

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

**ABC Tools, Inc.
Respondent**

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) **AED/MSEB # 7162**
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This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA), and ABC Tools, Inc., located at 3869 N.W. 125th Avenue, Miami, Florida 33054 (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. Parts 89 and 90.

Purpose

1. The purpose of this Agreement is to resolve any and all claims by EPA under the Act and Parts 89 and 90 arising out of the importation of 969 generators and water pumps containing nonroad engines in Respondent's U.S. Customs entries both currently seized and previously imported as described in Tables 1 and 2, and to ensure 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 regulations at 40 C.F.R. Parts 89 or 90 and that is covered by a Certificate of Conformity.

- B. *Dates of the Applicable Regulations:* The term “dates of the applicable regulations” for nonroad spark-ignition engines rated at or below 19 kW, the applicable effective date is January 1, 1997 and for nonroad compression-ignition engines rated at or below 19kW, the applicable effective date is January 1, 2000.
- 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 Tables 1 and 2, and any civil liability that may apply to violations of the Act and implementing regulations at 40 C.F.R. Part 90 and 40 C.F.R. Part 89.
- E. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 90.108 for spark-ignition engines and 40 C.F.R. § 89.122 for compression-ignition engines, after EPA has determined that the manufacturer’s application is complete and that the engine family meets the requirements of the applicable regulations 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 engines:* The term “Subject Engines” means those engines identified in Tables 1 and 2 of this Agreement.

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. § 90.1(a) defines the applicability of 40 C.F.R. Part 90 regulations to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and that are used for any purpose. 40 C.F.R. § 89.1(a) defines the applicability of 40 C.F.R. Part 89 regulations to nonroad compression-ignition engines except as provided by regulation.
5. 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. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad compression-ignition engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity.
6. 40 C.F.R. § 90.3 and 40 C.F.R. § 89.2 define a nonroad vehicle manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person in connection with the distribution of such vehicles.
7. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by engine manufacturer of a nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by engine manufacturer of a nonroad compression-ignition engine manufactured after the applicable effective date of the regulations, unless a label or tag is affixed to the engine.
8. 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 legible and readily visible to the average person after the engine is installed in the equipment, must contain the content required by 40 C.F.R. § 90.114 and must be attached in such a manner that it cannot be removed without

destroying or defacing the label. 40 C.F.R. § 89.110 requires the engine manufacturer to affix, at the time of manufacture of a certified compression-ignition 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, must contain the content required by 40 C.F.R. § 89.110 and must be attached in such a manner that it cannot be removed without destroying or defacing the label

Background

9. In September of 2005, Respondent imported 315 pieces of nonroad equipment or engines (Customs and Border Protection (Customs) entry numbers wbk-0018857-1 and wbk-0019002-3). Customs detained these two shipments at the Port of Miami, Florida.
10. Subsequent to EPA's request, Customs seized these two shipments (WBK-0018857-1 and WBK-0019002-3). See Table 1. Customs continues to hold these shipments.
11. Prior to September 2005, Respondent imported nonroad engines and equipment in seven shipments: WBK 0018609-6; WBK 0017391-2; WBK-0016839-1; WBK-0014608-2; WBK-0013035-9; WBK-0012358-6 and WBK-0011711-7. See Table 2. The importer sold these nonroad engines and equipment to third parties.
12. Respondent is the importer of the nonroad equipment containing Subject Engines identified in Table 1 and Table 2.
13. The Subject Engines listed in both Table 1 and Table 2 were manufactured after the dates of the applicable regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment.
14. The Subject Engines listed in Table 1 and Table 2 are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §90.114 and 40 C.F.R § 89.110. Accordingly, as the importer of the Subject Engines, the Respondent imported these engines in violation of Sections 203(a) and 213(a) of the Clean Air Act, 42 U.S.C. §§7542(a) and 7547(d), and the implementing regulations.

Terms of Agreement

15. Within 60 days of the date of this Agreement or such other time as required by U.S. Customs, Respondent shall submit to EPA the U.S. Customs documentation proving that each of the Subject Engines listed in Table 1 has been exported to a location outside the North American continent.

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

Leslie A. Kirby-Miles
U.S. EPA, OECA/AED (mailcode 2242A)
1200 Pennsylvania Ave NW
Washington, DC 20460-0001
Facsimile: (312) 886-0747

17. Respondent shall pay to the United States a civil penalty of \$155,000 within 60 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 and stipulated penalties pursuant to Paragraph 23(a) of this Agreement. 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 # 7162

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 16 or faxed to (312) 866-0747 to the attention of Leslie A. Kirby-Miles.

Such check shall be identified with the AED/MSEB number and Respondent's name.

18. Respondent agrees that it will not import any nonroad vehicle or piece of equipment manufactured on or after the Dates of the Applicable Regulations unless the nonroad vehicle or equipment complies with all applicable regulations.

General Provisions

19. The effective date of this Agreement is the date that EPA signs the Agreement.

20. Respondent hereby represents that the individual or individuals signing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such signature is sufficient to bind Respondent, its agents, assigns, or successors.
21. 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, 40 C.F.R. Part 90 and 40 C.F.R. 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.
22. The Effect of Settlement as described in Paragraph 25 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 Tables 1 and 2, and the prompt and complete exportation of all subject engines in Table 1 in accordance with this Agreement.

Stipulated Penalties:

23. 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 17, \$500 per day.
 - C. For failure to timely export the Subject Engines in Table 1, or provide proof of such exportation, pursuant to Paragraph 15, \$500 per day.
24. All stipulated penalties under Paragraph 23 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is

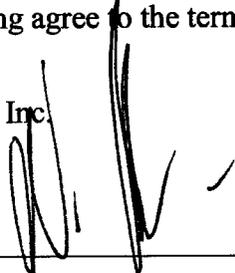
achieved. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 17 and shall be paid within five days of written demand by EPA. Stipulated penalties shall not 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

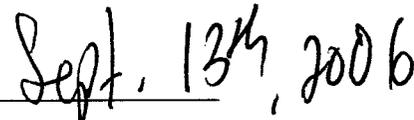
25. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

ABC Tools, Inc

By:  _____

Woody Alphonse
Owner


Date:

U.S. Environmental Protection Agency
In the Matter of ABC Tools, Inc.

AED/MSEB # 7162

By: Adam M. Kushner

9/25/06

Adam M. Kushner,
Director
Air Enforcement Division
Office of Civil Enforcement

Date

Table 1

In the Matter of ABC Tools, Inc.
AED/MSEB #

Uncertified and Unlabeled Engines
Currently Seized

Entry Date	Entry Number	Engine Model Number or Generator Model	Quantity	Manufacturer
10/12/05	wbk-0019002-3	DJ950CL, F400DE, DJ160D, DJ270D, DJ390D, DEK6000SL (SI and CI generators and engines) DJ50C, DJ80C, DEK100CLE (SI Pump Sets)	195	Fuzhou D & J Power Co. Ltd.
8/8/05	wbk-0018857-1	DEK6000SL, F400DE, DJ160D SI and CI generators and engines) DJ50C, DJ80C, DEK100CLE (SI Pump Sets)	120	Fuzhou D & J Power Co. Ltd

Table 2

In the Matter of ABC Tools, Inc..
AED/MSEB #

Uncertified and Unlabeled Engines
In Third Party Hands

Entry Date	Entry Number	Engine Model Number or Generator Model	Quantity	Manufacturer
4/22/03	wbk-0011711-7	DEK5000CL (CI Gen. Set), DEK180W (CI Gen. Set), DEK30W (CI Equip), F210D (CI engine), F400D (CI engine), DJ950CL (SI Gen. Set), DJ6500CL (SI Generator Set), DJ3000CL (SI Gen. Set), F300D (CI engine), DEK4000CL (CI Gen. Set)	98	Fuzhou D & J Power Co. Ltd.
6/28/03	wbk-0012358-6	KDE5000T (CI Generator), KDE14T (CI Generator), KGE2200X (SI Generator), KGE900TI (SI Generator)	80	Wuxi Worldbest Kama Machinery Co., Ltd.
9/30/03	wbk-0013035-9	DEK180E (CI Gen. Set) DEK5000SL (CI Gen. Set), DEK4000CL (CI Gen.Set), DJ3000CL (Gas Gen.Set), F300D (CI Engine), DJ160D (SI Engine)	150	Fuzhou D & J Power Co., Ltd.
1/25/05	wbk-0016839-1	DJ3000CL (SI Gen. set) DEK6500SL (CI Gen. set)	91	Fuzhou D & J Power Co., Ltd.
4/7/05	wbk-0017391-2	DJ950CL (SI generator) DEK6000SL (CI generator)	116	Fuzhou Hua Bo Machinery & electric Co., Ltd.
4/19/05	wbk-0014608-2	KDE6500T, KDE5000T, KDE5000TW, KDE19T, KDE14T (CI generators)	46	Wuxi Kama Power Co. Ltd.

8/14/05	wbk-0018609-6	DEK6000SL (CI)	73	Fuzhou D & J Power Co., Ltd.
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