

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

In the Matter of:)	
Caterpillar Inc.,)	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
and)	
)	AED/MSEB-7255
Mitsubishi Heavy Industries, Ltd.,)	
)	
Respondents.)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA), Caterpillar Inc. (Caterpillar), 100 N.E. Adams Street, Peoria, Illinois 61629, and Mitsubishi Heavy Industries, Ltd. (Mitsubishi), 3000 Tana, Sagamihara, 229-2293, Kanagawa, Japan (collectively, Respondents).

Purpose:

1. The purpose of this Agreement is to resolve fifteen alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and the implementing Compression-Ignition (CI) nonroad engine regulations, 40 C.F.R. Part 89 (CI Nonroad Regulations).

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit any person from causing the importation or importing any new nonroad vehicle or engine unless such vehicle or engine is covered by an EPA-issued certificate of conformity (EPA-COC), and bears the required EPA emissions information label (label).

Regulatory Authority - CI Nonroad Regulations:

3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from causing the importation or importing into the United States any CI engine manufactured after the effective dates of the regulations, unless such engine is covered by an EPA-COC.

4. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, delivery into commerce, or the causing thereof by an engine manufacturer of a nonroad CI 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. § 89.110.
5. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of a new nonroad engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
6. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified CI engine, a permanent and legible label identifying each nonroad engine and containing certain information. The label must readily be visible after the engine is installed in the equipment.
7. 40 C.F.R. §§ 89.110(a)(1) and (2) require the label to be attached in such a manner that it cannot be removed without destroying or defacing the label, and be durable and readable for the entire engine life.

Definitions:

8. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulation and dates:* 40 C.F.R. Part 89 is applicable to CI nonroad engines built after the applicability dates.
 - b. *Certified engine:* A nonroad engine built after the applicable dates of the regulations and that is covered by an EPA-COC.
 - c. *Certificate holder:* The manufacturer who obtained from and EPA-COC for the Subject Engines.
 - d. *Certificate of Conformity:* The document issued by EPA to a manufacturer 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 40 C.F.R. Part 89 and the CAA.

- e. *Export*: To transport to a location outside of the United States and its territories, Canada, and Mexico.
- f. *Observer*: A U.S. Customs and Border Protection (U.S. Customs) representative or an independent board certified licensed professional engineer.
- g. *Destroy*: The complete destruction of the Subject Engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.
- h. *This matter*: As used in this Agreement means Respondents' importation of the fifteen nonroad engines as described in Paragraph 9 of this Agreement (Subject Engines) and any civil liability that may apply to such violations.

Alleged Violations:

- 9. On or about May 27, 2007, Caterpillar imported into Savannah, Georgia fifteen excavators that contained CI nonroad engines (Subject Engines). The Subject Engines are described in Appendix A to this Agreement. The Subject Engines were manufactured by Mitsubishi and Mitsubishi is the Certificate Holder for the Subject Engines.
- 10. The U.S. Customs inspection of the Subject Engines revealed that the Subject Engines bore labels that were not permanently affixed and could be removed without destroying or defacing the labels, in violation of 40 C.F.R. § 89.110(a)(1).
- 11. On July 23, 2007, EPA requested that the U.S. Customs Port in Savannah, Georgia seize the Subject Engines.
- 12. Based on the foregoing, EPA alleges that Respondents committed fifteen violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the CI Nonroad Regulations, 40 C.F.R. Part 89.

13. By entering into this Agreement, Respondents do not admit that they have committed any violation of the CAA or its implementing regulations.

Injunctive Relief/Corrective Action:

14. No later than thirty days from the effective date of this Agreement, or such longer period of time if required by U.S. Customs, Respondents shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of U.S. Customs. Respondents shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.
15. In lieu exporting or destroying the Subject Engines as required by Paragraph 14, the Certificate Holder for the Subject Engines shall:
- a. Remove each non-complying label from the Subject Engine and affix a complying EPA emissions information label to each of the Subject Engines (replacement label).
 - b. Provide to EPA a technical description of the method and procedures that the Certificate Holder shall use to affix the replacement label to the Subject Engines to ensure that each replacement label is permanently affixed and cannot be removed without destroying or defacing the label. A copy of the replacement label and technical description for applying the label is attached hereto as Appendix B to this Agreement.
 - c. Establish and fully document a chain of custody for the replacement labels from the time of production until the time of installation on the Subject Engines, and destruction of any unused replacement labels.
 - d. Perform this corrective action under the direction of the Observer. The corrective action shall be completed no later than thirty (30) days from the effective date of this Agreement, or such longer period of time if requested by Respondents and approved by EPA for good cause shown.

- e. Remove each non-complying label and give it to the Observer, and shall attach the replacement label in accordance with the method and procedures submitted to EPA in the above Subparagraph “(b)”.
 - f. Ensure that the Observer destroys all the removed labels no later than the day the last Subject Engine receives a replacement label.
16. After the replacement label has been affixed to each of the fifteen Subject Engines, the Certificate Holder shall have the Observer randomly select one Subject Engine from each equipment model (the Test Sample Engines) to determine whether or not the replacement label is permanently affixed to the Subject Engine and cannot be removed without destroying or defacing the replacement label. Any Test Sample Engines whose replacement label is destroyed or defaced during this test must be relabeled by the Certificate Holder.
 17. Where the replacement label on a Test Sample Engine can be removed without destroying or defacing the replacement label, the Test Sample Engine and the related equipment shall be exported.
 18. Where the replacement label on a Test Sample Engine contains all the specified information, is permanently affixed and cannot be removed without destroying or defacing the label, the Test Sample Engine and the related equipment model Subject Engines may be deemed to comply with 40 C.F.R. § 89.110 and may be released by U.S. Customs.
 19. No later than thirty (30) days from the effective date of this Agreement (or such longer period of time if requested by Respondents and approved by EPA for good cause shown), Respondents shall provide EPA with a written report that fully describes the corrective action taken, and certifies that such corrective action was conducted as described. The report must include the following:

- (a) An affidavit from the Certificate Holder who has performed the corrective action work. The affidavit shall certify the date, time, and place of the corrective action work, identify each person doing the work, identify the serial number of each Subject engine that was re-labeled, provide a clear readable picture of the replacement label affixed to each model of the Subject Engines, and provide the results of any tests performed to determine whether or not the replacement label was permanent and could not be removed without destroying or defacing the label; and
- (b) An unconditional statement from the Certificate Holder certifying that the Subject Engines comply with all applicable requirements of the CAA and 40 C.F.R. Part 89.

Civil Penalty:

20. Respondents have agreed to pay a civil penalty of \$30,500 to the United States of America no later than thirty 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. Respondents agree to pay the amount by certified check or cashier's check payable to the United States of America, and to mail the payments to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Attn: AED/MSEB - 7255

Respondents may also pay online at www.pay.gov. From the "Agency List" select Environmental Protection Agency, then select "EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the "SFO Form Number 1.1."

Notice:

21. A copy of the payment shall be faxed to Jocelyn Adair, Esq. at (202) 564-0069 no later than twenty-four (24) hours after mailing the payment. A copy of the payment and all correspondence to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB- 7255

(Courier Service)

Jocelyn Adair, Esq.
U.S. EPA
Ariel Rios South, Room 1109A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Root Cause Analysis and Corrective Action Compliance Plan:

22. No later than thirty days from the effective date of this Agreement, the Certificate Holder shall initiate a thorough review and assessment of its nonroad engine labeling practices and procedures to ensure that all labels are permanently affixed on the Certificate Holder's engines and/or equipment at the time of manufacture and otherwise comply with the requirements of 40 C.F.R. § 89, in particular to ensure that labels once affixed cannot be removed without being destroyed or defaced at any point during the life of the engines, and during the manufacturing and assembly process (including during overseas shipment for assembly, and for importation into the United States). The Certificate Holder shall, as part of such review:

- (a) Review regulatory requirements for labels on nonroad engines;
- (b) Analyze a representative sample of the Subject Engines and labels to determine the potential cause(s) of label noncompliance;
- (c) Review current labeling procedures and associated quality assurance and/or control practices, including label installation procedures, label design and label performance characteristics; and
- (d) Identify and implement corrective action(s) to label installation procedure/design/performance as well as quality assurance/quality control procedures at locations where the Certificate Holder's nonroad equipment is manufactured and/or assembled, and for shipment to the United States, to ensure

that labels remain permanently affixed and attached such that they cannot be removed without their being defaced or destroyed.

23. The Certificate Holder shall complete the review and analysis required by Paragraph 22, and shall implement all corrective actions, within 180 days of the effective date of this Agreement. The Certificate Holder shall, within 210 days of the effective date of this Agreement, submit a report to EPA of the Root Cause Analysis and Corrective Action Plan detailing the analysis, cause(s) of noncompliance, and all corrective actions implemented by the Certificate Holder. Such report shall include example(s) of new or redesigned label(s) identified for use by the Certificate Holder as a result of the Root Cause Analysis and Corrective Action Plan.

General Provisions:

24. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondents.
25. Respondents hereby represent that the individual executing this Agreement on behalf of each Respondent is authorized to do so on behalf of each Respondent and that such execution is intended and is sufficient to bind Respondents, Respondents' agents, assigns, or successors.
26. Notwithstanding any other provisions of this Agreement, upon Respondents' default 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 CAA, 42 U.S.C. § 7524, and pursue any other remedies available to it. Respondents 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 CAA and 40 C.F.R. Part 89. Respondents expressly waive Respondents's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
27. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondents's disclosure and representation to EPA, 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 Respondents shall pay stipulated penalties to the United States as follows:
- a. For failure to export or destroy or re-label the Subject Engines or provide proof thereof, pursuant to Paragraphs 14 through 18, and 21, \$250.00 per day.
 - b. For failure to timely pay the civil penalty or provide proof thereof, pursuant to Paragraphs 20 and 21, \$250.00 per day; and
 - c. For failure to provide the reports specified in Paragraphs 19 and 23, \$250 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 in the manner specified in Paragraph 20 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jocelyn Adair at the address specified in Paragraph 21 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 penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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 Respondents' violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

Enforcement:

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 each 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 Respondents of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Caterpillar Inc.:

By: William P. Allen

Date: March 27, 2008

Printed Name: William P. Allen

Printed Title: Manager, Emissions Certification & Compliance

Administrative Settlement Agreement - In the Matter of Caterpillar Inc. and Mitsubishi Heavy Industries, Ltd.; AED/MSEB - 7255

Mitsubishi Heavy Industries, Ltd.

By: Katsuhiko Yoshida

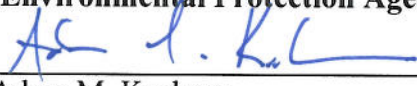
Date: March 10, 2008

Printed Name: Katsuhiko Yoshida

Printed Title: Executive Vice President & Representative Director

Administrative Settlement Agreement - In the Matter of Caterpillar Inc. and Mitsubishi Heavy Industries, Ltd.; AED/MSEB -7255

U.S. Environmental Protection Agency:

By: 
Adam M. Kushner
Director
Air Enforcement Division

Date: April 24, 2008

Appendix A

Entry Number: 004-4699846-0
Detention Number: 200717030151

Entry Date	Engine Manufacturer	Engine Model	Quantity	Horse Power
5/27/07	Mitsubishi	S3Q2	1	43
5/27/07	Mitsubishi	S4Q2	12	43
5/27/07	Mitsubishi	S3Q2-T	2	43
Total			15	