

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

_____)
In the Matter of:)

Eton America, LLC)

Respondent.)
_____)

**SETTLEMENT AGREEMENT
AED/MSEB # 7254**

This Settlement Agreement is made and entered by and between the United States Environmental Protection Agency (EPA) and Eton America, LLC (Eton America) located at 360 East Henry Street, Suite 102, Spartanburg, South Carolina 29302, regarding compliance by Eton America with the requirements of the Clean Air Act (Act) and the Recreational Vehicle Regulations promulgated thereunder at 40 C.F.R. Part 1051.

Purpose

1. The purpose of this Settlement Agreement (Agreement) is to provide for resolution and remediation of any and all claims by EPA under the Act and 40 C.F.R. Part 1051 arising out of the importation of 102 nonroad recreational vehicles as described in Paragraph 7 of this Agreement (Subject Vehicles), while ensuring that future violations are avoided.

Definitions

2. For purposes of this Agreement, the following definitions apply:
 - a. *This matter*: as used in this agreement means Eton America's importation of the Subject Vehicles and any civil liability that may apply to such violations.
 - b. *Certificate of Conformity*: the document issued by EPA to a recreational vehicle manufacturer under 40 C.F.R. Part 1051 after EPA determines that the manufacturer's application is complete and that the vehicle meets the applicable requirements of 40 C.F.R. Part 1051 and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of recreational vehicles built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.

- c. *Certified vehicle*: a recreational vehicle built after the applicable date of the regulations that is covered by a Certificate of Conformity which has the emission control information label (label) affixed in a manner that complies with the label requirements of certification pursuant to 40 C.F.R. § 1051.135.
- d. *Applicable regulation and dates*: 40 C.F.R. Part 1051 is applicable to recreational vehicles and engines built after the applicability dates in 40 C.F.R. Part 1051.
- e. *Certificate Holder*: the company granted an EPA Certificate of Conformity for the Subject Vehicles. In this matter, Eton America is the Certificate Holder.

Statutory Authority

- 3. 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 nonroad engines or vehicles unless the engine or vehicle is covered by a Certificate of Conformity issued and in effect, including the required label requirements of 40 C.F.R. § 1051.135.

Recreational Vehicle Regulatory Authority

- 4. 40 C.F.R. § 1068.101(a)(1) prohibits the sale, offering for sale, introduction or delivery into commerce, or the importation of new nonroad engines or vehicles, including recreational engines or vehicles, manufactured after the applicable effective date unless they have a valid certificate of conformity for their model year and the required label or tag pursuant to 40 C.F.R. § 1051.135.
- 5. 40 C.F.R. § 1051.135(b) requires the original vehicle manufacturer to affix, at the time of manufacture of a certified nonroad recreational vehicle, a permanent and legible label identifying the vehicle which must be attached in a manner that it is not removable without being destroyed or defaced.
- 6. 40 C.F.R. § 1068.30 defines a nonroad engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for

resale, or a person acting for, and under the control of, such person.

Background

7. On or about May 24, 2007, Eton America imported into the United States 102 all terrain recreational vehicles (Subject Vehicles), as described in the Table below.

Subject Vehicle Table

Entry Date	Entry Number	ATV Model and Engine Model	Quantity	Manufacturer
May 24, 2007	231-6619128-1	UK1-90: Rover GT; 7ETNX.088A26	72	Eton America, LLC
May 24, 2007	231-6619128-1	RXL90R-4S: Viper 90R; 7ETNX.088A26	30	Eton America, LLC

8. On or about May 24, 2006, the U.S. Customs and Border Protection (CBP) determined that the Subject Vehicles were not acceptable for immediate import due to their failure to contain labels that could not be removed without being destroyed or defaced pursuant to 40 C.F.R. § 1051.135(b). CBP conditionally released the Subject Vehicles to the custody of the Eton America pending correction of the defective labels. The Subject Vehicles continue to be held under the control of Eton America.
9. EPA investigation confirmed that Eton America is the importer and Certificate Holder of the Subject Vehicles and that the Subject Vehicles were not equipped with the labels required pursuant to 40 C.F.R. § 1051.135(b).
10. Based upon the foregoing, EPA has determined that Eton America is liable for 102 violations of Sections 203(a) and 213(d) of the Act, resulting from 102 violations of 40 C.F.R. § 1068.101(a)(1).

Terms of Agreement

11. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Eton America.
12. Eton America agrees to pay to the United States a civil penalty of \$10,000 (settled

penalty) for the 102 violations alleged in Paragraph 10 of this Agreement, as well as successful completion of the other terms of this Agreement.

13. Respondent agrees to pay the settled penalty to the United States of America within thirty days from the effective date of this Agreement (penalty due date). Late payment of the settled penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

Respondent agrees to pay the settled penalty 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 # 7254

A copy of the check shall simultaneously be sent to Judy Lubow at the following address:

Judy Lubow, Attorney
U.S. Environmental Protection Agency
12345 West Alameda parkway
Suite 214
Denver, CO 80228.

14. Within 30 days of the date of this Agreement, or such later date as CBP may require, Eton America must export or destroy the Subject Vehicles under CBP's supervision. In lieu of such export or destruction, Eton America may relabel the Subject Vehicles in accordance with this paragraph 14.

- a. Prior to the date that CBP permanently releases the Subject Vehicles to Eton America, Eton America, as the Certificate Holder, must remove each non-complying label from the Subject Vehicles and affix onto a conspicuous place on each Subject Vehicle a complying EPA approved emission control information label. This corrective action shall be accomplished in the following manner:

- (1) In order to obtain EPA approval for the label, the Certificate Holder shall send to EPA a sample of the proposed label and a technical description of the method, procedures and affixing substance that the Certificate Holder proposes to use to affix the label to the Subject Vehicle. The label and installation procedures must be designed to ensure that the label is

permanently affixed and cannot be removed without destroying or defacing the label. This submission, affidavits, and all other correspondence concerning this Settlement Agreement shall be sent to Judy Lubow, (by courier for this submission and affidavits), at the following address:

Judy Lubow, Attorney
U.S. Environmental Protection Agency
12345 West Alameda Parkway
Suite 214
Lakewood, CO 80228

The label sample, plus correction procedures shall also be simultaneously sent to Anne Wick, by courier, at the following address:

Anne Wick
Vehicle and Engine Team Leader
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Ariel Rios Building South, Room 1111B
1200 Pennsylvania Avenue, N.W.,
Washington, DC 20004

- (2) If EPA has not approved the label and correction procedures at the time of execution of this Agreement, EPA agrees that within five business days of receipt of a correction label and procedures from the Certificate Holder, it will approve the label and procedures or provide specific comments on the deficiency of the proposed label or procedures. Failure of EPA to provide a response in a timely manner shall constitute approval of the label and procedures. If EPA provides comments on the deficiency of the label or procedures, the Certificate Holder must resubmit the label design and correction procedures within 5 days of receiving EPA's comments. EPA may then approve or disapprove the label or procedures at its unreviewable

discretion. If EPA disapproves the label or procedures, the Subject vehicles may not be relabeled and must be exported or destroyed.

- (3) 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 Vehicles or destruction (in the case of any unused replacement labels).
- (4) This corrective action shall be conducted under the direction of a licensed Professional Engineer (the Observer) not employed directly by the Certificate Holder. The corrective action shall be completed no later than thirty days following the date of this Agreement.
- (5) Under the observation of the Observer, the Certificate Holder shall remove the non-complying labels from the first five percent of the Subject Vehicles to be corrected, and give them to the Observer, and shall attach complying labels to each of these vehicles in accordance with the procedures submitted to EPA in the above Subparagraph 14 (a)(1).
- (6) The labels for the remaining ninety-five percent of the Subject Vehicles must be corrected in the manner required under the above Subparagraph 14(a)(5) or, at the discretion of the Certificate Holder, may be corrected outside the observation of the Observer provided that the corrections are conducted in accordance with the procedures submitted to EPA under Subparagraph 14(a)(1) and the Certificate Holder takes a photograph of the corrected label on each Subject Vehicle together with a photograph of the vehicle identification number label of that Subject Vehicle and provides these photographs to EPA with the report required pursuant to Subparagraph 14(a)(8), below.
- (7) After the replacement label has been affixed to each of the Subject Vehicles, the Observer shall randomly select five percent of the Subject Vehicles from each model (the Test Sample Vehicles) to determine whether or not the replacement labels are permanently attached to the Subject Vehicle and

cannot be removed without destroying or defacing the replacement labels. Any Test Sample Vehicle whose replacement label is destroyed or defaced during this test must be relabeled by Certificate Holder. However, where the replacement label on a Test Sample Vehicle can be removed without destroying or defacing the replacement label, the Test Sample Vehicle and all vehicles of the same models as the Test Sample Vehicle, must be exported or destroyed.

- (8) Within thirty days of this Agreement (or such longer period of time if requested by Eton America and approved by EPA for good cause shown), the Certificate Holder shall provide EPA with a report that fully describes and certifies the corrective action taken. The report must include the following:
 - (a) An affidavit by the Observer documenting the performance of 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 Vehicle that was re-labeled; provide the results, and any resulting actions, of any tests performed to determine whether or not the label was permanent and could be removed without destroying or defacing the label; and provide the photographs of the re-labeled Subject Vehicles as required under Subparagraph 14(a)(6), above.
 - (b) An unconditional statement certifying that the Subject Vehicles comply with all requirements of the Clean Air Act and 40 C. F. R. Part 1051.
- b. Where, pursuant to the requirements of Subparagraph 14(a)(7), above, 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 otherwise been correctly performed, the Observer shall identify the model number of the Subject Vehicle and report his/her determination to EPA, and Eton

America shall export or destroy the vehicle tested by Observer, and export or destroy all related model vehicles as described in Subparagraph (14) (a) (7), above.

- c. The Observer shall destroy all removed labels no later than the day the last Subject Vehicle is relabeled.
- d. EPA agrees to the inclusion within this Agreement of the re-labeling program established in this Paragraph 14 due to the fact that Eton America is a first-time violator of the Nonroad Regulations.

Root Cause Analysis and Corrective Action Compliance Plan:

15. No later than thirty (30) days from the effective date of this Agreement, the Certificate Holder shall initiate a thorough review and assessment of its non-road engine/vehicle 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. Part 1051, 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/vehicles, 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/vehicles;
- (b) Analyze a representative sample of the Subject Vehicles 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;
- (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 vehicles/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; and
- (e) Complete the review and analysis required by this Paragraph 15 and implement all corrective actions, no later than 180 days of the effective date of this Agreement. The Certificate Holder shall, no later than 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 the Certificate Holder as a result of the Root Cause Analysis and Corrective Action Plan.

Stipulated Penalties

16. For failure to comply with the terms of this Agreement on a timely basis Eton America shall pay stipulated penalties to the United States as follows:
- a. For failure to pay the settled penalty, or provide proof thereof, pursuant to Paragraph 12, above, \$250.00 per day;
 - b. For failure to timely comply with the Subject Vehicle re-labeling, export or destruction requirements pursuant to Paragraph 14, above, \$250.00 per day;
 - c. For failure to submit to EPA a Root Cause Analysis and Corrective Action Compliance Plan which is acceptable to EPA, and to timely implement that plan, all pursuant to Paragraph 15, above, \$250.00 per day.
17. All stipulated penalties under Paragraph 16 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). 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 - 7254

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 Eton America's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

General Provisions

18. Notwithstanding any other provisions of this Agreement, the parties agree that upon default or failure of Eton America 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. Eton America 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.
19. The parties represent that the individual or individuals executing this Agreement on behalf of the respective party are authorized to do so and that such execution is intended and is sufficient to bind the respective party
20. Eton America 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.
21. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
22. This settlement is contingent upon the truthfulness, accuracy and completeness of Eton America's disclosures and representations to EPA and the prompt and complete remediation of any violations in accordance with this Agreement.

Effect of the Agreement

23. Upon completion of the terms of this Agreement, this civil matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Eton America in the event of default or noncompliance with this Agreement; for violations of Section 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, which are not the subject matter of 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 Eton America of responsibility to comply with other state, federal or local laws or regulations.

The following agree to the terms of this Agreement:

Eton America, LLC

By: 

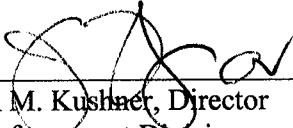
Printed Name:

Typed or Printed Title:

Date: 10-31-07

Settlement Agreement In the Matter of America, LLC - AED/ MSEB # 7254

U.S. Environmental Protection Agency

By:  _____
Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

Date: MN 30, 2007