

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

In the Matter of:	)	
	)	ADMINISTRATIVE
List Company, Inc.	)	SETTLEMENT AGREEMENT
	)	AED/MSEB - 7217
Respondent	)	

**This Administrative Settlement Agreement** is made and entered into by and between the United States Environmental Protection Agency (EPA) and the List Company, Inc., 46 Hillcrest Drive, Greenville, South Carolina 29609 (Respondent).

**Purpose**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve 284 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 small spark-ignition (SI) nonroad engine regulations, 40 C.F.R. Part 90 (SI 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 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 - SI Non-Road Regulations:**

3. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any SI 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. § 90.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI 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. § 90.114.

5. 40 C.F.R. § 90.3 defines an engine manufacturer as any person who, among other things, imports nonroad SI 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. § 90.114(a) requires the original engine manufacturer to affix, at the time of manufacture of a certified SI engine, a permanent and legible label identifying each nonroad engine and containing certain information. In relevant part, the label must meet the following performance requirements: (a)(1) be attached in such a manner that it cannot be removed without destroying or defacing the label, and (a)(2) be durable and readable for the entire engine life.
7. 40 C.F.R. §§ 90.114(c)(5) and (c)(6) require the label to specify the engine lubricant and specify the date of manufacture (DOM), respectively.

**Definitions:**

8. For the purposes of this Agreement, the following definitions apply:
  - a. *This matter*: as used in this Agreement means Respondent's importation of the 284 nonroad engines as described in Paragraph 9 of this Agreement (Subject Engines) and any civil liability that may apply to such violations.
  - b. *Certificate of Conformity*: the document issued by EPA to a manufacturer under 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 requirements of 40 C.F.R. Part 90 and the CAA.
  - c. *Certified engine*: a nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
  - d. *Uncertified engine*: a nonroad engine built after the applicable dates of the regulations but that is not covered by a Certificate of Conformity issued by EPA.
  - e. *Applicable regulation and dates*: 40 C.F.R. Part 90 is applicable to nonroad SI engines at or below 19 kilowatts (kW) built after the applicable dates in 40 C.F.R. Part 90.

- f. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy*: the complete destruction of the Subject Engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.

**Alleged Violations:**

- 9. On January 5 and 17, 2007, Respondent imported into Savannah, Georgia 282 generators and two chain saws containing small SI non-road engines (the Subject Engines) as described in the Table below.

Table

	Description of Generators Entry # 605-8002451-5	Quantity Imported	Manufacturer
1	GG 3000	76	United Power Equipment Manufacturing Co., Ltd
2	GG 7200E	76	United Power Equipment Manufacturing Co., Ltd
	<b>Description of Generators and Chain Saws Entry # 605-8002463-0</b>		
3	KJ 3200	45	Zhejiang Robot Power Machinery Co., Ltd
4	KJ 6500-DY	45	Zhejiang Robot Power Machinery Co., Ltd
5	KJ 8000-DY	40	Zhejiang Robot Power Machinery Co., Ltd
6	Chain Saw YD-4500	2	Zhejiang Robot Power Machinery Co., Ltd

- 10. For U.S. Customs's Entry Number 605-8002451-5, the 152 Subject Engines bore EPA emission labels that did not specify the engine lubricant and date of manufacture as required by 40 C.F.R. §§ 90.114(c)(5) and (c)(6), respectively.
- 11. For U.S. Customs's Entry Number 605-8002463-0, the 132 Subject Engines bore EPA emission labels that could be removed without destroying or defacing the label, and the DOM of the engine could be removed from the label, in violation of 40 C.F.R. §§ 90.114(a)(1) and (a)(2), respectively.
- 12. U.S. Customs and Border Protection (Customs) in Savannah, Georgia detained the Subject Engines.

13. Based on the forgoing, EPA alleges that Respondent committed 284 violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the small SI Non-Road Regulations, 40 C.F.R. Part 90.

**Terms of Agreement:**

14. Respondent has agreed to pay a civil penalty of \$10,700 within thirty days from the date of this Agreement to the United States of America. 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 21 of this Agreement. Respondent agrees to pay the amount by certified check or cashier's check payable to the United States of America, and to mail the payments to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
Attn: AED/MSEB - 7217

15. Within thirty days of this Agreement, or such longer period of time if required by Customs, Respondent shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.
16. A copy of the payment check and all correspondence to EPA concerning this Agreement shall be sent to:

Jocelyn Adair, Esq.  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W. Room 1109A  
Washington, DC 20460  
Attn: AED/MSEB-7217

## **General Provisions**

17. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
18. 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.
19. 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 90. 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.
20. 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**

21. 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 Paragraph 14, \$250.00 per day; and
  - b. For failure to export or destroy the Subject Engines or provide proof thereof, pursuant to Paragraph 15, \$250.00 per day.
22. All stipulated penalties under Paragraph 21 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 14 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 16. 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**

23. 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.

The following agree to the terms of this Agreement:

**List Company, Inc.**

By: Robert S. Latham

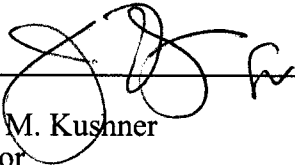
Date: 3-23-07

Printed Name: Robert Latham

Printed Title: President.

**Administrative Settlement Agreement - *In the Matter of the List Company, Inc.*,  
AED/MSEB - 7217**

**U.S. Environmental Protection Agency**

By:  \_\_\_\_\_ Date: 3.29.07

Adam M. Kushner  
Director  
Air Enforcement Division

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

In the Matter of: \_\_\_\_\_ )  
 )  
 List Company, Inc. )  
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 \_\_\_\_\_ )  
 Respondent )

*AMENDED* ADMINISTRATIVE  
 SETTLEMENT AGREEMENT  
 AED/MSEB - 7217

**This Amended Administrative Settlement Agreement** is made and entered into by and between the United States Environmental Protection Agency (EPA) and the List Company, Inc., 46 Hillcrest Drive, Greenville, South Carolina 29609 (Respondent).

**Background**

- On March 29, 2007, EPA and the Respondent entered into an Administrative Settlement Agreement (Agreement) that required Respondent to either export or destroy the Subject Engines identified in the Table below:

Table

	Description of Generators Entry # 605-8002451-5	Quantity Imported	Manufacturer
1	GG 3000	76	United Power Equipment Manufacturing Co., Ltd
2	GG 7200E	76	United Power Equipment Manufacturing Co., Ltd
	<b>Description of Generators and Chain Saws Entry # 605-8002463-0</b>		
3	KJ 3200	45	Zhejiang Robot Power Machinery Co., Ltd
4	KJ 6500-DY	45	Zhejiang Robot Power Machinery Co., Ltd
5	KJ 8000-DY	40	Zhejiang Robot Power Machinery Co., Ltd
6	Chain Saw YD-4500	2	Zhejiang Wuxing Power Manufacture Co. Ltd

- This Amended Agreement allows the Respondent to avoid exporting or destroying the Subject Engines, provided the company that obtained from EPA the certificate of conformity for the engine family (Certificate Holder), authorizes Respondent to remove each non-complying label from the Subject Engine and replace the label with an EPA approved emissions information label (corrective action), and Respondent completes such



corrective action. All the other provisions, terms and conditions of the Agreement remain in effect. Paragraphs 15 of the Agreement is hereby amended to read as follows:

**Amended Terms of Agreement**

15. a. In lieu of exporting or destroying each Subject Engine, as required by Paragraph 15 of the Agreement, Respondent, acting in its capacity as an Authorized Service Representative of the Certificate Holder, may remove each non-complying label from the Subject Engines and affix a complying EPA approved emissions information label to each of the Subject Engines. This corrective action shall be accomplished in the following manner:
- (1) In order to obtain EPA approval for the label, each Certificate Holder shall send to EPA a sample of the proposed label and a technical description of the method and procedures that the Certificate Holder proposes to use to affix the label to the engine. The label and installation procedure must be designed to ensure that the label is permanently affixed and cannot be removed without destroying or defacing the label. This submission, affidavits, and all other correspondence concerning this Amended Agreement shall be sent to Jocelyn Adair, by courier, at the following address:  
  
Jocelyn Adair, Esq.  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, N.W. Room 1109A  
Washington, DC 20004
  - (2) If EPA has not approved a label at the time of execution of this Agreement, EPA agrees that within five business days of receipt of a label from the Certificate Holder, it will approve the label or provide specific comments on the deficiency of the proposed label. Failure of EPA to provide a response in a timely manner shall constitute approval of the

- label. If EPA provides comments on the deficiency of the label, the Certificate Holder may resubmit the label design within 5 days of receiving EPA's comments. EPA may then approve or disapprove the label at its unreviewable discretion. If EPA disapproves the label, the Subject Engines may not be relabeled and must be exported or destroyed.
- (3) The Certificate Holder shall 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 or destruction (in the case of any unused replacement labels).
  - (4) This corrective action shall be conducted under the observation of U.S. Customs, or a licensed Professional Engineer (the Observer) not employed directly by either the List Company, Inc. or the Certificate Holder. The corrective action shall be completed within thirty days following the date of this Agreement.
  - (5) Respondent shall remove the non-complying label and give it to the Observer, and shall attach the complying label in accordance with the procedure submitted to EPA in the above Subparagraph "15 (a)(1)".
  - (6) After the replacement label has been affixed to each of the Subject Engines, the Observer shall randomly select ten percent of the Subject Engines from each model (the Test Sample Engines) to determine whether or not the replacement labels are permanently attached to the Subject Engines and cannot be removed without destroying or defacing the replacement labels. Any Test Sample Engines whose replacement label is destroyed or defaced during this test must be relabeled by Respondent. However, where the replacement label on a Test Sample Engine can be removed without destroying or defacing the replacement label, the Test

Sample Engine must be exported or destroyed, and all related model Subject Engines must be tested to determine whether or not the replacement labels are permanently attached to the Subject Engines and cannot be removed without destroying or defacing the replacement labels. Any engines that fail this subsequent test must be exported or destroyed, and engines that pass the test may be relabelled to replace the defaced or destroyed labels.

- (7) Within thirty days of this Agreement (or such longer period of time if requested by Respondent and approved by EPA for good cause shown), Respondent shall provide EPA with a report that fully describes and certifies the corrective action taken. The report must include the following:
- (a) an affidavit documenting the performance of 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, and provide the results of any tests performed to determine whether or not the label was permanent and could be removed without destroying or defacing the label,
  - (b) an unconditional statement certifying that the Subject Engines comply with all requirements of the Clean Air Act and 40 C. F. R. Part 90.

15. b. Where the Observer determines that a replacement label is non-complying, or can be removed without destroying or defacing the label, or the corrective action work has not been performed, the Observer shall identify the model number of the generator or chain saw and report his/her determination to EPA, and Respondent

shall export or destroy the engine tested by observer, and treat all related model engines as described in (15) (a) (6), above.

15. c. The Observer shall destroy all removed labels no later than the day the last Subject Engine is relabeled.

The following agree to the terms of this Agreement:

**List Company, Inc.**

By: Robert S. Latham JR

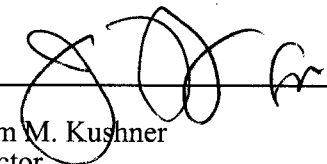
Date: 5-3-07

Printed Name: Robert Latham JR

Printed Title: President

**Admended Administrative Settlement Agreement - *In the Matter of the List Company, Inc.,*  
AED/MSEB - 7217**

**U.S. Environmental Protection Agency**

By:  \_\_\_\_\_ Date: 5-8-07

Adam M. Kushner  
Director  
Air Enforcement Division