

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

In the Matter of:

MOD Cycles Corp.,

Respondent

Administrative Settlement
Agreement

AED/MSEB # 7240

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (“EPA”), and MOD Cycles Corp., 7547 NW 52nd St., Miami, FL 33166 (“MOD” or “Respondent”), regarding Respondent’s compliance with the requirements of the Clean Air Act (“the Act”) and the regulations promulgated thereunder at 40 C.F.R. Parts 85 and 86.

Purpose

1. The purpose of this Administrative Settlement Agreement (“Agreement”) is to resolve any and all claims by EPA under the Act and Emissions Regulations for 1978 and Later New Motorcycles, 40 C.F.R. Part 86, Subpart E, arising out of the importation of two hundred thirty-nine (239) motorcycles, as described in Attachments 1 and 2.

Statutory Authority

2. Section 213(d) of the Clean Air Act, 42 U.S.C. § 7547(d), authorizes EPA to promulgate regulations “as may be necessary to determine compliance with, and enforce, standards in effect” under the vehicles section.

Regulatory Authority

3. 40 C.F.R. § 86.407-78 prohibits anyone from importing into the United States any motorcycle unless it is covered by an EPA-issued Certificate of Conformity.
4. 40 C.F.R. § 86.413-2006 requires the manufacturer of any motorcycle to affix a permanent, legible label identifying each motorcycle offered for sale to the public and covered by a certificate of conformity:

- a. Under 40 C.F.R. § 86.413-2006(a)(3), the label must be affixed in such a manner that it cannot be removed without destroying or defacing the label;
- b. Under 40 C.F.R. § 86.413-2006(a)(4)(iii), the label must state the engine displacement; and
- c. Under 40 C.F.R. § 86.413-2006(a)(4)(vi), the label must identify the exhaust emission control system.

Definitions

5. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulation and dates:* 40 C.F.R. Part 86, Subpart E, applies to 1978 and later model year, new, gasoline-fueled motorcycles built after 31 December, 1977, and to 1990 and later model year, new, methanol-fueled motorcycles built after December 31, 1989 and to 1997 and later model year, new natural gas-fueled and liquefied petroleum gas-fueled motorcycles built after December 31, 1996 and to 2006 and later model year new motorcycles, regardless of fuel.
 - b. *This matter:* As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Motorcycles identified in Attachments 1 and 2 and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Part 86.
 - c. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. §§ 86.407-78 and -80, after EPA has determined that the manufacturer’s application is complete and that the motorcycle engine family meets the applicable requirements of 40 C.F.R. Parts 86 and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of motorcycles built in accordance with the manufacturer’s application after the date of the Certificate and before expiration of the covered model year.

- d. *Certificate Holder*: The manufacturer whose name appears on the Certificate of Conformity issued for the motorcycles covered by this Agreement pursuant to 40 C.F.R. § 86.407-78 is the “Certificate Holder.”
- e. *Destroy*: The term “destroy” means the complete destruction of the motorcycle 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 outside of the United States and its territories, Canada, and Mexico.
- g. *Labeling requirements*: “Labeling requirements” means collectively the requirements found at 40 C.F.R. § 86.413-78 that require that certified motorcycles be labeled at the time of manufacture.

Alleged Violations

- 6. On or about March 26, 2007, Respondent imported into the United States at the Port of Miami, FL, one entry containing the sixty-two (62) motorcycles listed in Attachment 1.
- 7. Upon examination by the Department of Homeland Security’s Customs and Border Protection (“CBP”) and consultation with EPA, EPA determined that the 62 motorcycles were not labeled in compliance with 40 C.F.R. § 86.413-2006(a)(3).
- 8. In addition, the 14 motorcycles identified as Suntrike 150s and Suntrike 50s were not labeled in compliance with § 86.413-2006(a)(4)(iii) and (vi).
- 9. On July 16, 2007, MOD Cycles informed EPA of the imminent arrival of a second import shipment of the one hundred seventy-seven (177) motorcycles listed in Attachment 2.

MOD voluntarily disclosed its belief that all 177 motorcycles were similarly in violation of 40 C.F.R. § 86.413-2006.

10. EPA has determined that Respondent is the importer of the Subject Motorcycles.
11. Thus, Respondent has committed two hundred and thirty-nine (239) violations of 40 C.F.R. § 86.413-2006.

Corrective Action

12. Within thirty (30) days from the date that CBP releases the Subject Motorcycles, or from the effective date of this Agreement if CBP has released the Subject Motorcycles prior to the effective date of this Agreement, whichever is later, Respondent shall export to a country other than Canada or Mexico or destroy the Subject Motorcycles. This exportation or destruction shall be carried out under the supervision of CBP. Within forty-five (45) days from the applicable date under this Paragraph, Respondent shall certify to EPA and provide supporting documents that each of the motorcycles and Subject Motorcycles has been either destroyed or exported under the supervision of CBP.
13. In lieu of exporting or destroying each Subject Motorcycle as required by Paragraph 12 of this Agreement, the Certificate Holder for the Subject Motorcycles may remove each non-complying label from the Subject Motorcycles and affix a complying EPA emissions information label (“replacement label”) to each of the Subject Motorcycles. This corrective action must include each of the following steps:
 - a. Prior to relabeling, the Certificate Holder shall send to EPA a sample of the proposed replacement label and a technical description of the method and procedures that the Certificate Holder will use to affix the replacement label to the Subject Motorcycles in Attachments 1 and 2. The replacement label must contain all the information specified at 40 C.F.R. § 86.413-2006 and must provide accurate information for the motorcycle to which it will be affixed (e.g., model

year, VIN number, etc.). In addition, the replacement label and method and procedures used to affix the label must be designed to ensure that the replacement label is readily visible and is permanently affixed so that it cannot be removed without destroying or defacing the label. This submission, affidavit, and all other correspondence concerning this Agreement shall be sent to Meredith G. Miller at the address specified in Paragraph 21 of this Agreement;

- b. Also prior to relabeling, the Certificate Holder shall send to EPA the Certificate of Conformity and any documents and photographic evidence of the technical specifications of the seventy (70) motorcycles manufactured by Ningbo Rhon Motorcycle Co., Ltd., and the engines in them, such that EPA can verify that the proposed labels are consistent with the Certificate of Conformity issued for those motorcycles. In the event that EPA determines that the 70 motorcycles are not covered by a valid Certificate of Conformity, Respondent shall destroy or export the 70 motorcycles consistent with Paragraph 12, and pay stipulated penalties as provided by Paragraph 29;
- c. Where EPA determines that any of the proposed sample labels are deficient, EPA may notify the MOD of the deficiency of the proposed label within five (5) days of receiving the proposed label from the Certificate Holder or MOD. If EPA provides comments on the deficiency of the label or process for affixing the label, the Certificate Holder shall revise its label and/or process according to EPA's comments or provide EPA with an explanation as to why the label/or process is not deficient;
- d. The Certificate Holder shall establish and fully document a chain of custody for the replacement labels from the time of production until the time of installation on the Subject Motorcycle, and destruction of any unused replacement label;

- e. This corrective action shall be conducted under the observation of CBP, or a board certified licensed professional engineer (“Observer”) not employed directly by either MOD or the Certificate Holder. The corrective action shall be completed within thirty (30) days following the date of this Agreement, or such longer period of time if requested by Respondents and approved by EPA for good cause shown;
- f. The Certificate Holder shall remove the non-complying label and give it to the Observer, and shall attach the replacement label in accordance with the procedure submitted to EPA in the above Subparagraph (a);
- g. After the replacement label has been affixed to each of the 239 Subject Motorcycles, the Observer shall randomly select one Subject Motorcycle from each model (“Test Sample Engine”) to determine whether or not the replacement label is readily visible and is permanently attached to the Subject Motorcycle and cannot be removed without destroying or defacing the replacement label. Any Test Sample Engine whose replacement label is destroyed or defaced during this test must be relabeled by the Certificate Holder. However, where the replacement label on a Test Sample Engine can be removed without destroying or defacing the replacement label, the Test Sample Engine and the related model Subject Motorcycles must be exported or destroyed as described in Paragraph 12;
- h. Where a replacement label on a Test Sample Engine contains all the specified information, is readily visible, and cannot be removed without destroying or defacing the replacement label, the Test Sample Engine (once re-labeled, if necessary) and the related model Subject Motorcycles may be sold or introduced into commerce;

- i. Within thirty (30) days of this Agreement (or such longer period of time if requested by Respondents and approved by EPA for good cause shown), Respondents shall provide EPA with a report that fully describes and certifies the corrective action taken. The report must include the following:
 - i. An affidavit from the Certificate Holder who has performed the corrective action work. The affidavit shall certify the date, time, and place of the corrective action work, identify each person doing the work, identify the serial number of each Subject Motorcycle that was re-labeled, provide a clear readable picture of the replacement label affixed to each model of the Subject Motorcycles, and provide the results of any tests performed to determine whether or not the replacement label was permanent and could not be removed without destroying or defacing the label; and
 - ii. An unconditional statement from the Certificate Holder certifying that the Subject Motorcycles comply with all requirements of the Clean Air Act, 40 C.F.R. Part 86;
- j. Where the Observer determines that a replacement label is non-complying, or can be removed without destroying or defacing the label, or the corrective action work has not been performed, the Observer will report his or her findings to EPA and Respondents shall either export or destroy the Subject Motorcycles as described in Paragraph 12; and
- k. The Observer shall destroy all the removed labels no later than the day the last Subject Motorcycle receives a replacement label.

Audit Policy Determination

14. As discussed in Paragraph 9, MOD self-disclosed the violations related to the Subject Motorcycles listed in Attachment 2 and has requested consideration pursuant to EPA's

“Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations,” 65 Fed. Reg. 19,618, April 11, 2000 (“Audit Policy”).

15. EPA issued the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties; however, EPA retains its discretion to recover any economic benefit gained as a result of non-compliance.
16. Upon consideration of relevant information about MOD’s self-disclosed violations, EPA concludes that Respondent has satisfied the majority of the conditions set forth in the Audit Policy for the Subject Engines listed in Attachment 2. EPA took this into account in determining the penalty in this matter.

Civil Penalty

17. Respondent shall pay to the United States a civil penalty of eleven thousand dollars (\$11,000) (“EPA penalty”) in satisfaction of the violations described herein, provided Respondent successfully completes the terms of this Agreement.
18. Respondent agrees to pay the \$11,000 penalty to the United States of America 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.
19. Respondent agrees to pay the amount by either:
 - 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 # 7240

Simultaneously, a photocopy of the check shall be faxed to (202) 564-0067 to the attention of Meredith G. Miller. This check shall be identified with the case number and Respondent's name; or

- b. Respondent may make an online payment through the Department of the Treasury by visiting 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." Within twenty-four hours of payment, Respondent shall fax a copy of the online payment receipt to Meredith G. Miller at (202) 564-0067.
20. Separate and apart from this EPA penalty, CBP may require payment of a forfeiture remission amount for the release of the goods from seizure.

Notice

21. A copy of all correspondence and certifications to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Meredith G. Miller
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7240

(Courier Service)

Meredith G. Miller
U.S. EPA
Ariel Rios South, Room 2119C
1200 Pennsylvania Ave., NW
Washington, DC 20004

Root Cause Analysis and Corrective Action Compliance Plan

22. Within thirty (30) days from the date of this Agreement, the Certificate Holder shall initiate a thorough review and assessment of its motorcycle labeling practices and procedures to ensure that all labels are permanently affixed on the Certificate Holder's

motorcycles at the time of manufacture and in all respects comply with the requirements of 40 C.F.R. Part 86. The Certificate Holder shall, as part of such review:

- a. Review regulatory requirements for the labeling of motorcycles;
- b. Analyze a representative sample of the motorcycles and engines under its control to determine the potential cause(s) of label noncompliance;
- c. Review current label manufacture and application procedures and associated quality assurance and/or control practices; and
- d. Identify and implement corrective action(s) as well as quality assurance/quality control procedures at locations where the Certificate Holder's labels are designed, and/or printed and where its motorcycles are assembled for shipment to the United States, to ensure that all requirements of 40 C.F.R. Part 86 are met.

The Certificate Holder shall complete the review and analysis required by this Paragraph 22 and shall implement all corrective actions, within one hundred and eighty (180) days of the effective date of this Agreement. The Certificate Holder shall, within two hundred and ten (210) days of the effective date of this Agreement, submit a report to EPA of the Root Cause Analysis and Corrective Action Plan detailing the analysis, cause(s) of noncompliance, and all corrective actions implemented by the Certificate Holder.

General Provisions

23. This Agreement becomes effective upon the date executed by EPA ("effective date of the Agreement"), at which time a copy will be returned to Respondent.
24. Notwithstanding any other provision of this Agreement, the parties agree 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 motorcycles 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.

25. The parties represent that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
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 validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
28. This Settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Attachments 1 and 2, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties

29. For failure to comply with the terms of this Agreement on a timely basis, Respondent shall pay stipulated penalties to the United States as follows:
 - a. For failure to pay the civil penalty or provide proof thereof, pursuant to Paragraphs 17 and 18, \$250.00 per day;
 - b. For failure to export, destroy or re-label the Subject Motorcycles or provide proof thereof, pursuant to Paragraphs 12 and 13, \$250.00 per day;

- c. For failure to provide the reports specified in Paragraphs 12, 13 and 22, \$250 per day; and,
 - d. For the importation of 70 motorcycles not covered by a valid Certificate of Conformity determined pursuant to Paragraph 13.b, \$17,500.
30. All stipulated penalties under Paragraph 29 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 19 and shall be paid within five (5) days of written demand by EPA. Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA from seeking any other remedy or sanction available by virtue of Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

Effect of Agreement

31. 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 Respondent 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 Respondent of responsibility to comply with other state, federal, or local laws or regulations.

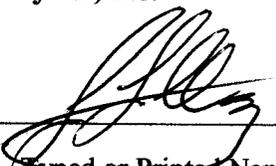
U.S. Environmental Protection Agency

Settlement Agreement In the Matter of MOD Cycles, Inc.

AED/MSEB #7240

The following agree to the terms of this Agreement:

MOD Cycles, Inc.

By:  _____

Date: 10/29/07

Typed or Printed Name: MARIO MEUSER

Typed or Printed Title: DIRECTOR.

**U.S. Environmental Protection Agency
Settlement Agreement In the Matter of MOD Cycles, Inc.
AED/MSEB #7240**

The following agrees to the terms of this Agreement:

U.S. Environmental Protection Agency

By: _____


Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: Nov 30, 2007

Attachment 1

In the Matter of MOD Cycles Corp.

AED/MSEB # 7240

**Subject Motorcycles
Entry Date 3/26/07**

Entry Date	Entry #	Manufacturer	Engine Family on Label	Year/Model	#	Value
3/26/07	HC6-0070496-5	Zhejiang Taizhou Wangye	7MODC0.15NFG	2007/Baccio VX150	48	\$2,487 ea.
3/26/07	HC6-0070443-7	Deceleste SA	6MODC0.15FKD	2007/Suntrike 150	7	\$441 ea.
3/26/07	HC6-0070443-7	Deceleste SA	6MODC0.05FKD	2007/Suntrike 50	7	\$441 ea.

Attachment 2

In the Matter of MOD Cycles Corp.

AED/MSEB # 7240

**Subject Motorcycles
Detention Date 7/18/07**

Deten. Date	Tally#	Manufacturer	Engine Family on Label	Year/Model	#	Value
7/18/07	911333	Zhejiang Taizhou Wangye	7MODC1.15NFG	2007/Baccio VX150	93	\$446 ea.
7/18/07	911303	Deceste SA	7MODC0.05NFG	2007/Suntrike 50	14	\$2,487 ea.
7/18/07	911754	Ningbo Rhon Motorcycle Co., Ltd.	7MODC0.05JNK	2007/Baccio Speedy 50	70	\$360 ea.