

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

In the Matter of:	}	
AGCO Corporation,	}	ADMINISTRATIVE SETTLEMENT AGREEMENT
and	}	
Perkins Engines Company Limited	}	AED/MSEB-7226
Respondents.	}	

**This Administrative Settlement Agreement** is made and entered into by and between the United States Environmental Protection Agency (EPA), AGCO Corporation (AGCO), 4205 River Green Parkway, Duluth, GA 30096-2568, and Perkins Engines Company Limited (Perkins), Eastfield, Peterborough, PE1 5NA, United Kingdom (Respondents).

**Purpose:**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve sixty-two 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 Nonroad 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 causing the importation or 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 Nonroad Regulations:**

3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from causing the importation or 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, delivery into commerce, or the causing thereof 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.

**Definitions:**

8. For the purposes of this Agreement, the following definitions apply:
  - a. *Applicable regulation and dates:* 40 C.F.R. Part 89 is applicable to compression-ignition nonroad engines built after the applicability dates.
  - b. *Certified engine:* A nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
  - c. *Certificate holder:* The manufacturer who obtained from EPA a Certificate of Conformity.
  - d. *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.

- e. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.
- f. *Observer*: A U.S. Customs and Border Protection (U.S. Customs) representative or an independent board certified licensed professional engineer.
- g. *This matter*: As used in this Agreement means Respondents's importation of the sixty-two nonroad engines as described in Paragraph 9 of this Agreement (Subject Engines) and any civil liability that may apply to such violations.

**Alleged Violations:**

- 9. On or about April 4 and May 7, 2007, AGCO imported into Savannah, Georgia and Galveston, TX sixty-two tractors that contained CI nonroad engines (the Subject Engines). The Subject Engines are described in Appendix A to this Agreement. The Subject Engines were manufactured by Perkins and Perkins is the Certificate Holder for the Subject Engines.
- 10. The U.S. Customs inspection of the Subject Engines at the Port of Savannah, Georgia 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 or about April 25, 2007, EPA requested that the U.S. Customs Port in Savannah, Georgia seize fifty-seven of the Subject Engines.
- 12. Based on the forgoing, EPA alleges that Respondents committed sixty-two violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the CI Nonroad Engine Regulations, 40 C.F.R. Part 89.
- 13. By entering into this Agreement, Respondents do not admit that they have committed any violation of the Clean Air Act or implementing regulations.

**Injunctive Relief/Corrective Action:**

14. The Certificate Holder for the Subject Engines shall:
  - (a) 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). A copy of the complying EPA emissions label is attached hereto as Appendix B to this Agreement.
  - (b) Provide to EPA a technical description of the method and procedures that the Certificate Holder will use to affix the replacement label to the Subject Engines to ensure that each replacement label is permanently affixed to the engine and cannot be removed without destroying or defacing the label.
  - (c) 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 labels.
  - (d) Perform this corrective action under the direction of the Observer. The corrective action shall be completed no later than thirty (30) days from the effective date of this Agreement, or such longer period of time if requested by Respondents and approved by EPA for good cause shown.
  - (e) Remove each 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 “(b)”.
  - (f) Ensure that the Observer destroys all the removed labels no later than the day the last Subject Engine receives a replacement label.
15. After the replacement label has been affixed to each of the sixty-two Subject Engines, the Observer shall randomly select one Subject Engine from each equipment model (the Test Sample Engines) to determine whether or not the replacement label is permanently

- affixed 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.
16. 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 equipment model Subject Engines shall be exported.
  17. 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 released by U.S. Customs.
  18. No later than thirty (30) days from the effective date of this Agreement (or such longer period of time if requested by Respondents and approved by EPA for good cause shown), Respondents shall provide EPA with a written report that fully describes the corrective action taken, and certifies that such corrective action was conducted as described. The report shall include the following:
    - (a) 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; and
    - (b) An unconditional statement from the Certificate Holder certifying that the Subject Engines comply with all applicable requirements of the Clean Air Act and 40 C. F. R. Part 89.

**Civil Penalty:**

19. Respondents have agreed to pay a civil penalty of \$95,000 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. Respondents agree 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 - 7226

**Notice:**

20. All correspondence, reports, and copies of payments 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-7226

**(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:**

21. No later than thirty (30) days from the effective date of this Agreement, the Certificate Holder shall initiate a thorough review and assessment of its nonroad 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 nonroad 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 nonroad 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.
- (e) The Certificate Holder shall complete the review and analysis required by this Paragraph 21, 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:**

- 22. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondents.

23. Respondents hereby represent that the individual executing this Agreement on behalf of each Respondent is authorized to do so on behalf of each Respondent and that such execution is intended and is sufficient to bind Respondents, Respondents's agents, assigns, or successors.
24. Notwithstanding any other provisions of this Agreement, upon Respondents'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. Respondents 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. Respondents expressly waive Respondents's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
25. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondents's disclosure and representation to EPA, 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 Respondents shall pay stipulated penalties to the United States as follows:
  - a. For failure to provide the written reports specified in Paragraphs 18 and 21, \$250 per day;
  - b. For failure to pay the civil penalty or provide proof thereof, pursuant to Paragraphs 19, \$250.00 per day.
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 simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in the manner specified in Paragraph 18 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



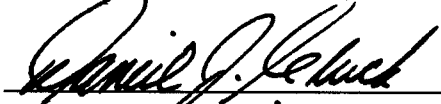
Paragraph 18. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by EPA (the due date). Late payment of the penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA from seeking any other remedy or sanction available by virtue of Respondents' violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

**Enforcement:**


28. 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 each 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 Respondents of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

**AGCO Corporation:**

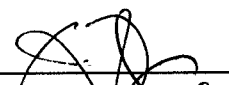
By:  Date: 6/27/07  
Printed Name: DANIEL J. GLUCK  
Printed Title: COUNSEL FOR AGCO Corporation,  
Partner, Serko SIMON Gluck & Kane LLP

**Perkins Engines Company Limited:**

By:  Date: 19<sup>th</sup> June 2007  
Printed Name: H. HAEFELI  
Printed Title: President

**Administrative Settlement Agreement - *In the Matter of AGCO Corporation and Perkins Engines Company Limited, AED/MSEB - 7226***

**U.S. Environmental Protection Agency**

By:  \_\_\_\_\_ Date: 7.3.07 \_\_\_\_\_

Adam M. Kushner  
Director  
Air Enforcement Division

Entry Date	Equipment Model	Tractor Serial Number	Engine Serial Number	EPA engine family
<b>57 Engines - Port of Savannah, Georgia</b>				
4/4/2007	MF573	BS05001	RE37827B507757P	7PKXL04.4RE1
4/4/2007	MF573	BS05006	RE37827B507766P	7PKXL04.4RE1
4/4/2007	MF573	BS05009	RE37827B507695P	7PKXL04.4RE1
4/4/2007	MF573	BS05010	RE37827B507699P	7PKXL04.4RE1
4/4/2007	MF573	BS06003	RE37827B507773P	7PKXL04.4RE1
4/4/2007	MF573	BS06004	RE37827B507756P	7PKXL04.4RE1
4/4/2007	MF573	BS06005	RE37827B507755P	7PKXL04.4RE1
4/4/2007	MF573	BS06010	RE37827B507770P	7PKXL04.4RE1
4/4/2007	MF573	BS06011	RE37827B507820P	7PKXL04.4RE1
4/4/2007	MF573	BS06019	RE37827B507745P	7PKXL04.4RE1
4/4/2007	MF573	BS06022	RE37827B507761P	7PKXL04.4RE1
4/4/2007	MF573	BS06035	RE37827B507806P	7PKXL04.4RE1
4/4/2007	MF573	BS06036	RE37827B507819P	7PKXL04.4RE1
4/4/2007	MF573	BS06037	RE37827B507807P	7PKXL04.4RE1
4/4/2007	MF573	BS06041	RE37827B507746P	7PKXL04.4RE1
4/4/2007	MF573	BS06044	RE37827B507812P	7PKXL04.4RE1
4/4/2007	MF573	BS06046	RE37827B507809P	7PKXL04.4RE1
4/4/2007	MF573	BS06047	RE37827B507753P	7PKXL04.4RE1
4/4/2007	MF573	BS06048	RE37827B507813P	7PKXL04.4RE1
4/4/2007	MF573	BS06049	RE37827B507744P	7PKXL04.4RE1
4/4/2007	MF573	BS06052	RE37827B507764P	7PKXL04.4RE1
4/4/2007	MF573	BS06054	RE37827B507743P	7PKXL04.4RE1
4/4/2007	MF573	BS06055	RE37827B507838P	7PKXL04.4RE1
4/4/2007	MF573	BS06056	RE37827B507829P	7PKXL04.4RE1
4/4/2007	MF573	BS06058	RE37827B507826P	7PKXL04.4RE1
4/4/2007	MF573	BS06059	RE37827B507843P	7PKXL04.4RE1
4/4/2007	MF573	BS07018	RE37827B507883P	7PKXL04.4RE1
4/4/2007	MF573	BS07021	RE37827B507852P	7PKXL04.4RE1
4/4/2007	MF573	BS07026	RE37827B507899P	7PKXL04.4RE1
4/4/2007	MF573	BS07029	RE37827B507878P	7PKXL04.4RE1
4/4/2007	MF573	BS07031	RE37827B507881P	7PKXL04.4RE1
4/4/2007	MF573	BS07032	RE37827B507882P	7PKXL04.4RE1
4/4/2007	MF573	BS07045	RE37827B507898P	7PKXL04.4RE1
4/4/2007	MF573	BS08010	RE37827B507844P	7PKXL04.4RE1
4/4/2007	MF573	BS08013	RE37827B507901P	7PKXL04.4RE1
4/4/2007	MF573	BS09002	RE37827B507836P	7PKXL04.4RE1
4/4/2007	MF573	BS09004	RE37827B507835P	7PKXL04.4RE1
4/4/2007	MF573	BS09006	RE37827B507891P	7PKXL04.4RE1
4/4/2007	MF573	BS07035	RE37827B507848P	7PKXL04.4RE1
4/4/2007	MF583	BS05013	RE37830B507732P	7PKXL04.4RE1
4/4/2007	MF583	BS06009	RE37830B507785P	7PKXL04.4RE1
4/4/2007	MF583	BS06024	RE37830B507790P	7PKXL04.4RE1
4/4/2007	MF583	BS06025	RE37830B507784P	7PKXL04.4RE1
4/4/2007	MF583	BS06027	RE37830B507730P	7PKXL04.4RE1
4/4/2007	MF583	BS06030	RE37830B507781P	7PKXL04.4RE1
4/4/2007	MF583	BS06031	RE37830B507778P	7PKXL04.4RE1
4/4/2007	MF583	BS06061	RE37830B507866P	7PKXL04.4RE1
4/4/2007	MF583	BS07003	RE37830B507776P	7PKXL04.4RE1
4/4/2007	MF583	BS07015	RE37830B507868P	7PKXL04.4RE1

	<b>Equipment</b>	<b>Tractor</b>		
4/4/2007	MF583	BS07034	RE37830B507871P	7PKXL04.4RE1
4/4/2007	MF583	BS07037	RE37830B507789P	7PKXL04.4RE1
4/4/2007	MF583	BS08007	RE37830B507874P	7PKXL04.4RE1
4/4/2007	MF583	BS09001	RE37830B507908P	7PKXL04.4RE1
4/4/2007	MF583	BS09007	RE37830B507860P	7PKXL04.4RE1
4/4/2007	MF583	BS09009	RE37830B507782P	7PKXL04.4RE1
4/4/2007	MF583	BS05012	RE37830B507735P	7PKXL04.4RE1
4/4/2007	MF596LP	BS06063	RG38179B5078009	7PKXL04.4RG1
<b>5 Engines - Port of Houston (Galveston), Texas</b>				
5/7/2007	MF573	BS14012	RE37827B508072P	7PKXL04.4RE1
5/7/2007	MF573	BS13012	RE37827B507902P	7PKXL04.4RE1
5/7/2007	MF573	BS14002	RG37828B507994P	7PKXL04.4RG1
5/7/2007	MF583	BS13005	RE37827B508077P	7PKXL04.4RE1
5/7/2007	MF593	BS13009	RE37830B508008P	7PKXL04.4RE1



Appendix B to AED MSEB-7226

IMPORTANT ENGINE INFORMATION			Perkins
Engine Family: 1104C-44	List: RE37827	E11	120R- N/A
Engine Type : 2159/2200	EPA Family: 7PKXL04.4RE1		
Advertised kW: 54.5	@ RPM: 2200	MLIT	e11*97/68GA*2001/63*0241*04
Fuel Rate at adv kW: 61.1 mm3/Stk		2-311	
Init. Timing: 0 DEG ATDC	Disp: 4.400		
Settings are to be made with engine at normal operating temperature with transmission in neutral. This engine conforms to 2007 U.S. EPA non-road and California off-road Regulations for large C.I. engines and is certified to operate on commercially available diesel fuel.			
Emission Control System:	Valve Lash Cold (inch):	FEL (g/kWh)	
DDI	Exhaust .018 Inlet .008	NOx + NMHC: N/A PM: N/A	
Hanger No.	Position (54/56)	Label No. 3181A081	