

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

In the Matter of:

Hidria USA, Inc.,
a subdivision of Hidria d.o.o., a Slovenian company
(d/b/a Tomos USA)

Respondent

Administrative Settlement
Agreement

AED/MSEB # 7812

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and Hidria USA, Inc., a subdivision of Hidria d.o.o., a Slovenian company (d/b/a Tomos USA) (Hidria or Respondent), located at 202 Beechtree Boulevard, Greenville, SC 29605, regarding Hidria's compliance with the requirements of the Clean Air Act (Act) and the Emission Regulations for New Motorcycles codified at 40 C.F.R. Part 86.

Purpose

- The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and EPA's Emissions Regulations for 1978 and Later Motorcycles, 40 C.F.R. Part 86 resulting from Hidria's importation of 450 motorcycles imported on September 24, 2008, in Customs and Border Protection (CPB) entry number THW-4005870-7, and identified in the table below (Subject Motorcycles).

Subject Motorcycles

Entry Date	Container Number	Manufacturer	Model	Qty
9/24/08	FSCU6289420	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	50
9/24/08	INKU6535228	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	49
9/24/08	INKU6535228	Xiamen Xiashing Motorcycle Co. Ltd.	XS150T-3, Nitro 150cc	1
9/24/08	INKU6564294	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	48
9/24/08	INKU6564294	Xiamen Xiashing Motorcycle Co. Ltd.	XS150T-3, Nitro 150cc	2

9/24/08	MSCU7907833	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	41
9/24/08	MSCU7907833	Xiamen Xiashing Motorcycle Co. Ltd.	XS150T-3, Nitro 150cc	9
9/24/08	MSCU9278848	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	28
9/24/08	MSCU9278848	Xiamen Xiashing Motorcycle Co. Ltd.	XS150T-3, Nitro 150cc	22
9/24/08	MSCU9427670	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	24
9/24/08	MSCU9427670	Xiamen Xiashing Motorcycle Co. Ltd.	XS150T-3, Nitro 150cc	26
9/24/08	MSCU9518640	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	12
9/24/08	MSCU9518640	Xiamen Xiashing Motorcycle Co. Ltd.	XS150T-3, Nitro 150cc	38
9/24/08	MSCU9761856	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	49
9/24/08	MSCU9761856	Xiamen Xiashing Motorcycle Co. Ltd.	XS150T-3, Nitro 150cc	1
9/24/08	TGHU8791369	Xiamen Xiashing Motorcycle Co. Ltd.	XS50QT-5, Nitro 50cc	49
9/24/08	TGHU8791369	Xiamen Xiashing Motorcycle Co. Ltd.	XS150T-3, Nitro 150cc	1

Statutory Authority

2. 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 certificate of conformity that is issued, and in effect.
3. Under Section 205(a) of the Act, 42 U.S.C. § 7524(a), any person who violates Section 203(a)(1), 42 U.S.C. § 7522(a)(1), is subject to a civil penalty of not more than \$32,500 for each motor vehicle.
4. 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.

Regulatory Authority

5. 40 C.F.R. § 86.401-97 provides that the motorcycle regulations apply to new gasoline-fueled motorcycles built after December 31, 1977, that have an engine displacement of at least 50 cubic centimeters (cc).
6. 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).
7. 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 (Certificate of Conformity).
8. 40 C.F.R. § 86.402-78(a) provides that a Certificate of Conformity is issued for a period not to exceed one model year.
9. 40 C.F.R. § 86.413-78 requires the manufacturer who has been issued a Certificate of Conformity for a vehicle to affix to the vehicle at the time of manufacture a permanent and legible emission information label (Emissions Label) with prescribed information.

Definitions

10. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulations and dates:* Applicable regulation means 40 C.F.R. Part 86, Subpart E, and applicable date means December 31, 1977.
 - b. *This matter:* Hidria's importation of the Subject Motorcycles and any civil liability arising therefrom under the Act and implementing regulations at 40 C.F.R. Part 86.
 - c. *Certificate of Conformity:* The document issued by EPA to a manufacturer of motorcycles after EPA has determined that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40

C.F.R. Part 86 and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of vehicles or engines built in accordance with the manufacturer's application as long as they are built after the effective date of the certificate and before the end of the calendar year for which the model year indicated on the certificate is named.

- d. *Certificate Holder*: Certificate Holder means the manufacturer whose name appears on a Certificate of Conformity issued for the engine or vehicles.
- e. *Destroy*: The term destroy means the complete destruction of the engine and the complete disassembly of the equipment. The water jackets of the cylinder block and the head shall be impaled in multiple locations such that they can not thereafter be made to retain coolant regardless of whether repair is attempted, and the equipment shall be crushed, or disassembled and damaged, in such a manner that it can never be reassembled.
- f. *Export*: The term export means to transport to a location that is not part of the United States and its territories, Canada, or Mexico.
- g. *Labeling requirements*: Labeling requirements means the requirements found at 40 C.F.R. § 86.413-78 that require that the engines of certified motorcycles be labeled in a specified manner at the time of manufacture.

Alleged Violations

- 11. On or about September 24, 2008, Hidria imported the Subject Motorcycles.
- 12. Hidria represented that the Subject Motorcycles were covered by a Model Year (MY) 2008 or 2009 Certificate of Conformity. The date of manufacture of the Subject Motorcycles, August 2008, is before September 8, 2008, when Hidria's MY 2009 certificates 9TOMC.049HID-002 and 9TOMC.149HID-003 were issued. Therefore the Subject Motorcycles are not covered by Hidria's MY 2009 certificates.

13. Hidria and its agents have documented that the Subject Motorcycles do not have catalytic converters installed. The applications for Certificates of Conformity numbered 8TOMC.049HID-002 and 8TOMC.149HID003, as well as the labels that were on the Subject Motorcycles when they were imported, indicate that Hidria's MY 2008 motorcycles were required to be equipped with catalytic converters. Therefore the motorcycles are not covered by Hidria's MY 2008 Certificates of Conformity.
14. Due to the fact that the Subject Motorcycles were not manufactured when a Hidria MY 2009 Certificate of Conformity was effective, and do not conform to the design specifications which describe the vehicles covered by the Model Year 2008 Certificates of Conformity, the Subject Motorcycles are not covered by a Certificate of Conformity, and were therefore imported in violation of Section 203(a)(1) the Act.
15. Based on the forgoing, EPA alleges that Hidria committed 450 separate violations of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and the Applicable Regulations.

Civil Penalty

16. Hidria shall pay to the United States a civil penalty of \$58,000 (EPA penalty).
17. Hidria agrees to pay the EPA penalty to the United States within thirty (30) calendar days of the effective date of this Agreement (penalty due date), but not before the effective date. Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Hidria agrees to pay the amount in the manner specified in paragraph a or b below:
 - a. Send a certified check or cashier's check payable to the United States of America, and mailed via United States Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7812

Simultaneously, fax a photocopy of the check to (202) 564-0069 to the attention of David Alexander, or scan and email a copy of the check to alexander.david@epa.gov. This check shall be identified with case number AED/MSEB # 7812, and Hidria's name; or

- b. Pay online through the Department of the Treasury using WWW.PAY.GOV. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center and complete the SFO Form Number 1.1. The payment shall be identified with case number AED/MSEB # 7812. Within twenty-four hours of payment, fax a photocopy of the receipt of payment to (202) 564-2109 to the attention of David Alexander, or scan and email a copy of the receipt to alexander.david@epa.gov.
18. Separate and apart from the EPA penalty, CBP may require payment of a forfeiture remission amount for the release of the goods from seizure.
19. Hidria shall Destroy the Subject Motorcycles within thirty days of this Agreement, or shall Export the Subject Motorcycles within 30 days of their release for export by CBP. This exportation or destruction shall be carried out under the supervision of CBP. Hidria shall, within the same time, certify to EPA that the Subject Motorcycles were either exported or destroyed, and shall provide supporting documents issued by CBP proving exportation or destruction.

Notice

20. All written correspondence to EPA concerning this Agreement shall be sent to:

(Postal Service Mail)

David E. Alexander
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW

(Courier Service)

David E. Alexander
U.S. EPA
Ariel Rios South, Room 1111A
1200 Pennsylvania Ave., NW

Washington, DC 20460
Attn: AED/MSEB # 7812

Washington, DC 20004
Attn: AED/MSEB # 7812

General Provisions

21. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time an electronic copy will be returned to Hidria.
22. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Hidria 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. Hidria 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. Hidria acknowledges that EPA intends to use Hidria's tax identification number, which Hidria has appended to this agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. (31 U.S.C. § 7701)
23. The parties represent that the individual or individuals executing this Agreement on behalf of Hidria are authorized to do so on behalf of Hidria and that such execution is intended and is sufficient to bind Hidria, its agents, assigns, or successors.
24. Hidria waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
25. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
26. This Agreement is contingent upon the truthfulness, accuracy and completeness of Hidria's disclosures and representations to EPA including, but not limited to,

representations regarding importations and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties

27. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to paragraphs 16, 17, 19 and/or 20 of this Agreement, Hidria agrees to the following stipulated penalties:
 - a. For the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to paragraphs 16, 17 and/or 20 of this Agreement, Hidria shall pay a stipulated penalty of \$250 per day.
 - b. For the failure to timely export or destroy any Subject Motorcycle, or provide proof of such exportation or destruction as required by paragraphs 19 and/or 20 of this Agreement, Hidria shall pay a stipulated penalty of \$2,500.
28. All stipulated penalties shall be paid in the manner specified in paragraph 17 of this Agreement. In addition, a copy of the transmittal letter(s) and receipts(s) shall be sent to David E. Alexander in the manner specified in paragraph 20.

Effect of Agreement

29. 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 Hidria 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 Hidria of responsibility to comply with other state, federal, or local laws or regulations.

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of

**Hidria USA, Inc., a subdivision of Hidria d.o.o., a Slovenian company
(d/b/a Tomos USA), respondent**

AED/MSEB # 7812

The following agrees to the terms of this Agreement:

By:  _____

Date: 2/25/09

Typed or Printed Name: SARAH DAVIS

Typed or Printed Title: Controller

Federal Tax Identification Number: 22-3665878

U.S. Environmental Protection Agency

Settlement Agreement In the Matter of Hidria USA, Inc.,

a subdivision of Hidria, d.o.o., (a Slovenian company) d/b/a Tomos USA)

AED/MSEB # 7812

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: _____



for Pamela J. Mazakas, Acting Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: 3/10/2009