

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

In the Matter of:)	
)	
Segma Power Products Co.)	SETTLEMENT AGREEMENT
)	AED/MSEB # 7277
Respondent.)	
)	

This Settlement Agreement is made and entered by and between the United States Environmental Protection Agency (EPA) and Segma Power Products Company (Respondent) regarding compliance by Respondent with the requirements of sections 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. Parts 89 and 90.

Purpose

1. The purpose of this Settlement Agreement (Agreement) is to provide resolution and remediation of any and all claims by EPA under the Act and 40 C.F.R. Parts 89 and 90 (Nonroad Regulations), arising out of the importation of seven (7) compression ignition nonroad engines and 450 spark ignition nonroad engines and the equipment containing those engines (Subject Engines), while ensuring that future violations are avoided.

Definitions

2. For 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 violations
 - b. *Certificate of Conformity*: the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105, for compression ignition engines, or 40 C.F.R. § 90.108 for spark ignition engines, 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

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Certificate of Conformity is valid.

- c. *Certified engine*: a nonroad engine that was built after the applicable effective dates of the regulations at 40 C.F.R. Parts 89 or 90 and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable effective dates of the regulations at 40 C.F.R. Parts 89 or 90 but which is not covered by a Certificate of Conformity.
- e. *Dates of the Applicable Regulations*: for a nonroad compression ignition engine means the date after which the certification requirement applies to the engine, as defined in Table 2 of 40 C.F.R. § 89.112. For nonroad spark-ignition engines rated at or below 19 kW, the applicable effective date is January 1, 1997.
- f. *Certificate Holder*: the company granted an EPA Certificate of Conformity for the Subject Engines.

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 labeled according to the information label requirements of 40 C.F.R. §§ 89.110 or 90.114.
- 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 and bears a permanently affixed EPA emissions label, or is properly excluded from the certification requirements.
- 5. 40 C.F.R. § 89.2 defines a nonroad compression ignition engine manufacturer as any person engaged in the manufacture or assembly of new nonroad engines or the importing of 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 engine manufacturer to affix, at the time of manufacture, a permanent and legible label identifying each nonroad engine. The label must be attached so that it cannot be removed without destroying or defacing the label, and must contain certain information. 40 C.F.R. § 89.110(b)(6) requires the label to include the engine tune-up specifications and adjustments. 40 C.F.R. § 89.110(b)(10) requires the label to include a statement indicating which model year standards apply to the engine.
7. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity and bears a permanently affixed EPA emissions label, or is properly excluded from the certification requirements.
8. 40 C.F.R. § 90.3 defines a nonroad spark ignition engine manufacturer as any person engaged in the manufacture or assembly of new nonroad engines or the importing of 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.
9. 40 C.F.R. § 90.114 requires the engine manufacturer to affix, at the time of manufacture of a certified spark-ignition engine, a permanent and legible label identifying each nonroad engine. The label must be attached so that it cannot be removed without destroying or defacing the label, and must contain certain information. 40 C.F.R. § 90.114(a)(6) requires the label to include the month and year that the engine was manufactured.

Background

10. On July 16, 2007, Respondent imported 457 nonroad engines, described in the Table below.

Subject Engine Table

Generator Model	Engine Manufacturer	Engine Family	Qty
Diesel Generator Set 30 kw	Shandong Weichai Huafeng Power Co.	7SDWL3.12BBB	1
Diesel Generator Set 50 kw	Shandong Weichai Huafeng Power Co.	7SDWL4.33AAA	5
Diesel Generator Set 150 kw	Shandong Weichai Huafeng Power Co.	7SDWL7.52AAA	1
Gasoline Generator Set JDP950	Suzhou Jinding Machinery Manufacturing Co., Ltd.	7SZJS.0641GA	450

11. U.S. Customs and Border Protection (CBP) inspected the generators and identified a number of potential problems associated with EPA Declaration Form 3520-21 and the emissions information labels affixed to the Subject Engines.
12. Respondent is the importer of the nonroad equipment containing the Subject Engines.
13. The Subject Engines were manufactured after the Dates of the Applicable Regulations.
14. The emissions labels on the Subject Engines manufactured by Shandong Weichai Huafeng Power Co. did not include the engine tune-up specifications and adjustments or a statement indicating which model year standards apply to the engine, in violation of 40 C.F.R. §§ 89.110(b)(6) and (10).
15. The emissions labels on the Subject Engines manufactured by Suzhou Jinding Machinery Manufacturing Co., Ltd., did not include the month that the engines were manufactured, in violation of 40 C.F.R. § 90.114(a)(6).
16. Based upon the foregoing, EPA alleges that Respondent is liable for 457 violations of Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7542(a) and 7547(d), arising from the Respondent's importation of the Subject Engines that did not meet the applicable requirements for emission labels described above.

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Terms of Agreement

17. Respondent will submit to EPA, at the address below, a sample EPA label identical to the replacement EPA labels:

(By regular mail)

U.S. Environmental Protection Agency
Air Enforcement Division
Ariel Rios Building (2242A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attention: Amelie Isin

(By courier service)

U.S. Environmental Protection Agency
Air Enforcement Division
Ariel Rios Building (Room 1109A)
1200 Pennsylvania Avenue, NW
Washington, DC 20004
Attention: Amelie Isin

18. Respondent will request that the Certificate Holder (or its authorized representative) replace the existing EPA labels on the Subject Engines with replacement EPA labels, meeting all the regulatory requirements of 40 C.F.R. Part 89 or 40 C.F.R. Part 90, as applicable, to be provided by the Certificate Holder.

19. Within thirty (30) days from the date Respondent signs this Agreement, Respondent shall provide EPA with an affidavit from an authorized representative of the Certificate Holder verifying that he/she has affixed the replacement EPA labels to the Subject Engines. The affidavit must include:

- a. the engine serial numbers,
- b. a statement that the EPA labels are readily visible once installed,
- c. photos of the replacement EPA labels on ten of the Subject Engines chosen at random once the replacement EPA labels are installed,
- d. a statement that the Subject Engines are covered by a warranty that complies with 40 C.F.R. Part 89 or 40 C.F.R. Part 90, as applicable, and
- e. a statement concerning the final disposition of the removed (incomplete) labels.

20. Respondent agrees not to sell the Subject Engines until after the original EPA labels have been replaced and EPA has been given the opportunity to inspect and review the affidavit

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described in paragraph 19 herein above.

21. This agreement does not preclude any other action by EPA for violations that are not part of this Agreement, or any future violations of the Act or regulations promulgated thereunder.
22. Respondent shall pay to the United States a civil penalty of \$3,700 within 30 calendar days of 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. 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63179-9000
ATTN: AED/MSEB # 7277

A photocopy of the check shall be telefaxed simultaneously to Jeff Kodish at the number specified in Paragraph 23. Alternatively, Respondent may affect an online payment by visiting www.pay.gov, and entering "sfo 1.1" in the "Search Public Forms" field to access the EPA Payment Form.

23. A copy of all correspondence and certifications to EPA concerning this Agreement shall be sent to:

Jeffrey A. Kodish
Attorney-Advisor
OECA/AED/Western Field Office (8MSU)
1595 Wynkoop Street
Denver, Colorado 80202

Tel: 303-312-7153
Fax: 303-312-6007

General Provisions

24. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.
25. 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.
26. Notwithstanding any other provision of this agreement, upon Respondent's failure to perform, or 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 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 its right to assert that such action is barred by any applicable statute of limitation, *see*, e.g., 28 U.S.C. § 2462.
27. This settlement 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:

28. 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 22, \$400 per day.
 - B. For failure to timely relabel the Subject Engines prior to sale, or provide proof thereof, pursuant to Paragraphs 17 - 20, \$500 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 22 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

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 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 laws or regulations, and does not address Respondent's potential liability to CBP for engines that are seized or detained.

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The following agree to the terms of this Agreement:

By: 
(name)
(title)

June 18, 2008
Date

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U.S. Environmental Protection Agency

By: 

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

Date: July 19, 2008