

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

In the Matter of:)	
)	
)	Administrative Settlement
)	Agreement
Toyota Industries Corporation,)	
)	AED/MSEB # 7276
Respondent)	
)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Toyota Industries Corporation, with its head office located at 2-1-1 Toyoda-cho Kariya-shi Aichi-ken Japan 448-8671 (Toyota or Respondent), regarding Respondent's compliance with the requirements of the Clean Air Act (the Act) and the control of emissions from new and in-use non-road compression-ignition engines promulgated thereunder at 40 C.F.R. Part 89.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and 40 C.F.R. Part 89 arising out of Toyota's Emission Defect Information Report (EDIR) concerning 469 non-road compression-ignition (CI or diesel) engines which were shipped without the required EPA Emission control information label attached to each engine.

Statutory Authority

2. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any new non-road engines or vehicles unless the engine or vehicle is

covered by a Certificate of Conformity issued and in effect, and bearing the required label as provided under 40 C.F.R. § 89.110.

Regulatory Authority

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 non-road 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 non-road 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 non-road 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.

Definitions:

8. For the purposes of this Agreement. The following definitions apply:
- a. *Application regulation and dates:* 40 C.F.R. Part 89 is applicable to CI non-road engines built after the applicability dates.
 - b. *Certified Engine:* A non-road engine built after the applicable dates of the regulation and that is covered by a Certificate of Conformity.
 - c. *Certificate Holder:* The manufacturer who obtained from EPA a Certificate of Conformity.
 - d. *Certificate of Conformity:* The document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 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.
 - e. *Corrective Action:* Action taken by one or more Respondents to remedy the violations alleged by EPA in this Agreement.
 - f. *Export:* To transport to a location outside of the United States and its territories, Canada, and Mexico.
 - g. *Observer:* A U.S. Customs and Border Protection (U.S. Customs) representative or an independent board certified licensed professional engineer.
 - h. *This matter:* As used in this Agreement refers to the violations reported in Respondents' EDIR, the injunctive relief/corrective action required by this Agreement, and any liability that may apply to such alleged violations.

Alleged Violations:

9. On or about June 8, 2007, Toyota submitted an EDIR to EPA which disclosed that Toyota had shipped 469 lift trucks containing CI non-road engines without the required EPA Emission control information label attached to each engine (Subject Engines). The Subject Engines are described in Appendix A to this Agreement.
10. Based on the foregoing, EPA alleges that Respondents committed 469 violations of 40 C.F.R. § 89.110(a)(1), which are enforceable pursuant to Sections 203(a) and 213(d) of the CAA.

Injunctive Relief/Corrective Action:

11. The Certificate Holder for the Subject Engines shall:
 - a. Remove each original label from the Subject Engine and affix a complying EPA emissions information label to each of the Subject Engines (replacement label). A copy of the form of emissions label EPA has agreed complies with 40 C.F.R. § 89.110(a)(1) is attached hereto as Appendix B to this Agreement.
 - b. Provide to EPA a technical description of the method and procedures that the Certificate Holder shall use to affix the replacement label to the Subject Engines to ensure that each replacement label is permanently affixed and cannot be removed without destroying or defacing the label.
 - c. establish and fully document a chain of custody for
 - i. the replacement labels from the time of production until the time of installation on the Subject Engines, and
 - ii. destruction of any unused replacement labels.
 - d. Perform this injunctive relief/corrective action under the direction of the Observer.

The injunctive relief/corrective action shall be completed no later than thirty (30) days from the effective date of this Agreement, or such longer period of time if requested by Respondents and approved by EPA for good cause shown.

- e. Attach the replacement label in accordance with the method and procedures submitted to EPA in the above Subparagraph "b."
 - f. Contact EPA for relabeling procedures in the event that an original label on any Subject Engine is not accessible. The Certificate Holder shall identify the equipment and Subject Engine by Model and serial number, and provide such information (e.g., photographic evidence) as may be requested by EPA demonstrating engine label inaccessibility.
12. After the replacement label has been affixed to each of the 469 Subject Engines, the Certificate Holder shall have the Observer randomly select one Subject Engine from each equipment model (Test Sample Engines) to determine whether or not the replacement label is permanently affixed 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.
13. 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 equipment shall be exported.
14. Where the replacement label on a Test Sample Engine contains all the specified information, is permanently affixed and cannot be removed without destroying or defacing the label, the Test Sample Engine and the related equipment model Subject Engines is

deemed to comply with 40 C.F.R. § 89.110.

15. No later than thirty (30) days from the effective date 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 written report that fully describes the injunctive relief/corrective action taken, and certifies that such injunctive relief/corrective action was conducted as described. The report must include the following:
 - a. An affidavit from the Certificate Holder who has performed the corrective action work. The affidavit shall certify the date and place of the injunctive relief/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; and
 - b. 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.

Civil Penalty:

17. Respondents have agreed to pay to the United States of America a civil penalty of \$37,000 no later than thirty (30) days from the effective date of this Agreement. 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 26 of this Agreement. Respondents agree to pay the amount by certified check or cashier's check payable to the United States of America, and mail to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7276

Alternatively, Respondents may affect an electronic funds transfer in the amount of \$37,000 with the notation "Toyota Industries Corporation Administrative Settlement Agreement for Case No.: AED/MSEB-7276" using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010727
Bank Holding Account:	Treas_NYC
Routing Number:	021030004

The costs of such electronic funds transfer shall be Respondents' responsibility.

18. All correspondence, reports, and copies of payment checks concerning this Agreement shall be sent to:

(Regular Mail)

Angela E. Fitzgerald, Esq.
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attn: AED/MSEB- 7276

(Courier Service)

Angela E. Fitzgerald, Esq.
U.S. Environmental Protection Agency
Ariel Rios South, Rm 1117A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attn: AED/MSEB- 7276

Or via telefax where an original is not required at 202/564-0015.

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

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 Respondent.
21. Notwithstanding any other provision of this Agreement, the parties 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 205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act, or pursue any other remedies available to it. Respondent 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.
22. The parties represent 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.
23. Respondent waives its rights, if any, to a hearing, trial, or any other proceeding on any issue of fact or law relating to the matters consented 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 Respondent's disclosures and representations to EPA under this Agreement including, but not limited to, representations regarding importations contained in Attachment 1 and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties

26. 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 pay the civil penalty, or provide proof thereof, described in Paragraph 17, above, \$250.00 per day;
 - b. For failure to submit the report, affidavit and statement described in Paragraph 15 by the date specified, \$250.00 per day.
27. All stipulated penalties under Paragraph 26 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 United States of America within 5 days of written demand by EPA (the due date) and in either manner specified in Paragraph 17 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 stipulated penalty amount.

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 Respondent in the event of default or noncompliance with this Agreement, for violations of Sections 203 or 213 of the Act, 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 Respondent of responsibility to comply with other state, federal, or local laws or regulations.

**U.S. Environmental Protection Agency
Settlement Agreement In the Matter of Toyota Industries Corporation
AED/MSEB # 7276**

The following agree to the terms of this Agreement:

By: Kenji Hirota Date: 8/22/2008

Type or
Printed Name: Kenji Hirota

Type or
Printed Title: Product Planning Manager

**U.S. Environmental Protection Agency
Settlement Agreement In the Matter of Toyota Industries Corporation
AED/MSEB # 7276**

The following agree to the terms of this Agreement:

United States Environmental Protection Agency

By:  _____

Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: 9/11/08

APPENDIX A

**In the Matter of Toyota Industries Corporation
AED/MSEB # 7276
Settlement Agreement with U.S. Environmental Protection Agency**

LIST OF SUBJECT ENGINES