

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

In the Matter of:

Homier Distributing Company, Inc.,
Respondent.

Administrative Settlement
Agreement

AED/MSEB # 7118

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Homier Distributing Company, Inc. (Homier), located at 84 Commercial Road, Huntington, Illinois 46750-8805.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve alleged violations of Section 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a), and 7547(d), and the regulations governing Emissions from New Nonroad Compression-Ignition Engines, codified at 40 C.F.R. Part 89, resulting from Homier's importation the of 80 tractors (Subject Tractors) identified in Attachment I.

Statutory Authority

2. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation into the United States of any new motor vehicle or new motor vehicle engine manufactured after the effective date of the applicable regulations unless such vehicle or engine is covered by an EPA certificate of conformity that is issued, and in effect.
3. Section 213(d) of the CAA, 42 U.S.C. § 7547(d), requires emission standards for nonroad vehicles and engines to be enforced in the same manner as emission standards for motor vehicles, and authorizes promulgation of regulations necessary to enforce the emission standards for nonroad vehicles.

4. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates Sections 203(a)(1) and 213(d), 42 U.S.C. §§ 7522(a)(1) and 7547(d), to a civil penalty of not more than \$25,000 for each nonroad vehicle or engine. Under the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and its implementing regulations, 40 C.F.R. § 19.4, the maximum civil penalty applicable to violations occurring before March 16, 2005, is \$27,500 per vehicle or engine, and the maximum civil penalty applicable to violations occurring on or after March 16, 2006, and before January 16, 2009, is \$32,500 per vehicle or engine.
5. Section 216(1) of the CAA, 42 U.S.C. § 7550(1), defines a manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or engines, or importing such vehicles or engines for resale.
6. Sections 216(10) and (11) of the CAA, 42 U.S.C. §§ 7550(10) and (11), define a nonroad engine as an engine that is not used in a motor vehicle, competition vehicle or stationary source.

Regulatory Authority

7. 40 C.F.R. § 89.2 defines a Nonroad Vehicle and Nonroad Equipment Manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment, or any person importing such vehicles or equipment for resale.
8. 40 C.F.R. § 89.2 defines Nonroad Vehicle as any vehicle that is self-propelled and is not a motor vehicle.
9. 40 C.F.R. §§ 89.102 and 89.112 codify the effective dates for regulation of certain classes of new nonroad compression-ignition engines. Engines that are manufactured after January 1, 1998, and have power ratings greater than or equal to 37 kilowatts (kw) but less than 75 kw, must comply with the emission standards and certification provisions of 40 C.F.R. Part 89.

10. 40 C.F.R. § 89.105 requires every manufacturer of a new nonroad compression-ignition engine to obtain an EPA-issued certificate of conformity for each model year prior to selling, offering for sale, introducing into commerce, or importing into the United States any new nonroad compression-ignition engine.
11. 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 under 40 C.F.R. Part 89, or any nonroad vehicle or equipment containing such engine, unless the engine is covered by a certificate of conformity that has been issued by EPA, and is in effect.
12. 40 C.F.R. § 89.1003(b)(4) requires certified engines to be incorporated into vehicles or equipment that are manufactured after the effective dates specified in 40 C.F.R. § 89.112.

Background:

13. Homier imported the Subject Tractors and sold them in the United States.
14. EPA has not issued a certificate of conformity which purports to cover the engines in the Subject Tractors.

Alleged Violations:

15. EPA alleges that Homier violated 40 C.F.R. §§ 89.1003(a)(1)(ii) and 89.1003(b)(4) by importing the Subject Tractors because they do not contain engines that are certified in accordance with 40 C.F.R. § 89.105.
16. Based on the forgoing, EPA alleges that Homier committed 80 violations of Sections 203(a)(1) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(1) and 7547(d).

Civil Penalty

17. Homier shall pay to the United States a civil penalty of thirty thousand dollars (\$30,000) (EPA penalty).
18. Homier agrees to pay the EPA penalty to the United States of America within thirty (30) calendar days of the effective date of this Agreement (penalty due date), but not before the effective date. Late payment of the EPA penalty is subject to interest and fees as

specified in 31 U.S.C. § 3717. Homier agrees to pay the amount in the manner specified in paragraph a or b below:

- a. Send a certified check or cashier's check payable to the United States of America, and mailed via United States Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7118

Simultaneously, fax a photocopy of the check to (202) 564-0069 to the attention of David Alexander, or scan and email a copy of the check to alexander.david@epamail.epa.gov. This check shall be identified with the case number, AED/MSEB # 7118, and Homier's name; or

- b. Pay online through the Department of the Treasury using WWW.PAY.GOV. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center and complete the SFO Form Number 1.1. The payment shall be identified with case number AED/MSEB # 7118. Within twenty-four hours of payment, fax a photocopy of the receipt of payment to (202) 564-0069 to the attention of David Alexander, or scan and email a copy of the receipt to alexander.david@epamail.epa.gov.

Notice

19. All written correspondence and submissions to EPA concerning this Agreement shall be sent to:

(Postal Service Mail)

David E. Alexander
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7118

(Courier Service)

David E. Alexander
U.S. EPA
Ariel Rios South, Room 1111A
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7118

General Provisions

20. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Homier.
21. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Homier 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(c) of the CAA, 42 U.S.C. § 7524(c), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the CAA, or pursue any other remedies available to it. Homier 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. Homier acknowledges that its tax identification number may be used for the purpose of collecting or reporting any delinquent monetary obligation arising from this agreement. (See 31 U.S.C. § 7701)
22. The parties represent that the individual or individuals executing this Agreement on behalf of Homier are authorized to do so on behalf of Homier and that such execution is intended, and is sufficient to bind Homier, its agents, assigns, or successors.
23. Homier waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
24. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
25. This Settlement is contingent upon the truthfulness, accuracy, and completeness of Homier's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations, and the prompt and complete remediation of any violations in accordance with each and every term of this Agreement.

Stipulated Penalties

26. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 17 -19 of this Agreement, Homier agrees to the following stipulated penalties as follows: for the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to Paragraphs 17 and 18 of this Agreement, Homier shall pay a stipulated penalty of \$500 per day.
27. 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 receipts(s) shall be sent to David E. Alexander in the manner specified in Paragraph 18.

Effect of Agreement


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

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of Homier Distributing Company, Inc., Respondent

AED/MSEB # 7118

The following agrees to the terms of this Agreement:

By: 

Date: 8-11-10

Typed or Printed Name: Charles Homier

Typed or Printed Title: President

Federal Tax Identification Number: 35-1581679

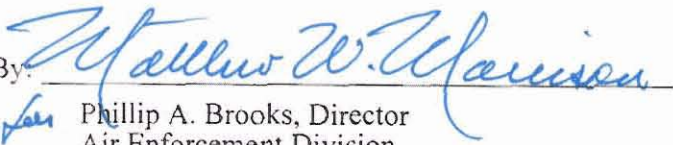
U.S. Environmental Protection Agency

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The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: 

pb Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: 8/30/10