



### 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. 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.
5. 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, or causing the importation of such a motor vehicle.
6. 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.

**Alleged Violations:**

7. EPA alleges that Respondent imported into the United States eight hundred and twenty-six (826) uncertified motorcycles as described in the Table below (the subject motorcycles). Respondent represented that the subject motorcycles were covered under an EPA certificate of conformity. Inspection of sample motorcycles documented each had an adjustable air-fuel mixture idle screw. The application for certification for each of the engine families specifically stated this parameter would not be adjustable.

Entry No.	Inspection Date(s)	Non-Conformity	Vehicle	VIN of Inspected Unit	Engine Family	Quantity
WDN-98009039	6/4/09 – 6/26/09 & 8/7/09	A/F screw	SportCity 125	ZD4SGC00794001436	9PVMCO.12SGC	102
WDN-98009047	6/4/09 – 6/26/09 & 8/10/09	A/F screw	Fly 150	ZAPM578F6A4000176	9PVMCO.15MS7	190
WDN-98009047	6/4/09 – 6/26/09 & 8/10/09	A/F screw	Fly 50	ZAPC446V1A4000017	9PVMC.049C44	114
WDN-98009054	6/4/09 – 6/26/09 & 8/10/09	A/F screw	SportCity 50 SportCity 125	ZD45BC 00294001682 ZD4SGC00794001436	9PVMCO.04SBC 9PVMCO.12SGC	102 102
WDN-98010888	7/10/09 & 8/7/09	A/F screw	Scarabeo 200	ZD4RBC0009J001129	9PVMCO.18RBC	216

8. Based on the forgoing, EPA alleges that Respondent committed eight hundred and twenty-six (826) separate violations of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and the Motorcycle Regulations.

**Terms of Agreement:**

9. Respondent agrees to pay to the United States of America a civil penalty of \$120,000 under this Agreement. Accordingly, within ninety (90) days from the date of this Agreement Respondent shall pay the aforementioned civil penalty to the United States of America. Late payment of the 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- 7848

A copy of each check written under this paragraph shall be sent to David Schnare at the address specified in Paragraph 15 of this Agreement.

10. Within ninety (90) days from the effective date of this Agreement:
  - A. Respondent shall provide to David Schnare, by email or at the address specified in Paragraph 15 of this Agreement, evidence of EPA approving an amendment to the certificate of compliance for the Fly 50, Fly 150, Sportcity 50, Sportcity 125 and Scarabeo 200 models; such amendments shall incorporate emissions testing that demonstrates that the subject motorcycles meet applicable emissions requirements over the full range of air-fuel mixtures for which the engine can be operated; and, within two (2) working days of receipt of that evidence, EPA shall notify U.S. Customs officials that the subject motorcycles are compliant with EPA regulations and may be imported.
  - B. In the event testing of the Scarabeo 200 indicates that that the subject motorcycles do not meet applicable emissions requirements over the full range of air-fuel mixtures for which the engine can be operated:
    - i. Respondent shall remediate the Scarabeo motorcycles identified in paragraph 7 above;

- ii. Within two (2) working days of receipt of notice from Respondent showing evidence of remediation of those goods, EPA shall notify U.S. Customs officials that the subject motorcycles are compliant with EPA regulations and may be imported; and,
    - iii. Respondent shall remediate the Scarabeo 200 motorcycles identified in paragraph 7 above using either a high hardness epoxy or a glued steel, concave cap or such other measures as EPA may approve for use by Respondent or motorcycle manufacturers generally.
  - C. If, within the given ninety (90) day period, Respondent fails to satisfy the terms, of this paragraph 10, within thirty (30) days following the expiration of the initial ninety (90) day period, Respondent shall export any remaining non-compliant motorcycles from the United States to a port not in Mexico or Canada.
- 11. In the event that testing of the Scarabeo 200 indicates that that the subject motorcycles do not meet applicable emissions requirements over the full range of air-fuel mixtures for which the engine can be operated, within ninety (90) days from the effective date of this Agreement, Respondent shall issue a nationwide incentive-based recall of the MY 2008 and 2009 Scarabeo motorcycles imported for sale into the United States for the purpose of making the air-fuel mixture idle screw non-adjustable in accordance with Paragraph 10(B)(iii) above. To incentivize participation in the recall, Respondent shall provide each motorcycle owner, upon completion of the recall service, a voucher, redeemable at the servicing dealer for twelve (12) months from the date of the recall service, for either \$150 worth of Piaggio brand accessories or \$150 off the purchase price of a new Piaggio

brand motorcycle. Respondent shall conduct this recall for one year, provided that thereafter the Respondent, at its sole discretion, may continue or terminate this recall.

12. Respondent shall establish and maintain records to enable the Parties to monitor the implementation of the recall program required pursuant to Paragraph 11.
  - A. The records shall include the following:
    - i. The total number of MY 2008 and 2009 Scarabeo motorcycles imported for sale into the United States; and
    - ii. The number of engines remediated under the recall program.
  - B. Respondent shall update and maintain the figures pursuant to the preceding Subparagraph (A)(ii) as cumulative totals at least once every three months throughout the twelve-month recall period and at the conclusion of that period.
  - C. The records required by this Paragraph shall be retained by Respondent in accordance with the record retention requirements of Paragraph 14.
13. Within sixty (60) days from the effective date of this Agreement, Respondent shall provide to EPA a copy of a compliance assurance plan that Respondent will implement to help ensure its future compliance with the Motorcycle Regulations cited in paragraphs 1 through 5, *supra*. The compliance assurance plan shall remain in effect for at least two years from the effective date of this Agreement. The compliance assurance plan need only apply to Respondent's production facilities in China and may vary from facility to facility to reflect the degree of direct management supervision by Piaggio employees at any specific facility. Those parts of the compliance assurance plan that constitute a description of management practices, or otherwise provide proprietary or confidential

business information may be so marked, and will be handled as confidential business information pursuant to EPA's 40 C.F.R. Part 2 disclosure rules. At a minimum, Respondent's compliance assurance plan shall contain the following:

- A. An explanation of how the procedures implemented at the facilities where the motorcycles are assembled ensure that prior to shipment of the motorcycles from the facility each motorcycle's engine displacement and category of use (e.g., on-highway, off-highway, or dual-purpose) is correctly described and each motorcycle bears the appropriate EPA emissions label;
- B. For motorcycles whose application for certification of compliance does not identify the air-fuel mixture valve as an adjustable parameter, an explanation of how the procedures implemented at the facilities where the motorcycles are assembled ensure that prior to shipment of the motorcycles from the facility each motorcycle's air-fuel mixture valve is not adjustable, including for example, a quality assurance comparison of the certified vehicle design to the applicable bill of materials;
- C. An explanation of how the procedures implemented at the facilities where the motorcycles are assembled ensure the emissions control device has been installed and contains all appropriate elements, including the certified catalyst; and
- D. At Piaggio's Nanjing facility, use of an inspector to randomly and periodically select at least one percent of each model of Respondent's motorcycles prior to shipment to the United States for inspection to ensure that the motorcycles being imported are correctly manufactured, described and labeled, including verification

that, where appropriate, the air-fuel mixture valve is not adjustable and the emissions control device, as described on the certificate, has been installed.

- E. Respondent shall provide semi-annual reports to EPA, in conjunction with Respondent's routine accounting process. The reports shall be submitted to cover model years 2010 and 2011. Each report shall contain the following information:
- i. A list of the motorcycles (i.e., manufacturer, make, model number, vehicle identification number, and a copy of the EPA emission label) that Respondent imported and/or sold to others for importation to the United States under current year Certificates of Conformity;
  - ii. A report that includes, but is not limited to, the name, business address, and telephone number of the quality control inspector(s), to the extent permitted by applicable law, the date of the inspections, a description of how the motorcycles were randomly and periodically selected for inspection, a description of the inspection conducted, the location of the facilities inspected, a description of each motorcycle inspected (i.e., the manufacturer, make, model number, vehicle identification number), a statement of whether or not each motorcycle inspected was described correctly on the invoice, whether or not the EPA emissions label was affixed to each motorcycle, and whether the air-fuel mixture valve needed to be and was not adjustable, and whether the emission control devices have been installed and contain all appropriate elements, including the certified catalyst.

14. Respondent shall:

- A. Preserve, for five (5) years after termination of this Agreement, an original or a copy of all data and final documents and records (including all electronic documents and records), but excluding drafts where a final version exists, and any notes and information within its possession or control, or that of its contractors or agents, relating to implementation of and compliance with this Agreement, including, but not limited to, testing, analysis, production records, receipts, reports, research, correspondence, or other documents or information related to compliance with this Agreement;
- B. Provide to the United States, upon request, originals or copies of any documents described in the preceding subparagraph;
- C. Make all information and documents submitted by Respondent to the United States pursuant to this Agreement subject to public inspection, unless identified and supported as confidential business information by Respondent in accordance with 40 C.F.R. Part 2; and
- D. Respondent may assert that documents, records and other information are privileged under the attorney-client privilege, work product protection or any other privilege or protection recognized by the federal laws of the United States. If Respondent asserts such a privilege or protection in lieu of providing documents, Respondent shall provide the United States with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or

information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information; and (vi) the privilege asserted by Respondent. However, no document, report or other information required to be created or generated by this Agreement shall be withheld on the grounds that it is privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only. Respondent shall retain all records and documents it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been finally resolved in Respondent's favor.

15. All correspondence to EPA concerning this Agreement shall be sent to:

David W. Schnare, Esq. Ph.D.  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W., Room 1109A  
Washington, DC 20460

**Stipulated Penalties:**

16. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 9 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 Paragraph 9 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day;
  - B. For failure to export motorcycles under Paragraph 10, \$200 per day;

- C. For the failure to timely develop and implement a compliance assurance plan or to submit any semi-annual report as required by Paragraph 13 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day.
  - D. If the subject Scarabeo 200 motorcycles fail to meet applicable emissions requirements over the full range of air-fuel mixtures for which the engine can be operated, Respondent shall pay a stipulated penalty of \$50,000.
17. All stipulated penalties shall be paid in the manner specified in Paragraph 9 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to David Schnare at the address specified in Paragraph 15 of this Agreement.
  18. 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 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.
  19. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
  20. 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.

21. 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.
22. 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.
23. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
24. The effect of settlement described in Paragraph 25 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
25. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent for violations of the Clean Air Act, 42 U.S.C. § 7521 *et seq.*, 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:

**Administrative Settlement Agreement In the Matter of: Piaggio Group Americas, Inc.,  
AED/MSEB: 7848.**

Piaggio Group Americas, Inc.

By: Jane Lewis  
Signature:

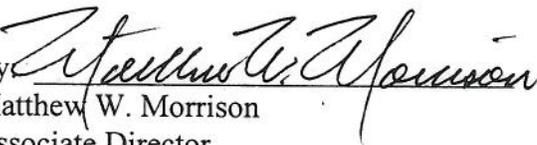
Date: 10/15/2009

Print Name: Jane Lewis

Print Title: Vice President Business Operations

**Administrative Settlement Agreement *In the Matter of: Piaggio Group Americas, Inc.,***  
***AED/MSEB: 7848.***

U.S. Environmental Protection Agency

By   
Matthew W. Morrison  
Associate Director  
Air Enforcement Division

Date: 11/18/09