

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC**

In the Matter of:	)	
	)	
	)	Administrative Settlement
	)	Agreement
HES International LLC,	)	
	)	AED/MSEB # 7275
Respondent	)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and HES International LLC (HES or Respondent), regarding Respondent's compliance with the requirements of the Clean Air Act (the Act) and the Nonroad Spark Ignition Engine Regulations promulgated thereunder at 40 C.F.R. Part 90.

**Purpose**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and 40 C.F.R. Part 90 arising out of the importation of 490 gasoline engines as described in Paragraph 10 of this Agreement (Subject Engines).

**Statutory Authority**

2. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any new nonroad engines or vehicles, unless the engine or vehicle is covered by a Certificate of Conformity issued and in effect, and bearing the required label as provided under 40 C.F.R. § 90.114.

### **Regulatory Authority**

3. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any spark-ignition (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. § 90.1004(d) provides that a new nonroad engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, shall be subject to the provisions of section 90.1003, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart B of this part, then the engine must comply with the standards of the country that is to receive the engine.
6. 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.
7. 40 C.F.R. § 90.114 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. The label must be readily visible after the engine is installed in the equipment.

8. 40 C.F.R. §. 90.114(c)(3-6), require the label to specify the operating fuel, identify the emission control system, specify the engine lubricant, and specify the date of manufacture, respectively.

### **Definitions**

9. For the purposes of this Agreement, the following definitions apply:
- a. *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.
  - b. *This matter:* Respondent's importation of the nonroad engines as described in Paragraphs 10 through 13 of this Agreement Subject Engines, and the corrective action that may apply to such alleged violations.
  - c. *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 Act.
  - d. *Certificate Holder:* The manufacturer whose name appears on the Certificate of Conformity issued for the engines covered by this Agreement pursuant to 40 C.F.R. Part 90 is the "Certificate Holder."
  - e. *Labeling requirements:* "Labeling requirements" means collectively the requirements promulgated at 40 C.F.R. 90.114 that require that certified engines be labeled at the time of manufacture.

**Alleged Violations**

10. On or about January 11, 2008, Respondent imported into the United States 490 nonroad gasoline engines (Subject Engines), as described in the Table below.

**Subject Engines Table**

<b>Importer</b>	<b>Entry Number</b>	<b>Entry Date</b>	<b>Model</b>	<b>Manufacturer</b>	<b>Number of Units</b>
HES International, LLC	BGX-10410641	1-11-08	168F2	Chongqing Dajiang Power Equipment Co. Ltd.	490

11. On or about January 15, 2008, the U.S. Customs and Border Protection (CBP) determined that the Subject Engines were not acceptable for immediate import due to their failure to bear emissions control information labels (EPA labels) meeting the following requirements pursuant to 40 C.F.R. § 90.114. The EPA labels are: attached such that they can be removed without being destroyed or defaced, do not include information on the exhaust emission control system, do not include the year of manufacture of the engine, do not state that the engines conform to California regulations although they were manufactured under a 50-state certificate, and use the term "off-road" in place of "non-road" in the conformity statement.

12. EPA investigation confirmed that Respondent is the importer, and Chongqing Dajiang Power Equipment Co. Ltd. is the Certificate Holder, of the Subject Engines and that the Subject Engines did not bear the EPA labels required pursuant to 40 C.F.R. § 90.114.

13. Based upon the foregoing, EPA has determined that Respondent is liable for 490 violations of Sections 203(a) and 213(d) of the Act, resulting from 490 violations of 40 C.F.R. §90.1003(a)(4)(ii).

**Corrective Action:**

14. Respondent will submit to EPA, at the address below, a sample EPA label identical to the replacement EPA labels:

(By regular mail)

U.S. Environmental Protection Agency  
Air Enforcement Division  
Ariel Rios Building (2242A)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
Attention: Amelie Isin

(By courier service)

U.S. Environmental Protection Agency  
Air Enforcement Division  
Ariel Rios Building (Room 1109A)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004  
Attention: Amelie Isin

15. Respondent will request that the Certificate Holder (Chongqing Dajiang Power Equipment Co. Ltd.) (or its authorized representative) replace the existing EPA labels on the Subject Engines with replacement EPA labels, meeting all the regulatory requirements of 40 C.F.R. Part 90, to be provided by Chongqing Dajiang Power Equipment Co. Ltd. (the certificate holder).
16. Within thirty (30) days from the date Respondent signs this Agreement, Respondent shall provide EPA with an affidavit from an authorized representative of the certificate holder verifying that he/she has affixed the replacement EPA labels to the Subject Engines. The affidavit must include:
- a. the engine serial numbers.
  - a. a statement that the EPA labels are readily visible once installed.
  - b. photos of the replacement EPA labels on ten of the Subject Engines chosen at random once the replacement EPA labels are installed,
  - c. a statement that the Subject Engines are covered by a warranty that complies with 40 C.F.R. Part 90, and

- d. a statement concerning the final disposition of the removed (incomplete) labels.
17. Respondent agrees not to sell the Subject Engines until after the original EPA labels have been replaced and EPA has been given the opportunity to inspect and review the affidavit described in paragraph 16 herein above.
18. This agreement does not preclude any other action by EPA for violations that are not part of this Agreement, or any future violations of the Act or regulations promulgated thereunder.

**Civil Penalty:**

19. Respondent has agreed to pay to the United States of America a civil penalty of \$4,500 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 28 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 payment to:**

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Attn: AED/MSEB - 7275

Respondent may also pay online at [www.pay.gov](http://www.pay.gov). From the "Search Public Form" field, enter SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the "SFO Form Number 1.1."

**Notice:**

20. Respondent will sign and return this agreement by close of business, February 15, 2008.

21. A copy of all correspondence and certifications to EPA concerning this Agreement shall be sent to:

**(Regular Mail)**

Amelie Isin  
U.S. EPA  
Mail Code 2242A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
Attn: AED/MSEB # 7275

**(Courier Service)**

Amelie Isin  
U.S. EPA  
Ariel Rios South, Room 1109A  
1200 Pennsylvania Ave., NW  
Washington, DC 20004  
Facsimile: 202-564-0069

**General Provisions**

22. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be sent to Respondent at [chesterhester1@hotmail.com](mailto:chesterhester1@hotmail.com).
23. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act, or pursue any other remedies available to it. Respondent expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.
24. The parties represent 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.

25. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.
26. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
27. This Settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Attachment 1, and the prompt and complete remediation of any violations in accordance with this Agreement.

#### **Stipulated Penalties**

28. 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 relabel the Subject Engines prior to sale pursuant to Paragraphs 15 to 18, above, \$250.00 per engine;
  - b. For failure to submit the affidavit described in Paragraph 16 by the dates specified, \$250.00 per day.
29. All stipulated penalties under Paragraph 28 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



to the United States of America within 5 days of written demand by EPA (the due date). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the stipulated penalty amount by either:

- a. Certified check or cashier's check payable to the "United States of America," and mailed via United States Postal Service to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
ATTN: AED/MSEB # 7275

Simultaneously, a photocopy of the check shall be faxed to 202-564-0069 to the attention of Amelie Isin. This check shall be identified with the case number and Respondent's name; or

- b. Respondent may make an online payment through the Department of the Treasury by visiting [WWW.PAY.GOV](http://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." Within twenty-four hours of payment, Respondent shall fax a copy of the online payment receipt to Amelie Isin at 202-564-0069.

### **Effect of Agreement**

30. 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, for violations of Sections 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, which are not the subject matter of this Agreement, 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 laws or regulations.

**U.S. Environmental Protection Agency**

**Settlement Agreement In the Matter of HES International LLC.**

**AED/MSEB # 7275**

The following agrees to the terms of this Agreement:

By: Chester Hester Date: 2-20-08

Typed or Printed Name: CHESTER HESTER

Typed or Printed Title: President, HES. INT.

**U.S. Environmental Protection Agency**

**Settlement Agreement In the Matter of HES International LLC.**

**AED/MSEB # 7275**

The following agrees to the terms of this Agreement:

**United States Environmental Protection Agency**

By: Adam M. Kushner

Date: 2-21-08

Adam M. Kushner, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency