

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.
ADMINISTRATIVE SETTLEMENT AGREEMENT**

In the Matter of:

C.T.Q. Power U.S.A., Inc.

Respondent

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) **MSEB AED # 7142**
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This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and C.T.Q. Power U.S.A., Inc. (Respondent) regarding compliance by Respondent with the requirements of section 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder at 40 C.F.R. Parts 89 and 90.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Parts 89 and 90 arising out of the importation on or about December 1, 2005 of 660 sixty generators and water pumps containing nonroad engines described in Attachment I and to ensure that future violations are avoided.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - A. *Certified engine:* A "certified engine" is a nonroad engine that was built after the applicable effective dates of the regulations at Parts 89 or 90 and that is covered by a Certificate of Conformity.
 - B. *Dates of the Applicable Regulations:* The term "dates of the applicable regulations" for a nonroad compression ignition engine means the date after

which the certification requirement applies to the engine, as defined in Table 2 of 40 C.F.R. § 89.112. For nonroad spark-ignition engines rated at or below 19 kW, the applicable effective date is January 1, 1997.

- C. *Uncertified engine:* An “uncertified engine” is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.
- D. *This matter:* As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Parts 89 and 90.
- E. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105, for compression ignition engines, or 40 C.F.R. § 90.108 for spark ignition engines, after EPA has determined that the manufacturer’s application is complete and that the engine family meets the requirements of 40 C.F.R. Parts 89 or 90 and the Clean Air Act. Issuance of the Certificate of Conformity permits production of engines built in accordance with the manufacturer’s application provided that the production is within the period during which the Certificate of Conformity is valid.
- F. *Subject engines:* The term “Subject Engines” means the engines whose model numbers, and Customs entry bill numbers are listed in Attachment I.

Statutory and Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7542(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.

4. 40 C.F.R. §§ 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad compression ignition engine manufactured after the applicable effective date of the regulations unless such engine is a certified engine.
5. 40 C.F.R. §§ 89.1003(b)(4) requires nonroad vehicle and equipment manufacturers to use certified compression ignition engines in vehicles and equipment manufactured after the effective date.
6. 40 C.F.R. §§ 89.2 defines a nonroad vehicle or equipment manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment, or importing such vehicles or equipment 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 compression ignition engine, a permanent and legible label which identifies the nonroad engine and provides the information specified in that section, including a statement that the engine is a certified 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. § 90.1(a) defines the applicability of 40 C.F.R. Part 90 regulations to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and that are used for any purpose.
9. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity.
10. 40 C.F.R. §§ 90.3 defines a nonroad vehicle manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person in connection with the distribution of such vehicles.

11. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless an emissions label is affixed to the engine.
12. 40 C.F.R. § 90.114 requires the engine manufacturer to affix, at the time of manufacture of a certified spark-ignition 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, must contain the content required by 40 C.F.R. § 90.114 and must be attached in such a manner that it cannot be removed without destroying or defacing the label.

Background

13. On February 1, 2006, U. S. Customs and Border Protection (CPB) seized the nonroad equipment listed in Attachment I at the port of Savannah, Georgia.
14. Respondent is the importer of the nonroad equipment containing the Subject Engines.
15. The Subject Engines and nonroad equipment were manufactured after the Dates of the Applicable Regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment.
16. The Subject Engines listed in Table 1 of Attachment I are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §§ 89.110 or 90.114. The Subject Engines listed in Table 2 of Attachment I were manufactured under a certificate of conformity, but bear labels that do not comply with 40 C.F.R. § 90.114(b)(6).

Terms of Agreement

17. Within 60 days of the date of this Agreement, Respondent shall submit proof that each of the Subject Engines has been exported to a location outside the North American continent.
18. All submissions to EPA shall be sent to the following address:

David Alexander
U.S. EPA, OECA/AED (mailcode 2242A)
1200 Pennsylvania Ave NW (Rm. 1111A)
Washington, DC 20460-0001
facsimile: (202) 564-0069

19. Respondent shall pay to the United States a civil penalty of forty-one thousand dollars (\$41,000) within 30 calendar 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.

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 # 7142

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 18 or faxed to (202) 564-0069 to the attention of David Alexander. 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 the Respondent.
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. Notwithstanding any other provision of this agreement, upon Respondent's failure to perform, or default of 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. 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 Parts 89 or 90. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.

23. The Effect of Settlement described in Paragraph 26 of this Agreement is conditioned 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 I, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

24. 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 timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 19, \$400 per day.
 - B. For failure to timely export the Subject Engines, or provide proof of such exportation, pursuant to Paragraph 17, \$500 per day.
25. All stipulated penalties under Paragraph 24 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 in accordance with Paragraph 19 and shall be paid within five 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.

Effect of Agreement

26. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

C.T.Q. Power U.S.A., Inc.

By:  _____

Lee Johnson, President

25TH APRIL 06

Date

Title: Pres

U.S. Environmental Protection Agency
In the Matter of C.T.Q. Power U.S.A., Inc.
AED/MSEB #7142

By:  _____

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

5.17.06
Date

ATTACHMENT I

In the Matter of C.T.Q. Power U.S.A., Inc.

Table 1

Uncertified and Unlabeled Engines

Entry Date	Entry Number	Engine Model # (Equipment type)	Qty	Manufacturer
12/30/2005	K10-3529981-3	LDG5500D (diesel generator)	206	Fuzhou Launtop M & E CO LTD (Red Maple)
12/30/2005	DEWCXD65125 00053	LDG5500D (diesel generator)	220	Fuzhou Launtop M & E CO LTD (Red Maple)
12/30/2005	DEWCXD65125 00053	LPG20001 (LPG generator)	1	Fuzhou Launtop M & E CO LTD (Green Power)
12/30/2005	DEWCXD65125 00053	LPG50001 (LPG generator)	1	Fuzhou Launtop M & E CO LTD (Green Power)
12/30/2005	DEWCXD65125 00053	LDP80CLE (diesel water pumps)	12	Fuzhou Launtop M & E CO LTD (Red Maple)

Table 2

Engines Manufactured Under an EPA Certificate Which Lack Labels Compliant With 40 C.F.R. § 90.114

Entry Date	Entry Number	Engine Model # (Equipment type)	Qty	Manufacturer
12/30/2005	K10-3529981-3	LTP80C (gas water pumps)	108	Fuzhou Launtop M & E CO LTD (Red Maple)
12/30/2005	DEWCXD65125 00053	LTP80C (gas water pumps)	112	Fuzhou Launtop M & E CO LTD (Red Maple)