

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

Truper, Corp.
d/b/a Tytan International

Respondent

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) M.SEB AED # 7078
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This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), Truper, Corp., d/b/a Tytan International (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 eight tractors containing the nonroad engines described in Attachment I (Subject Tractors), while ensuring that prior violations are identified and resolved, and that future violations are avoided.

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 Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations governing importation of nonroad engines identified in Attachments I and II.
- E. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 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 and the Clean Air 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 Attachment I.

Statutory and Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Clean Air 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. Limitations of the TPEM include, but are not limited to, use of engines that are produced after the Dates of the Applicable Regulations for the engines contained in the equipment being manufactured or imported, a limit of 200 engines per year per power category, and use of only one engine manufacturer per power category for the duration of the program.

Background

9. On December 2, 2004, Respondent imported the Subject Tractors.



10. On December 14, 2004, U. S. Customs and Border Protection (Customs) detained the Subject Tractors at the port of Portland, Oregon.
11. Respondent is the importer of the Subject Tractors.
12. The Subject Tractors contain nonroad compression ignition engines manufactured in Model Year 2004 which is after the Dates of the Applicable Regulations. As a consequence, certified engines were required to be used in the Subject Tractors.
13. The Subject Tractors do not contain certified engines, and do not have affixed the certification label required by 40 C.F.R. § 89.111).
14. For the duration of the TPEM, Respondent imported thirteen tractors in the power category greater than or equal to 8 kW and less than 19 kW with engines made by a manufacturer other than Changchai, as shown in Attachment II. Respondent failed to comply with 40 C.F.R. § 89.102(d)(2)(iii) and is liable for thirteen violations of Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(a)(2).
15. For the duration of the TPEM, Respondent imported eleven tractors in the power category greater than or equal to 19 kW and less than 37 kW with engines made by a manufacturer other than Feidong, as shown in Attachment II. Respondent failed to comply with 40 C.F.R. § 89.102(d)(2)(iii) and is liable for eleven violations of Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(a)(2), in addition to the violations listed in Paragraph 14.

Terms of Agreement

16. Within 30 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 decrease its 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines rated equal to or above 8 kW and less than 19 kW, under 40 C.F.R. § 89.102(d)(2) by thirteen.
18. Respondent shall decrease its 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines rated equal to or above 19 kW and less than 37 kW, under 40 C.F.R. § 89.102(d)(2) by eleven.
19. 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 name of 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), two such reports, covering Respondent's importation for the previous calendar year, shall be submitted on or before February 28, 2006, and February 28, 2007.
20. All submissions shall be sent to EPA at the following address:

David Alexander
U.S. EPA, OECA/AED (mailcode 2242A)
1200 Pennsylvania Ave NW (Rm. 1111A)
Washington, DC 20460-0001
facsimile: (202) 564-0069
21. Respondent shall pay to the United States \$2,500 within 30 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 # 7078

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 22 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.

22. Respondent agrees that it will not import any nonroad vehicle or piece 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 is powered by a certified nonroad engine, or contains a nonroad engine that was manufactured after the Dates of the Applicable Regulations and is otherwise imported in compliance with 40 C.F.R. § 89.102(d).

General Provisions

23. 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.
24. 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.
25. 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.
26. The Effect of Settlement described in Paragraph 29 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations

regarding importations contained in Attachment II, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties:

27. 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 21, \$400 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 Paragraphs 16 through 18, \$400 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 19, \$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.

28. All stipulated penalties under Paragraph 27 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 21 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

29. 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:

Truper, Corp.
d/b/a Tytan International

By: Mark Leonard

Mark Leonard, President

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2/15/05

Date

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Administrative Settlement Agreement, United States Environmental Protection Agency:
In the Matter of Truper, Corp.

U.S. Environmental Protection Agency


By:



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

2/17/05

Date



Administrative Settlement Agreement, United States Environmental Protection Agency:
In the Matter of Truper, Corp.

Attachment I

SUBJECT TRACTORS HELD BY CUSTOMS

Tractor Serial #04T-	Engine Serial # C40-	Engine Make	Engine Model	kW	TPEM	Export
5004- 36	Y40600864A	CHANGCHAI	N390T	18.4	YES	NO
5004- 37	Y04610636A	CHANGCHAI	N390T	18.4	YES	NO
5004- 38	Y40610650A	CHANGCHAI	N390T	18.4	YES	NO
5004- 39	Y40610643A	CHANGCHAI	N390T	18.4	YES	NO
5004- 40	C40500761A	CHANGCHAI	N390T	18.4	YES	NO
5004- 41	C40601172A	CHANGCHAI	N390T	18.4	YES	NO
5004- 42	04F0404603	CHANGCHAI	N390T	18.4	YES	NO
5004- 43	04F0404595	CHANGCHAI	N390T	18.4	YES	NO

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The Truper Corporation History - 2003 & 2004

Engine Brand	Engine Model	Engine Serial #	Engine Mfg. Date	Power KW Rating	Tractor Mfg.	Tractor Model	Tractor Serial #	Tractor Assembly Date	Date Shipped
Feidong	495T2	9246	2004.3	33.4	Taishan	554	10136	2004.4	2004.4
Feidong	495T2	9243	2004.3	33.4	Taishan	554	10137	2004.4	2004.4
Feidong	495T2	9242	2004.3	33.4	Taishan	554	10138	2004.4	2004.4
Feidong	495T2	9247	2004.3	33.4	Taishan	554	10139	2004.4	2004.4
Feidong	495T2	9245	2004.3	33.4	Taishan	554	10140	2004.4	2004.4
Feidong	495T2	9244	2004.3	33.4	Taishan	554	10141	2004.4	2004.4
Feidong	495T2	8307	2004.3	33.4	Taishan	554	10142	2004.4	2004.4
Feidong	495T2	9201	2003.4	33.4	Taishan	554	10293	2003.5	2003.5
Feidong	495T2	9199	2003.4	33.4	Taishan	554	10294	2003.5	2003.5
Feidong	495T2	9200	2003.4	33.4	Taishan	554	10295	2003.5	2003.5
Feidong	495T2	9202	2003.4	33.4	Taishan	554	10296	2003.5	2003.5
Yangdong	YD2-485	Y40213926z	2004.2	25.7	Taishan	354	10384	2004.3	2004.3
Yangdong	YD2-485	Y40214206z	2004.2	25.7	Taishan	354	10385	2004.3	2004.3
Yangdong	YD2-495	8301	2004.2	25.7	Taishan	354	10110	2004.3	2004.3
Yangdong	YD2-485	y40400721z	2004.4	25.7	Taishan	354	10601	2004.4	2004.4
Yangdong	YD2-485	y40400726z	2004.4	25.7	Taishan	354	10602	2004.4	2004.4
Yangdong	YD2-485	y40315565z	2004.3	25.7	Taishan	354	10603	2004.4	2004.4
Yangdong	YD2-485	y40400730z	2004.3	25.7	Taishan	354	10604	2004.4	2004.4
Yangdong	YD2-485	y40400723z	2004.3	25.7	Taishan	354	10605	2004.4	2004.4
Yangdong	YD2-485	y40306493z	2004.3	25.7	Taishan	354	10606	2004.4	2004.4
Yangdong	YD2-485	y40306490z	2004.3	25.7	Taishan	354	10607	2004.4	2004.4
Yangdong	YD2-485	y40315570z	2004.3	25.7	Taishan	354	10608	2004.4	2004.4
Changchai	N390T	c40402441a	2004.4	18.4	Weifang	254	4t500267	2004.8	2004.8
Changchai	N390T	c40402435a	2004.4	18.4	Weifang	254	4t500275	2004.8	2004.8
Changchai	N390T	c40702338a	2004.7	18.4	Weifang	254	4t500268	2004.8	2004.8
Changchai	N390T	c40702339a	2004.7	18.4	Weifang	254	4t500276	2004.8	2004.8
Changchai	N390T	c40702333a	2004.7	18.4	Weifang	254	4t500269	2004.8	2004.8
Changchai	N390T	c40402426a	2004.4	18.4	Weifang	254	4t500277	2004.8	2004.8
Changchai	N390T	c40402429a	2004.4	18.4	Weifang	254	4t500270	2004.8	2004.8
Changchai	N390T	c40402440a	2004.4	18.4	Weifang	254	4t500278	2004.8	2004.8
Changchai	N390T	c40702330a	2004.7	18.4	Weifang	254	4t500271	2004.8	2004.8
Changchai	N390T	c40702337a	2004.7	18.4	Weifang	254	4t500279	2004.8	2004.8
Changchai	N390T	c40702334a	2004.7	18.4	Weifang	254	4t500272	2004.8	2004.8
Changchai	N390T	c40402436a	2004.4	18.4	Weifang	254	4t500280	2004.8	2004.8
Changchai	N390T	c40402443a	2004.4	18.4	Weifang	254	4t500273	2004.8	2004.8

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	A	B	C	D	E	F	G	H	I	J
3	Engine	Engine	Engine	Engine	Power	Tractor	Tractor	Tractor	Tractor	Date
4	Brand	Model	Serial #	Mfg. Date	KW Rating	Mfg.	Model	Serial #	Assembly Date	Shipped
40	Changchai	N390T	c40402437a	2004.4	18.4	Weifang	254	4t500065	2004.5	2004.5
41	Changchai	N390T	c40402430a	2004.4	18.4	Weifang	254	4t500064	2004.5	2004.5
42	Changchai	N390T	c40402428a	2004.4	18.4	Weifang	254	4t500066	2004.5	2004.5
43	Changchai	N390T	c40402444a	2004.4	18.4	Weifang	254	4t500067	2004.5	2004.5
44	Changchai	N390T	c40402434a	2004.4	18.4	Weifang	254	4t500063	2004.5	2004.5
45	Changchai	N390T	c40702332a	2004.4	18.4	Weifang	254	4t500274	2004.8	2004.8
46	Changchai	N390T	c40702336a	2004.4	18.4	Weifang	254	4t500281	2004.8	2004.8
47	Changchai	N390T	c40702331a	2004.4	18.4	Weifang	254	4t500282	2004.8	2004.8
48	Changchai	N390T	c40402439a	2004.4	18.4	Weifang	254	4t500070	2004.5	2004.5
49	Changchai	N390T	c40402442a	2004.4	18.4	Weifang	254	4t500069	2004.5	2004.5
50	Changchai	N390T	c40402438a	2004.4	18.4	Weifang	254	4t500068	2004.5	2004.5
51	Changchai	N390T	c40904798a	2004.9	18.4	Weifang	254	4t500436	2004.11	2004.11
52	Changchai	N390T	c40402427a	2004.4	18.4	Weifang	254	4t500437	2004.11	2004.11
53	Changchai	N390T	c4805607a	2004.8	18.4	Weifang	254	4t500438	2004.11	2004.11
54	Changchai	N390T	c4805602a	2004.8	18.4	Weifang	254	4t500439	2004.11	2004.11
55	Changchai	N390T	c4805612a	2004.8	18.4	Weifang	254	4t500440	2004.11	2004.11
56	Changchai	N390T	c4805608a	2004.8	18.4	Weifang	254	4t500441	2004.11	2004.11
57	Changchai	N390T	c4805615a	2004.8	18.4	Weifang	254	4t500442	2004.11	2004.11
58	Changchai	N390T	c4805605a	2004.8	18.4	Weifang	254	4t500443	2004.11	2004.11
59	Changchai	290TA1	567	2003.7	18.4	Weifang	254	T50074	2003.8	2003.8
60	Changchai	290TA1	043	2003.7	18.4	Weifang	254	T50075	2003.8	2003.8
61	Changchai	290TA1	335	2003.7	18.4	Weifang	254	T50076	2003.8	2003.8
62	Yangdong	Y385T	y30800950z	2003.8	16.4	Taishan	254	10361	2004.4	2004.4
63	Yangdong	Y385T	y30805668a	2003.8	16.4	Taishan	254	10362	2004.4	2004.4
64	Yangdong	Y385T	y30800946a	2003.8	16.4	Taishan	254	10363	2004.4	2004.4
65	Yangdong	Y385T	y30800947a	2003.8	16.4	Taishan	254	10364	2004.4	2004.4
66	Yangdong	Y385T	y30800769a	2003.8	16.4	Taishan	254	10357	2004.4	2004.4
67	Yangdong	Y385T	y30800780a	2003.8	16.4	Taishan	254	10358	2004.4	2004.4
68	Yangdong	Y385T	y30800778a	2003.8	16.4	Taishan	254	10359	2004.4	2004.4
69	Yangdong	Y385T	y30800773a	2003.8	16.4	Taishan	254	10360	2004.4	2004.4
70	Yangdong	Y385T	Y30502232A	2003.5	16.4	Foton	254	FE001053	2003.8	2003.9
71	Yangdong	YD380	40816529	2004.9	13.24	Jinma	184	21008037	2004.10.3	2004.10
72	Yangdong	YD380	40804678	2004.9	13.24	Jinma	184	21008039	2004.10.3	2004.10
73	Yangdong	YD380	40804686	2004.9	13.24	Jinma	184	21008038	2004.10.3	2004.10
74	Yangdong	YD380	40804681	2004.9	13.24	Jinma	180	21003363	2004.10.3	2004.10
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