

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

	)	
<b>In the Matter of:</b>	)	<b>ADMINISTRATIVE SETTLEMENT</b>
	)	<b>AGREEMENT</b>
<b>AXCO of Florida, Inc. d/b/a</b>	)	
<b>Boom Trikes USA</b>	)	<b>AED/MSEB: 7250</b>
	)	
<b>Respondent.</b>	)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and AXCO of Florida, Inc. d/b/a Boom Trikes USA, 4601 Fowler Street, Ft. Myers, Florida 33907 (Respondent).

**Purpose:**

The purpose of this Administrative Settlement Agreement (Agreement) is to resolve ten alleged violations of Section 203(a) of the Clean Air Act (Act), 42 U.S.C. § 7522(a), and the regulations promulgated thereunder at 40 C.F.R. Part 86, Subpart E, regarding the emissions certification requirements for motorcycles (the Motorcycle Regulations).

**Applicable Statutory and Regulatory Provisions:**

1. 40 C.F.R. § 86.401-2006 provides that the Motorcycle Regulations apply to 1978 and later model year new motorcycles.
2. 40 C.F.R. § 86.402-98 defines a motorcycle as any motor vehicle with a headlight, taillight and stoplight, two or three wheels, and a curb mass less than or equal to 793 kilograms (1,749 pounds).
3. 40 C.F.R. § 86.407-78 prohibits a new motorcycle from being manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States unless the motorcycle is covered by an EPA- issued certificate of

conformity (EPA-COC), or is excluded or exempt from meeting the regulatory requirements.

4. 40 C.F.R. § 86.413-78 requires the manufacturer who has been issued the certificate of conformity for the motorcycle to affix at the time of manufacture a permanent and legible EPA emissions information label (label).
5. 40 C.F.R. § 85.1513 prohibits the importation of a motor vehicle or motor vehicle engine which is not covered by a certificate of conformity other than in accordance with 40 C.F.R. Part 85, Subpart P.
6. 40 C.F.R. § 85.1511(b) provides certain limited exemptions from the certification requirements for imported motor vehicles, provided that prior written approval is obtained from EPA based upon a written application that indicates that the importer is entitled to the exemption. 40 C.F.R. § 85.1511(b)(2) provides an exemption for testing vehicles, and 40 C.F.R. § 85.1511(b)(3) provides an exemption for prototype vehicles for use in applying to EPA for certification, subject to the limitation that no more than one prototype vehicle for each engine family shall be imported under this exemption.
7. Section 216 of the Act, 42 U.S.C. § 7550, defines a manufacturer as any person engaged in the manufacturing or assembling of new motor vehicles, or importing such motor vehicles for resale.
8. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits the importation into the United States of any new motor vehicle manufactured after the effective date of the regulations unless the motor vehicle is covered by an EPA-COC, or causing the importation of such a motor vehicle.

9. Under Section 205(a) of the Act, 42 U.S.C. § 7524(a), any person who violates Section 7522(a), is subject to a civil penalty of not more than \$32,500 for each motor vehicle or nonroad engine.

**Other Definitions:**

10. For purposes of this Agreement, the following definitions apply:
  - a. *Export*: To transport to a location outside of the United States and its territories, Canada, and Mexico.
  - b. *Destroy*: The complete destruction of the motorcycle engine and the complete disassembly of the motorcycle. The engine shall be crushed or broken in such a manner that the engine or its parts can never be used to power anything, and the motorcycle shall be disassembled and broken down in such a manner that it can never be reassembled.

**Background:**

11. During May and August 2007, Respondent imported into the port of Miami, Florida ten uncertified and unlabeled motorcycles as described in Appendix A to this Agreement (subject motorcycles).
12. U. S. Customs and Border Protection (U.S. Customs) at the port in Miami, Florida either detained or seized the subject motorcycles.

**Alleged Violations:**

13. As the importer of the uncertified subject motorcycles, Respondent is liable for ten separate violations of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and the Motorcycle Regulations, 40 C.F.R. Part 86.

**Corrective Action:**

14. No later than thirty days from the date of this Agreement, or such longer period of time if required by U.S. Customs, Respondent shall export or destroy nine of the subject motorcycles. The exportation or destruction shall be carried out under the supervision of U.S. Customs. Respondent shall also certify to EPA and provide supporting documents that the subject motorcycles were either exported or destroyed.
15. For the remaining subject motorcycle as described in Appendix B of this Agreement, AXCO shall obtain an EPA-issued certificate of conformity that covers the subject motorcycle no later than twelve months from the effective date of this Agreement. If AXCO fails to certify an EPA engine family that covers the subject motorcycle within twelve months from the effective date of this Agreement, AXCO shall either export or destroy the subject motorcycle. AXCO shall also provide a copy of the certificate of conformity for the subject motorcycle, or provide supporting documents that the subject motorcycle was either exported or destroyed.

**Civil Penalty:**

16. Respondent has agreed to pay to the United States of America a civil penalty of \$25,000 no later than ninety 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 18 of the Agreement. Respondent agrees to pay the amount by certified check or cashier's check payable to the United States of America, and to mail the payments to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Attn: AED/MSEB - 7250

Respondent may also pay online at [www.pay.gov](http://www.pay.gov). From the "Search Public Form" field, enter SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the "SFO Form Number 1.1."

**Notice:**

17. A copy of the payment check shall be faxed to Jocelyn Adair, Esq. at (202) 564-0069 no later than twenty-four hours after mailing the payment. All correspondence to EPA concerning this Agreement shall be sent to:

**(Regular Mail)**

Jocelyn Adair, Esq.  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Attn: AED/MSEB-7250

**(Courier Service)**

Jocelyn Adair, Esq.  
U.S. EPA  
Ariel Rios South, Room 1111A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**Stipulated Penalties:**

18. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 14 through 17 of this Agreement, Respondent agrees to the following stipulated penalties:


- (a) For the failure to export or destroy the subject motorcycles, or provide proof of such exportation or destruction, pursuant to Paragraphs 14, 15, and 17 of this Agreement, Respondent shall pay for each motorcycle a stipulated penalty of \$32,500; and,

- (b) For the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to Paragraphs 16 and 17 of this Agreement, Respondent shall pay a stipulated penalty of \$250 per day.
19. All stipulated penalties shall be paid in the manner specified in Paragraph 16 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jocelyn Adair, Esq. at the address specified in Paragraph 17 of this Agreement.
20. Respondent further agrees 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.
21. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
22. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent.
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 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.
25. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
26. The effect of settlement described in Paragraph 27 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
27. 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 Respondent in the event of default or noncompliance with this Agreement; for violations of Section 203 of the Clean Air Act, 42 U.S.C. § 7522, 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 Respondent of responsibility to comply with other state, federal or local law or regulations, and does not address Respondent's potential liability to U.S. Customs for the Subject Engines.

The following agree to the terms of this Agreement:

AXCO of Florida, Inc. d/b/a Boom Trikes USA

By: 

Date: 01-14-08

Signature:

Print Name: AXEL SCHULZ MANFRED GLANZNER

Print Title: MEMBER MEMBER

**Administrative Settlement Agreement – In the Matter of AXCO of Florida, Inc. d/b/a Boom  
Trikes USA; AED/MSEB – 7250**

U.S. Environmental Protection Agency

By: Adam M. Kushner

Adam M. Kushner  
Director  
Air Enforcement Division

Date: 1/25/07



## Appendix A

### Subject Motorcycles Administrative Settlement Agreement – *In the Matter of AXCO of Florida, Inc. d/b/a Boom Trikes USA; AED/MSEB – 7250*

Entry Number	Date of Arrival	Detention No.	VIN	Model
336-7863256-6	5/02/2007	0138920	WBC5BF3317S002556	X11 Fighter
336-7863256-6	5/02/2007	0138920	WBC5BMS117S002574	Chopper 3L
336-7863256-6	5/02/2007	0138920	WBC5BML127S002594	Low Rider 3L
336-7863256-6	5/02/2007	0138920	WBC5BF3316S002481	X11 Fighter

Arrival Date: August 21, 2007

Entry Number	Detention #	Chassis Number	Model	Part Number
AM5-42145173	0138974	WBC5BML127S002750	Low Rider 5I	
AM5-42145173	0138974	WBC5BML377S002737	Low Rider 5I	
AM5-42145173	0138974	WBC5BML377S002739	Low Rider 5I	
AM5-42145173	0138974	WBC5BC1216S002090	Fun 500 Trend	
AM5-42145173	0138974		1.6 L	ACD71677
AM5-42145173	0138974		1.6 L	E9943/37EJ
AM5-42145173	0138974		1.6 L	E9943/41EJ
AM5-42145173	0138974		460 cc	M341M52848

Arrival Date: August 26, 2007  
Seizure Number: 2007SZ008504301  
FP&F Number: 2007520100069701

Entry Number	Chassis Number	Model	Part Number	Vehicle Manufacturer
AM542145272	WBC5BML377S002770	Low Rider 3I		Boom Trikes
AM542145272	WBC5BC1216S002082	Fun 500 Trend		Boom Trikes
AM542145272		460 cc	M341M52863	Boom Trikes
AM542145272		1.6 L	E9943/38EJ	Boom Trikes

**Appendix B**

**Subject Motorcycle**

**Administrative Settlement Agreement – *In the Matter of AXCO of Florida, Inc. d/b/a Boom Trikes USA; AED/MSEB – 7250***  
***Entry Number: AM542145272***

Seizure Number & FP&F Number	Invoice Number	Description	VIN
2007SZ008504301 2007520100069701	1018322	1 Book-Trike Kit/Rolling Chassis and related parts identified on Invoice	WBC 5 BML 37 7S 002770
2007SZ008504301 2007520100069701	1018323	Engine Part No.: E9943/38EJ	