

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

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In the Matter of:)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
MOD Cycles Corporation)	
)	AED/MSEB: 7271
Respondent.)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and MOD Cycles Corporation, 7547 NW 52nd Street, Miami, Florida 33166 (Respondent).

Purpose:

The purpose of this Administrative Settlement Agreement (Agreement) is to resolve 544 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. 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.
6. 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.
7. 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:

8. 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:

9. On or about September 27, 2007, Respondent imported into the Port of Fort Everglades, Florida, five entries containing 544 motorcycles as described in Appendix A to this Agreement (the subject motorcycles).
10. On the EPA Declaration Forms 3520-1 used to import the subject motorcycles, Respondent declared that the subject motorcycles were covered by an EPA-COC for model year 2008.
11. U. S. Customs and Border Protection (U.S. Customs) at the Port of Fort Everglades, Florida inspected a sample of the subject motorcycles and documented that the subject motorcycles bore EPA emissions information labels stating that the subject motorcycles, among other things, were U.S. certified, were model year 2007, and were equipped with a three-way catalyst (TWC) and/or engine modification (EM).
12. As a result of the U.S. Customs inspection, EPA determined that although it had issued an EPA-COC to Respondent for model year 2007, EPA had not issued to Respondent an EPA-COC for model year 2008 before Respondent imported the subject motorcycles into the United States.
13. On or about November 13 and 16, 2007, Respondent submitted to EPA certificates of conformity applications for four EPA engine families and obtained certificates of conformity that would cover the subject motorcycles, except that Respondent described the exhaust emission system differently on the application for certification than on the emissions information labels affixed to subject motorcycles.

Alleged Violations:

14. As the importer of the uncertified subject motorcycles, Respondent is liable for 544 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:

15. No later than thirty days from the effective date of this Agreement, or such longer period of time if required by U.S. Customs, Respondent shall export or destroy 541 subject motorcycles. The exportation or destruction shall be carried out under the supervision of U.S. Customs. Respondent shall certify to EPA and provide supporting documents that the subject motorcycles were either exported or destroyed (corrective action report).
16. No later than thirty days from the date of the corrective action, Respondent shall submit to EPA the corrective action report. The report shall fully describe the corrective action taken, identify the subject motorcycles by vehicle identification number, and certify that the corrective action was conducted as described. The report shall also include supporting documents (e.g., loading, shipping and freight documents) to further verify that the subject motorcycles were either exported or destroyed.

Transfer of Sample Subject Motorcycles to EPA for Testing:

17. Within thirty calendar days of the effective date of this Agreement, Respondent agrees to transfer custody to EPA one of each model subject motorcycle, i.e., a Baccio DLX 50 from Customs Entry Number HC6-0071736-3, a Baccio Runner 50 from Customs Entry Number HC6-0071738-9, and a Baccio VX 50 from Customs Entry Number HC6-0071741-3 (sample motorcycles), for inspection and testing to determine compliance with the emission standards and other requirements of 40 C.F.R. Part 86. The three

sample motorcycles will be selected by U.S. Customs from the subject motorcycles, and custody of the sample motorcycles will be transferred from U.S. Customs to EPA. At the conclusion of the testing, EPA shall return the sample motorcycles to Respondent. No later than thirty days after Respondent receives the sample motorcycle, Respondent agrees to either export or destroy each sample motorcycle and provide proof thereof in the manner specified in Paragraphs 15 and 16 of this Agreement.

18. Notwithstanding Paragraph 17, EPA may elect to test fewer than three subject motorcycles or not to test any of the subject motorcycles in which case Respondent will either export or destroy the subject motorcycles and provide proof therefor in the manner specified in Paragraphs 15 and 16 of this Agreement.

Civil Penalty:

19. Respondent has agreed to pay to the United States of America a civil penalty of \$50,000 no later than thirty 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 21 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 - 7271

Respondent may also pay online at 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:

20. 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-7271

(Courier Service)

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

Stipulated Penalties:

21. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 15 through 17 of this Agreement, Respondent agrees to the following stipulated penalties:
- a. For the failure to timely export or destroy each subject motorcycle or provide proof thereof as required by Paragraphs 15 through 18, and 20, \$250 per day.
 - b. For the failure to timely pay the civil penalty or provide proof thereof as required by Paragraphs 19 and 20, \$250 per day.
22. All stipulated penalties shall be paid in the manner specified in Paragraph 20 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 20 of this Agreement.
23. 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.

24. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
25. 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.
26. 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.
27. 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.
28. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
29. The effect of settlement described in Paragraph 30 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.

Effect of Agreement:

30. 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 motorcycles.

The following agree to the terms of this Agreement:

**Administrative Settlement Agreement – In the Matter of MOD Cycles Corporation;
AED/MSEB – 7271**

MOD Cycles Corporation

By: _____
Signature: _____

Date: 04/03/08

Print Name: MARCO KEUHL

Print Title: DIRECTOR

**Administrative Settlement Agreement – In the Matter of MOD Cycles Corporation;
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U.S. Environmental Protection Agency

By: 

Adam M. Kushner
Director
Air Enforcement Division

Date: April 25, 2008

Appendix A

Subject Motorcycles
Administrative Settlement Agreement – *In the Matter of MOD Cycles Corporation;*
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Importer: Mod Cycles Corporation
Manufacturer: Zhejiang Taizhou Wangye Power Co., LTD

Entry Number	Model Name	Model Year	Quantity
HC6-0071736-3	Baccio DLX 50	2008	112
HC6-0071738-9	Baccio Runner 50	2008	112
HC6-0071739-7	Baccio DLX 50	2008	112
HC6-0071741-3	Baccio VX 50	2008	96
HC6-0071742-1	Baccio Runner 50	2008	112
Total			544