

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

In the Matter of:

Yanmar America Corporation,

CNH America LLC

and

Kobelco Construction  
Machinery America LLC,

Respondents.

**ADMINISTRATIVE  
SETTLEMENT AGREEMENT**

AED/MSEB - 7236

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), Yanmar America Corporation (Yanmar), 901 Corporate Group Drive, Buffalo Grove, IL 60089, as the subsidiary of Yanmar Co. Ltd., and other Yanmar affiliates (collectively referred to as Yanmar), CNH America LLC (CNH), 700 State Street, Racine, WI 53404, and Kobelco Construction Machinery America LLC (Kobelco), 501 Richardson Road, Calhoun, Georgia 30701 (Respondents).

**Purpose:**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve thirty-three 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 Nonroad Engine 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 causing the importation or 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 - CI Nonroad Engine Regulations:**

3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from causing the importation or 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, delivery into commerce, or the causing thereof 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 a 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 readily be 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.

**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 who obtained from EPA a 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. *Export*: To transport to a location outside of the United States and its territories, Canada, and Mexico.
- f. *Observer*: A U.S. Customs and Border Protection (U.S. Customs) representative or an independent board certified licensed professional engineer.
- g. *This matter*: As used in this Agreement means Respondents's importation of the thirty-three nonroad engines as described in Paragraph 9 of this Agreement (Subject Engines) and any corrective action, and civil liability that may apply to such violations.

**Alleged Violations:**

- 9. On or about May 3, 2007, CNH and Kobelco imported into Savannah, Georgia thirty-three excavators that contained the CI nonroad engines (Subject Engines). The Subject Engines are described in Appendix A to this Agreement. The Subject Engines were manufactured by Yanmar and Yanmar is the Certificate Holder for the Subject Engines.
- 10. The U.S. 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 or about May 18, 2007, the U.S. Customs's Port in Savannah, Georgia detained the Subject Engines.

12. Based on the forgoing, EPA alleges that Respondents committed thirty-three violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the CI Nonroad Engine 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 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 complying EPA emissions label is attached hereto as 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 Respondents 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) Contact EPA for relabeling procedures in the event that a non-complying label on any Subject Engine is not accessible. The Certificate Holder shall identify the equipment and Subject Engine by Model and serial number, and provide such information (e.g., photographic evidence) as may be requested by EPA demonstrating engine label inaccessibility.
15. The Certificate Holder shall ensure that the Observer destroys all the removed labels no later than the day the last Subject Engine receives a replacement label.
16. After the replacement label has been affixed to each of the thirty-three (33) 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.
17. 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.
18. 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 Customs.
19. No later than thirty (30) days from the effective date of this Agreement (or such longer period of time if requested by Respondents and approved by EPA for good cause shown), Respondents shall provide 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 requirements of the Clean Air Act and 40 C.F.R. Part 89.

**Civil Penalty:**

20. Respondents have agreed to pay to the United States of America a civil penalty of \$37,500 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. Respondents agree to pay the amount by certified check or cashier's check payable to the United States of America, and to mail the payments to (or, upon receipt of instructions from EPA, by Electronic Funds Transfer):

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251  
Attn: AED/MSEB - 7236

**Notice:**

21. All correspondence, reports, and copies of payment checks concerning this Agreement shall be sent to:

**(Regular Mail)**

Jocelyn Adair, Esq.  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Attn: AED/MSEB-7236

**(Courier Service)**

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

**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 Respondents.
23. Respondents hereby represent that the individual executing this Agreement on behalf of each Respondent is authorized to do so on behalf of each Respondent and that such execution is intended and is sufficient to bind Respondents, Respondents' agents, assigns, or successors.
24. Notwithstanding any other provisions of this Agreement, upon Respondents' 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. Respondents specifically agree 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. Respondents expressly waive Respondents' 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 Respondents'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 Respondents shall pay stipulated penalties to the United States as follows:
- a. For failure to provide the report specified in Paragraph 19, \$250 per day; and,
  - b. For failure to pay the civil penalty or provide proof thereof, pursuant to Paragraph 20, \$250.00 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 20 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to the EPA representative at the address specified in Paragraph 21. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by EPA. 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 Respondents's violation of this Agreement or of the statues 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 each 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 Respondents of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:



**Administrative Settlement Agreement - In the Matter of Yanmar America Corporation, CNH America LLC, and Kobelco Construction Machinery America, LLC, AED/MSEB-7236.**

**Yanmar America Corporation, as subsidiary of Yanmar Co. Ltd., and other Yanmar affiliates:**

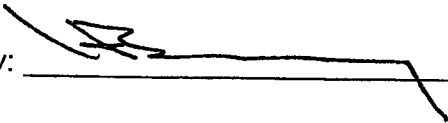
By:  Date: \_\_\_\_\_

Printed Name: Akihiko Nakaoka

Title: CEO, President

**Administrative Settlement Agreement – In the Matter of Yanmar America Corporation, CNH America LLC, and Kobelco Construction Machinery America LLC, AED/MSEB-7236**

**CHN America LLC:**

By:  \_\_\_\_\_


Date:

Printed Name: H. Boyanovsky

Printed Title: \_\_\_\_\_

**Administrative Settlement Agreement – In the Matter of Yanmar America Corporation, CNH America LLC, and Kobelco Construction Machinery America LLC, AED/MSEB-7236**

**Kobelco Construction Machinery America LLC**

By:  \_\_\_\_\_

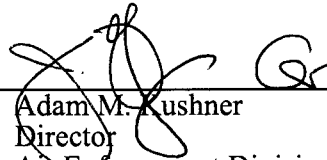
Date:

Printed Name: H. Boyanorsky

Printed Title: \_\_\_\_\_

**Administrative Settlement Agreement - *In the Matter of Yanmar America Corporation, CNH America LLC, and Kobelco Construction Machinery America LLC, AED/MSEB-7236***

**U.S. Environmental Protection Agency**

By:  \_\_\_\_\_ Date: JUNE 13, 2007  
Adam M. Kushner  
Director  
Air Enforcement Division

**APPENDIX A**

Table 1: Entry Number: 112-6213710-4  
Entry Date: 05/06/2007

Horse Power	Engine Model	Engine Serial Number	Equipment Model	Equipment Serial Number
21.3	3TNV82A	44187	CX27B	N7TN41397
28.4	3TNV88	54978	CX31B	N7TN51387
28.4	3TNV88	55677	CX36B	N7TN62021
40.8	4TNV88	55681	CX50B	N7TN81770
40.8	4TNV88	54618	CX50B	N7TN81779
40.8	4TNV88	57492	CX50B	N7TN81792

Table 2: Entry Number: 112-6213816-9  
Entry Date: 05/06/2007

Horse Power	Engine Model	Engine Serial Number	Equipment Model	Equipment Serial Number
21.3	3TNV82A	44500	E27SR	N7TN41401
21.3	3TNV82A	44499	E27SR	N7TN41402
21.3	3TNV82A	44041	E27SR	N7TN41403
28.4	3TNV88	54292	E35SR	N7TN61992
40.8	4TNV88	55431	E50SR	N7TN81765
40.8	4TNV88	54449	E50SR	N7TN81772
40.8	4TNV88	57358	E50SR	N7TN81787
40.8	4TNV88	57565	E50SR	N7TN81790

Table 3: Entry Number: 286-1750455-1  
Entry Date: 05/02/2007

Horse Power	Engine Model	Engine Serial Number	Equipment Model	Equipment Serial Number
21.3	3TNV82A	44437	SK27SR-3	PV11-30335
21.3	3TNV82A	44407	SK27SR-3	PV11-30338
28.4	3TNV88	55033	SK30SR-3	PW 12-40625
28.4	3TNV88	55006	SK30SR-3	PW 12-40624
28.4	3TNV88	54342	SK35SR-3	PX13-15538
28.4	3TNV88	53997	SK35SR-3	PX13-15570
28.4	3TNV88	54473	SK35SR-3	PX13-15571
28.4	3TNV88	54035	SK35SR-3	PX13-15569
28.4	3TNV88	51721	SK35SR-3	PX13-15620
28.4	3TNV88	51750	SK35SR-3	PX13-15621
28.4	3TNV88	53971	SK35SR-3	PX13-15606
28.4	3TNV88	50516	SK35SR-3	PX13-15618
28.4	3TNV88	50517	SK35SR-3	PX13-15619
28.4	3TNV88	56099	SK35SR-3	PX13-15642
28.4	3TNV88	56060	SK35SR-3	PX13-15643
40.8	4TNV88	55081	SK50SR-3	PJ05-06499
40.8	4TNV88	55522	SK50SR-3	PJ05-06496
40.8	4TNV88	54974	SK50SR-3	PJ05-06500
40.8	4TNV88	57467	SK50SR-3	PJ05-06566