

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

In the Matter of:)	
)	
U-Brothers Equipment Co., Ltd.)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
Respondent.)	AED/MSEB: 7129

THIS ADMINISTRATIVE SETTLEMENT AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and U-Brothers Equipment Co., Ltd., 24700 Chagrin Boulevard, Suite 200, Beachwood, Ohio 44122 (U-Brothers or Respondent).

Purpose:

The purpose of this Administrative Settlement Agreement (Agreement) is to resolve twenty-five alleged violations of Section 213 of the Clean Air Act (CAA), 42 U.S.C. § 7547, and the implementing compression-ignition (CI) engines nonroad regulations at 40 C.F.R. Part 89. These violations are described in Tables 1 and 2, Paragraphs 7 and 8 of this Agreement, respectively.

Definitions

1. For the purposes of this Agreement, the following definitions apply:
 - (a) *Certified Engine* means a new or remanufactured 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.
 - (b) *Uncertified Engine* means a CI nonroad engine built after the applicable date(s) of the Part 89 regulations but which is not covered by a valid certificate of conformity issued by EPA as described in 40 C.F.R. § 89.105.
 - (c) *Export* means to export an engine or machine outside of the United States and its Territories to some country other than Mexico or Canada.
 - (d) *Destroy* means to render an engine or machine completely inoperable in a manner so that the action cannot be reversed or repaired.
 - (e) *Remediate the violation* means (1) to export the uncertified engine and machine, or (2) to remove the uncertified engine from the machine and install a certified engine in the machine and export or destroy the removed uncertified engine. In

addition, with respect to any falsely labeled engines, remediate shall also include having the engine manufacturer or representative to remove the false emissions labels in the presence of an U.S. Customs or EPA representative.

Regulatory Authority

2. 40 C.F.R. § 89.1003(a)(1) prohibits manufacturers and any other person from importing into the United States any nonroad engine manufactured after the effective date of the regulations, unless such engine is covered by a currently valid certificate of conformity.
3. 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 or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110.
4. 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.
5. 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 state that the engine conforms to applicable EPA regulations. The label must be legible and readily visible to the average person after the engine is installed in the equipment.

Background

6. On March 14, 2002, to facilitate the release of four CI engines from U.S. Customs, U-Brothers entered into an Administrative Settlement Agreement with EPA, AED/MSEB - 6066. The AED/MSEB - 6066 Agreement required U-Brothers to perform a "paper audit" to determine whether or not the CI engines that it imported between January 1, 1996, and March 14, 2002, were covered under an EPA-issued certificate of conformity. The AED/MSEB-6066 Agreement also required U-Brothers to randomly inspect at least 10% of the CI engines that it had imported to determine whether or not the engines bore the required EPA emissions label.
7. On August 19, 2003, as required by the AED/MSEB-6066 Agreement, U-Brothers disclosed to EPA that it may have imported seventeen uncertified CI engines as identified in Table 1 below:

Table 1
Seventeen Uncertified Engines Self-Disclosed by U-Brothers

Number	Engine Serial Number	Engine Manufacturer	Engine Model
1	13Z38417	Caterpillar	3306TA
2	1CK15507	Caterpillar	C3116TA
3	41Z19937	Caterpillar	3406C
4	DE12TI000077LA	Daewoo	DE12T
5	000197EA	Daewoo	DE12T
6	1900095LA	Daewoo	DE12T
7	GN21231	Daewoo	DE12T
8	000189EA	Daewoo	DE12T
9	TD11718	Hitachi	H07C
10	210199	Komatsu	SA6D125E-2
11	86180	Komatsu	SA6D125E-2
12	210238	Komatsu	SA6D125E-2
13	210266	Komatsu	SA6D125E-2
14	210313	Komatsu	SA6D125E-2
15	210342	Komatsu	SA6D125E-2
16	210346	Komatsu	SA6D125E-2
17	210349	Komatsu	SA6D125E-2

8. EPA and U.S. Customs independently investigated and identified eight Mitsubishi engines imported by U-Brothers to the United States. The engines are described in Table 2 below. Seven of these engines were uncertified, and eight of these engines bore false EPA Emissions Labels stating that the engines were certified. Mitsubishi, the original engine manufacturer, denied affixing the labels to these engines.

Table 2:

Eight Falsely-Labeled Mitsubishi Engines Independently Discovered

NOTE: * Indicates That The Engine Is Certified

	Engine Serial Number	Mitsubishi Engine Model
1	078336	6D34-TE1/TUA
2	078256	6D34-TE1/TUA
3	080652	6D34-TE1/TUA
4	081512*	6D34-TE1/TUA/TEB
5	077586	6D34-TLE1/TLUC
6	077606	6D34-TLE1/TLUC
7	074951	6D34-TLE1/TLUC
8	946874	6D34-TLE1/TLUA

9. EPA's Self-Disclosure Policy allows EPA to not seek a gravity-based (i.e., non-economic benefit) penalty where the violator finds the violation through voluntary environmental audits or efforts that reflect due diligence, and promptly discloses and expeditiously corrects the violation.
10. The Self-Disclosure Policy also imposes important safeguards to prevent abuses of its use. These safeguards require: (1) prompt disclosure of the violation, (2) expeditious correction of the violation, (3) action to prevent recurrence of the violation, and (4) action to remedy any environmental harm that occurred as a result of the violation. Additionally, certain violations are ineligible for consideration under the policy such as: (1) repeat violations, (2) violations that caused actual harm, (3) violations that present imminent and substantial endangerment, and (4) violations that will allow companies to gain an economic advantage over competitors by delaying their investment in compliance.
11. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

12. EPA has determined not to seek a gravity-based penalty for the seventeen uncertified CI engine violations described in Table 1, Paragraph 7, provided that within one year from the date that this Agreement is executed by EPA ("the due date"), Respondent remediates each violation.
13. As for the eight violations described in Table 2, Paragraph 8, EPA has determined to reduce the civil penalty to \$43,000, provided that within thirty days from the date that this Agreement is executed by EPA or within fifteen days from the date that EPA removes or supervises the removal of the false emissions labels, whichever is later, Respondent takes all appropriate action to remediate each violation. Such action shall include, but is not limited to, fulfilling all U.S. Customs requirements, requesting that U.S. Customs release the uncertified engines for export or destruction, and, making appropriate arrangements and agreements to have the uncertified engines immediately exported or destroyed.
14. Respondent shall pay \$43,000 to the United States of America within thirty days from the date that this Agreement is executed by EPA ("the due date"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent shall 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-7129
15. Within twenty days of Respondent's completion of the corrective action as described in Paragraphs 12 and 13, Respondent shall submit a compliance verification report to EPA. This report shall include the name, address, and telephone number of the person who remediated each violation; invoices for the purchase of the replacement certified engines, and invoices for the removal of the uncertified engines from the machines, and installation of the certified engines into the machines. For each machine, the engine serial number of the uncertified engine that was removed from the machine and the engine serial number of the certified engine that was installed in the machine; a digital picture of each installed certified engine bearing the required EPA emissions label; the date(s) on which each uncertified engine was removed and replaced with a certified engine; documents that evidence that the uncertified engine or both the uncertified engine and machine was destroyed or exported; and a copy of the warranty provided on each certified engine.
16. Respondent shall accept civil liability for all fines, penalties or forfeitures resulting from the re-importation or use in the United States of any of the uncertified engines described in

Tables 1 and 2 by U-Brothers, or any of its affiliates. Respondent further agrees, with respect to any contract of sale of any of the uncertified engines described in Tables 1 and 2 by Respondent or any of its affiliates, to: (a) put the buyer on notice that the engine is not covered by an EPA-issued certificate of conformity and may not lawfully be imported or used in the United States and its territories; (b) obtain an agreement from the buyer that the buyer will not re-import or sell the engine for use in the United States or its territories; and, (c) obtain an agreement from the buyer that, in the event that the buyer sells the engine to another purchaser, the buyer will put that purchaser on notice that the engine is not covered by an EPA-issued certificate of conformity and may not lawfully be imported or used in the United States and its territories.

17. All correspondence concerning this Agreement, including a copy of the payment check shall be sent to the EPA attorney assigned to this case, J. L. Adair, Esq., and mailed to:

(In the case of regular mail)

(In the case of courier service)

U.S. EPA, OECA/AED (2242A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

U.S. EPA, Ariel Rios (Room 1109A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Stipulated Penalties:

18. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 12 through 16 of this Agreement, Respondent agrees to the following stipulated penalties:

- a. For the failure to remediate each violation as required by Paragraphs 12 and 13 of this Agreement, Respondent agrees to pay a stipulated penalty of \$27,500 per engine.
- b. For the failure to timely submit the report as required by Paragraph 15 of this Agreement, Respondent agrees to pay a stipulated penalty of \$100 per day for the late report.
- c. For the failure to pay the civil penalty or submit the report within thirty days after the due date of the payment or report, Respondent shall be in default of this Agreement. Upon such default, Respondent shall pay a stipulated penalty of \$27,500 per engine.

19. Stipulated penalties provided for in this Agreement shall automatically begin to accrue on the day performance is due or the non-compliance occurs, and shall continue to accrue through the day performance is completed or the non-compliance ceases. Nothing herein shall be construed to prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. Payment of stipulated penalties as set forth above is

in addition to, and the United States specifically reserves all other rights or remedies which may be available to the United States by reason of Respondent's failure to comply with the requirements of this Agreement, or any federal, state or local law or regulation applicable to Respondent.

20. Stipulated penalties from the date of accrual are due and payable upon demand by EPA on or before the thirtieth day following the demand and shall be due and payable monthly thereafter. Late payment of stipulated penalties shall be subject to interest and fees as specified in 31 U.S.C. § 3717. All stipulated penalties shall be paid by cashiers or certified check or electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 306277M
Pittsburgh, Pennsylvania 15251
Attention: AED/MSEB -7129

A copy of the transmittal letter and check shall be sent to J. L. Adair at the address specified in Paragraph 17.

21. The parties further agree that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to section 213(d) of the Act, 42 U.S.C. § 7547(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to section 213 of the Act; or pursue any other remedies available to it. Respondent expressly waives its right to assert that such engines are certified, 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.
22. The effect of settlement described in Paragraph 23 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
23. 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 Clean Air Act for violations based upon facts known to EPA on or before the effective date of this Agreement with respect to the engines described in Tables 1 and 2, Paragraphs 7 and 8, respectively.

Enforcement

24. This Agreement does not preclude any other action by EPA for violations that are not a part of this Agreement, or any future violations of the Clean Air Act or regulation promulgated thereunder.

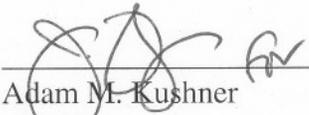
U-Brothers Equipment Co., Ltd.

By: 

11/15/05
Date

Administrative Settlement Agreement In the Matter of: *U-Brothers Equipment Co., Ltd.*;
AED/MSEB # 7129

U.S. Environmental Protection Agency

By:  _____
Adam M. Kushner
Director
Air Enforcement Division

11-30-05
Date