

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

In the Matter of:)	
The Tractor Company, Inc.)	Administrative Settlement Agreement
Respondent)	AED/MSEB # 7879

Purpose

1. The United States Environmental Protection Agency (EPA) and The Tractor Company, Inc. (The Tractor Company), enter into this Administrative Settlement Agreement (Agreement) to resolve four alleged violations of sections 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(a).

Governing Law

2. Congress authorized EPA to regulate nonroad vehicles and engines in order to control their emissions of air pollutants including oxides of nitrogen, hydrocarbons, and particulate matter. 42 U.S.C. § 7547. Accordingly, EPA regulates nonroad compression-ignition (CI) engines. Model year 2010 and earlier nonroad CI engines with a power output greater than 560 kW are regulated by 40 C.F.R. Part 89. 40 C.F.R. §§ 89.1, 1039.1(b).
3. One may not import a new nonroad CI engine, or equipment containing such an engine, unless the engine is covered by an EPA-issued certificate of conformity (COC) or otherwise exempt from the prohibition on importing uncertified nonroad CI engines.

40 C.F.R. § 89.1003(a)(1)(ii); *see also* 40 C.F.R. § 89.2 (defining *new* nonroad CI engines to include all nonroad CI engines that are “not covered by a certificate of conformity issued under this part at the time of importation”); 40 C.F.R. § 89.105 (stating the requirement for a COC).

4. One may not import a new nonroad CI engine, or equipment containing such an engine, unless the engine bears an appropriate emission control information label. 40 C.F.R. § 89.1003(a)(4)(ii); *see also* 40 C.F.R. § 89.110 (specifying the necessary content and standards for emission control information labels).
5. Any violation of the prohibited acts in 40 C.F.R. § 89.1003(a) constitutes a violation of sections 203 and 213(d) of the Act, 42 U.S.C. §§ 7522 and 7547(d). 40 C.F.R. § 89.1006(a).
6. A person who imports an engine in violation of 40 C.F.R. § 89.1003(a)(1) or 40 C.F.R. § 89.1003(a)(4) is subject to a civil penalty of not more than \$37,500 for each such engine. 40 C.F.R. § 89.1006(a)(1), (3); *see also* 40 C.F.R. § 89.1006(a), (a)(6); 40 C.F.R. § 19.4 (increasing the penalty cap to \$37,500 per engine for violations after January 12, 2009).
7. Rather than referring a matter to the United States Department of Justice to commence a civil action, EPA may assess a civil penalty through its own administrative process if the penalty sought is less than \$295,000. 42 U.S.C. § 7524(c); 40 C.F.R. § 89.1006(c); *see also* 40 C.F.R. § 89.1006(a), (a)(6); 40 C.F.R. § 19.4 (increasing the administrative penalty cap to \$295,000 for violations after January 12, 2009).

Violations

8. On or about November 5, 2010, The Tractor Company imported into the United States the two nonroad CI engines (Subject Engines) contained in off-highway vehicles as specified in the following table.

Engine Serial Number	Engine Model	Engine Horsepower	Engine Model Year	Vehicle Identification Numbers	Equipment Make, Model
BTR00387	Caterpillar 3508	1000 hp / 746 kW	Remanufactured 2010	CAT0777DHAGC01799	Caterpillar, 777D
BTR00440	Caterpillar 3508	1000 hp / 746 kW	Remanufactured 2010	CAT0777DCAGC01806	Caterpillar, 777D

9. The Subject Engines are nonroad CI engines regulated by 40 C.F.R. Part 89. They are subject to the certification requirement in 40 C.F.R. § 89.105 and the prohibited acts specified in 40 C.F.R. § 89.1003.
10. On EPA Forms 3520-21, The Tractor Company declared that the Subject Engines are covered by an EPA-issued COC and that their serial numbers were 2GR07515 and 2GR05684. These serial numbers are incorrect. The actual serial numbers, as provided in the preceding table, are clearly displayed on the Subject Engines.
11. EPA records show that, though the engines associated with the incorrect serial numbers are covered by an EPA-issued COC, the Subject Engines are not covered by any COC.
12. The Tractor Company has never claimed that the Subject Engines are exempt or excluded from the certification requirements in 40 C.F.R. Part 89. EPA concludes that the Subject Engines are neither exempt nor excluded.
13. Therefore, The Tractor Company committed two violations of 40 C.F.R. § 89.1003(a)(1)(ii) and 42 U.S.C. §§ 7522 and 7547 when it imported the Subject Engines.

14. In addition to certification violations, neither of the Subject Engines have an emission control information labels required by 40 C.F.R. § 89.110. Therefore, The Tractor Company committed two violations of 40 C.F.R. § 89.1003(a)(4)(ii) and 42 U.S.C. §§ 7522 and 7547 when it imported the Subject Engines.

Civil Penalty

15. The Tractor Company must pay to the United States a civil penalty of \$55,000 (EPA Penalty). This EPA Penalty reflects the “moderate” egregiousness of these violations, rather than “major” egregiousness, due to EPA’s determination that the Subject Engines were remanufactured to a configuration that satisfies Tier 1 standards for nonroad CI engines with a power output greater than 560 kW. *See* Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements at 13 (Jan. 16, 2009).
16. The Tractor Company agrees to pay the EPA Penalty to the United States within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 23). Late payment is subject to interest and fees as specified in 31 U.S.C. § 3717, and such interest and fees must be paid by The Tractor Company on demand by the United States. The Tractor Company agrees to pay the EPA penalty in the manner specified in subparagraph a. or b. below:

- a. Mail by United States Postal Service a certified check or cashier’s check, payable to the United States of America, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

ATTN: AED/MSEB # 7879

This check must be identified with case number AED/MSEB # 7879 and state that it is remitted by The Tractor Company. Simultaneously, scan and email a copy of the check to Evan M. Belser at belser.evan@epa.gov.

- b. Pay online through the Department of the Treasury using www.pay.gov. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1. The payment must be identified with case number AED/MSEB # 7879. Within 24 hours of payment, scan and email a copy of the receipt to belser.evan@epa.gov.

17. Beside the EPA Penalty, The Tractor Company acknowledges that the United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP) may assess separate penalties related to the Subject Vehicles.

Remedial Action

18. The Tractor Company must export or destroy both of the Subject Engines. Exportation must be carried out under the supervision of CBP. The Tractor Company must submit to EPA a written certification that the Subject Engines were exported or destroyed and supporting documents issued by CBP proving exportation or destruction. Each action listed in this paragraph must be completed within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 23), or within 30 calendar days of CBP's release of the Subject Engines, whichever is later.

Stipulated Penalties

19. Time is of the essence to this Agreement. The Tractor Company agrees to pay a stipulated penalty of:
 - a. \$1,000 per day for its failure to timely pay the civil penalty or provide proof of such payment according to ¶ 16;
 - b. \$25,000 for each Subject Engine The Tractor Company distributes, offers for sale, or sells in the United States, United States territories, Canada, or Mexico; and
 - c. \$25,000 for each Subject Engine The Tractor Company causes to be distributed, offered for sale, or sold in the United States, United States territories, Canada, or Mexico.
20. Every stipulated penalty must be paid within 30 days of its corresponding precipitating event as listed in ¶ 19 and in the manner specified in ¶ 16 of this Agreement.

Effect of Agreement

21. On completion of the terms of this Agreement, the alleged violations described in this Agreement will be deemed resolved. Nothing herein limits EPA's rights to proceed against The Tractor Company for its default or noncompliance with this Agreement, for violations of the Clean Air Act, 42 U.S.C. §§ 7401–7671q, or the Act's implementing regulations which are not the subject matter of this Agreement, for other violations of law including violations of 18 U.S.C. §§ 542 and 1001, or with respect to other matters not within the scope of the Agreement.

General Provisions

22. All correspondence to EPA or notifications required by this Agreement must be in writing and emailed to belser.evan@epa.gov or mailed to:
- | | |
|----------------------------|-----------------------------|
| (U.S. Postal Service Mail) | (Courier Service) |
| Evan M. Belser | Evan M. Belser |
| U.S. EPA | U.S. EPA |
| Mail Code 2242A | Ariel Rios South, Room 1111 |
| 1200 Pennsylvania Ave., NW | 1200 Pennsylvania Ave., NW |
| Washington, DC 20460 | Washington, DC 20004 |
| Attn: AED/MSEB # 7879 | Attn: AED/MSEB # 7879 |
23. This Agreement becomes effective on the date executed by EPA (effective date of the Agreement), at which time a fully executed electronic copy will be returned to The Tractor Company.
24. The individual or individuals executing this Agreement on behalf of The Tractor Company are authorized to do so and such execution is intended to and does bind The Tractor Company and its agents, successors, and assigns.
25. This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts. Any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement. The parties agree that a facsimile copy, photocopy, or electronic copy of this Agreement has the same effect as the original document for all purposes.

26. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
27. The Tractor Company may not delegate its duties under this Agreement to any other party without the written consent of EPA, which may be granted or withheld at EPA's sole discretion. If EPA so consents, the Agreement is binding on the party or parties to whom the duties are delegated.
28. Notwithstanding any other provision of this Agreement, the parties agree that on The Tractor Company's default or failure to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General pursuant to § 205(d) of the Act, 42 U.S.C. § 7524(d), to commence a civil action against The Tractor Company in United States Federal District Court to enforce this Agreement, recover civil and stipulated penalties, and pursue any other available remedies. The Tractor Company expressly waives its right to assert that the Subject Engines are certified or exempt from the certification requirements, or that such action is barred by 18 U.S.C. § 3282(a), other statutes of limitation, or other provisions limiting actions as a result of passage of time. The Tractor Company acknowledges that EPA intends to use The Tractor Company's tax identification number, which The Tractor Company has appended to this Agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. 31 U.S.C. § 7701.
29. The Tractor Company waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.

30. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than EPA and The Tractor Company, any rights, remedies, or other benefits.
31. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
32. This Agreement is contingent on the truthfulness, accuracy, and completeness of The Tractor Company's disclosures and representations to EPA including, but not limited to, representations regarding importations and the construction and configuration of the Subject Engines.
33. This Agreement in no way affects or relieves The Tractor Company of responsibility to comply with other federal, state, or local laws or regulations.


SIGNATURES ON FOLLOWING PAGES

United States Environmental Protection Agency

Administrative Settlement Agreement
In the Matter of The Tractor Company, Inc.
AED/MSEB # 7879

The following agrees to the terms of this Agreement:

The Tractor Company, Inc.

By: 

Typed or Printed Name: William E. Connelly

Typed or Printed Title: SECRETARY

Federal Tax Identification Number: 55-0764206

Date: 9/14/2011

United States Environmental Protection Agency

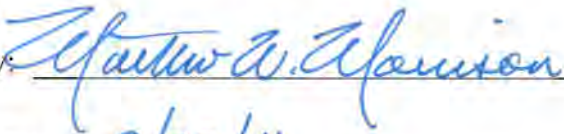
Administrative Settlement Agreement

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The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: 

Date: 9/23/11

Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency