

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

In the Matter of:Volvo Construction Equipment
North America, Inc., a Delaware
Corporation, and Deutz
Corporation, a Delaware
Corporation,

**ADMINISTRATIVE SETTLEMENT
AGREEMENT****AED/MSEB No. 6060**

THIS ADMINISTRATIVE SETTLEMENT AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Volvo Construction Equipment North America, Inc., a Delaware corporation, ("VCENA") and Deutz Corporation, a Delaware corporation, ("Deutz") (hereinafter jointly referred to as "Importer"), regarding compliance by Importer with the requirements of the Clean Air Act and the regulations promulgated thereunder at 40 C.F.R. Part 89 ("Regulations").

Purpose

The purpose of this Administrative Settlement Agreement ("Agreement") is to facilitate handling of equipment containing uncertified engines as described in Table 1; while ensuring that prior violations are identified and resolved, present violations are corrected and future violations are avoided. Hereinafter, the term "Subject Equipment" shall mean the equipment set forth in Table 1. Hereinafter, the term "Subject Engines" shall mean the engines set forth in Table 1.

Table 1: Description of Subject Equipment/Engines

VCENA Machine Model	Engine Serial No.	Machine Serial No.	Location if Imported into U.S.
EC240B	639986	10003	Asheville, NC
EC240B	657393	10032	Seattle, WA
EC240B	662412	10051	Long Beach, CA
EC240B	663059	10046	Long Beach, CA
N/A-engine only	639936	N/A	Asheville, NC
N/A-engines	MY 2001 Deutz manufactured engines for VCENA use which will be imported into the United States	N/A	Not yet imported into the United States

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - a. *Certified engine*: a compression ignition nonroad engine built after the applicable date(s) of the regulations and which is covered by a certificate of conformity issued by EPA.

- b. *Uncertified engine*: a compression ignition nonroad engine built after the applicable date(s) of the regulations but which is not covered by a certificate of conformity issued by EPA.
- c. *Exempted engine*: a compression ignition nonroad engine built prior to the applicable date(s) of the regulations.
- d. Applicable regulation and dates: 40 C.F.R. Part 89, applicable to compression ignition nonroad engines built after the following dates
 - 1) January 1, 1996, for 175 hp to 750 hp
 - 2) January 1, 1997, for 100 hp to < 175 hp
 - 3) January 1, 1998, for 50 hp to < 100 hp
 - 4) January 1, 1999, for 25 hp to < 50 hp
 - 5) January 1, 2000, for 0 to < 25 hp and > 750 hp.

Regulatory Authority

- 3. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any 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 or tag is affixed to the engine in accordance with 40 C.F.R. § 89.110-96.

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.
6. 40 C.F.R. § 89.110-96 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.

Background

7. On or before January 14, 2002, Importer imported or caused the importation into the United States of five (5) engines manufactured in 2001, that were not covered by a certificate of conformity as required by 40 C.F.R. § 89.1003(a)(1)(ii). The five engines were manufactured in 2001 by Deutz for use by VCENA. Although applied for, no certificate of conformity was ever issued for these MY 2001 engines. The importation of these five engines into the United States constitutes five separate violations of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), for which Importer is liable.
8. Importer has identified approximately 600 additional engines that were manufactured in 2001 for importation into the United States that are not covered by a certificate of conformity as required by 40 C.F.R. § 89.1003(a)(1)(ii) that have not yet been imported into the United States. These engines were also manufactured in 2001 by Deutz for use by VCENA. Although applied for, no certificate of conformity was ever issued for these MY 2001 engines. As these engines have not yet been imported into the United States,

there is not yet a violation of the CAA with respect to these engines. However, to prevent violations of the CAA from occurring, this Agreement applies to these engines.

Terms of Agreement

Representation that 2001 Engines are Identical to 2002 Engines

9. Importer hereby represents that it has obtained a certificate of conformity for engines manufactured in 2002 ("2002 Certificate of Conformity") see Attachment 1, 2002 Certificate of Conformity. Importer further represents that the Subject Engines are identical in every respect to the engines covered by the 2002 Certificate of Conformity, including in materials, design, performance, components, parameters, dimensions and emissions.

Representation that Other Engines are Certified

10. Importer shall inspect and/or review information sufficient to establish that all of the engines and equipment containing engines imported into the United States prior to January 14, 2002, except with respect to the Subject Engines, are certified as required by the Clean Air Act. Importer shall, within sixty (60) days of the effective date of this Agreement, submit an affidavit to EPA representing that it has complied with this Paragraph, setting forth the engines that were imported and were covered by a certificate of conformity as required by the CAA, and setting forth the engines that were imported that were not covered by a certificate of conformity as required by the CAA. With respect to the engines that did not comply, Importer shall state in the affidavit what was done to remedy the situation.

Plan to Prevent Future Violations

11. VCENA and Deutz, within thirty (30) days from the date of this Agreement, shall each provide EPA with a plan that shall ensure that all engines or pieces of equipment containing engines imported into the United States, after the date of this Agreement, are certified and bear readily visible EPA emission labels. In addition, the plan shall ensure there are significant improvements in each of VCENA and Deutz's procedures for obtaining, tracking and complying with the requirements of certificates of conformity. VCENA and Deutz within thirty (30) days from the date of this Agreement shall each submit an affidavit and other substantiating information, to EPA to demonstrate that they have established and implemented their plans.

Labeling of Uncertified Engines

12. Importer agrees to remedy the alleged violations by identifying all engines and equipment containing engines manufactured in 2001 that are not covered by a certificate of conformity that have been or are going to be imported into the United States. Importer agrees to remove the label on these engines and replace it with a label from the original engine manufacturer (Deutz) as required by 40 C.F.R. § 89.110-96 indicating that the engine is covered by the 2002 Certificate of Conformity. Importer hereby represents that each of the engines for which the label is changed shall be covered by all warranties the same as if that engine was manufactured in 2002. Importer shall submit quarterly reports to EPA substantiating that the remedial efforts required by this Paragraph have been performed including identification of all engines onto which new labels have been affixed and when the labels were so affixed.

Payment of EPA Civil Penalty

13. After considering the gravity of the violations, the economic benefit/savings resulting from the violations, the size of Importer's business, Importer's history of compliance, actions taken by Importer to remedy the violations, the effect of the penalty on Importer's ability to continue in business, the terms of this Agreement and other facts presented by Importer, EPA has agreed to conditionally remit and mitigate the EPA civil penalty for the five violations set forth in Paragraph 7 to Twenty Thousand Dollars (\$20,000), for which VCENA is responsible for Eleven Thousand Dollars (\$11,000) and Deutz is responsible for Nine Thousand Dollars (\$9,000), pending successful completion of the terms of this Agreement. Importer agrees to pay the EPA civil penalty amount of Twenty Thousand Dollars (\$20,000) as follows: The EPA civil penalty amount of Twenty Thousand Dollars (\$20,000) shall be payable on or before sixty days after the effective date of this Agreement. In accordance with the Debt Collection Act of 1982, if the EPA civil penalty amount is not paid within 30 days following its due date, interest shall accrue from the due date at a rate to be furnished each quarter by the EPA Fiscal Policies and Procedures Branch, through the date of actual payment. A late payment handling charge of \$20.00 shall also be imposed if the amount is not paid by the due date, with an additional charge of \$10.00 for each subsequent 30 day period. A 6% per annum penalty shall be applied on any principal amount not paid within 90 days of the due date. Importer agrees that the civil penalty amount shall be paid by cashier's check or certified check payable to the "United States of America" submitted to the EPA Washington Accounting Operations, P.O. Box 360277M, Pittsburgh, Pennsylvania 15251, with a copy to Marcia S. Ginley,

Attorney for EPA. Each such check shall be identified with Importer's name and the case number of this matter.

14. Importer expressly agrees that the amounts paid under the terms of this Agreement are not deductible with respect to any federal, state, local or other tax.

General Provisions

15. Except as expressly set forth herein, Volvo and Deutz are jointly and severally liable for the terms and performance of this Agreement.
16. Importer acknowledges that the representations it has made in this Agreement are material provisions of this Agreement and default constitutes a material default of this Agreement.
17. Time is of the essence to this Agreement. The parties agree that upon default of or failure to comply with any of the terms of this Agreement by Importer, EPA may refer this matter to the United States Attorney General for collection; collect stipulated penalties; commence an action to enforce this Agreement or to recover a civil penalty pursuant to section 203 of the CAA, 42 U.S.C. § 7522; or pursue any other remedies available to it. Importer specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claims of violation of section 203 of the CAA, 42 U.S.C. § 7522, and Importer expressly waives its right to assert 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.
18. Importer hereby represents that the individuals executing this Agreement are authorized to do so on behalf of Importer and that such execution is intended and is sufficient to bind Importer, its agents, employees, servants, assigns, and successors.

19. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.
20. The validity, enforceability, and construction of and all other matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
21. The effective date of this Agreement is the date that EPA executes the Agreement. To facilitate resolution of this matter, this Agreement can be executed by Importer sending a facsimile copy or copies of the Agreement signed by Importer to EPA which EPA can then execute. The copies of the Agreement with the original signatures of Importer and EPA shall be maintained by EPA and shall have the same force and effect as if the original signatures were on the same copy of the Agreement.
22. All submissions, notices and other mailings required by this Agreement, unless expressly stated otherwise, shall be sent by U.S. Mail, postage prepaid or facsimile as follows:

EPA:

Marcia S. Ginley
Senior Attorney
U.S. EPA
12345 W. Alameda, Suite 214
Denver, CO 80228
FAX: 303 236-9514

VCENA:

Michael Going
Vice President and General Counsel
One Volvo Drive
Asheville, NC 28003-34477
FAX: 828-650-2502, and

Julie Domike
Wallace King Marraro & Branson, PLLC
1050 Thomas Jefferson St., N.W.
Washington, D.C. 20007
FAX: 202-204-1001

Deutz:

Alex E. Wehner
Attorney at Law
13020 Windsor Circle
Leawood, KS 66209
FAX: 913-458-9454

23. Violations disclosed to EPA as a result of this Agreement may fall under EPA's Self-Disclosure Policy. This policy allows EPA not to seek a gravity-based, i.e., non-economic benefit or 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.
24. EPA's Self-Disclosure Policy states nine conditions considered in determining mitigation of penalty amount: (1) systematic discovery; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevention of recurrence; (7) no repeat violations; (8) other violations excluded (those that result in serious actual harm, may have presented an imminent and substantial endangerment, or violate the specific terms of any judicial or administrative order, or consent agreement); and (9) cooperation.

Stipulated Penalties

25. Importer shall pay, in addition to any other remedies, stipulated penalties to the United States for failure to comply with the terms of this Agreement as follows:

- A. For a false representation that an 2001 engine is identical to an engine covered by the 2002 Certificate of Conformity, engine is covered by a certificate of conformity, or that an engine is covered by a warranty as provided by Paragraphs 9,10 and 12 of this Agreement, a stipulated penalty of \$200 per day per engine.
 - B. For failure to submit a plan or perform the inspection/review as required by Paragraph 11 or 10 of this Agreement, a stipulated penalty of \$200 per day.
 - C. For failure to comply with the requirements for installing a new label on a Subject Engine as provided in Paragraphs 12 of this Agreement, a stipulated penalty of \$200 per day per engine.
 - D. Failure to pay the EPA civil penalty as required by Paragraph 13 of this Agreement, a stipulated penalty of \$200 per day.
 - E. Failure to submit documentation, reports or affidavits substantiating implementation of a plan to prevent future violations, labeling of engines, or payment of the civil penalty, as required by Paragraphs 10, 11, 12, and 13 of this Agreement, a stipulated penalty of \$100 per day per required submission.
26. All stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

Effect of Agreement

27. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of the EPA to proceed against Importer in the event of default or noncompliance with this Agreement; for violations of section 203 of the CAA, 42 U.S.C. § 7522 or 40 C.F.R. Part 89, 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 this Agreement.

AGREED TO BY:

IMPORTER:

Volvo Construction Equipment North America, Inc., a Delaware Corporation

By: Michael P. Going
Michael Going, Vice President
and General Counsel

1/17/02
Date

Deutz Corporation, a Delaware Corporation

By: Robert Mann
Robert Mann, President

1/17/2002
Date

EPA:

U.S. Environmental Protection Agency

By: Bruce C. Buckheit
Bruce C. Buckheit, Director
Air Enforcement Division

1/17/02
Date

JAN. 17. 2002 5:23PM FAX 71 VOLVO CE EXECUTIVE DEUTZ ATL. ADMIN.
81. 4. 72030 GINLEY

NO. 2249 P. 16 14 015

ATTACHMENT 1 - 2002 CERTIFICATES OF CONFORMITY

JAN 16 '02 09:21AM BLACK & VEATCH
01/14/02 10:35 FAX 734 214 4083 EPA CCD AMY AMBURN

P.3 P.02
0002/001

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

2002 Model Year Certificate of Conformity

Manufacturer: Deutz AG
Certificate Number: DZX-NR5-02-21
Effective Date: 1/14/02
Date Issued: 1/14/02



Gregory A. Green, Director
Certification and Compliance Division
Office of Transportation and Air Quality

Pursuant to Section 213 of the Clean Air Act (42 U.S.C. section 7547) and 40 CFR 89, and subject to the terms and conditions prescribed in those provisions, this certificate of conformity is hereby issued with respect to the test engines which have been found to conform to applicable requirements and which represent the following nonroad engines, by engine family, more fully described in the documentation required by 40 CFR Part 89 and produced in the stated model year.

Nonroad Diesel Engine Family: 2DZX105.7033

This certificate of conformity covers only those new nonroad compression-ignition engines which conform in all material respects to the design specifications that applied to those engines described in the documentation required by 40 CFR Part 89 and which are produced during the model year stated on this certificate of the said manufacturer, as defined in 40 CFR Part 89. This certificate of conformity does not cover nonroad engines imported prior to the effective date of the certificate.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 89.129-96 and 89.506-96 and authorized in a warrant or court order. Failure to comply with the requirements of such a warrant or court order may lead to revocation or suspension of this certificate for reasons specified in 40 CFR Part 89. It is also a term of this certificate that this certificate may be revoked or suspended or rendered void ab initio for other reasons specified in 40 CFR Part 89.

This certificate does not cover nonroad engines sold, offered for sale, or introduced, or delivered for introduction, into commerce in the U.S. prior to the effective date of the certificate.

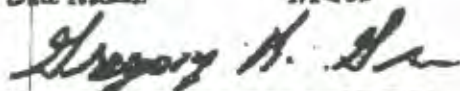
JAN 16 '02 05:18 PM BLACK & VEATCH
Jan-16-02 01:51 PM Letter Service Dept.
01/14/02 10:35 FAX 734 214 4033 EPA CCD ANN ARBOR

P.4 P.03
0003/003

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

2002 Model Year Certificate of Conformity

Manufacturer: Dests AG
Certificate Number: DZX-NR6-02-29
Effective Date: 1/14/02
Date Issued: 1/14/02



Gregory A. Groen, Director
Certification and Compliance Division
Office of Transportation and Air Quality

Pursuant to Section 213 of the Clean Air Act (42 U.S.C. section 7547) and 40 CFR 89, and subject to the terms and conditions prescribed in those provisions, this certificate of conformity is hereby issued with respect to the test engines which have been found to conform to applicable requirements and which represent the following nonroad engines, by engine family, more fully described in the documentation required by 40 CFR Part 89 and produced in the stated model year.

Nonroad Diesel Engine Family: 2DZXL07.1032

This certificate of conformity covers only those new nonroad compression-ignition engines which conform in all material respects to the design specifications that applied to those engines described in the documentation required by 40 CFR Part 89 and which are produced during the model year stated on this certificate of the said manufacturer, as defined in 40 CFR Part 89. This certificate of conformity does not cover nonroad engines imported prior to the effective date of the certificate.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 89.129-96 and 89.506-96 and authorized in a warrant or court order. Failure to comply with the requirements of such a warrant or court order may lead to revocation or suspension of this certificate for reasons specified in 40 CFR Part 89. It is also a term of this certificate that this certificate may be revoked or suspended or rendered void ab initio for other reasons specified in 40 CFR Part 89.

This certificate does not cover nonroad engines sold, offered for sale, or introduced, or delivered for introduction, into commerce in the U.S. prior to the effective date of the certificate.

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

In the Matter of:
Volvo Construction Equipment
North America, Inc., a Delaware
Corporation, and Deutz
Corporation, a Delaware
Corporation,

**FIRST AMENDMENT TO
ADMINISTRATIVE SETTLEMENT
AGREEMENT**

AED/MSEB No. 6060

WHEREAS, an Administrative Settlement Agreement ("the Agreement") was entered into on January 17, 2002, by and between the United States Environmental Protection Agency ("EPA") and Volvo Construction Equipment North America, Inc., a Delaware corporation, ("VCENA") and Deutz Corporation, a Delaware corporation, ("Deutz") (hereinafter jointly referred to as "Importer"), regarding compliance by Importer with the requirements of the Clean Air Act and the regulations promulgated thereunder at 40 C.F.R. Part 89 ("Regulations") with respect to the "Subject Equipment" and "Subject Engines" set forth in Table 1 below;

Table 1: Description of "Subject Equipment/Engines"

VCENA Machine Model	Engine Serial No.	Machine Serial No.	Location if Imported into U.S.
EC240B	639986	10003	Asheville, NC

EC240B	657393	10032	Seattle, WA
EC240B	662412	10051	Long Beach, CA
EC240B	663059	10046	Long Beach, CA
N/A-engine only	639936	N/A	Asheville, NC
N/A-engines	MY 2001 Deutz manufactured engines for VCENA use which will be imported into the United States	N/A	Not yet imported into the United States

and,

WHEREAS, the parties desire to modify Paragraph 10 of the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set out herein, EPA and
Importer stipulate and agree as follows:

1. The first sentence of Paragraph 10 of the Agreement which now reads:

10. Importer shall inspect and/or review information sufficient to establish that all of the engines and equipment containing engines imported into the United States prior to January 14, 2002, except with respect to the Subject Engines, are certified as required by the Clean Air Act.

shall be amended to read as follows:

10. Importer shall inspect and/or review information sufficient to establish that all of the engines and equipment containing engines imported into the United States in 2001 and between January 1 and January 13, 2002, except with respect to the Subject Engines which are dealt with by separate terms of this Agreement, are certified as required by the Clean Air Act.

2. Except as stated in Paragraph 1 of this Amendment to Administrative Settlement Agreement ("Amendment"), each provision of Paragraph 10 and of the Agreement is not modified by this Amendment and shall remain in full force and effect.

AGREED TO BY:

IMPORTER:

Volvo Construction Equipment North America, Inc., a Delaware Corporation

By: Michael P. Going
Michael Going, Vice President
and General Counsel

February 12, 2002
Date

Deutz Corporation, a Delaware Corporation

By: Robert Mann
Robert Mann, President

Feb. 12, 2002
Date

EPA:

U.S. Environmental Protection Agency

By: Bruce C. Buckhelt
Bruce C. Buckhelt, Director
Air Enforcement Division

3-25/02
Date