

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.  
ADMINISTRATIVE SETTLEMENT AGREEMENT**

In the Matter of:

**BARLOW RV REPAIR AND  
EQUIPMENT, INC. d/b/a Tractor Outlet**

MSEB # 7040

**Respondent**

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Barlow RV Repair and Equipment, Inc. d/b/a Tractor Outlet (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**

- 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 one Model Year 2004 tractor containing the nonroad engine described in Table 1 (Subject Engine), while ensuring that prior violations are identified and resolved, and that future violations are avoided.

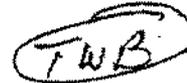
**Table 1: Description of Subject Engine**

<b>Engine Brand &amp; Model</b>	<b>Engine (Equipment) Serial Number</b>	<b>Power (kW)</b>	<b>Engine Build Year</b>
Yangdong Y395	98050294 (20634426)	22.6	1999

*TWB*

**Definitions:**

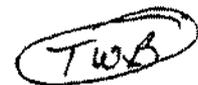
2. For the purposes of this Agreement, the following definitions apply:
- A. *Certified engine:* A "certified engine" is a nonroad engine that was built after the applicable effective dates of the Part 89 regulations and that is covered by a Certificate of Conformity.
  - B. *Dates of the Applicable 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 Engine identified in Table 1 and any civil liability that may apply to violations of the Act and implementing regulations governing importation of nonroad engines.
  - E. *Certificate of Conformity:* A "certificate of conformity" means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 or § 90.108 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 or 90 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 tractor*: The term "subject tractor" means the tractor whose serial numbers are listed in Table 1.

**Statutory and Regulatory Authority:**

3. Sections 203(a) and 213(d) of the 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. One limitation is that the TPEM only allows use of engines that are produced after the applicable effective date of the regulations for the



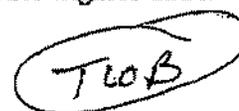
engines contained in the equipment being manufactured or imported, and does not allow use of engines that are produced before this date.

### Background

9. On August 2, 2004, Respondent imported the Subject Tractor.
10. On August 10, 2004, U. S. Customs and Border Protection (Customs) detained the Subject Tractor containing the Subject Engine at the port of Portland, Oregon where it is currently being held.
11. Respondent is the importer of the Subject Tractor.
12. The Subject Tractor containing the subject engine was built in Model Year 2004, which is after the effective date for the engine in the subject vehicle. As a consequence, a certified engine was required to be used in the subject equipment.
13. The Subject Tractor does not contain a certified engine, and does not have affixed the certification label required by 40 C.F.R. § 89.110.
14. Respondent is liable for one violation of section 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 89.1003(b)(4).
15. Respondent affirms that since January 1, 1999, it has imported into the United States a total of 130 tractors built after the dates of the applicable regulations that do not contain certified engines in addition to those in the Subject Tractor. These tractors are described in Attachment 1.

### Terms of Agreement

16. Within thirty 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 include the 135 tractors (the one Subject Tractor identified in Table 1, and the 134 previously imported and identified in Paragraph 15) in its calendar year 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines under 40



- C.F.R. § 89.102(d)(2). The two engines marked with an asterisk in Attachment 1 shall be included in Respondent's 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines rated equal to or above 8 kW and less than 19 kW, and the remaining 133 engines identified in Table 1 and Attachment 1 shall be included in Respondent's 2005 TPEM allowance for equipment containing uncertified nonroad diesel engines rated equal to or above 19 kW and less than 37 kW.
18. 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 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), three such reports, covering Respondent's importation for the previous calendar year, shall be submitted on or before January 30, 2005, January 30, 2006, and January 30, 2007.
19. All submissions shall be sent to EPA at the following address:

Jerry A. Kodish, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch  
12345 West Alameda Parkway, Suite 214  
Denver, CO 80228

facsimile: (303) 236-9514

20. Respondent shall pay to the United States \$500 within thirty 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 #

TWB

Nov 10 04 02:44p

Terrence Barlow

541-576-3800

P. 10

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 19 or faxed to (303) 236-9514 to the attention of Jeffrey A. Kodish. Such check shall be identified with the case number and Respondent's name.

21. 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 a) is powered by certified nonroad engines, or b) contains a nonroad engine that was manufactured after the applicable effective date of the regulations and is otherwise imported in compliance with 40 C.F.R. § 89.102(d).

#### General Provisions

22. 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.
23. 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.
24. 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.
25. The effect of the settlement described in Paragraph 28 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, and the prompt and complete remediation of any violations in accordance with this agreement.

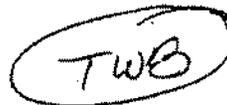


**Stipulated Penalties:**

26. 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 20, \$200 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 Paragraph 16, \$500 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 18, \$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.
27. All stipulated penalties under Paragraph 26 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 20 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**

28. 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:

Barlow RV Repair and Equipment, Inc. d/b/a Tractor Outlet:

By: Terrence Barlow 11/10/04  
Terrence Barlow, President Date

U.S. Environmental Protection Agency:

By: Adam M. Kushner 11/12/04  
Adam M. Kushner, Acting Director Date  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance

## Attachment 1

*Terrence Barlow*  
TWB

	Engine Brand and Model	Engine Serial #	Tractor Serial #	Power (kW)
1	Yangdong TY 290	2006501	10553	20
2	Yangdong Y385	2009577	10767	21
3	Yangdong Y385	2018763	10844	21
4	Yangdong Y385	2019552	10916	21
5	Yangdong Y385	2020765	20311	21
6	Yangdong Y385	2022351	21465	21
7	Yangdong Y385	2026585	21382	21
8	Yangdong Y395	37112	48760	22.2
9	Yangdong Y385	2036575	21013	21
10	Yangdong Y395	37556	50033	22.2
11	Yangdong Y385	2041118	21048	21
12	Yangdong Y385	2048443	21121	21
13	Yangdong Y385	2048981	21188	21
14	Yangdong Y385	2049260	21215	21
15	Yangdong Y385	2049315	21324	21
16	Yangdong Y385	1592613	21377	21
17	Yangdong Y385	1604445	21391	21
18	Yangdong Y385	1614633	21415	21
19	Yangdong Y385	1622359	21483	21
20	Yangdong Y385	1645207	21501	21
21	Yangdong Y385	1659812	21581	21
22	Yangdong Y395	40119	50631	22.2
23	Yangdong Y385	1672001	21656	21
24	Yangdong Y385	1684328	21696	21
25	Yangdong Y385	2009584	21700	21
26	Yangdong Y385	2044472	21715	21
27	Yangdong Y385	20505647	21737	21
28	Yangdong Y395	402010	21735	22.2
29	Yangdong Y385	20506855	21736	21
30	Yangdong Y385	20507340	21620	21
31	Yangdong Y385	20506862	21887	21
32	* Yangdong TY290	20410686	21931	13.2
33	Yangdong Y385	20507017	21930	21
34	Yangdong Y385	20502040	21953	21
35	Yangdong Y395	402114	21952	22.2
36	Yangdong Y395	20502043	21955	21

1 of 2

Nov 10 04 02:43p

Terrence Barlow

541-576-3800

P.2

TWB

37	Yangdong Y385	20505846	21999	21
38	Yangdong Y385	20703294	22497	21
39	Yangdong Y385	20703308	22496	21
40	Yangdong Y385	20703396	22495	21
41	Yangdong Y385	20705879	22451	21
42	Yangdong Y385	20703296	22494	21
43	Yangdong Y385	20704063	22498	21
44	Yangdong Y385	20705194	22556	21
45	Yangdong Y385	20411477	22557	21
46	Yangdong Y385	20505321	22555	21
47	Yangdong Y385	20806642	22707	21
48	Yangdong Y385	20807159	22860	21
49	Yangdong Y385	20801712	22987	21
50	Yangdong Y385	20802858	22988	21
51	Yangdong Y385	20810386	22988	21
52	Yangdong Y385	20806536	22990	21
53	Yangdong Y385	20800323	22991	21
54	Yangdong Y385	20900885	22989	21
55	Yangdong Y386	10601183	23020	21
56	Yangdong Y385	98044030	23566	22.2
57	Yangdong Y385	20412367	23569	21
58	Yangdong Y385	20412409	23568	21
59	Yangdong Y385	20412411	23570	21
60	Yangdong Y385	20412422	23567	21
61	Yangdong Y385	20412059	24396	21
62	Yangdong Y385	20412759	33729	21
63	Yangdong Y385	20412725	33730	21
64	Yangdong Y385	20412784	33731	21
65	Yangdong Y385	20412741	33732	21
66	Yangdong Y385	20412919	33982	21
67	Yangdong Y385	20412920	33983	21
68	Yangdong Y385	20412910	33984	21
69	Yangdong Y385	20412915	33985	21
70	Yangdong Y385	20514041	34120	21
71	Yangdong Y385	20512152	34115	21
72	Yangdong Y385	20514098	37620	21
73	Yangdong Y385	20514142	37623	21
74	Yangdong Y385	20514171	37618	21
75	Yangdong Y385	98044624	21927	22.2
76	Yangdong Y385	20514162	37625	21
77	Yangdong Y385	20514096	37619	21
78	Yangdong Y385	20512019	30470	21
79	Yangdong Y385	20514143	37621	21

2/4

Nov 10 04 02:43p

Terrence Barlow

541-576-3800

P.3

TWB

80	Yangdong Y385	20514166	37824	21
81	Yangdong Y395	98044507	37394	22.2
82	Yangdong Y385	20514839	37731	21
83	Yangdong Y385	20514745	37727	21
84	Yangdong Y385	20514708	38126	21
85	Yangdong Y385	20514756	37730	21
86	* Yangdong TY295	20311567	38138	14.7
87	Yangdong Y385	20515093	38144	21
88	Yangdong Y385	20515047	38303	21
89	Yangdong Y385	20515152	38338	21
90	Yangdong Y385	20514757	38125	21
91	Yangdong Y385	20514264	37729	21
92	Yangdong Y385	20514777	37732	21
93	Yangdong Y385	20515180	38822	21
94	Yangdong Y385	20514756	38538	21
95	Yangdong Y385	20514616	38535	21
96	Yangdong Y385	20515291	38536	21
97	Yangdong Y385	20515185	38537	21
98	Yangdong Y385	10712128	23009	21
99	Yangdong Y385	20514766	37733	21
100	Yangdong Y385	20315264	38823	21
101	Yangdong Y385	20515382	38826	21
102	Yangdong Y385	20515319	38825	21
103	Yangdong Y385	20524007	39122	21
104	Yangdong Y385	20515318	38822	21
105	Yangdong Y385	20515332	38824	21
106	Yangdong Y385	20524397	39102	21
107	Yangdong Y385	20615360	38821	21
108	Yangdong Y395	98044719	39125	22.6
109	Yangdong Y385	20514753	39121	21
110	Yangdong Y395	98046188	39505	22.6
111	Yangdong Y385	20514900	39118	21
112	Yangdong Y385	20524308	39117	21
113	Yangdong Y385	20524309	39119	21
114	Yangdong Y385	31015542	20228095	21
115	Yangdong Y385	20524098	20228093	21
116	Yangdong Y385	31015551	20228094	21
117	Yangdong Y385	31015503	20228092	21
118	Yangdong Y385	31015515	20228096	21
119	Yangdong Y385	31015511	20228091	21
120	Yangdong Y385	31015566	20328195	21
121	Yangdong Y385	31015523	20328196	21
122	Yangdong Y385	31015549	20328198	21

3/4

Nov 10 04 02:43p

Terrence Barlow

541-576-3900

p.4

TWB

123	Yangdong Y385	31018003	20428489	21
124	Yangdong Y385	31015853	20428500	21
125	Yangdong Y385	30112232	20226116	21
126	Yangdong Y385	31015965	20428502	21
127	Yangdong Y385	31015743	20328202	21
128	Yangdong Y395	98050294	20634426	22.2
129	Yangdong Y385	31018024	20528896	21
130	Yangdong Y385	31017048	20528899	21
131	Yangdong Y385	31018098	20528898	21
132	Yangdong Y385	31017137	20528895	21
133	Yangdong Y385	31015947	20528897	21
134	Yangdong Y395	98050385	20634468	22.2

4 of 4