

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

In the Matter of:	}	
	}	ADMINISTRATIVE
Doosan Infracore America Corporation	}	SETTLEMENT AGREEMENT
	}	
Respondent	}	AED/MSEB -7222

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Doosan Infracore America Corporation, 2905 Shawnee Industrial Way, Suwanee, Georgia 30024 (Doosan or Respondent).

Purpose:

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve twenty-nine alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a), and 7547(d), and the implementing Compression-Ignition (CI) nonroad engine regulations, 40 C.F.R. Part 89 (CI Non-Road Regulations).

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), prohibit any person from importing any new nonroad vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued and in effect, and bears the required EPA emissions label.

Regulatory Authority - CI Non-Road Regulations:

3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any CI engine manufactured after the effective dates of the regulations, unless such engine is covered by a certificate of conformity issued by EPA.
4. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, offer for sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad CI engine manufactured after the

effective dates of the regulations, unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.

5. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of a new nonroad engines or importing 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 original engine manufacturer to affix, at the time of manufacture of a certified CI engine, a permanent and legible label identifying each nonroad engine and containing certain information. The label must readily be visible after the engine is installed in the equipment.
7. 40 C.F.R. §§ 89.110(a)(1), (2), and (5) require the label to be attached in such a manner that it cannot be removed without destroying or defacing the label; be durable and readable for the entire engine life; and be located so as to be readily visible to the average person after the engine is installed in the equipment. A supplemental label meeting all the requirements may be attached to a location other than the engine, in cases where the required label must be obscured after the engine is installed in the equipment.

Definitions:

8. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter*: as used in this Agreement means Respondent's importation of the twenty-nine nonroad engines as described in Paragraph 9 of this Agreement (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, as applicable, after EPA determines that the manufacturer's application is complete and that the engine family meets the requirements of 40 C.F.R. Part 89 and the CAA.

- c. *Certified engine*: a nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: a nonroad engine built after the applicable dates of the regulations but that is not covered by a Certificate of Conformity issued by EPA.
- e. *Applicable regulation and dates*: 40 C.F.R. Part 89 is applicable to compression-ignition nonroad engines built after the applicability dates.
- f. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy*: the complete destruction of the Subject Engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.

Alleged Violations:

- 9. On March 26 and April 9, 2007, Respondent imported into Savannah, Georgia the twenty-six excavators and three wheel loaders containing CI non-road engines (the Subject Engines), as described in the Attachment.
- 10. The U.S. Customs and Border Protection (Customs) inspection of the Subject Engines revealed that the engines bore Emissions Information Labels that could be removed without destroying or defacing the label, in violation of 40 C.F.R. § 89.110(a)(1).
- 11. On April 19, 2007, EPA requested that the Customs Port in Savannah, Georgia seize the Subject Engines.
- 12. Based on the forgoing, EPA alleges that Respondent committed twenty-nine violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the CI Non-Road Regulations, 40 C.F.R. Part 89.

Terms of Agreement:

- 13. Respondent has agreed to pay a civil penalty of \$99,000 within thirty days from the date of this Agreement to the United States of America. Late payment of the civil penalty is

subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraph 22 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 payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 7222

14. Within thirty days of this Agreement, or such longer period of time if required by Customs, Respondent shall export or destroy the Subject Engines. 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 Engines were either exported or destroyed.
15. In lieu of exporting or destroying each Subject Engine as required by Paragraph 14 of this Agreement, the Certificate Holder for the Subject Engines may remove each non-complying label from the Subject Engines and affix a complying EPA emissions information label to each of the Subject Engines (replacement label). This corrective action shall be accomplished in the following manner:
 - (a) the Certificate Holder shall send to EPA a sample of the proposed replacement label and a technical description of the method and procedures that the Certificate Holder will use to affix the replacement label to the Subject Engine. The replacement label must meet all the design and information requirements specified at 40 C.F.R. § 89.110. In addition, the replacement label and installation procedure must be designed to ensure that the replacement label is permanently affixed and cannot be removed without destroying or defacing the label. This submission, affidavit, and all other correspondence concerning this Agreement

shall be sent to Jocelyn L. Adair, at the address specified in Paragraph 16 of this Agreement.

- (b) Where EPA determines that the proposed sample label is deficient, EPA may notify the Certificate Holder and the Respondent of the deficiency of the proposed label within five days of receiving the proposed label from the Certificate Holder. If EPA provides comments on the deficiency of the label, the Certificate Holder may resubmit the proposed label and information within 5 days of receiving EPA's comments. EPA may then approve or disapprove the label at its unreviewable discretion. If EPA disapproves the label, the Subject Engines may not be relabeled and must be exported or destroyed.
- (c) The Certificate Holder shall establish and fully document a chain of custody for the replacement labels from the time of production until the time of installation on the Subject Engines, and destruction of any unused replacement label.
- (d) This corrective action shall be conducted under the observation of U.S. Customs, or a board certified licensed professional engineer (Observer) not employed directly by either the Respondent or the Certificate Holder. The corrective action shall be completed within thirty days following the date of this Agreement, or such longer period of time if requested by Respondent and approved by EPA for good cause shown.
- (e) The Certificate Holder shall remove the non-complying label and give it to the Observer, and shall attach the replacement label in accordance with the procedure submitted to EPA in the above Subparagraph "(a)".
- (f) After the replacement label has been affixed to each of the twenty-nine Subject Engines, the Observer shall randomly select one Subject Engine from each model (the Test Sample Engines) to determine whether or not the replacement label is permanently attached to the Subject Engine and cannot be removed without destroying or defacing the replacement label. Any Test Sample Engines whose

replacement label is destroyed or defaced during this test must be relabeled by the Certificate Holder. However, where the replacement label on a Test Sample Engine can be removed without destroying or defacing the replacement label, the Test Sample Engine and the related model Subject Engines must be exported or destroyed.

- (g) Within thirty days of this Agreement (or such longer period of time if requested by Respondent and approved by EPA for good cause shown), Respondent shall provide EPA with a report that fully describes and certifies the corrective action taken. The report must include the following:
 - (1) an affidavit from the Certificate Holder who has performed the corrective action work. The affidavit shall certify the date, time, and place of the corrective action work, identify each person doing the work, identify the serial number of each Subject engine that was re-labeled, provide a clear readable picture of the replacement label affixed to each model of the Subject Engines, and provide the results of any tests performed to determine whether or not the replacement label was permanent and could not be removed without destroying or defacing the label,
 - (2) an unconditional statement from the Certificate Holder certifying that the Subject Engines comply with all requirements of the Clean Air Act and 40 C. F. R. Part 89.
- (h) Where the Observer determines that a replacement label is non-complying, or can be removed without destroying or defacing the label, or the corrective action work has not been performed, the Observer will report his or her findings to EPA and Respondent shall either export or destroy the Subject Engines.

- (i) Where a replacement label on a Test Sample Engine contains all the specified information and cannot be removed without destroying or defacing the replacement label, the Test Sample Engine (once re-labeled, if necessary) and the related model Subject Engines may be sold or introduced into commerce.
- (j) The Observer shall destroy all the removed labels no later than the day the last Subject Engine receives a replacement label.

16. A copy of the payment check and all correspondence to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7224

(Courier Service)

Jocelyn Adair, Esq.
U.S. EPA
Ariel Rios South, Room 1109A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Root Cause Analysis and Corrective Action Compliance Plan:

17. Within thirty days from the date of this Agreement, the Certificate Holder shall initiate a thorough review and assessment of its non-road engine labeling practices and procedures to ensure that all labels are permanently affixed on the Certificate Holder's engines and/or equipment at the time of manufacture and otherwise comply with the requirements of 40 C.F.R. § 89, in particular to ensure that labels once affixed cannot be removed without being destroyed or defaced at any point during the life of the engines, and during the manufacturing and assembly process (including during overseas shipment for assembly, and for importation into the United States). The Certificate Holder shall, as part of such review:

- (a) Review regulatory requirements for labels on non-road engines;
- (b) Analyze a representative sample of the Subject Engines and labels to determine the potential cause(s) of label noncompliance;

- (c) Review current labeling procedures and associated quality assurance and/or control practices, including label installation procedures, label design and label performance characteristics; and
- (d) Identify and implement corrective action(s) to label installation procedure/design/performance as well as quality assurance/quality control procedures at locations where the Certificate Holder 's non-road equipment is manufactured and/or assembled, and for shipment to the United States, to ensure that labels remain permanently affixed and attached such that they cannot be removed without their being defaced or destroyed.

The Certificate Holder shall complete the review and analysis required by this Paragraph 17, and shall implement all corrective actions, within 180 days of the effective date of this Agreement. The Certificate Holder shall, within 210 days of the effective date of this Agreement, submit a report to EPA of the Root Cause Analysis and Corrective Action Plan detailing the analysis, cause(s) of noncompliance, and all corrective actions implemented by the Certificate Holder. Such report shall include example(s) of new or redesigned label(s) identified for use by the Certificate Holder as a result of the Root Cause Analysis and Corrective Action Plan.

General Provisions:

- 18. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
- 19. Respondent hereby represents that the individual executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.

20. Notwithstanding any other provisions of this Agreement, upon Respondent's 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. Part 89. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
21. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representation to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties:

22. 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 pay the civil penalty or provide proof thereof, pursuant to Paragraphs 13 and 16, \$250.00 per day;
 - b. For failure to export or destroy or relabel the Subject Engines or provide proof thereof, pursuant to Paragraphs 14, 15, and 16, \$250.00 per day, and
 - c. For failure to provide the reports specified in Paragraphs 15 and 17, \$250 per day.
23. All stipulated penalties under Paragraph 22 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 simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in the manner specified in Paragraph 13 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jocelyn Adair at the address specified in Paragraph 16. All stipulated penalties shall be paid to the United States of America

within 5 days of written demand by EPA (the due date). Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. 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.

Enforcement:

24. 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 law or regulations.

The following agree to the terms of this Agreement:

Doosan Infracore America Corporation

By: 

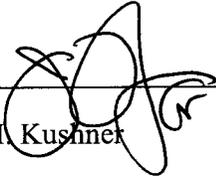
Date: 6-25-07

Printed Name: Tom Lattie

Printed Title: CFO

**Administrative Settlement Agreement - *In the Matter of Doosan Infracore America Corporation,*
AED/MSEB - 7222**

U.S. Environmental Protection Agency

By:  _____ Date: JUN 28, 2007

Adam M. Kushner
Director
Air Enforcement Division

Attachment 1

Table: Description Entries, Equipment, and Diesel Engines

Entry Date	No.	Entry Number	Engine No.	Model
3/26/2007	1	101-7416100-9	DL08-700153EB	DX300LC
3/26/2007	2	101-7416100-9	DL08-700341EB	DX300LC
3/26/2007	3	101-7416100-9	DL08-700358EB	DX300LC
3/26/2007	4	101-7416100-9	DL08-700353EB	DX300LC
3/26/2007	5	101-7416100-9	DL08-700168EB	DX300LC
3/26/2007	6	101-7416100-9	DL08-700103EB	DX300LC
3/26/2007	7	101-7416100-9	DL08-700328EB	DX300LC
3/26/2007	8	101-7416100-9	DL08-700355EB	DX300LC
3/26/2007	9	101-7416100-9	DL08-700371EB	DX300LC
3/26/2007	10	101-7416100-9	DL08-700142EB	DX300LC
3/26/2007	11	101-7416100-9	DL08-700177EC	DX340LC
3/26/2007	12	101-7416100-9	DL08-700332EC	DX340LC
3/26/2007	13	101-7416100-9	DL08-700192EC	DX340LC
3/26/2007	14	101-7416100-9	DL08-700294EB	DX340LC
3/26/2007	15	101-7416100-9	S140LC-V	S140LC-V
4/9/2007	16	101-7429828-0	DL08-700359EC	DX340LC
4/9/2007	17	101-7429828-0	DL08-700339EC	DX340LC
4/9/2007	18	101-7429828-0	DL08-700338EC	DX340LC
4/9/2007	19	101-7429828-0	DL06-600256LD	DL200
4/9/2007	20	101-7429828-0	DL06-600232LD	DL200
4/9/2007	21	101-7429828-0	DL06-700333EG	DX225LC
4/9/2007	22	101-7429828-0	DL06-700352EG	DX225LC
4/9/2007	23	101-7429828-0	DL06-700032LC	DL250
4/9/2007	24	101-7429828-0	DL08-700417EB	DX300LC
4/9/2007	25	101-7429828-0	DL08-700415EB	DX300LC
4/9/2007	26	101-7429828-0	DL08-700343EB	DX300LC
4/9/2007	27	101-7429828-0	DL08-700416EB	DX300LC
4/9/2007	28	101-7429828-0	DL08-700326EB	DX300LC
4/9/2007	29	101-7429828-0	DL08-700408EB	DX300LC
Total				