

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

In the Matter of:)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
Isuzu Motors America, Inc.)	
Respondent)	AED/MSEB # 7041

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Isuzu Motors 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

1. 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 the uncertified 1998, 1999, and 2001 Isuzu 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

Engine Model & S/N	Hp	Engine Build Date
208781	51	2001
4JG1PH 179053	65	1999
4JG1T #0003	84	1998

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 Engine and any civil liability that may apply to such violation.
 - 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.
- h. *Manufacturer-owned nonroad engine:* an uncertified nonroad engine owned and controlled by a nonroad engine manufacturer and used in a manner not involving lease or sale by itself or in a vehicle or piece of equipment employed from year to year in the ordinary course of business for product development, production method assessment, and market promotion purposes.

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.
8. 40 C.F.R. § 89.902 defines a manufacturer-owned nonroad engine as an uncertified engine owned and controlled by a nonroad engine manufacturer and used in a manner not involving lease or sale by itself or in a vehicle or piece of equipment employed from year to year in the ordinary course of business for product development, production method assessment, and market promotion purposes (Prototype Engines).

Background

9. In June of 2002, U. S. Customs and Border Protection (Customs) detained the equipment containing the first Subject Engine, serial number 208781, at the port of Minneapolis, Minnesota because it did not contain the EPA mandated label, as set forth in 40 C.F.R. § 89.110.
10. On June 11, 2002, Customs placed the equipment containing the first Subject Engine, serial number 208781, under constructive detention at Murphy Warehouse - Dock Door # 33, 701 24th Avenue SE, Minneapolis, Minnesota, where it is currently being held.
11. The Subject Engines were built in 1998, 1999, and 2001 with a rated power of between 51 and 84 hp, consequently they are subject to the requirements of 40 C.F.R. Part 89.
12. Respondent is the importer of the Subject Engines.
13. The Subject Engines are Manufacturer-Owned Nonroad Engines as defined at 40 C.F.R. § 89.902.

14. Within 30 days from the date of this Agreement, Respondent shall export the first Subject Engine in its entirety to a country other than Canada or Mexico, and provide EPA with proof of exportation by Customs documentation. Alternatively, within 30 days, Respondent shall destroy the first Subject Engine pursuant to EPA's guidelines for such destruction.
15. This is Respondent's first violation of the Regulations pertaining to the importation of nonroad engines.
16. Respondent affirms that since January 1, 1997, and September 30, 2002, it has imported 46 Manufacturer-Owned Nonroad Engines as defined at 40 C.F.R. § 89.902 into the United States (Prototype Engines) and 78,706 Certified Engines.
17. Respondent submitted the results of an audit of the 46 Prototype Engines.
18. In response to EPA's inquiries, Respondent submitted additional information on the 46 Prototype Engines to EPA on January 24, 2004.
19. For 44 of the 46 Prototype Engines, Respondent has shown compliance with the requirements of 40 C.F.R. § 89.906(a) and these 44 Prototype engines thus are exempt from the prohibitions of 40 C.F.R. § 89.1003.
20. The remaining 2 Prototype Engines not covered in Paragraph 19, above, are described in Table 1, and are further discussed in Paragraph 23 and 24, below.
21. Since June 6, 2003, Respondent has changed its procedures for the importation of Prototype Engines in a manner reasonably calculated to insure that all compression-ignition (diesel) 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 Part 89.

Terms of Agreement

22. Within 30 days from the date of this Agreement, Respondent shall provide verification of the export under Customs supervision of the Subject Engine to a country other than Canada or Mexico.
23. The 2 Prototype Engines in Paragraph 20, above, were built after January 1, 2001 with 65 and 84 hp respectively. As a result, they are subject to the requirements of 40 C.F.R. Part 89 and are included in Table 1.
24. The 2 Prototype Engines are uncertified and unlabeled and have been entered into commerce, in violation of the prohibitions of 40 C.F.R. § 89.1003.
25. Respondent shall pay to the United States Ten Thousand Dollars (\$10,000) 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 # 7041

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

Angela E. Fitzgerald, Esq.
U.S. Environmental Protection Agency
Air Enforcement Division
Ariel Rios Building (2242A)
Washington, D.C. 20460
Fax (202)564-0015

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

General Provisions

26. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Importer.
27. 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.
28. 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.
29. The effect of this Agreement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraphs 17 and 18 of this Agreement and Respondent's submittals, dated June 6, 2003 and January 16, 2004, respectively.
30. The violations disclosed to EPA pursuant to this Agreement fall under EPA's Self-Disclosure Policy "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," *see* 65 Fed. Reg. 19,618 (April 11, 2000).

31. 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:

32. 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 as specified in Paragraph 22, or to submit written proof of the exportation, \$500 per day; and
 - b. For failure to pay the penalty required by Paragraph 25, \$500 per day.
33. All stipulated penalties under Paragraph 32 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 # 7041

Simultaneously, a photocopy of the check shall be mailed to Angela E. Fitzgerald at the address specified in Paragraph 25 or sent via telefax to 202/564-0015. Such check shall be identified with the case number and Respondent's name. Stipulated penalties 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

34 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:

Isuzu Motors America, Inc.

By: 
Takao Okamoto,
Vice President, Powertrain

Nov 29, 2004
Date

U.S. Environmental Protection Agency

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

Dec 17, 2004
Date

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 $25 \leq \text{hp} < 100$.