

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

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

Hercules Tire Company of Canada Inc.,
d/b/a Treadway Exports

MSEB AED # 7219

Respondent

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Hercules Tire Company of Canada Inc. d/b/a Treadway Exports (Respondent), of 311 Ingersoll St., Ingersoll, On., N5C 3J7 (U.S. address: 16380 East US Route 224, Ste 200, Findlay, OH 45840), regarding compliance by Respondent with the requirements of sections 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:

1. 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 on or about May 15, 2006, and June 28, 2006, of nonroad engines contained in twelve generators described in Tables 1 and 2 in Attachment I, and to ensure that future violations are avoided.

Definitions:

2. For purposes of this Agreement, the following definitions apply:
 - a. *This matter:* As used in this Agreement, "this matter" means Respondent's importation of the Subject Engines identified in Tables 1 and 2 of Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 89.
 - b. *Subject Engines:* The term "Subject Engines" means the engines contained in the equipment listed in Tables 1 and 2 of Attachment I.

Y 7/19/07

- c. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to an compression ignition engine 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 applicable requirements of 40 C.F.R. Part 89 and the Clean Air 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.
- d. *Certified engine*: A “certified engine” is a nonroad engine built after the applicable effective dates of the regulations at Part 89 and that is covered by a Certificate of Conformity.
- e. *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 issued by EPA.
- f. *Dates of Applicable Regulations*: The term “dates of the applicable regulations” for a nonroad compression ignition engines means the date after which the certification requirement applies to the engine, as defined in Table 2 of 40 C.F.R. § 89.112.
- g. *Export*: The term “export” means to transport to a location outside of the United States and its territories, Canada, and Mexico.
- h. *Destroy*: The term “destroy” means the complete destruction of the engine and the complete disassembly of the equipment. The water jackets of the cylinder block and the head shall be impaled in multiple locations such that they can not thereafter be made to retain coolant regardless of whether repair is attempted and the equipment shall be crushed or disassembled and damaged in such a manner that it can never be reassembled.

Statutory and Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Clean Air 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 non-road vehicle or engine after the applicable

hp 7/19/07

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 compression ignition engine manufactured after the applicable effective date of the regulations, unless such engine is a certified engine, and bears a permanently affixed EPA Emissions Label or is properly exempted or excluded from the certification requirements.
5. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits an engine manufacturer of a new nonroad compression ignition engine manufactured after the effective date of the regulations from selling, offering for sale, introducing, or delivering into commerce a nonroad engine unless a label or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.
6. 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.
7. 40 C.F.R. § 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified compression ignition engine, a permanent and legible label identifying each nonroad engine which contains the information specified in that section, including a statement that the engine is a certified engine. The label must be readily visible to the average person after the engine is installed in the equipment, and must not be removeable intact.
8. 40 C.F.R. §§ 89.110(d) requires each engine to have a legible, unique engine identification number permanently affixed to, or engraved on, the engine.
9. 40 C.F.R. §§ 89.909(a) requires that in order to be exempted from the regulations at § 89.1003, a new nonroad engine intended solely for export to an importing country whose new nonroad engine emission standards differ from EPA standards to be so labeled or tagged on the outside of the container, and on the engine itself.
10. EPA has requested on EPA form 3520-21 that engines imported "for export only" be secured by bond as per 40 C.F.R. §§ 89.611(b).

hy 7/19/07

Background:

11. On or about May 15, 2006, and June 28, 2006, U.S. Customs and Border Protection (CBP) seized the nonroad equipment listed in Table 1 and Table 2 of Attachment I at the Port of Buffalo, New York.
12. Respondent is the importer of the nonroad equipment containing the Subject Engines.
13. The Subject Engines were manufactured after the Dates of the Applicable Regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment, or proof that engines were eligible for importation under any of the exclusions or exemptions allowed by the regulations was necessary.
14. The Subject Engines in diesel generators listed in Table 1 of Attachment I are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §§ 89.110. In addition, on the EPA Engine Declaration Form (Form 3520-21), the importer checked Box 5d, Export, but no "solely for export" labels were found on the container and on the engine itself as required by 40 C.F.R. § 89.909(a). Finally, Respondent did not secure the bonding required by 40 C.F.R. § 89.611(b) and Form 3520-21 for the export exemption.
15. The Subject Engines in diesel generators listed in Table 2 of Attachment I are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §§ 89.110. Also, no engine identification number was found on the engine as required by 40 C.F.R. § 89.110(d). The importer did not declare the provision on the EPA Engine Declaration Form (Form 3520-21) under which these engines were being imported.

Terms of Agreement:

16. Within 30 days of the date of this Agreement, or within 30 days of the date CPB releases the Subject Engines for export, whichever is later, Respondent shall submit proof that each of the Subject Engines has been exported to a location outside of North America. In lieu of export, within 60 days of the date of this Agreement, Respondent shall arrange for the destruction of the Subject Engines and equipment in their entirety in accordance with Paragraphs 2(h), and 17 -19 of this Agreement.
17. Destruction of each of the Subject Engines and equipment shall be deemed complete only when conducted in the manner specified in paragraph 2(h).

W 7/19/07

18. Within 70 days of the date of this Agreement, Respondent shall submit proof of the destruction of the Subject Engines and equipment in accordance with Paragraph 19 and 20 below to EPA.
19. Proof of destruction of Subject Engines shall be in the form of an attestation by an authorized employee of CBP.
20. All submissions to EPA shall be sent to the following address:

David Alexander
U.S. EPA, OECA/AED (mailcode 2242A)
1200 Pennsylvania Ave NW (Rm. 1111A)
Washington, DC 20460-0001
facsimile: (202) 564-0069

21. Respondent shall pay to the United States a civil penalty of ten thousand dollars (\$10,000) within 30 calendar days of 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. 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 #7219

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 20 or faxed to (202) 564-0069 to the attention of David Alexander. Such check shall be identified with case number AED/MSEB #7219 and Respondent's name.

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

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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, EOA 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 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, including but not limited to representations regarding importations contained in Table 1 and Table 2 in Attachment I of the 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 21, \$400 per day.
 - b. For failure to timely export the Subject Engines, or provide proof of such exportation, pursuant to Paragraph 16, \$500 per day, or for failure to timely destroy the Subject Engines and equipment, or provide proof of such destruction pursuant to Paragraphs 17 through 20 of this Agreement, \$500 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 the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 21 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 this Agreement is based.

M-1/19/07

Effect of Agreement:

28. Upon completion of the terms of the Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

Hercules Tire Company of Canada Inc., d/b/a Treadway Exports

By: [Signature] Date July 19/07


Perry Hromadka, Controller

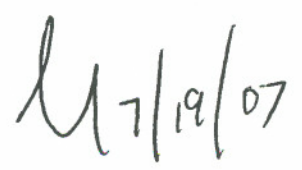
Date

July 19/07

U.S. Environmental Protection Agency
In the Matter of Hercules Tire Company of Canada Inc., D/b/a Treadway Exports

AED/MSEB # 7219

By:  _____ 8-1-07
Adam M. Kushner, Date
Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

 7/19/07

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MSEB AED # 7219

TABLE 1: Entry # 300-0236837-9 Detained June 27, 2006

Model and Description	Manufacturer	Serial Number
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020164
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020169
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020183
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020185
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020184
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020177
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020176
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020170
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020167
KDE12T Diesel Generator	Wuxi Kipor Power Co.	E10736020166

TABLE 2: Entry # 300-0309333-1 Detained June 29, 2006

Model and Description	Manufacturer	Serial Number
KDE19T Diesel Generator	Wuxi Kipor Power Co.	10716030009
KDE19T Diesel Generator	Wuxi Kipor Power Co.	10716030015

M-1/19/