

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

In the Matter Of:)	ADMINISTRATIVE SETTLEMENT
DEUTZ Corporation)	AGREEMENT
Respondent.)	AED/MSEB - 7103

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and DEUTZ Corporation (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 Agreement is to resolve all claims by EPA under Section 213 of the Act, 42 U.S.C. § 7547, and the implementing compression-ignition (CI) engines nonroad regulations at 40 C.F.R. Part 89 arising out of the importation of five hundred and thirty (530) engines (the Subject Engines) described in Attachment 1 while ensuring that prior violations are identified and resolved and future violations are avoided.

Definitions

1. For the purposes of this agreement, the following definitions apply:
 - (a) *Certified engine* means a CI nonroad engine built after the applicable date(s) of the Part 89 regulations and which is covered by a valid certificate of conformity as defined in 40 C.F.R. § 89.602.
 - (b) *Uncertified engine* means a CI nonroad engine built after the applicable date(s) of the Part 89 regulations but which is not covered by a valid certificate of conformity issued by EPA as described in 40 C.F.R. § 89.105.



Regulatory Authority

2. 40 C.F.R. § 89.1003(a)(1) prohibits manufacturers and any other person from importing into the United States any nonroad compression-ignition engine manufactured after the effective date of the regulations, unless such engine is covered by a currently valid certificate of conformity.
3. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad compression-ignition engine manufactured after the applicable date of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.
4. 40 C.F.R. § 89.2 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.
5. 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 state that the engine conforms to applicable EPA regulations. The label must be legible and readily visible to the average person after the engine is installed in the equipment.

Background

6. Lombardini s.r.l. is a manufacturer of engines, located in Reggio Emilia, Italy, who supplies brand-labeled engines to Respondent.
7. Respondent is the holder of the Certificate of Conformity for the model F3M 1008F Subject Engines which are manufactured by Lombardini s.r.l. for Respondent. The family designation is 5DZXL01.4029.
8. When Lombardini manufactured the Subject Engines, it failed to apply EPA labels and tamper-proofing, which are required by the Certificate of Conformity. As a result, the Subject Engines are uncertified engines.



9. Respondent imported the uncertified Subject Engines into the United States during the period of June 2004 through February 2005, in violation of 40 C.F.R. §§ 89.1003(a)(1)(ii) and (a)(4)(ii).
10. In February 2005, Lombardini s.r.l. determined that the Subject Engines were missing the required EPA labels and tamper-proofing, and notified Respondent of this discrepancy. Respondent then promptly notified EPA of this violation.
11. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreement contained herein, which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

12. a. Respondent shall conduct an audit of its records within ninety (90) days from the date of this Agreement consisting of 3% of the compression-ignition nonroad engines imported by Respondent between January, 2001 and the present, and submit, in electronic format, written evidence of the audit to EPA. If a violation is found in a particular model and year, then Respondent shall conduct an audit of 100% of the engines of that model and year. The submission shall consist of a compilation of the following information about each imported engine based upon all records available to Respondent after a diligent search:
 - 1) manufacturer;
 - 2) engine family name, the certificate number and the effective dates of each certificate;
 - 3) engine serial number;
 - 4) date of manufacture;
 - 5) horsepower rating;
 - 6) an indication whether the engine was or was not manufactured under a Certificate of Conformity issued by EPA; and
 - 7) date of import.



- b. Respondent may request EPA approval for an extension of time to complete the audit in Paragraph 12(a), but in no case will approval be granted for an extension greater than one hundred eighty (180) days from the date of the Agreement.
- 13.
 - a. For each unique combination of model, model year and production facility that manufactured engines imported by Respondent, Respondent agrees to locate and inspect a random sample consisting of at least one engine from each unique combination of which Respondent imported more than 10 engines. The purpose of the inspection is to determine whether the nonroad engines are certified and an EPA emission label is present, legible, and readily visible. If the inspected engine is missing an EPA emission label, tamper-proofing or is not certified, then Respondent shall inspect 100% of that unique combination that it imported. Results of the sample inspection shall be submitted to EPA within ninety(90) days of this Agreement. The submission shall consist of signed affidavits from DEUTZ representatives confirming inspection of a random sample of nonroad engines for the presence of an EPA label and tamper-proofing.
 - b. Respondent may request EPA approval for an extension of time to complete the audit in Paragraph 13(a), but in no case will approval be granted for an extension greater than one hundred eighty (180) days from the date of the Agreement.
- 14. Within sixty (60) days from the date of this Agreement, Respondent shall provide EPA with a plan to ensure that all nonroad engines imported after the date of this Agreement into the United States by Respondent, shall be imported in a manner that complies with all applicable regulations, including 40 C.F.R.Parts 89 and 90.
- 15. Respondent agrees that, within ninety (90) days, it will attach the EPA emission label and install tamper-proofing to the Subject Engines. This will be done by authorized DEUTZ distributors, dealers or DEUTZ personnel.



16. Within thirty (30) days of Respondent's completion of the corrective action as described in Paragraph 15, Respondent shall provide EPA with an affidavit from each of the authorized DEUTZ distributors, dealers or DEUTZ personnel, verifying that EPA emission information labels have been affixed to the Subject Engine(s), that the labels are readily visible, and the engine(s) are subject to warranty protection by DEUTZ. The affidavit will also verify that tamper-proofing has been installed on each of the Subject Engines. In addition to these affidavits, a summary should be provided in paper and electronic format that would include a listing of the Subject Engines, the engine serial number, the current owner of the equipment, the name of the distributor and date the affidavit was completed.
17. For those engines that have been exported out of the country and are not subject to remediation, Respondent shall provide EPA with an affidavit verifying the engines, by serial number, that have been exported and the date of export.
18. Responses to Paragraphs 12 - 17 shall be sent to Ann M. Stephanos, the EPA attorney assigned to this case, at the following address:
- | | |
|---|---|
| Via Regular Mail: | Via Courier Service: |
| U.S. Environmental Protection Agency
OECA/Air Enforcement Division
Ariel Rios Bldg. (2242A)
1200 Pennsylvania Ave., N.W.
Washington, DC 20460 | U.S. Environmental Protection Agency
Air Enforcement Division
Ariel Rios Building (Rm. 1109A)
1200 Pennsylvania Ave., N.W.
Washington, DC 20004 |
19. Respondent shall pay to the United States Eighty Thousand Dollars (\$80,000.00) within thirty (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 - 7103

Simultaneously, a photocopy of the check shall be mailed to Ann M. Stephanos at the address specified in Paragraph 18 or faxed to 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 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. Upon failure to timely perform pursuant to Paragraphs 12 - 17 of this Agreement, or 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.
23. Violations disclosed to EPA as a result of this Agreement may fall under EPA's Self-Disclosure Policy "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," *see* 65 Fed. Reg. 19,618 (Apr. 11, 2000). It is anticipated that violations discovered in the course of the audit required by Paragraphs 12 and 13 of this Agreement may be deemed to have been systematically and voluntarily discovered

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independent of a government or third party plaintiff. It is anticipated that violations reported in the audit report may be deemed to have been disclosed promptly, notwithstanding the passage of more than twenty-one (21) days from their actual discovery, provided that Respondent delivers its audit report to EPA on or before the time provided in this Agreement (or any extension thereof).

24. Settlement under the Self-Disclosure Policy of Respondent's voluntarily disclosed violations is contingent upon the truthfulness and accuracy of Respondent's disclosure to EPA.

Stipulated Penalties

25. Respondent shall pay stipulated penalties of five hundred dollars (\$500.00) per day to the United States for failure to comply with the terms of this Agreement as follows:
- a. Failure to pay the civil penalty, or provide proof of such payment, pursuant to Paragraph 19;
 - b. Failure to conduct the audit and sampling required by Paragraphs 12 and 13, or to submit to EPA, in writing, the results of the audit and sampling, pursuant to Paragraphs 12 and 13;
 - c. Failure to submit to EPA, in writing, a plan to prevent future violations, pursuant to Paragraph 14.
26. For failure to attach an EPA emission labels to the Subject Engines and install tamper-proofing, pursuant to Paragraph 15, Respondent shall pay a stipulated penalty of \$2,500 for each Subject Engine not remediated.
27. All stipulated penalties under Paragraphs 25 and 26 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 Paragraphs 25 and 26 and shall be paid within

five (5) 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.

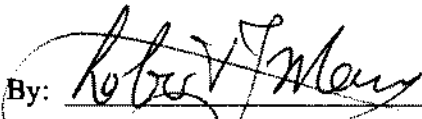
28. The effect of the settlement described in Paragraph 30 below is conditional upon the truthfulness, accuracy and completeness of Respondent's representations to EPA, as memorialized in Paragraphs 12 - 17 of this consent agreement and final order and Respondent's response within thirty (30) days of the date of this Agreement.
29. The terms of this Agreement shall be the complete settlement of all civil administrative claims and causes of action that EPA could allege against Respondent, any of its affiliates, distributors, dealers, customers or any other person or entity under the Act for violations based upon facts known to EPA on or before the effective date of this Agreement with respect to the Subject Engines.

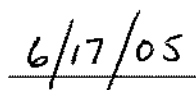
Enforcement

30. 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:

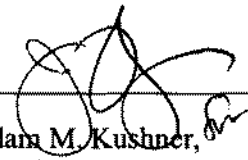
DEUTZ Corporation

By: 
Robert T. Mann
President


Date

**Administrative Settlement Agreement in the matter of United States v.
DEUTZ Corporation**

U.S. Environmental Protection Agency

By:  _____

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

6.24.05
Date