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

In the Matter of:	)	
	)	
Komatsu America Corporation,	)	ADMINISTRATIVE SETTLEMENT AGREEMENT AED/MSEB-7296
	)	
Respondent.	)	
	)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Komatsu America Corporation, 1 Continental Towers, 1701 West Golf Road Rolling Meadows, Illinois 60008 (Komatsu or Respondent), a wholly-owned subsidiary of Komatsu Ltd., 2-3-6 Akasaka, Minato-ku, Tokyo 107-8414, Japan.

Purpose:

1. The purpose of this Agreement is to resolve three 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.

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, selling, or leasing 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 nonroad 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(b)(7) allows an engine manufacturer to produce and import a nonroad replacement engine that does not comply with current model year (MY) emission standards provided certain conditions are met.

5. 40 C.F.R. § 89.1003(b)(7)(iv) provides that if the engine being replaced was certified to emission standards less stringent than those in effect when the manufacturer produced the replacement engine, the replacement engine must have a permanent label with the manufacturer's corporate name and trademark and the following language, or similar alternate language approved by the Administrator: "THIS ENGINE COMPLIES WITH U.S. EPA NONROAD EMISSION REQUIREMENTS FOR [Insert appropriate year reflecting when the Tier 1 or Tier 2 standards for the replaced engine began to apply] ENGINES UNDER 40 CFR 89.1003(b)(7). SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A NONROAD ENGINE BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the next tier of emission standards began to apply] MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."

Definitions:

6. For the purposes of this Agreement, the following definitions apply:

   a. *Applicable regulation and dates*: 40 C.F.R. Part 89 is applicable to CI nonroad engines built after the applicability dates.

   b. *Certified Engine*: A CI nonroad engine that is covered by an EPA-issued certificate of conformity.

   c. *Certificate of Conformity*: The document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 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.

d. *Corrective Action*: Action taken by Respondent to remedy the violations alleged by EPA in this Agreement.

e. *Destroy*: The complete destruction of the engine. The engine shall be crushed or broken in such a manner that the engine block, crankshaft, and cylinder head(s) can never be used to power anything.

f. *Export*: To transport to a location outside of North America and the territories of the United States.

g. *This matter*: As used in this Agreement means Respondent's importation of the three CI nonroad engines as described in Paragraph 8 of this Agreement, the corrective action required by this Agreement, and any liability that may apply to such alleged violations.

Background:

7. On or about March 18 through June 3, 2008, Komatsu self-disclosed that, in violation of 40 C.F.R. § 89.1003(b)(7)(iv), it failed to affix the required replacement label to the three CI nonroad engines described in Appendix A to this Agreement (subject engines). Komatsu also requested the application of EPA's Self-Audit Policy to resolve the three alleged violations caused by the failure to affix the required replacement labels to the subject engines.

8. According to Komatsu's disclosure, Komatsu Ltd. manufactured the subject engines on or about January 28, 2008. The subject engines were manufactured in order to be stocked by Komatsu in its inventory to be available to replace failed certified MY 2004 engines, Komatsu Model No. SAA4D95LE-3 (LE-3). The LE-3 model engines are used by Komatsu to power a small, 93 horsepower, hydraulic excavator, Komatsu Model No. PC138USLC-2 (PC138-2). Komatsu also stated that the subject engines comply with the Tier 2 EPA emissions standards for MYs 2004 through 2007. Komatsu further stated, and

submitted documents to demonstrate, that no current MY 2008 engine is available with the appropriate physical or performance characteristics to repower the PC138-2 excavators.

9. EPA's Self-Disclosure Policy allows EPA to significantly reduce the gravity-based (*i.e.*, non-economic benefit) penalty where the violator finds the violation through voluntary environmental audits or efforts that reflect due diligence, and promptly discloses and expeditiously corrects the violation.

10. The Self-Disclosure Policy also imposes important safeguards to prevent abuses of its use. These safeguards require: (1) prompt disclosure of the violation, (2) expeditious correction of the violation, (3) action to prevent recurrence of the violation, and (4) action to remedy any environmental harm that occurred as a result of the violation. Additionally, certain violations are ineligible for consideration under the policy such as: (1) repeat violations, (2) violations that caused actual harm, (3) violations that present imminent and substantial endangerment, and (4) violations that will allow companies to gain an economic advantage over competitors by delaying their investment in compliance.

Alleged Violations:

11. Based on the foregoing, EPA alleges that Respondent committed three violations of the replacement engine labeling requirements of Sections 203(a)(4) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the CI non-road engine regulations, 40 C.F.R. § 89.1004(b)(7)(iv).

Corrective Action:

12. No later than thirty days from the effective date of this Agreement, or such longer period of time if required by the United States Department of Homeland Security's Bureau of Customs and Border Protection (U.S. Customs), Respondent shall:

    (a) Affix a complying replacement label to each subject engine,

    (b) Provide to EPA a description of the label and the method and procedures that the Komatsu shall use to affix the replacement label to the subject engines to ensure

that the label is permanently affixed and cannot be removed without destroying or defacing the label; and,

(c) Establish and fully document a chain of custody for the replacement labels and destruction of any unused labels.

13. In lieu of performing the corrective action pursuant to Paragraph 12 of this Agreement, Respondent shall either export the subject engines under U.S. Customs supervision or destroy the subject engines. Respondent shall provide proof of export or destruction of the engines to EPA no later than thirty (30) days after such exportation or destruction.

Civil Penalty:

14. Respondent has agreed to pay a civil penalty of $2,000 to the United States of America. The payment shall be due no later than thirty (30) days from 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, plus the stipulated penalties as specified in Paragraph 20 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(s) to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Attn: AED/MSEB -7296

Alternatively, Respondent may pay online at www.pay.gov. From the "Search Public Form" field, Respondent shall enter "SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the SFO Form Number 1.1.

Notice:

15. A copy of the payment(s) shall be faxed to Jocelyn Adair, Esquire, at (202) 564-0069 no later than twenty-four (24) hours after payment(s). A copy of all the correspondence to EPA that concerns this Agreement shall be sent to:

(Regular Mail)

Jocelyn Adair, Esquire
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB-7296

(Courier Service)

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

General Provisions:

16. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.

17. 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, and successors.

18. 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 Attorney General for collection pursuant to the CAA Section 205(c), 42 U.S.C. § 7524(c), commence an action to enforce this Agreement or to recover the civil penalty pursuant to the CAA Section 205(c), and/or pursue any other available remedies. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statues of limitation, or other provisions limiting actions as a result of the passage of time. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement, *see* 31 U.S.C. § 7701.

19. The termination and resolution of violations described in Paragraph 22 of this Agreement are conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

20. 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 affix the required replacement label, export the subject engines, or provide proof thereof, pursuant to Paragraphs 12 and 13 of this Agreement, $500 per day.

    (b) For failure to timely pay the civil penalty or provide proof thereof, pursuant to Paragraph 14 of this Agreement, $500 per day.

21. All stipulated penalties under Paragraph 20 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 14 of this Agreement. In addition, a copy of the transmittal letter(s) and payment(s) shall be sent to Jocelyn Adair, Esquire, at the address specified in Paragraph 15 of this Agreement. All stipulated penalties shall be paid to the United States of America within five 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 statues or regulations upon which the Agreement is based.

Effect of Agreement:

22. Upon completion of the terms of this Agreement, this civil matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent: (a) in the event of default or noncompliance with this Agreement; (b) for other violations of law which are not the subject matter of this Agreement; and/or (c) 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. In addition, this Agreement does not address Respondent's potential liability to U. S. Customs for engines that are seized or detained now or in the future.

The following parties agree to the terms of this Agreement:

Administrative Settlement Agreement - *In the Matter of Komatsu America Corporation; AED/MSEB-7296*

Komatsu America Corporation

By: Frank E. Pagura Date: 2/24/10

Printed Name: FRANK E. PAGURA

Printed Title: VICE PRESIDENT, PARTS OPERATIONS

Federal Tax Identification Number: 94-1715128

Administrative Settlement Agreement - ***In the Matter of Komatsu America Corporation; AED/MSEB-7296***

U.S. Environmental Protection Agency

By: _____ Date: 3/5/10

Pamela J. Mazakas
Acting Director
Air Enforcement Division

Appendix A

Standards	Serial Number	Engine Model Number	Power
Tier 2 (2004 - 2007)	128385	SAA4D95LE-3	93 hp (69 kW)
	128386		
	128387		