

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

In the Matter of:	)	
	)	
Base Core Management, LLC	)	<b>SETTLEMENT AGREEMENT</b>
Respondent.	)	<b>AED/MSEB # 7233</b>
	)	

**This Settlement Agreement** is made and entered by and between the United States Environmental Protection Agency (EPA) and Base Core Management (Base Core) regarding compliance by Base Core with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 90.

**Purpose**

1. The purpose of this Settlement Agreement (Agreement) is to provide for resolution and remediation of any and all claims by EPA under the Act and 40 C.F.R. Part 90 (Nonroad Regulations), arising out of the importation of 110 spark ignition nonroad engines and the equipment containing those engines, as described in Paragraph 8 of this Agreement, (Subject Engines), while ensuring that future violations are avoided.

**Definitions**

2. For purposes of this Agreement, the following definitions apply:
  - a. *This matter*: as used in this agreement means Base Core's importation of the Subject Engines and any civil liability that may apply to such violations.
  - b. *Certificate of Conformity*: the document issued by EPA to an engine manufacturer under 40 C.F.R. § 90.106, after EPA determines that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Part 90 and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of engines built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.

- c. *Certified engine*: a nonroad engine built after the applicable date of the regulations that is covered by a Certificate of Conformity which includes the engine information label affixed in a manner that complies with the label requirements of certification pursuant to 40 C.F.R. § 90.114.
- d. *Applicable regulation and dates*: 40 C.F.R. Part 90 is applicable to nonroad SI engines built after the applicability dates in 40 C.F.R. Part 90.
- e. *Certificate Holder*: the company granted an EPA Certificate of Conformity for the Subject Engines.

### **Statutory Authority**

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad engines, including engines contained in nonroad equipment or nonroad vehicles, unless the engine or vehicle is covered by a Certificate of Conformity issued and in effect, including the required engine information label requirements of 40 C.F.R. § 90.114.

### **Nonroad SI Engine Regulatory Authority**

- 4. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits the following acts and the causation thereof: “The importation into the United States [of] any new nonroad [SI] engine manufactured after the applicable effective date under this part unless such engine is covered by a certificate of conformity....”
- 5. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad SI engine manufactured after the applicable effective date of the regulations, unless a label is affixed to the engine in accordance with 40 C.F.R. § 90.114.
- 6. 40 C.F.R. § 90.3 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad SI engines or importing such engines for resale, or a person acting for, and under the control of, such person.
- 7. 40 C.F.R. § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified nonroad SI 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.

**Background**

8. On or about August 26, 2006, Base Core imported into the United States 110 nonroad engines and the generators containing such engines (Subject Engines), as described in the Table below.

**Subject Engine Table**

<b>Entry Date</b>	<b>Entry Number</b>	<b>Generator Model and Engine Model</b>	<b>Quantity</b>	<b>Manufacturer</b>
August 26, 2006	414-0039826-2	ES9000E PW420060	110	Powerful Machinery & Electronics Technology, Development Co., Ltd

9. On or about October 25, 2006, the U.S. Customs and Border Protection (CBP) seized the Subject Engines for their failure to have affixed the required permanent, legible label in violation of 40 C.F.R. § 90.114.
10. On or about November 17, 2006, CBP determined that the Subject Engines were subject to forfeiture due to their failure to have affixed the required labels as described in paragraph 8, above. The Subject Engines continue to be held under the control of the CBP.
11. Subsequent EPA investigation established that Base Core is the importer of the Subject Engines and that the Subject Engines were not equipped with the permanent, legible identification labels required pursuant to 40 C.F.R. § 90.114.
12. Based upon the foregoing, EPA has determined that Base Core is liable for 110 violations of Sections 203(a) and 213(d) of the Act, resulting from 110 violations of 40 C.F.R §90.1003(a)(4)(ii) of the Nonroad Regulations.

**Terms of Agreement**

13. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Base Core.
14. It is the understanding of EPA and Base Core that Base Core is resolving its penalty

liability for these violations by paying a penalty to CBP, and that CBP's initial penalty assessment is \$5992.80.

15. Within 30 days of the date of this Agreement, or such later date as CBP may require, Base Core must export or destroy the Subject Engines under CBP's supervision. In lieu of such export or destruction, Base Core may relabel the engines in accordance with this paragraph 15.

a. Prior to the date that CBP releases the Subject Engines, the Certificate Holder must remove each non-complying label from the Subject Engines and affix a complying EPA approved emissions information label to each of the Subject Engines. This corrective action shall be accomplished in the following manner:

- (1) In order to obtain EPA approval for the label, the Certificate Holder shall send to EPA a sample of the proposed label and a technical description of the method and procedures that the Certificate Holder proposes to use to affix the label to the engine. The label and installation procedure must be designed to ensure that the label is permanently affixed and cannot be removed without destroying or defacing the label. This submission, affidavits, and all other correspondence concerning this Amended Agreement shall be sent to Judy Lubow, by courier, at the following address:

Judy Lubow, Attorney  
U.S. Environmental Protection Agency  
12345 West Alameda Parkway  
Suite 214  
Lakewood, CO 80228

The label sample, plus a copy of the affidavits and all other correspondence concerning this label correction procedure shall also be sent to Anne Wick, by courier, at the following address:

Anne Wick  
Vehicle and Engine Team Leader  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Ariel Rios Building South, Room 111B  
1200 Pennsylvania Avenue, N.W.,

Washington, DC 20004

- (2) If EPA has not approved a label at the time of execution of this Agreement, EPA agrees that within five business days of receipt of a label from the Certificate Holder, it will approve the label or provide specific comments on the deficiency of the proposed label. Failure of EPA to provide a response in a timely manner shall constitute approval of the label. If EPA provides comments on the deficiency of the label, the Certificate Holder must resubmit the label design 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.
- (3) 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 or destruction (in the case of any unused replacement labels).
- (4) This corrective action shall be conducted under the observation of a licensed Professional Engineer (the Observer) not employed directly by either Base Core or the Certificate Holder. The corrective action shall be completed no later than thirty days following the date of this Agreement.
- (5) Certificate Holder shall remove the non-complying label and give it to the Observer, and shall attach the complying label in accordance with the procedure submitted to EPA in the above Subparagraph 15 (a)(1).
- (6) After the replacement label has been affixed to each of the Subject Engines, the Observer shall randomly select ten percent of the Subject Engines from each model (the Test Sample Engines) to determine whether or not the replacement labels are permanently attached to the Subject Engines and cannot be removed without destroying or defacing the replacement labels. Any Test Sample Engines whose replacement label is destroyed or defaced during this test must be relabeled by 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 must be exported or destroyed, and all related model Subject Engines must be tested to determine whether or not the replacement labels are permanently attached to the Subject Engines and cannot be removed without destroying or defacing the replacement labels. Any engines that fail this subsequent test must be exported or destroyed, and engines that pass the test must be relabelled to replace the defaced or destroyed labels.

- (7) Within thirty days of this Agreement (or such longer period of time if requested by Respondent and approved by EPA for good cause shown), the Certificate Holder shall provide EPA with a report that fully describes and certifies the corrective action taken. The report must include the following:
- (a) An affidavit documenting the performance of 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, and provide the results of any tests performed to determine whether or not the label was permanent and could be removed without destroying or defacing the label,
  - (b) An unconditional statement certifying that the Subject Engines comply with all requirements of the Clean Air Act and 40 C. F. R. Part 90.
- b. Where, pursuant to the requirements of Subparagraph 15(a)(6), above, 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 otherwise been correctly performed, the Observer shall identify the model number of the generator or chain saw and report his/her determination to EPA, and Base Core shall export or destroy the engine tested by Observer, and treat all related model engines as described in Subparagraph (15) (a) (6), above.

- c. The Observer shall destroy all removed labels no later than the day the last Subject Engine is relabeled.
  - d. EPA agrees to the inclusion within this Agreement of the re-labeling program established in Paragraph 15, above, due to the fact that the Respondent is a first-time violator of the Nonroad Regulations.
16. Within thirty days of the effective date of this Agreement, Base Core shall implement and provide to Judy Lubow of the EPA, at the address specified for her in Paragraph 15(a)(1), above, a nonroad engine compliance plan which must be acceptable to EPA. The plan must be reasonably calculated to ensure that all nonroad engines imported by Base Core into the United States after the effective date of this Agreement shall be imported in a manner that complies with all applicable EPA regulations, including the Nonroad Regulations.

**Stipulated Penalties**

17. For failure to comply with the terms of this Agreement on a timely basis Base Core shall pay stipulated penalties to the United States as follows:
- a. For failure to timely comply with the Subject Engine re-labeling, export or destruction requirements pursuant to Paragraph 15, above, \$250.00 per day;
  - b. For failure to submit to EPA a compliance plan which is acceptable to EPA, and to timely implement that plan, all pursuant to Paragraph 16, above, \$250.00 per day.
18. All stipulated penalties under Paragraph 17 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 to the United States of America within 5 days of written demand by EPA (the due date). 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 - 7233

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.

**General Provisions**

19. Notwithstanding any other provisions of this Agreement, the parties agree that upon default or failure of Base Core to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act; or pursue any other remedies available to it. Base Core expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation or other provisions limiting actions as a result of passage of time.
20. The parties represent that the individual or individuals executing this Agreement on behalf of the respective party are authorized to do so and that such execution is intended and is sufficient to bind the respective party
21. Base Core waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.
22. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
23. This settlement is contingent upon the truthfulness, accuracy and completeness of Base Core's disclosures and representations to EPA and the prompt and complete remediation of any violations in accordance with this Agreement.

**Effect of the Agreement**

25. 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 Base Core in the event of default or noncompliance with this Agreement; for violations of Section 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, which are not the subject matter of 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 Base Core of responsibility to comply with other state, federal or local laws or regulations.

The following agree to the terms of this Agreement:

**Base Core Management, LLC**

By: \_\_\_\_\_

Printed Name: Jason Epsen  
Typed or Printed Title: owner

Date: \_\_\_\_\_

06/11/07

**U.S. Environmental Protection Agency**

By:  \_\_\_\_\_  
Adam M. Kushnek, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance

Date: JUNE 28, 2007