

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

In the Matter of:)	
)	ADMINISTRATIVE SETTLEMENT
DEUTZ Corporation)	AGREEMENT
)	
Respondent)	AED/MSEB - 7114
)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Deutz Corporation (Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Part 89.

Purpose

The purpose of this Agreement is to resolve all claims by EPA under Section 203(a)(3)(A) of the Act, 42 U.S.C. § 7522(a)(3)(A), and the implementing nonroad compression-ignition (CI) engine regulations at 40 C.F.R. Part 89, arising out of the modification of twelve engines while ensuring that prior violations are identified and resolved and future violations are avoided.

Definitions

1. For the purposes of this Agreement, the following definitions apply:
 - (a) *Certified engine* means a CI nonroad engine built after the applicable date(s) of the Part 89 regulations and which is covered by a valid certificate of conformity as defined in 40 C.F.R. § 89.602.



Applicable Statutory and Regulatory Provisions

2. Section 203(a)(3)(A) of the Act, 42 U.S.C. § 7522(a)(3)(A) prohibits any person to knowingly remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with the regulations after such sale and delivery to the ultimate purchaser (the tampering prohibition).
3. Under Section 205(a) of the Act, 42 U.S.C. § 7524(a), any person who violates Section 7522(a)(3)(A), is subject to a civil penalty of not more than \$25,000 per violation.
4. 40 C.F.R. § 89.1003(a)(3) prohibits any person from removing or rendering inoperative a device or element of design installed on or in a nonroad engine, vehicle or equipment in compliance with regulations after the sale and delivery to the ultimate purchaser.
5. 40 C.F.R. § 89.2 defines an engine manufacturer as any person who, among other things, imports nonroad engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines.

Background

6. In August 2004, DEUTZ supplied Volvo Construction Equipment (VCE) with twenty (20) engines with mechanical injection systems for their SuperPac Rollers. These engines are designated D6D RAE2 and are certified by EPA as nonroad compression-ignition engines with the family designation 4DZXL06.1028.

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7. At VCE's request, DEUTZ modified twelve of these engines (the Subject Engines) by advancing the injection timing 1 degree in order to eliminate white smoke emissions.
8. The modification was conducted at the VCE facility in North Carolina by authorized DEUTZ personnel under guidance from DEUTZ.
9. The timing of fuel injection into an engine's combustion chamber has a direct impact on NOx emissions. Fuel injection earlier in the combustion cycle, known as "advanced timing," increases NOx emissions.
10. Injection timing is an element of design installed in a motor vehicle engine in compliance with the engine emissions certificate regulations. As a consequence, modification of engine timing outside the timing parameter specified in the EPA emissions certificate constitutes tampering, in violation of Section 203(a)(3)(A) of the Act, 42 U.S.C. § 7522(a)(3)(A).
11. The 20 engines identified in Paragraph 6 were removed from the VCE SuperPac Rollers and exported back to Germany. New certified DEUTZ engines were installed in the VCE SuperPac Rollers.
12. Based on the forgoing, EPA alleges that Respondent committed twelve violations of the tampering prohibition in Section 203(a)(3)(A) of the Act, 42 U.S.C. § 7522(a)(3)(A) and the nonroad compression-ignition engine regulations at 40 C.F.R. § 89.1003(a)(3).
13. Respondent notified EPA of this violation in a letter dated August 19, 2004.
14. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreement, contained herein, which consideration is

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acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

15. Within sixty (60) days from the date of this Agreement, Respondent shall provide EPA with a plan to prevent future tampering violations.

16. The response to Paragraph 15 shall be sent to Ann M. Stephanos, the EPA attorney assigned to this case, at the following address:

Via Regular Mail:

Via Courier Service:

U.S. Environmental Protection Agency
OECA/Air Enforcement Division
Ariel Rios Building (2242A)
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

U.S. Environmental Protection Agency
Air Enforcement Division
Ariel Rios Building (Rm. 1109A)
1200 Pennsylvania Ave., N.W.
Washington, DC 20004

17. Respondent shall pay to the United States Eighteen Thousand Dollars (\$18,000.00) within thirty (30) days of the 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 - 7114

Simultaneously, a photocopy of the check shall be mailed to Ann M. Stephanos at the address specified in Paragraph 16 or faxed to (202) 564-4006. Such check shall be identified with the case number and Respondent's name.



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 Respondent.
19. 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.
20. Upon failure to timely perform pursuant to Paragraphs 15 -17 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by the Respondent, 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, or 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 Part 89. Respondent expressly waives its right to assert that such action is barred by any applicable statutes of limitation. *See, e.g.,* 28 U.S.C. § 2462.

Stipulated Penalties

21. Respondent shall pay stipulated penalties of five hundred dollars (\$500.00) per day to the United States for failure to comply with the terms of this Agreement as follows:
 - a. Failure to pay the civil penalty, or provide proof of such payment, pursuant to Paragraph 17; and



- b. Failure to submit to EPA, in writing, a plan to prevent future violations, pursuant to Paragraph 15.
22. All stipulated penalties under Paragraph 21 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.
23. All stipulated penalties shall be paid in accordance with Paragraph 17 and shall be paid with five (5) 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 the Agreement is based.
24. The effect of the settlement described in Paragraph 26 below is conditional upon the truthfulness, accuracy and completeness of Respondent's representations to EPA, as memorialized in Paragraphs 6-11 of this Agreement.
25. The terms of this Agreement shall be the complete settlement of all civil administrative claims and causes of action that EPA could allege against Respondent, any of its affiliates, distributors, dealers, customers, or any other person or entity under the Act for violations based upon facts known to EPA on or before the effective date of this Agreement with respect to the Subject Engines.

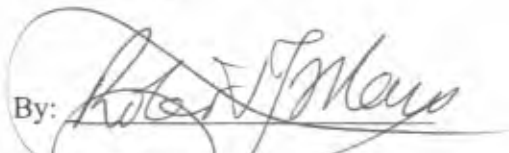
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Enforcement

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

The following agree to the terms of this Agreement:

DEUTZ Corporation

By: 
Robert T. Mann
President

8/15/05
Date



**Administrative Settlement Agreement in the matter of United States v.
DEUTZ Corporation**

U.S. Environmental Protection Agency

By: Camela J. Mazolek

8/19/05

for Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance
Assurance

Date

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