

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

In the Matter of:

**Ritchie Bros. Auctioneers,
Respondent.**

(America) Inc.

**ADMINISTRATIVE SETTLEMENT
AGREEMENT**

AED/MSEB # 7089

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Ritchie Bros. Auctioneers, *(America) 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

- 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 fourteen uncertified 2003 Cummins compression-ignition (diesel) engines 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	Hp	Engine Build Date
1.	B5.9-C 21581007	126	10/18/2003
2.	B5.9-C 21581009	126	10/22/2003

3.	B5.9-C 21579731	126	10/10/2003
4.	B5.9-C 21581027	126	10/22/2003
5.	B5.9-C 21579726	126	10/10/2003
6.	B5.9-C 21581028	126	10/22/2003
7.	B5.9-C 21579473	126	10/07/2003
8.	B5.9-C 21579634	126	10/08/2003
9.	B5.9-C 21579475	126	10/07/2003
10.	B5.9-C 21579476	126	10/07/2003
11.	B5.9-C 21579478	126	10/07/2003
12.	B5.9-C 21579659	126	10/09/2003
13.	B5.9-C 21579636	126	10/08/2003
14.	B5.9-C 21579649	126	10/09/2003

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 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 (diesel) 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.

Background

8. In December of 2004, Ritchie Bros. imported or caused the importation of the fourteen uncertified subject engines into the United States at the Port of Seattle, Washington.
9. In January of 2005, U. S. Customs and Border Protection (Customs) placed the equipment containing the fourteen subject engines under constructive seizure at the Respondent's place of business located in Olympia, Washington, where it is currently being held.
10. The Subject Engines were built after January 1, 1997 with a rated power of between 116 - 126 hp, consequently they are subject to the requirements of 40 C.F.R. Part 89.
11. Respondent is the importer of the Subject Engines.

12. Respondent affirms that since January 1, 1997, and September 30, 2002, it has imported ninety-four Nonroad Engines as defined at 40 C.F.R. § 89.902 into the United States. Thirty-five of these imports predated the engine regulations.

Terms of Agreement

13. Within 60 days from the date of this Agreement, Respondent shall export the Subject Engines and equipment in their entirety to a country other than Canada or Mexico, and provide EPA with proof of exportation by Customs documentation.
14. Within 90 days of this Agreement, respondent shall submit proof to EPA of EPA certification for the prior fifty-nine imported engines. Proof of engine certification shall be provided by letter on original engine manufacturer's letterhead signed by the manufacturer's EPA certification representative. The letter shall list the engine serial number, horsepower, year of manufacture, and engine's EPA engine family. A copy of the engine family's certificate of conformity shall also be provided.
15. Within 90 days from the date of this Agreement Respondent shall submit to EPA the results of a random audit of fifteen of the fifty-nine previously imported non-road engines. Respondent shall confirm, using the Affirmation of Inspection form (*see* Appendix 2), that the EPA emission labels on the fifteen randomly audited engines conform to the standards in 40 C.F.R. § 89.110.
16. Within 60 days from the date of this Agreement, Respondent shall submit to EPA a plan to ensure that no future violations of Part 89 occur. The Plan shall include a description of current compliance control programs, and shall include steps to be taken by Respondent to improve

and implement such programs. Respondent shall include in the Plan steps to be taken for the improvement of the education and training of employees of the EPA regulations.

17. Respondent shall pay to the United States Fifty Six Thousand (\$56,000) within 30 days of the date of this Agreement. 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 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 # 7089

A photocopy of the check shall be mailed or faxed simultaneously to:

Jacqueline Robles Werner, Esq.
U.S. Environmental Protection Agency
Air Enforcement Division
Ariel Rios South Building (2242A)
Washington, D.C. 20460
Fax (202) 564-0069

Such check shall be identified with the case number and Respondent's name.

18. In addition to the civil penalties set forth in the preceding paragraph, the parties acknowledge that Customs will require payment of a forfeiture remission amount for the disposition of the Customs Seizure case relating to the Subject Engines. Customs shall collect \$56,000 as a forfeiture remission amount for this case.

General Provisions

19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Importer.
20. 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.
21. 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:

22. 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 13, or to submit written proof of the exportation, \$500 per day,
 - b. For failure to pay the penalty required by Paragraph 17, \$500 per day,
 - c. For failure to submit results of random audit as specified in Paragraph 15, \$500 per day, and,

- d. For failure to submit a plan as specified in Paragraph 16, \$500 per day.
23. All stipulated penalties under Paragraph 22 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 # 7089

Simultaneously, a photocopy of the check shall be mailed to Jacqueline Robles Werner, Esq., at the address specified in Paragraph 17 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

24. 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:

(AMERICA.)
Ritchie Bros Auctioneers, Inc.

By: R. S. Casfield Feb 24/05.
Date

U.S. Environmental Protection Agency

By: [Signature] 3/17/05
Date
Adam M. Kushner,
Acting Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

Ritchie Bros. Auctioneers, Inc.
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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 $25 \leq \text{hp} < 100$.

Appendix 2**AFFIRMATION OF INSPECTION
of EPA EMISSION LABEL**

I, _____ (name and title), hereby attest and affirm that I personally inspected the engine bearing the serial number(s) _____ and that the EPA emission label was properly affixed and is readily visible. Specifically, the label is:

1. Attached so that it cannot be removed without being destroyed or defaced;
(Yes___ / No___)
2. Durable and readable for the entire engine life;
(Yes___ / No___)
3. Secured on a part of the engine required for normal engine operation which does not normally require replacement during the life of the engine;
(Yes___ / No___)
4. Written in English;
(Yes___ / No___)
5. Located where it is readily visible to an average person after the engine is installed in a piece of equipment;
(Yes___ / No___)
6. The label contains the statement: "This engine conforms to [model year] U.S. EPA regulations large nonroad compression-ignition engines."
(Yes___ / No___)

I hereby affirm that the foregoing information is true and correct.

In witness whereof, I have hereunto set my hand on _____ (Date).

_____ (Signature)

_____ (Printed name & title)

_____ (Address)

_____ (Telephone)