

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

In the Matter of:)	
)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
Blueline Manufacturing Co., Inc.,)	
Respondent.)	AED/MSEB # 7095
)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Blueline Manufacturing Co., Inc., (Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 89.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Part 89 arising out of the importation of six 2004 Model Year (MY) VM Motori compression-ignition engines that lack the proper EPA emission labels and one MY 2004 uncertified John Deere compression-ignition engine described in Table 1 (Subject Engines), while ensuring that prior violations are identified and resolved, and future violations are avoided.

Table 1: Description of Subject Engines

No.	Engine Model & S/N	Equip.	Hp	Engine Build Date
1.	DT704TE2; 77B32472	Tractor	83	January, 2005
2.	DT703TE2; 16C31759	Tractor	68	December, 2004
3.	DT703TE2; 16C31761	Tractor	68	December, 2004

4.	DT703TE2; 16C31765	Tractor	68	December, 2004
5.	DT704TE2; 77B32052	Tractor	83	November, 2004
6.	DT704TE2; 77B32471	Tractor	83	January, 2005
7.	3029TFG71; CD3029T884616	Tractor	70	October, 2004

Definitions:

2. For the 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 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 Part 89 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 compression-ignition nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
 - d. *Uncertified engine:* a compression-ignition nonroad engine built after the applicable dates of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
 - e. *Random sample:* a sample drawn from a population so that each member of the population has an equal chance to be drawn.

- f. *Exempted engine*: a compression-ignition nonroad engine built prior to the applicable dates of the regulations.
- g. *Applicable regulation and dates*: The applicable regulation is 40 C.F.R. Part 89, which is applicable to compression-ignition nonroad engines built after the dates in Appendix I.

Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. 7542, and 42 U.S.C. 7547, prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.
- 4. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
- 5. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad 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 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 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. § 89.110(3) requires that the label be secured to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

Background

9. In March of 2005, BlueLine Manufacturing imported or caused the importation of six unlabeled subject engines and one uncertified subject engine into the United States at the Port of Portland, Oregon.
10. The Subject Engines were built after January 1, 1997 with a rated power of between 68 - 83 hp, consequently they are subject to the requirements of 40 C.F.R. Part 89.
11. Respondent is the importer of the Subject Engines.

Terms of Agreement

12. Upon ratification of this Agreement, EPA agrees to recommend that Customs permit VM Motori, or its authorized agent, to affix EPA emission information labels to Subject Engines 1 through 6 in accordance with Paragraph 13 of this Agreement. EPA will recommend that Customs release the engines after VM Motori affixes EPA emission information labels to each of the engines in accordance with Paragraph 13 of this Agreement.
13. Within 30 days from the date of this Agreement, VM Motori, or its authorized agent shall, under the direct supervision of Customs, affix EPA emission information labels to Subject Engines 1 through 6. Respondent shall furnish proof to EPA in the form of an

affidavit and digital photographs, that the proper emissions labels were affixed to the engines and readily visible.

14. Within 30 days from the date of this Agreement, Respondent shall export the one John Deere Subject Engine and equipment, in its entirety, to a country other than Canada or Mexico and provide EPA with proof of exportation by Customs documentation.
15. Respondent agrees to conduct an audit of its stock and all records within 90 days from the date Respondent executes this Agreement, of all nonroad engines imported by Respondent during the five years prior to date of this Agreement, and Respondent shall submit written evidence of the audit to EPA. The audit shall consist of two parts: (A) it shall include an evaluation of records available to Respondent for compliance with 19 C.F.R. 12.74(b)(2); and (B) a compilation of the following information for each imported engine based upon stock on hand and all records available to Respondent after a diligent search:
 - a. manufacturer name, address, and telephone number;
 - b. type of engine (spark or compression);
 - c. type of vehicle or equipment (generator, tractor, pump, etc.);
 - d. engine family number, in the case of certified engines;
 - e. engine serial number;
 - f. date of manufacture;
 - g. horsepower rating;
 - h. a statement that the engine was, or was not, manufactured under a Certificate of Conformity;
 - i. the date of the applicable Certificate(s) of Conformity, if any;

- j. date of importation;
 - k. if an EPA Form 3520-21 was filed, the box number that was checked, and;
 - l. an original certification signed by an officer of the corporation or owner or principal of the business that the submitted information is true, complete, and accurate.
16. Respondent agrees to locate and physically inspect a representative sample of 15% or 10, whichever is greater, of the certified spark and compression ignition nonroad engines imported by Respondent during the five years prior to the date of Agreement, for the purpose of determining whether an EPA emission label is present, legible, and readily visible. The engines in the 15% sample shall be chosen at random. To the extent that these samples include equipment that, after diligent search and negotiation, Respondent is unable to locate or otherwise gain access to, Respondent shall randomly pick a replacement engine for inclusion in such sample. Each engine included in the initial sample, and any subsequent samples, shall be accompanied by the attached Affirmation of Inspection of EPA Emissions Label, with the results of the inspection and shall be submitted to EPA within 90 days from the date of this Agreement.
17. Within 90 days of the date of this Agreement, Respondent shall provide EPA with a detailed plan reasonably calculated to ensure that all nonroad engines imported after the date of this Agreement into the United States by Respondent have proper EPA emission information labels affixed to each engine, conform in all material respects to the engines that were tested in support of the applications for certification, and are imported in a manner that complies with all other applicable regulations, including Parts 89 and 90.
18. Responses to Paragraphs 13-17 shall be sent to Jacqueline Robles Werner via overnight mail at the following address:

United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Ariel Rios South
Room 1111C
Washington, D.C. 20460

19. Respondent shall pay to the United States \$11,000 within one hundred eighty (180) days of 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. Respondents agree to pay the 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 # 7095

Simultaneously, a photocopy of the check shall be faxed to Jacqueline Robles Werner at (202) 564-0069. Such check shall be identified with the case number and Respondent's name.

General Provisions

20. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Importer.
21. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.

22. Upon default of or failure to comply with any terms of this Agreement by the Respondent, 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, or 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 Part 89. Respondent expressly waives its right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.

Stipulated Penalties:

23. Respondent shall pay stipulated penalties to the United States for failure to comply with the terms of this Agreement as follows:
- a. For failure to export the Subject Engine and equipment as specified in Paragraph 14, or to submit written proof of the exportation, \$500 per day;
 - b. For failure to place emission information labels on readily visible area of engines as specified in Paragraph 13, \$500 per day;
 - c. For failure to pay the penalty as required by Paragraph 19, \$500 per day;
 - d. For failure to submit results of audit as specified in Paragraph 15, \$500 per day;
 - e. For failure to submit results of random audit as specified in Paragraph 16, \$500 per day;
 - and
 - f. For failure to submit a plan as specified in Paragraph 17, \$500 per day.
24. All stipulated penalties under Paragraph 23 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid by certified check or cashier's check payable to the "United States of America," and mailed to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB # 7095

Simultaneously, a photocopy of the check shall be mailed to Jacqueline Robles Werner, Esq., at the address specified in Paragraph 18 or sent via telefax to (202) 564-0069. Such check shall be identified with the case number and Respondent's name. Stipulated penalties shall be paid within ten business 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

25. This Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
26. 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:

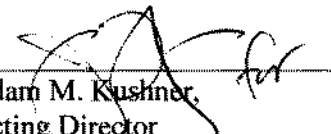
Blueline Manufacturing Co., Inc.

By: Gregg Mann

4-19-05
Date

**Blueline Manufacturing Co., Inc.
Administrative Settlement Agreement
AED/MSEB # 7095**

U.S. Environmental Protection Agency

By:  _____ Date 4.25.05

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

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Appendix 1

Applicable regulation and dates:

40 C.F.R. Part 89, applicable to compression ignition nonroad engines built after the following dates:

Tier I:

- 1) January 1, 1996, for 175 hp to 750 hp;
- 2) January 1, 1997, for 100 hp to <175 hp;
- 3) January 1, 1998, for 50 hp to <100 hp;
- 4) January 1, 1999, for 25 hp to <50 hp;
- 5) January 1, 2000, for 0 to < 25 hp and >750 hp;

Tier II:

- 6) January 1, 2001, for $300 \leq \text{hp} < 600$;
- 7) January 1, 2002, for $600 \leq \text{hp} \leq 750$;
- 8) January 1, 2003, for $100 \leq \text{hp} < 300$; and
- 9) January 1, 2004, for $25 \leq \text{hp} < 100$.

Tier III:

- 7) January 1, 2006, for $600 \leq \text{hp} \leq 750$
- 8) January 1, 2006, for $300 \leq \text{hp} \leq 600$
- 9) January 1, 2006, for $175 \leq \text{hp} < 300$
- 10) January 1, 2007, for $100 \leq \text{hp} < 175$
- 11) January 1, 2008, for $50 \leq \text{hp} < 100$