

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

NELSON EQUIPMENT CORPORATION

Respondent

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) AED/MSEB #7034
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This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Nelson Equipment Corporation (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. 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 four Model Year 2004 tractors containing the nonroad engines described in Table 1 (Subject Engines), while ensuring that prior violations are identified and resolved, and that future violations are avoided.

Table 1: Description of Subject Engines

Engine Brand & Model	Engine (Equipment) Serial Number	Power (kW)	Engine Build Year
Yangdong Y380	31016607 (20418100)	14.7	1999
Yangdong Y380	31016826 (20518112)	14.7	1999
Jiangsu Y395	98050095 (20534143)*	22.08	1998
Yangdong Y380	31016575 (2041807)	14.7	1999

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 Part 89 regulations and that is covered by a Certificate of Conformity.
 - B. *Dates of the Applicable regulations:* The term “dates of the applicable regulations” means the date after which the certification requirement applies to an engine, as defined in Table 2 of 40 C.F.R. § 89.112.
 - 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 Table 1 and any civil liability that may apply to violations of the Act and implementing regulations governing importation of nonroad engines.
 - E. *Certificate of Conformity:* A “certificate of conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 or § 90.108 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 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 tractors:* The term “subject tractors” means the tractors whose serial numbers are listed in Table 1.

Statutory and Regulatory Authority:

3. Sections 203(a) and 213(d) of the 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 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 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 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. § 89.102 sets forth a program to provide transitional flexibility for nonroad equipment manufacturers, the Transition Provisions for Equipment Manufacturers (TPEM). The TPEM provides a limited opportunity for the manufacture or importation of equipment containing certain engines that otherwise do not comply with the emission standards of 40 C.F.R. Part 89. One limitation is that the TPEM only allows use of engines that are produced after the applicable effective date of the regulations for the engines contained in the equipment being manufactured or imported, and does not allow use of engines that are produced before this date.

Background

9. On June 14, 2004, Respondent imported the Subject Tractors.
10. On June 25, 2004, U. S. Customs and Border Protection (Customs) detained the subject equipment containing the Subject Engines at the port of Portland, Oregon where they are currently being held.
11. Respondent is the importer of the Subject Tractors.
12. The Subject Tractors containing the subject engines were built in Model Year 2004, which is after the effective date for the engines in the subject vehicles. As a consequence, certified engines were required to be used in the subject equipment
13. The Subject Tractors do not contain certified engines, and do not have affixed the certification label required by 40 C.F.R. § 89.110.
14. Respondent is liable for four violations of Section 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(b)(4).
15. Respondent affirms that since January 1, 1999, it has imported into the United States a total of twenty six tractors built after the dates of the applicable regulations that do not contain certified engines in addition to those in the Subject Engines. These tractors are described in Attachment 1.

Terms of Agreement

16. Within thirty days of the date of this Agreement, Respondent shall provide EPA with a plan reasonably calculated to insure that all nonroad engines imported by Respondent into the United States after the date of this Agreement, shall be imported in a manner that complies with the requirements of the Act and 40 C.F.R. Parts 89 and 90.
17. Respondent shall include the thirty tractors (the 4 Subject Tractors identified in Table 1, and the twenty six previously imported and identified in Paragraph 15) in its calendar year 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines under 40 C.F.R. § 89.102(d)(2). The thirteen tractors marked with an asterisk in Table 1 and Paragraph 15 shall be included in Respondent's 2005 TPEM allowance for

equipment containing uncertified nonroad diesel engines rated equal to or above 19 kW and less than 37 kW, and the remaining twenty engines shall be included in Respondent's 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines rated equal to or above 8 kW and less than 19 kW.

18. Respondent shall submit reports showing compliance with the TPEM requirements under 40 C.F.R. § 89.102(d). Such reports shall contain, for each piece of equipment imported by Respondent under the TPEM, the engine and chassis manufacturer, engine and chassis serial numbers, engine and chassis date of manufacture, engine power rating, engine power category under 40 C.F.R. § 89.112, and the date of importation. Notwithstanding 40 C.F.R. § 89.102(e)(1), three such reports, covering Respondent's importation for the previous calendar year, shall be submitted on or before January 30, 2005, January 30, 2006, and January 30, 2007.

19. All submissions shall be sent to EPA at the following address:

David Alexander
U.S. EPA, OECA/AED (mailcode 2242A)
Room 1111A
1200 Pennsylvania Ave NW
Washington, DC 20037-0001
facsimile: (202) 564-0069

20. Respondent shall pay to the United States \$2,000 within ninety calendar 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 #7034

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 19 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.

21. Respondent agrees that it will not import any nonroad vehicle or peice of equipment manufactured on or after the applicable model years set forth in 40 C.F.R. § 89.112 unless the nonroad vehicle or equipment a) is powered by certified nonroad engines, or b) contains a nonroad engine that was manufactured after the applicable effective date of the regulations and is otherwise imported in compliance with 40 C.F.R. § 89.102(d).

General Provisions

22. 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.
23. 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.
24. 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 Part 89. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.
25. The effect of the settlement described in Paragraph 28 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties:

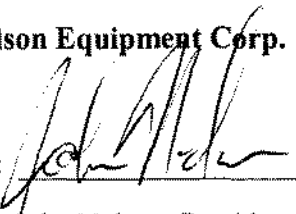
26. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
- A. For failure to timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 20, \$200 per day.
 - B. For failure to submit to EPA, in writing, a plan to prevent future violations, and reduce importations pursuant to flexibility provisions pursuant to Paragraph 16, \$500 per day.
 - C. For failure to submit reports, including failure to submit timely reports, of importations under 40 C.F.R. § 89.102 in accordance with Paragraph 18, \$300 per day.
 - D. For importing a piece of nonroad equipment containing an uncertified engine that does not qualify for the TPEM, \$10,000 per violation.
27. All stipulated penalties under Paragraph 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 Paragraph 20 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

28. 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:

Nelson Equipment Corp.

By: 
John Nelson, President

11-3-04
Date

U.S. Environmental Protection Agency

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

11/5/04
Date

Attachment 1

	Engine Brand & Model	Engine (Equipment) Serial Number	Power (kW)	Engine Build Year
1	Yangdon TY380	20311534(037642)	14.7	1999
2	Yangdon TY395	98044676(037904)*	25.73	1998
3	Yangdon TY395	98044063(21926)*	25.73	1998
4	Yangdon Y385	20514906(039008)	18.4	1999
5	Jinagsu TY395	98044068(039124)*	22.06	1998
6	Yangdong TY290	99005(039116)	13.2	1999
7	Jiangsu TY 395IT	404714(404714)*	22.06	1998
8	Jiangsu TY395	98045186(039504)*	22.06	1998
9	Yangdong 280	20515429(044691)	16.2	1999
10	Yangdong Y385	31014683(039555)	18.4	1999
11	Jinagsu TY395	9805295(040575)*	22.6	1998
12	Yangdong Y385	2052437(039123)	18.4	1999
13	Yangdon Y380	31014856(039559)	16.2	1999
14	Jinagsu Y395	98045388(20234064)*	22.6	1998
15	Yangdong Y385	20228073(31015299)	18.4	1999
16	Yangdong Y385	31015702(20228097)	18.4	1999
17	Yangdong Y385	31015550(20228115)	18.4	1999
18	Yangdon TY385	31015748(20328200)	18.4	1999
19	Yangdon TY380	31016260(20318040)	14.7	1999
20	Jiangsu TY395	98050002(20334090)*	22.06	1998
21	Jiangsu TY395	98050003(20334089)*	22.06	1998
22	Jiangsu TY395IT	400052(400052)*	22.06	1998
23	Jiangsu Y395	98050043(20439034)*	22.08	1998
24	Yangdong Y380	31016606(20418099)	14.7	1999
25	Jiangsu TY395IT	401702(401702)*	22.06	1998
26	Yangdong Y385	31018073(20528894)	18.4	1999