

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

In the Matter of:	}	
	}	ADMINISTRATIVE
	}	SETTLEMENT AGREEMENT
Terex Cranes Wilmington, Inc. f/k/a	}	
The American Crane Corporation, and	}	
Cummins Inc.	}	AED/MSEB -7223
Respondents.	}	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), Terex Cranes Wilmington, Inc. f/k/a The American Crane Corporation (Terex), 202 Raleigh Street, Wilmington, NC 28412, and Cummins Inc. (Cummins), Box 3005, Columbus, IN 47202-3005 (Respondents).

Purpose:

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve four 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 Non-Road 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 Non-Road 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. A supplemental label meeting all the requirements may be attached to a location other than the engine, in cases where the required label must be obscured after the engine is installed in the equipment.

Definitions:

8. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* as used in this Agreement means Respondents's importation of the four nonroad engines as described in Paragraph 9 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, 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.

- c. *Certified engine*: a nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
- d. *Certificate holder*: the manufacturer who obtained from EPA a Certificate of Conformity.
- e. *Applicable regulation and dates*: 40 C.F.R. Part 89 is applicable to compression-ignition nonroad engines built after the applicability dates.
- 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:

- 9. On March 16, 2007, Terex imported into Savannah, Georgia the four cranes containing CI non-road engines (the Subject Engines), as described in the Attachment to this Agreement. The Subject Engines were manufactured by Cummins and Cummins is the Certificate Holder for the Subject Engines.
- 10. The U.S. Customs and Border Protection (Customs) inspection of the Subject Engines 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 April 19, 2007, EPA requested that the Customs Port in Savannah, Georgia seize the Subject Engines.
- 12. Based on the forgoing, EPA alleges that Respondents committed four violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the CI Non-Road Regulations, 40 C.F.R. Part 89.

Terms of Agreement:

13. Respondents have agreed to pay a civil penalty of \$35,000 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 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 7223

14. Within thirty days of this Agreement, or such longer period of time if required by Customs, Respondents shall export or destroy the Subject Engines. This exportation or destruction shall be carried out under the supervision of Customs. Respondents shall certify to EPA and provide supporting documents that the Subject Engines were either exported or destroyed.
15. In lieu of exporting or destroying each Subject Engine as required by Paragraph 14 of this Agreement, the Certificate Holder for the Subject Engines may 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). This corrective action shall be accomplished in the following manner:
- (a) the Certificate Holder shall send to EPA a sample of the proposed replacement label and a technical description of the method and procedures that the Certificate Holder will use to affix the replacement label to the Subject Engine. The replacement label must contain all the information specified at 40 C.F.R. § 89.110. In addition, the replacement label and method and procedures used to affix the label must be designed to ensure that the replacement label is

permanently affixed and cannot be removed without destroying or defacing the label. This submission, affidavit, and all other correspondence concerning this Agreement shall be sent to Jocelyn L. Adair, at the address specified in Paragraph 16 of this Agreement.

- (b) Where EPA determines that the proposed sample label is deficient, EPA may notify the Certificate Holder and Terex of the deficiency of the proposed label within five days of receiving the proposed label from the Certificate Holder. If EPA provides comments on the deficiency of the label or process for affixing the label, the Certificate Holder shall revise its label and/or process according to EPA's comments or provide EPA with an explanation as to why the label/or process is not deficient.
- (c) 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, and destruction of any unused replacement label.
- (d) This corrective action shall be conducted under the observation of U.S. Customs, or a board certified licensed professional engineer (Observer) not employed directly by either Terex or the Certificate Holder. The corrective action shall be completed within thirty days following the date of this Agreement, or such longer period of time if requested by Respondents and approved by EPA for good cause shown.
- (e) The Certificate Holder shall remove the 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 “ (a)”.
- (f) After the replacement label has been affixed to each of the four Subject Engines, the Observer shall randomly select one Subject Engine from each model (the Test Sample Engines) to determine whether or not the replacement label is

permanently attached 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. However, 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 model Subject Engines must be exported or destroyed.

- (g) 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 sold or introduced into commerce.
- (h) Within thirty days 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 report that fully describes and certifies the corrective action taken. The report must include the following:
 - (1) 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,

- (2) an unconditional statement from the Certificate Holder certifying that the Subject Engines comply with all requirements of the Clean Air Act and 40 C. F. R. Part 89.
- (i) Where 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 been performed, the Observer will report his or her findings to EPA and Respondents shall either export or destroy the Subject Engines.
- (j) The Observer shall destroy all the removed labels no later than the day the last Subject Engine receives a replacement label.
16. A copy of the payment check and all correspondence to EPA 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-7223

(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:

17. Within thirty days from the date of this Agreement, the Certificate Holder shall initiate a thorough review and assessment of its non-road 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 non-road 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 non-road 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.

The Certificate Holder shall complete the review and analysis required by this Paragraph 17, 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 Respondents as a result of the Root Cause Analysis and Corrective Action Plan.

General Provisions:

- 18. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondents.
- 19. 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.

20. 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 agree 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.
21. 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:

22. 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 pay the civil penalty or provide proof thereof, pursuant to Paragraphs 13 and 16, \$250.00 per day; and
 - b. For failure to export or destroy or relabel the Subject Engines or provide proof thereof, pursuant to Paragraphs 14, 15, and 16, \$250.00 per day.
 - c. For failure to provide the reports specified in Paragraphs 15 and 17, \$250 per day.
23. All stipulated penalties under Paragraph 22 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 13 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 16. 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's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

Enforcement:

24. 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:

Terex Cranes . . . Wilmington, Inc. f/k/a The American Crane Corporation:

By: 
Printed Name: ERIC I COHEN
Vice President
Printed Title: _____

Date: May 10, 2007

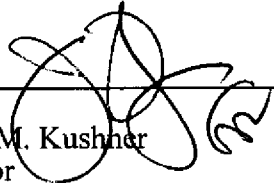
Cummins Inc.:

By: 
Printed Name: RICHARD E. KLEINE
Printed Title: VICE PRESIDENT OFF HIGHWAY

Date: MAY 9, 2007

Administrative Settlement Agreement - *In the Matter of Terex of Wilmington, Inc. f/k/a The American Crane Corporation, and Cummins Inc.*; AED/MSEB - 7223

U.S. Environmental Protection Agency

By:  _____ Date: 5.14.07 _____

Adam M. Kushner
Director
Air Enforcement Division

Attachment 1

Table: Description of Equipment and Diesel Engines

Entry Date	Entry Number	Model		Manufacturer	
		Equipment	Engine	Equipment	Engine
3/16/2007	WBA-15735706	Crane HC60	AC4233	Terex	Cummins
3/16/2007	WBA-15735706	Crane HC80	AC4237	Terex	Cummins
3/16/2007	WBA-15735706	Crane HC110	AC4259	Terex	Cummins
3/16/2007	WBA-15735706	Crane HC275	AC4218	Terex	Cummins