate correspondence and by telephone, Komatsu is proceeding with re-labeling of certain engines in its possession, following testing to verify further the effectiveness of the Cemedine adhesive. In addition to our visits with you to demonstrate how these labels adhere, the attached video clip and photograph further document our basis for understanding that this approach is satisfactory, and may be useful to you in that regard.



CIMG0318.AVI



CIMG0324a.JPG

Rosly Davis

IMPORTANT ENGINE INFORMATION

PLEASE READ THIS INFORMATION CAREFULLY BEFORE OPERATING THIS ENGINE. IT CONTAINS IMPORTANT INFORMATION THAT MAY BE NECESSARY TO PROTECT YOUR SAFETY AND THE SAFETY OF OTHERS. THIS INFORMATION IS NOT INTENDED TO BE USED AS A SUBSTITUTE FOR THE OPERATOR'S MANUAL OR OTHER INSTRUCTIONS PROVIDED WITH THE ENGINE.

INSTRUCTIONS

ROSKOPF

ROSKOPF
P.O. Box 100
10000
10000
10000

POCKET KNIFE