

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

)	
In the Matter of:)	
)	ADMINISTRATIVE SETTLEMENT
Zongshen, Inc.)	AGREEMENT
)	AED/MSEB: 7106
Respondent.)	
)	

THIS SETTLEMENT AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Zongshen, Inc., 10530 NW 37th Terrace, Miami, Florida 33178 (Respondent).

Purpose:

The purpose of the Settlement Agreement (Agreement) is to resolve Respondent's 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. § 86.401-97 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).
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 certificate of conformity).
4. 40 C.F.R. § 86.410-90 provides that the emission standards for motorcycles are 5.0 grams per kilometer (g/km) of hydrocarbons, 12 g/km of carbon monoxide, and zero crankcase emissions (EPA motorcycle emissions standards).
5. 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 emissions label (EPA emissions label).

(ck)

6. Section 207(a) of the Act, 42 U.S.C. § 7541(a), requires the manufacturer of each new motor vehicle and new motor vehicle engine to warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine is designed, built, and equipped to comply with the federal emissions standards, and is free of any material defects which would cause the vehicle or engine to fail to comply with the federal emissions standards during its useful life (EPA emissions warranty).
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 certificate of conformity.
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 term “export” means to transport to a location outside of the United States and its territories, Canada, and Mexico.
11. For purposes of this Agreement, the term “destroy” means 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.

Alleged Violations:

12. EPA alleges that in October 2004, Respondent imported into the United States eighty three (83) motorcycles that are described in Table 1 below (the subject motorcycles). The subject motorcycles were not covered by an EPA-issued certificate of conformity and did not bear valid EPA emissions labels. EPA further alleges that each of the subject motorcycles was equipped with an engine having a displacement greater than 50 cc, and, as a consequence, was required to be covered by an EPA-issued certificate of conformity.

Table 1

Entry Date	Customs Entry Numbers	Model Numbers	Quantity	Displacement
10/21/04	178-16403266	WY 125T-9	42	125 ccs
10/21/04	178-16403266	WY 50QT-2	41	63 ccs

13. Based on the forgoing, EPA alleges that Respondent committed 83 separate violations of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and the Motorcycle Regulations.

Terms of Agreement:

14. EPA has determined to reduce the civil penalty for the eighty three (83) violations alleged in Paragraph 13 of this Agreement to \$45,000, provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$45,000 to the United States of America within thirty days from the date that this Agreement is executed 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- 7106

A copy of the check shall be sent to Jeffrey A. Kodish at the address specified in Paragraph 20 of this Agreement.

15. Within forty five (45) days of this Agreement, or such longer period of time if required by the United States Customs and Border Protection (Customs), Respondent shall export or destroy the subject motorcycles. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the subject motorcycles were either exported or destroyed.
16. Within thirty (30) days of this Agreement, Respondent shall implement a program, which shall remain in effect until December 31, 2006, to ensure its compliance with the Act and the Motorcycle Regulations. In order to meet this requirement, Respondent shall:
- (a) Create and maintain a complete list of all the motorcycles that it markets, by manufacturer, make, model number, vehicle identification number, engine serial

number, engine type (i.e., 2 stroke or 4 stroke), engine displacement, and maximum speed;

(b) Examine a representative sample of the motorcycles marketed by Respondent by completing the following procedures:

1. A separate sample must be examined for each make, model and production year of motorcycles that are marketed (motorcycle category);
2. If motorcycles within a particular motorcycle category contain engines that are manufactured by different manufacturers, that motorcycle category shall be subdivided into separate categories for each engine manufacturer represented;
3. The number of motorcycles to be examined in each motorcycle category (the motorcycle category sample size) shall be determined as follows:

Number of motorcycles marketed in the category	Number of motorcycles from the category to be examined
1 through 10	1
11 through 50	3
51 through 250	10
251 and greater	20

4. The motorcycles in each motorcycle category sample shall:
 - (a) Be selected randomly from the motorcycles in each motorcycle category;
 - (b) Be examined as required in this Agreement before any motorcycles in the category are sold or transferred by Respondent; and
 - (c) If the number of motorcycles in a motorcycle category increases because of subsequent marketing of additional motorcycles in the category, and, if as a consequence the motorcycle category sample size increases, the additional motorcycles shall be examined before

any of the additional motorcycles in the category are sold or transferred by Respondent;

5. For each motorcycle category that Respondent markets as being excluded from the certification requirements because of an engine displacement that is less than 50 cc, Respondent's examination of the motorcycle category sample shall consist of measurement of the engine cylinder size using the EPA procedures described in the Attachment;
 6. For each motorcycle category that Respondent markets as being excluded from the certification requirements because the maximum speed is less than twenty-five miles per hour, Respondent's examination of the motorcycle category sample shall consist of test driving the sampled motorcycles to determine their maximum speed;
 7. For each motorcycle category that Respondent markets as being excluded from the certification requirements because the motorcycles are not equipped with a headlight, tail light and stop light, Respondent shall examine the motorcycles in the sample to determine that they are not equipped with these lights and cannot be readily fitted with these lights;
 8. For each motorcycle category that Respondent markets as being covered by an EPA certificate of conformity, Respondent's examination of the motorcycle category sample shall consist of:
 - (a) Verifying the presence of the required EPA emissions label;
 - (b) Verifying that the EPA emissions warranty statement is included in the motorcycle owner's manual; and
 - (c) Confirming that the motorcycle manufacturer obtained an EPA certificate of conformity for the motorcycle category, by contacting the EPA Certification Division at (734) 214-4100.
- (c) Where, for a category of motorcycles that Respondent markets as being excluded under Paragraphs 16(b)(5), (6) and (7), Respondent determines from its examination that one or more motorcycles does not meet the exclusion criteria, Respondent shall:
1. Treat all the motorcycles in that motorcycle category as failing to meet the exclusion criteria;
 2. Not market any additional motorcycles in that category;
 3. Within ninety (90) days of the examination, export all motorcycles in that category that are in Respondent's possession; and

4. Within ninety (90) days of the examination, recall and export all motorcycles in that category that were marketed after the last date when Respondent sampled and examined motorcycles from this category and found that they complied with the Motorcycle Regulations;
- (d) Where, for a category of motorcycles that Respondent marketed as being covered by an EPA certificate of conformity, Respondent determines from its examination that one or more motorcycles does not meet the criteria specified under Paragraphs 16(b)(8)(a) or (b), Respondent shall:
1. Treat all the motorcycles in that motorcycle category as failing to meet the criteria;
 2. Not market any additional motorcycles in that category unless and until the criteria deficiency has been corrected; and
 3. Within ninety (90) days, recall and correct the deficiency for each motorcycle in that category that was marketed after the last date when Respondent sampled and examined motorcycles from this category and found that they complied with the Motorcycle Regulations.
- (e) Respondent shall submit an annual report to EPA that describe the activities taken under this compliance assurance program. The first annual report will be due by March 1, 2006 and the second report will be due by March 1, 2007 for activities performed during the previous calendar year, and shall include the following information:
1. A description of each motorcycle category, the number of motorcycles in the category, and the dates and ports of entry for the motorcycles; and
 2. A description of the examinations that were performed on the motorcycle category sample, and the results of the examinations.
17. Within ninety (90) days of this Agreement, Respondent shall develop and implement a joint compliance assurance program along with its parent company, Zongshen Industries Group, that is designed to a) ensure that all U.S. directed production of EPA certified motorcycles manufactured in China by Zongshen Industries Group are identical in all material respects to the motorcycles tested and described in the application for certification, b) ensure that all U.S. directed production of EPA certified motorcycles manufactured in China by Zongshen Industries Group are properly labeled, and c) prevent third parties from importing uncertified motorcycles into the United States that are manufactured in China by Zongshen Industries Group. Respondent and Zongshen Industries Group shall seek input from EPA's Compliance and Certification Division regarding this joint compliance assurance program and shall meet with EPA staff regarding the creation and implementation of this program.

18. At any time after the effective date of this Agreement, Respondents may submit a request to EPA to allow it to implement the joint compliance assurance plan developed under paragraph 17, in lieu of the compliance program set forth in paragraph 16. To make a successful petition, Respondents must demonstrate that the joint compliance assurance program developed under paragraph 17 will be at least as effective in preventing future violations as the compliance assurance program set forth in paragraph 16.
19. Respondent shall maintain all reports, documents and records related to this Agreement for five years from the date of this Agreement, and upon request by EPA shall make these records available to EPA in the manner requested by EPA, either by sending copies to EPA or making the records available to EPA at Respondent's place of business.
20. All correspondence to EPA concerning this Agreement shall be sent to:

Jeff Kodish, Attorney
Air Enforcement Division
U.S. Environmental Protection Agency
12345 W. Alameda Parkway, Suite 214
Lakewood, CO 80228

_____ Fax number: (303) 236-9514

Stipulated Penalties:

21. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 14 - 19 of this Agreement, Respondent agrees to the following stipulated penalties:
 - (a) For the failure to timely pay the civil penalty, or provide proof of such payment, pursuant to Paragraph 14 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day. However, if after sixty days of this Agreement, Respondent has failed to pay the civil penalty, Respondent shall be in default of this Agreement. Upon such default, Respondent shall pay a stipulated penalty of \$2,500 per subject motorcycle.
 - (b) For the failure to export or destroy the motorcycles as required by Paragraph 15 of this Agreement, Respondent shall pay for each motorcycle a stipulated penalty of \$2,500.
 - (c) For the failure to create and maintain a list of all motorcycles that it markets within 30 days of this Agreement, pursuant to Paragraph 16(a), Respondent shall pay a stipulated penalty of \$200 per day.

- (d) For the failure to examine motorcycles, pursuant to Paragraph 16(b), Respondent shall pay a stipulated penalty of \$1,000 for each motorcycle not examined.
 - (e) For the failure to recall and/or export all motorcycles that fail to meet the exclusion criteria specified in Paragraph 16(b)(5), (6) and (7) of this Agreement, pursuant to Paragraph 16(c)(3) and (4), Respondent shall pay for each motorcycle a stipulated penalty of \$2,500 plus the difference between Respondent's purchase price and the retail value of the motorcycle.
 - (f) For marketing additional motorcycles in a category that fail to meet the criteria under Paragraph 16(b)(5), (6) and (7) of this Agreement, pursuant to Paragraphs 16(c)(2) and 16(d)(2) and failure to recall and correct the deficiency, pursuant to Paragraph 16(d)(3), Respondent shall pay for each motorcycle a stipulated penalty of \$2,500 plus the difference between Respondent's purchase price and the retail value of the motorcycle.
 - (g) For failure to timely submit the reports required under Paragraph 16(e) of this Agreement, Respondent shall pay a stipulated penalty of \$200 for each day a report is not filed.
 - (h) For the failure to develop and implement a joint compliance assurance plan pursuant to paragraph 17, Respondent shall pay a stipulated penalty of \$200 per day.
22. All stipulated penalties shall be paid in the manner specified in Paragraph 14 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jeffrey A. Kodish 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.
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 § 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.

The following agree to the terms of this Agreement:

Zongshen, Inc.

By: _____

Date: 9-28-05

(Name) CAVAN CHAN
(Title) Vice President

Administrative Settlement Agreement in the matter of United States v. Zongshen, Inc.

U.S. Environmental Protection Agency

By: _____

Adam M. Kushner
Acting Director
Air Enforcement Division

Date: 10.11.05