

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

_____ )	
In the Matter of: )	ADMINISTRATIVE
)	SETTLEMENT AGREEMENT
Genuine Scooters, LLC, )	AED/MSEB-7808
)	
_____ )	
Respondent. )	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Genuine Scooters, LLC, 5400 N. Damen Avenue, Chicago, Illinois 60625 (Genuine Scooters or Respondent).

**Purpose:**

The purpose of this Administrative Settlement Agreement (Agreement) is to resolve 782 alleged violations of section 203(a) of the Clean Air Act (CAA), 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 on-highway motorcycles (the motorcycle regulations).

**Statutory Authority:**

1. Section 203(a)(1) of the CAA, 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-issued certificate of conformity (EPA-COC).
2. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), subjects any person who violates Section 7522(a) to a civil penalty for each motor vehicle or engine. The maximum civil penalty applicable to the alleged violations is \$32,500 per vehicle or engine, based on the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the applicable

regulations, 40 C.F.R. § 19.4, adjusting the statutory penalty of \$25,000 to \$32,500 for violations committed between March 15, 2004 and January 12, 2009.

3. Section 206 of the CAA, 42 U.S.C. § 7525, provides, among other things, that EPA shall test, or require to be tested, any new motor vehicle to determine whether such vehicle or engine complies with emission standards. In addition, section 206 of the CAA provides that EPA shall apply any appropriate adjustment factors to assure that each vehicle or engine comply with the emission standards during its useful life.
4. Section 216(1) of the CAA, 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.
5. Section 216(2) of the CAA, 42 U.S.C. § 7550, defines a “motor vehicle” as any self-propelled vehicle designed for transporting persons or property on a street or highway.

**Regulatory Authority:**

6. 40 C.F.R. § 86.401-2006 provides that the motorcycle regulations apply to 1978 and later model year new motorcycles.
7. 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).
8. 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-COC, or is excluded or exempt from meeting the regulatory requirements.

9. 40 C.F.R. § 86.413-78 requires the manufacturer who has been issued the EPA-COC to affix at the time of manufacture a permanent and legible EPA emissions information label (label).
10. 40 C.F.R. § 86.416-80(a)(2)(ii) requires the manufacturer to specify the range of available fuel and ignition system adjustments in the application for certification.
11. 40 C.F.R. § 86.421-78 requires the test vehicle to be tested at the range with the greatest probability of exceeding the standard.
12. 40 C.F.R. § 86.428-80(d) provides that EPA may select (within the physical available range) the ignition timing, idle air fuel mixture, and other fuel adjustments to be used on each test vehicle during certification, and each tuneup procedure.
13. 40 C.F.R. § 86.437-78(a)(1) provides that the manufacturer shall submit to EPA a statement that the test vehicles, for which data are submitted, have been tested in accordance with the application test procedures, and, on the basis of such tests, they conform to the requirements of the regulations. In addition, 40 C.F.R. § 86.437-78(a)(2)(iii) provides that the certificate will cover all vehicles represented by the test vehicle.
14. 40 C.F.R. § 86.442-78 provides that where the manufacturer knowingly submit false or inaccurate information, EPA may deem such certificate void ab initio.

**Background:**

15. On or about September 30, 2008, and May 30, 2010, Respondent imported into the Port of Chicago, Illinois, 782 motorcycles as described in the Appendix to this Agreement (the subject motorcycles).

16. EPA and the U.S. Department of Homeland Security's Bureau of Customs and Border Protection (U.S. Customs) at the Port of Chicago, Illinois inspected a sample of the subject motorcycles and documented that the subject motorcycles bore labels stating, among other things, that the subject motorcycles were U.S. certified and were model year 2009 and 2010.
17. During the inspection, the inspectors also examined the idle mixture screw on a sample of the subject motorcycles, and determined that the idle mixture screw could be easily adjusted and removed.
18. Although EPA issued to Respondent model year 2009 and 2010 EPA-issued COCs for engine families that would cover the five models of imported subject motorcycles, EPA determined that the applications for certification failed to indicate that the test vehicles contained any adjustable parameters. Consequently, the subject motorcycles are not identical in all material respects to the test vehicles and, as such, the subject motorcycles are not covered by the EPA-issued COC or are uncertified.

**Alleged Violations:**

19. As the importer of the uncertified subject motorcycles, Respondent is liable for 782 separate violations of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and the motorcycle regulations, 40 C.F.R. Part 86.

**Civil Penalty:**

20. Respondent shall pay to the United States of America a civil penalty of \$188,500. The civil penalty shall be paid as follows: (1) fifty percent (\$94,250) no later than thirty days from the effective date of this Agreement; and (2) the balance (\$94,250) in seven consecutive quarterly payments of \$13, 464.29. The first consecutive quarterly payment

shall be due no later than four months 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 24 of the Agreement. Respondent shall pay the amount by certified check or cashier's check payable to the United States of America, and shall 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 - 7808.

Respondent may also pay online at [www.pay.gov](http://www.pay.gov); From the "Search Public Form" field, Respondent shall enter "SFO 1.1," click "EPA Miscellaneous Payments - Cincinnati Finance Center," and complete the SFO Form Number 1.1.

**Notice:**

21. A copy of the payment check shall be faxed to Jocelyn L. Adair, Esq., at (202) 564-0068 no later than twenty-four hours after mailing the payment. All correspondence to EPA concerning this Agreement shall be sent to:

**(Regular Mail)**

Jocelyn L. Adair, Esq.  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**(Courier Service)**

Jocelyn L. Adair, Esq.  
U.S. EPA  
Ariel Rios South, Room 2117A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**Stipulated Penalties:**

22. Time is of the essence under this Agreement. Upon the failure to timely pay the civil penalty or provide proof thereof as required by Paragraph 20 of this Agreement, \$250 per day.

23. 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 L. Adair, Esq., at the address specified in Paragraph 21 of this Agreement.

**General Provisions:**

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(c) of the CAA, 42 U.S.C. § 7524(c), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the CAA, or pursue any other available remedies. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, or other statutes of limitation. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement, *see* 31 U.S.C. § 7701.
25. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
26. By entering into this Agreement, Respondent does not admit that it committed any of the alleged violations.
27. 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.
28. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue fact or law relating to the matters consented to herein.

29. 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.
30. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
31. The effect of settlement described in Paragraph 32 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.

**Effect of Agreement:**

32. 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: (a) in the event of default or noncompliance with this Agreement; (b) for other violations of law, which are not the subject matter of this Agreement; or (c) 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, and does not address Respondent's potential liability to U.S. Customs for vehicles or engines that are seized or detained now or in the future.

The following agree to the terms of this Agreement:

**Administrative Settlement Agreement – In the Matter of Genuine Scooters, LLC;  
AED/MSEB – 7808**

Genuine Scooters, LLC

By:   
Signature:

Date: 9-2-2011

Print Name: James Kolbe

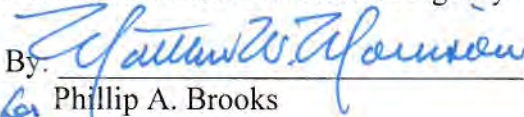
Print Title: Officer

Federal Tax Identification Number: 77-0652723



**Administrative Settlement Agreement – *In the Matter of Genuine Scooters, LLC;*  
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U.S. Environmental Protection Agency

By:   
for Phillip A. Brooks  
Acting Director  
Air Enforcement Division

Date: 9/23/11

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**Appendix**

**Subject Motorcycles  
Entry No.: 0450265215-1**

Engine Family	Model Name	Model Year	Quantity
9SCEC.150CPL	Buddy 150	2009	116
9SCEC.125PAL	Buddy 125	2009	232
9GSCC.110PGO	Rattler 110	2009	52
9GSCC.049PGO	Buddy 50	2009	232
Total			632

**Subject Motorcycles  
Entry No.: 045-0286135-6**

Engine Family	Model Name	Model Year	Quantity
AGSCC.148STL	Stella	2010	150