

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

In the Matter of:)	
)	
USA Tools, Inc.)	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
)	AED/MSEB # 7132
)	
Respondent.)	
)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and USA Tools, Inc., 2037 NW 27th Avenue, Miami, Florida, (Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) 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 provide for resolution and remediation of any and all claims by EPA under the Act and Parts 89 and 90 arising out of the importation of the eleven generators containing the nonroad diesel engines, eighty-three generators containing the nonroad gasoline engines and the twelve pumps containing the nonroad gasoline engines described in Attachment 1 to this Agreement (Subject Engines), while ensuring that future violations are avoided.

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 violation.

- b. *Certificate of Conformity*: the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 or § 90.108 after EPA determines that the manufacturer's application is complete and that the engine family meet the requirements of Part 89 or 90 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 nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable dates of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
- e. *Applicable regulation and dates*: 40 C.F.R. Part 89 is applicable to all nonroad compression-ignition engines, beginning with model year 1996 and subsequent model years; 40 C.F.R. Part 90 is applicable to all nonroad spark-ignition engines at or below 19 kW, beginning with model year 1997 and subsequent model years.

Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. § 7522, 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 compression-ignition 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. § 89.1003(b)(4) requires that certified nonroad engines shall be used in all vehicles and equipment . . . unless the manufacturer of the vehicle or equipment *can prove* that the vehicle or equipment will be used in a manner consistent with paragraph (2) of the definition of nonroad engine in § 89.2.” (emphasis added). 40 C.F.R. § 89.2, under the definition of “nonroad engine,” reads that an engine is not considered a nonroad engine if “the engine . . . will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation.”
7. 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.
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 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 an engine manufacturer as any person who, among other things, imports nonroad engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
11. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by engine manufacturer of a nonroad engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 90.114.

Background

12. On November 22, 2005, Respondent imported equipment containing the Subject Engines into Miami, Florida.
13. On December 8, 2005, U. S. Customs and Border Protection (Customs) detained the equipment containing the Subject Engines, at Miami, Florida, where they are presently being held because the Subject Engines were not properly labeled and did not seem to be certified. Respondent claimed the Subject Engines qualified for stationary exemption status by checking Box 20 on EPA Form 3520-21, dated December 1, 2005.
14. EPA has determined that
 - a. Respondent is the importer of the 106 Subject Engines,
 - b. All the Subject Engines are subject to the Act and to the requirements of 40 C.F.R. §§ 89 and 90,

- c. The Subject Engines were not certified under Sections 203(a) and 213(d) of the Act,
- d. The Subject Engines were not properly labeled under Parts 89 and 90, and
- e. Respondent did not provide proof at the time of importation that the Subject Engines would be used consistent with the stationary use exemption at 40 C.F.R. §89.2 and § 90.2.
- f. Based on the above, EPA has determined that Respondent is liable for 106 violations of 40 C.F.R. §§ 89 and 90.

Terms of Agreement

- 15. Within sixty (60) days of this Agreement, or such longer period of time if required by the Customs, Respondent shall export/destroy each Subject Engine. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the subject engines were either exported or destroyed. Exportation of the Subject Engines shall be to any country other than Canada or Mexico.
- 16. Respondent has agreed to pay a civil penalty of \$4,600 under this Agreement. Accordingly, under this Agreement, within thirty days from the date of this Agreement (the Agreement due date), Respondent shall pay \$4,600 to the United States of America. 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 - 7132

17. A copy of the check shall be sent to Angela E. Fitzgerald via facsimile 202/564-0015 or at the following address:

Angela E. Fitzgerald (Ariel Rios South - 1117A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

General Provisions

18. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
19. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
20. Notwithstanding any other provisions of this Agreement, upon Respondent's failure to timely perform pursuant to Paragraphs 15-17 of this Agreement, 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 40 C.F.R. Parts 89 and 90. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.

21. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representations to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties

22. 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 export or destroy the Subject Engines, and provide proof thereof, pursuant to Paragraph 15 of this Agreement, \$250.00 per day;
 - b. For failure to pay the penalty, or provide proof thereof, pursuant to Paragraph 16 of this Agreement, \$250.00 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 simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraphs 16 and 17 of this Agreement 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.

Enforcement

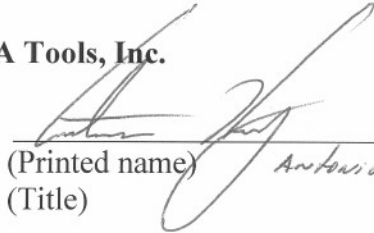
24. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; or for other violations 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:

USA Tools, Inc.

By:


(Printed name)
(Title)


Antonio Hernandez

Date

April 10, 2006

**Administrative Settlement Agreement
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U. S Environmental Protection Agency

By:  _____
Adam M. Kushner
Director
Air Enforcement Division

Date: 4.25.06 _____

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ATTACHMENT 1

Table 1: Description of Subject Diesel Generators

Entry Date	Entry Number	Model	Qty	Manufacturer
11/22/2005	WTB05513896	D180WE 4.2 kW	5	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	D5000SL 4.2 kW	6	Fuzhou Hua Bo Machinery & Elec Co

Table 2: Description of Subject Gasoline Generators

Entry Date	Entry Number	Model	Qty	Manufacturer
11/22/2005	WTB05513896	G1200CL 1 kW	10	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	G2500CL 2 kW	23	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	G4000CL 3.5 kW	15	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	G180WE 5 kW	2	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	G950GL .8 kW	20	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	G3000CL 2.5 kW	8	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	G5000CL 4.5 kW	5	Fuzhou Hua Bo Machinery & Elec Co

Table 3: Description of Gasoline Pump Sets

Entry Date	Entry Number	Model	Qty	Manufacturer
11/22/2005	WTB05513896	D80CL	2	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	D100CL	1	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	D50X	2	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	G80C	2	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	G100CL	1	Fuzhou Hua Bo Machinery & Elec Co

11/22/2005	WTB05513896	DEK80HLE	2	Fuzhou Hua Bo Machinery & Elec Co
11/22/2005	WTB05513896	DJ80HL	2	Fuzhou Hua Bo Machinery & Elec Co