

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

|                                   |   |                                  |
|-----------------------------------|---|----------------------------------|
| <b>In the Matter of:</b>          | ) |                                  |
|                                   | ) | <b>ADMINISTRATIVE SETTLEMENT</b> |
| <b>Unitek Latin America, Inc.</b> | ) | <b>AGREEMENT</b>                 |
|                                   | ) |                                  |
| <b>Respondent</b>                 | ) | <b>AED/MSEB - 7108</b>           |
|                                   | ) |                                  |

**THIS ADMINISTRATIVE SETTLEMENT AGREEMENT** is made and entered into by and between the United States Environmental Protection Agency (EPA) and Unitek Latin America, Inc., 3260 NW 23<sup>rd</sup> Avenue, Suite 1400E, Pompano Beach, FL 33069 (Respondent).

**Purpose**

The purpose of the Settlement Agreement (Agreement) is to resolve alleged violations of Sections 203 and 213 of the Clean Air Act (CAA), 42 U.S.C. § 7522 and § 7547, and the regulations issued thereunder at 40 C.F.R. Part 90, and the Spark Ignition Nonroad Regulations (SI Nonroad Regulations).

**Applicable Statutory and Regulatory Provisions**

1. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any spark ignition nonroad engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity (EPA-issued certificate of conformity).
2. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a spark ignition nonroad engine manufactured after the

applicable effective date of the regulations, unless a label or tag is affixed to the engine (EPA emissions label).

3. 40 C.F.R. § 90.1103 requires the manufacturer of each new nonroad engine to warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine is designed, built, and equipped to comply with the federal emissions standards, and is free of any material defects which would cause the vehicle or engine to fail to comply with the federal emissions standards during its useful life (EPA emissions warranty).
4. 40 C.F.R. § 90.3 defines an engine manufacturer as any person who, among other things, imports nonroad engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
5. 40 C.F.R. § 90.114 requires the 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.

#### **Other Definitions**

6. For purposes of this Agreement the term “export” means to transport to a location outside of the United States and its territories, Canada, and Mexico.
7. For purposes of this Agreement the term “destroy” means the complete destruction of the nonroad engine and the complete disassembly of the equipment. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything, and the equipment shall be disassembled and broken down in such a manner that it can never be reassembled.

**Alleged Violations**

8. EPA alleges that on April 21, 2005, Respondent imported into the United States 169 generators described in the Table below (Subject Generators). The Subject Generators were not covered by an EPA-issued certificate of conformity and did not bear the required EPA emissions labels. No EPA forms were submitted at the time of entry and there was no indication that these generators were imported for export only.

Table: Description of Subject Generators

| <b>Entry Date</b> | <b>Entry Number</b> | <b>Model</b> | <b>Qty.</b> | <b>Manufacturer</b>                  |
|-------------------|---------------------|--------------|-------------|--------------------------------------|
| 3/5/05            | MA7-06803834        | .9 kW        | 45          | Wenzhou E&T Foreign Trade Co., Ltd.  |
| 3/5/05            | MA7-06803834        | 2.0 kW       | 25          | Wenzhou E&T Foreign Trade Co., Ltd.. |
| 3/5/05            | MA7-06803834        | 4.5 kW       | 33          | Wenzhou E&T Foreign Trade Co., Ltd.  |
| 3/5/05            | MA7-06803834        | 4.5 kW       | 33          | Wenzhou E&T Foreign Trade Co., Ltd.  |
| 3/5/05            | MA7-06803834        | 5.5 kW       | 33          | Wenzhou E&T Foreign Trade Co., Ltd.  |

9. Based on the forgoing, EPA alleges that Respondent committed 169 separate violations of Section 213 of the CAA, 42 U.S.C. § 7547, and the spark ignition nonroad regulations.

**Terms of Agreement**

10. Respondent shall, within ninety (90) days from the date of this Agreement, conduct an audit of all spark ignition nonroad engines, including generators, imported by Respondent between July 1, 2000 and the present. The audit shall include importations "For Export Only." Respondent shall submit to EPA a report of this audit, in both written and

electronic (i.e., spreadsheet) form, that includes the following information about each imported engine or generator based upon all records available to Respondent after a diligent search:

- a) manufacturer;
- b) engine family number, in the case of certified engines;
- c) engine serial number;
- d) date of manufacture;
- e) horsepower rating;
- f) a statement that the engine was or was not manufactured under a Certificate of Conformity issued by EPA;
- g) date of import; and
- h) where an EPA Form 3520-21 was filed, the box number that was checked.

It is anticipated that, provided that Respondent conducts a diligent search, its inability to locate records relating to import transactions shall not constitute a violation of this Agreement.

11. If Respondent has not imported any spark ignition nonroad engines, including generators, into the United States other than the Subject Generators, then Respondent shall provide EPA with a sworn affidavit verifying that no such prior imports have occurred.
12. Within sixty (60) days of this Agreement, Respondent shall provide to EPA a plan that it will implement to ensure that all engines contained in equipment imported into the United States after the date of this Agreement comply with the appropriate SI Nonroad Regulations.

13. Responses to Paragraphs 10 – 12 shall be sent to Ann M. Stephanos, the EPA attorney assigned to this case, at the following address:

Via Regular Mail:

U.S. Environmental Protection Agency  
OECA/Air Enforcement Division  
Ariel Rios Building (2242A)  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

Via Courier Service:

U.S. Environmental Protection Agency  
Air Enforcement Division  
Ariel Rios Building (Rm. 1109A)  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20004

14. Respondent shall pay to the United States of America Six Thousand Eight Hundred Dollars (\$6,800.00) within thirty (30) days from the date that this Agreement is executed by EPA (the due date). 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 – 7108

Simultaneously, a photocopy of the check shall be mailed to Ann Stephanos at the address specified in Paragraph 15 of this Agreement or faxed at (202) 564-0069. Such check will be identified with the case number and Respondent's name.

15. Within thirty (30) days of this Agreement, or such longer period of time if required by the United States Customs and Border Protection (Customs), Respondent shall export or destroy the Subject Generators. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the Subject Generators were either exported or destroyed.

All correspondence to EPA concerning this Agreement shall be sent to:

Ann Stephanos, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch (MC 2242A)  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Facsimile: (202) 564-0069

16. Upon execution of this Agreement by EPA, EPA agrees to recommend that Customs release the Subject Generators so that they may be exported or destroyed in accordance with Paragraph 15 of this Agreement.

**Stipulated Penalties**

17. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 10, 11, 12, 14 and 15 of this Agreement, Respondent agrees to pay the following stipulated penalties:
  - (a) For the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to Paragraph 14 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day. However, if after sixty (60) days of this Agreement, Respondent has failed to pay the civil penalty, Respondent shall be in default of this Agreement. Upon such default, Respondent shall pay a stipulated penalty of \$2,500 per Subject Generator.
  - (b) For the failure to conduct the audit required by Paragraph 10, to submit to EPA, in writing, the results of this audit, pursuant to Paragraph 10 or to submit the affidavit required in Paragraph 11, Respondent shall pay a stipulated penalty of \$500 per day.

- (c) For the failure to provide a plan to EPA to ensure that all generators imported into the United States after the date of this Agreement comply with the appropriate SI Nonroad Regulations required by Paragraph 12 of this Agreement, Respondent shall pay a stipulated penalty of \$2,500.
  - (d) For the failure to export or destroy the Subject Generators required by Paragraph 15 of this Agreement, Respondent shall pay for each Subject Generator a stipulated penalty of \$2,500.
18. All stipulated penalties under Paragraph 17 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 the manner specified in Paragraph 14 of this Agreement and shall be paid within five (5) days of written demand by EPA. Stipulated penalties shall not be construed as prohibiting, altering, or in any 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.

**General Provisions**

- 19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
- 20. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent, its agents, assigns or successors.
- 21. Upon failure to timely perform pursuant to Paragraphs 10, 11, 12, 14 and 15, or upon

default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act; 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.90. 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.

22. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.
23. The effect of settlement described in Paragraph 25 below is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA, as memorialized in Paragraphs 10, 11, and 12 of this consent agreement and final order and Respondent's response within thirty (30) days of the date of this Agreement.
24. The terms of this Agreement shall be the complete settlement of all civil administrative claims and causes of action that EPA could allege against Respondent, any of its affiliates, distributors, dealers, customers or any other person or entity under the Act for violations based upon facts known to EPA on or before the effective date of this Agreement with respect to the Subject Generators.

#### **Enforcement**

25. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed terminated and resolved.

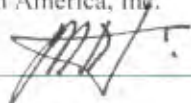


**Administrative Settlement Agreement in the matter of United States v.  
Unitek Latin America, Inc.**

The following agree to the terms of this Agreement:

Unitek Latin America, Inc.

By: \_\_\_\_\_



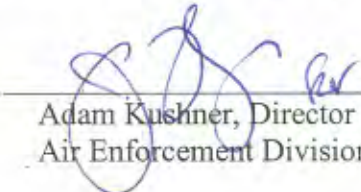
Manuel De Leca  
General Manager

Date: \_\_\_\_\_

8/4/05

**Administrative Settlement Agreement in the matter of United States v.  
Unitek Latin America, Inc.**

U.S. Environmental Protection Agency

By:  \_\_\_\_\_  
Adam Kushner, Director  
Air Enforcement Division

Date: 8/9/05