

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

In the Matter of:)	
)	
Partech Industries, Inc.)	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
Respondent)	AED/MSEB - 7150

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Partech Industries, Inc., 5773 NW 151 Street, Miami, Florida 33014 (Respondent).

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve 256 alleged violations of Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. 7542, and 42 U.S.C. 7547, and the implementing compression-ignition (CI) engines nonroad regulations at 40 C.F.R. Part 89 (CI Non-Road Regulations), and the spark-ignition (SI) nonroad engine at or below 19 Kilowatts (kW) regulations at 40 C.F.R. Part 90 (SI Non-Road Regulations).

Statutory Authority:

2. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. 7522(a), and 42 U.S.C. 7547(d), prohibit any person from importing any new nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.

Regulatory Authority - CI Non-Road Regulations:

3. 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 covered by a Certificate of Conformity.
4. 40 C.F.R. § 89.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad 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. § 89.110.

5. 40 C.F.R. § 89.1004(b) provides that the “Administrator may exempt a new nonroad engine from §89.1003 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigation, studies, demonstrations, or training, or for reasons of national security.”
6. 40 C.F.R. § 89.1004(d) provides that a “new nonroad engine intended solely for export, and so labeled or tagged on the outside of the container and on the engine itself, shall be subject to the provisions of § 89.1003, except that if the country that is to receive the engine has emissions standards that differ from the standards prescribed under subpart B of this part, then the engine must comply with the standards of the country that is to receive the engine.”
7. 40 C.F.R. § 89.2 defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or a person acting for, and under the control of such person.
8. 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 identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.

Regulatory Authority - SI Non-Road Regulations:

9. 40 CFR § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any SI engine manufactured after the effective dates of the regulations, unless such engine is covered by a certificate of conformity issued by EPA.
10. 40 CFR § 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 effective dates of the regulations, unless a label or tag is affixed to the engine in accordance with 40 CFR § 90.114.

11. 40 CFR § 90.3 defines an engine manufacturer as any person who, among other things, imports nonroad SI engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.
12. 40 CFR § 90.114 requires the original engine manufacturer to affix, at the time of manufacture of a certified SI engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible after the engine is installed in the equipment.

Definitions:

13. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter*: as used in this Agreement means Respondent's importation of the 256 nonroad engines as described in Paragraph 17 of this Agreement (Subject Engines) and any civil liability that may apply to such violations.
 - b. *Certificate of Conformity*: the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 or 40 C.F.R. § 90.106, 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. Parts 89 or 90 and the CAA. 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 dates of the regulations and that is covered by a Certificate of Conformity.
 - d. *Uncertified engine*: a nonroad engine built after the applicable dates of the regulations but that is not covered by a Certificate of Conformity issued by EPA.
 - e. *Applicable regulation and dates*: 40 C.F.R. Part 89 is applicable to compression-ignition nonroad engines built after the applicability dates. 40 C.F.R. Part 90, is

applicable to nonroad SI engines at or below 19 kilowatts (kW) built after the applicable dates in 40 C.F.R. Part 90.

- f. *Export*: to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Destroy*: the complete destruction of the Subject Engine. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything.

Alleged Violations:

14. EPA alleges that Respondent imported into the United States the 256 generators containing CI or SI non-road engines (generator sets), as described in the Table below (the Subject Engines).

Entry Date	Entry No.	Engine Model No. Generator Model No.	Qty.	Manufacturer
1/27/2006	554-3416833-6	LT-154 (SI) LT1200C (SI Generator)	180	Fuzhou Launtop M and E Company Limited
1/27/2006	554-3416833-6	LT-154 (SI) LT1200CL(SI Generator)	16	Fuzhou Launtop M and E Company Limited
1/27/2006	554-3416833-6	LT-200 (SI) LT3000CL(SI Generator)	36	Fuzhou Launtop M and E Company Limited
1/27/2006	554-3416833-6	LT-390 (SI) LT6500CL(SI Generator)	12	Fuzhou Launtop M and E Company Limited
1/27/2006	554-3416833-6	LT-390 (SI) LTW200AE (SI Welder-Generator)	2	Fuzhou Launtop M and E Company Limited
1/27/2006	554-3416833-6	LA-186 (CI) LDW180AE (CI Welder-Generator)	2	Fuzhou Launtop M and E Company Limited
1/27/2006	554-3416833-6	LA-186 (CI) LDW180ASE (CI Welder-Generator)	8	Fuzhou Launtop M and E Company Limited

15. On March 13, 2006, U.S. Customs and Border Protection (Customs) at the Port of Fort Lauderdale, Florida seized the generator sets containing the 256 Subject Engines.

16. The Subject Engines were not proven to be certified, nor did they bear the required EPA Emissions Label.

17. The ten CI engines were claimed by Respondent to be exempted because they were solely for export, but neither the engines nor the container bore the labels or tags required under 40 C.F.R. § 89.1004(d).
18. Based on the forgoing, EPA alleges that Respondent committed 256 separate violations of Sections 203(a) and 213(d) of the CAA, and the CI or SI Non-Road Regulations, 40 C.F.R. Parts 89 and 90, respectively.

Terms of Agreement:

19. Within thirty days of this Agreement, or such longer period of time if required by Customs, Respondent shall export or destroy the Subject Engines. The exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the subject engines were either exported or destroyed.
20. Respondent has agreed to pay a civil penalty of \$5,800 under this Agreement. Accordingly, under this Agreement, within thirty days from the date of this Agreement Respondent shall pay \$5,800 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. Respondent agrees 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 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 7150

21. Within sixty days of the date of this Agreement, Respondent shall also provided to EPA a detailed plan reasonably calculated to ensure that all nonroad engines imported after the date of this Agreement into the United States by Respondent is covered under an EPA-issued certificate of conformity, have proper EPA emission labels affixed to each engine,

and are imported in a manner that complies with all other applicable regulations, including Part 89 or 90.

22. A copy of the payment check and all correspondence to EPA concerning this Agreement shall be sent to:

Jocelyn Adair, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W. Room 1109A
Washington, DC 20460
Attn: 7150

General Provisions

23. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
24. Respondent hereby represents that the individuals executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, Respondent's agents, assigns, or successors.
25. Notwithstanding any other provisions of this Agreement, upon Respondent'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. 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 40 C.F.R. Part 89 and 90. Respondent expressly waives Respondent's right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
26. This settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosure and representation to EPA, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties

27. 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 export or destroy the Subject Engines and provide proof thereof, pursuant to Paragraph 19, \$250.00 per day;
 - b. For failure to pay the civil penalty, pursuant to Paragraph 20, \$250.00 per day; and
 - c. For failure to submit to EPA, in writing, a plan to prevent further violations, pursuant to Paragraph 21, \$250.00 per day.
28. All stipulated penalties under Paragraph 27 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 manner specified in Paragraph 20 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 22. 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 Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

Enforcement

29. 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 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 Respondent of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

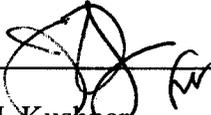
Partech Industries, Inc.

By: 
Printed Name: HABIB U. PARACHA
Printed Title: VICE PRESIDENT

Date: 7/17/06

**Administrative Settlement Agreement - *In the Matter of Partech Industries, Inc.*;
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U.S. Environmental Protection Agency

By:  _____ Date: 8-8-06

Adam M. Kushner
Director
Air Enforcement Division