

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

In the Matter of:)	
)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
Devon Motorcycles, Inc.)	
King of Prussia, Pennsylvania)	AED/MSEB: 7202
Respondent.)	

THIS SETTLEMENT AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Devon Motorcycles, Inc., 1100 First Street, Suite 100, King of Prussia, PA 19406 (Respondent).

Purpose:

The purpose of this Settlement Agreement (Agreement) is to resolve Respondent's alleged violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the regulations promulgated there under at 40 C.F.R. Part 1051, Subpart B, regarding the emissions certification requirements for off-highway motorcycles (the Off-Highway Motorcycle Regulations).

Statutory Authority:

1. Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d), prohibit any person from importing any new nonroad vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued and in effect, and bears the required EPA emissions label.
2. Section 205(a) of the Act, 42 U.S.C. § 7524(a), provides that any person who violates Section 7522(a), is subject to a civil penalty of not more than \$32,500 for each vehicle or nonroad engine.

Regulatory Authority:

3. 40 C.F.R. § 1068.101(a)(1) prohibits a new off-highway 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), and bears the required EPA emissions label.
4. 40 C.F.R. § 1051.135(a) 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).

Other Definitions:

5. For purposes of this Agreement the term “export” means to transport to a location outside of the United States and its territories.
6. 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:

7. On December 12, 2006, Respondent imported into the Port of Savannah, Georgia forty-eight off-highway motorcycles as described the Table below (subject motorcycles). Respondent declared on the EPA Declaration Forms 3520-21 that the subject motorcycles were covered under an EPA-issued certificate of conformity and bore an EPA emissions label.

Table

Entry Date	Entry Number	Model	Quantity	Manufacturer
12/12/2006	221-1854092-5	JC150Y	48	Jincheng

8. U.S. Customs and Border Protection (Customs) examined the entry and determined that the emissions labels affixed to the motorcycles were removable without destroying or defacing the label, and the label did not state the month and year of manufacture of the motorcycle, in violation of 40 C.F.R. §§ 1051.135(a)(1) and (a)(6), respectively.
9. On January 17, 2007, EPA requested that U.S. Customs at the Port of Savannah, Georgia seize the Subject Engines.
10. Based on the forgoing, EPA alleges that Respondent committed forty-eight violations of Sections 203(a) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a), and 7547(d) and the Off-Highway Motorcycle Regulations, 40 C.F.R. § 1051.135.

Terms of Agreement:

11. Respondent has agreed to pay to the United States of America a civil penalty of \$5,000 within thirty days from the 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 15 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
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB- 7202

A copy of the check shall be sent to Jocelyn Adair at the address specified in Paragraph 13 of this Agreement.

12. Respondent shall export or destroy the subject motorcycles within thirty days of this Agreement, or such longer period of time if required by U.S. Customs and Border Protection (Customs). The exportation or destruction shall be carried out under the supervision of Customs. Respondent shall also certify to EPA and provide supporting documents that the subject motorcycles were either exported or destroyed.
13. All correspondence to EPA concerning this Agreement shall be sent to:

Jocelyn Adair, Esq.
U.S. EPA/MSEB
Mail Code 2242A
1200 Pennsylvania Avenue, N.W., Room 1109A
Washington, DC 20460

Stipulated Penalties:

14. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 11 through 13 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 Paragraphs 11 and 13 of this Agreement, Respondent shall pay a stipulated penalty of \$250 per day.
 - (b) For the failure to export or destroy the motorcycles as required by Paragraph 12 of this Agreement, Respondent shall pay for each motorcycle a stipulated penalty of \$5,000.
15. All stipulated penalties shall be paid in the manner specified in Paragraph 11 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jocelyn Adair at the address specified in Paragraph 13 of this Agreement.
16. 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.

17. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
18. 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.
19. 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.
20. 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.
21. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
22. The effect of settlement described in Paragraph 23 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
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 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.

The following agree to the terms of this Agreement:

Devon Motorcycles, Inc.

By: 


Signature:

Print Name: JOHN A. BENNETT

Date: 2-16-07

**Administrative Settlement Agreement – *In the Matter of Devon Motorcycles, Inc.*;
AED/MSEB – 7202**

U.S. Environmental Protection Agency

By:  _____
Adam M. Kushner
Director
Air Enforcement Division
Office of Civil Enforcement

Date: 2-27-07