

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

In the Matter of:

Vito Motors, Inc. Corporation
Respondent

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ADMINISTRATIVE SETTLEMENT
AGREEMENT

AED/MSEB # 7035

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Vito Motors, Inc. (Respondent) regarding compliance by Respondent with the requirements of Section 203(a) of the Clean Air Act (Act), 42 U.S.C. § 7522 *et seq.*, and the regulations promulgated thereunder at 40 C.F.R. Part 86.

Purpose

- 1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act arising out of the importation of four Model Year 2003 Harley Davidson motorcycles described in Table 1 (the Subject Motorcycles), while ensuring that prior violations are identified and resolved, and future violations are avoided.

Table 1: Description of Subject Motorcycles

Model and Make	Engine Serial Number
Heritage Soft Tail Harley Davidson Motorcycle Silver	5HE1BJY114Y015557
Heritage Soft Tail Harley Davidson Motorcycle Red	5HE1BJY154Y016291
V-Rod Harley Davidson Motorcycle	5HE1HAZ483K848894
Fat Boy Harley Davidson Motorcycle Royal Blue	5HE1BMY124Y016525

Definitions:

For the purposes of this Agreement, the following definitions apply:

2. a. *This matter:* as used in this Agreement, means Respondent's importation of the Subject Motorcycles and any civil liability that may result from this importation.
- b. *Certificate of Conformity:* means the document issued by EPA to a manufacturer under 40 C.F.R. § 86.417-78 after EPA determines that the manufacturer's application is complete and that vehicles produced as described in the application meet the requirements of 40 C.F.R. Part 86. Issuance of the Certificate of Conformity permits production and introduction into commerce of vehicles built in accordance with the manufacturer's application during the period when the Certificate is in effect.
- c. *United States:* means the 50 states, territories and the District of Columbia.
- d. *A Day:* is a calendar day.

Regulatory Authority:

3. 40 C.F.R. § 86.401-97 provides that the motorcycle regulations apply to new gasoline-fueled motorcycle regulations built after December 31, 1977, that have an engine displacement of at least 50 cubic centimeters (cc).
4. 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).
5. 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).
6. 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).

7. 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).
8. 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).
9. 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.
10. 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.
11. Section 205(a) of the CAA, 42 U.S.C. § 7524(a), provides that any person who violates Section § 7522(a), shall be subject to a civil penalty of not more than \$25,000 for each motor vehicle or nonroad engine. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, increase the statutory maximum penalty to \$27,500 for each violation that occurred on or after January 31, 1997, and to \$32,500 for each violation that occurred on or after March 14, 2004.

Background

12. On May 17, 2004, at the port of San Juan, Puerto Rico, U. S. Customs and Border Protection (Customs) seized the Subject Motorcycles which were being imported into the United States by Respondent. None of the four Subject Motorcycles was covered by a Certificate of Conformity and none bore the required EPA emissions label.
13. The Subject Motorcycles were manufactured after 1978. As a consequence, the Subject Motorcycles are required to be covered by an EPA Certificate of Conformity.

Respondent, as the importer of the Subject Motorcycles, is liable for four violations of Section 203(a) of the Clean Air Act, 42 U.S.C. § 7522(a) and 40 C.F.R. 85.1513(a).

Terms of Agreement

14. Respondent will export the Subject Motorcycles to St. Maartens within 14 days of the date of this Agreement.
15. Within fourteen calendar days from the date of his Agreement Respondent shall pay a penalty of \$4000. Payment shall be in accordance with Paragraph 18. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.
16. Within fourteen calendar days from the date of this Agreement, Respondent shall provide EPA with a plan to insure that all motor vehicles imported after the date of this Agreement into the United States by Respondent, shall be imported in a manner that complies with all applicable regulations, including Section 203 of the Clean Air Act, 42 U.S.C. § 7522. The plan shall include a provision for notifying all employees of the Respondent of its provisions, and the plan shall be submitted to EPA which shall approve or disapprove it within thirty days. If disapproved, a revised plan shall be resubmitted within fourteen days, modified in accordance with amendments offered in writing by EPA. Only one plan revision shall be permitted.
17. The compliance plan referred to above shall be sent to David Alexander, at the following address:

U.S. EPA, Air Enforcement Division
David Alexander, Attorney
1200 Pennsylvania Avenue, NW Mail Code: 2142A
Washington, DC 20460
Facsimile: 202-564-0015
Electronic Mail Address: alexander.david@epamail.epa.gov
18. Respondent agrees to pay the penalty specified in Paragraph 15 by certified check or cashier's check payable to the "United States of America," and will mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB #

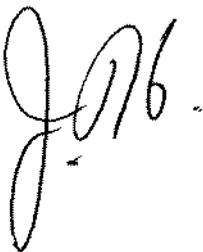
Simultaneously, a photocopy of the check shall be mailed to David Alexander at the address specified in Paragraph 17. Such check shall be identified with the case number and Respondent's name.

General Provisions

19. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Respondent.
20. Respondent hereby represents 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.
21. Upon failure to timely perform pursuant to Paragraphs 15 and 16 of this Agreement, or upon default of or failure to comply with any terms of this Agreement by the Respondent, EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to Section 205 of the Act, 42 U.S.C. § 7524, or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of Section 203 of the Clean Air Act, 42 U.S.C. § 7522. Respondent expressly waives its right to assert that such action is barred by any applicable statutes of limitation, see *e.g.* 28 U.S.C. § 2462.
22. The effect of settlement described in Paragraph 25 below is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosure and representations to EPA as memorialized in this Agreement including but not limited to Paragraphs 10 - 14 of this Agreement, and the prompt and complete remediation of any violations in accordance with this agreement.

Stipulated Penalties:

23. Respondent shall pay stipulated penalties to the United States for failure to comply with the terms of this Agreement as follows:



- a. For failure to timely export the Subject Motorcycles in accordance with Paragraph 14: \$100 per motorcycle per day.
 - b. For failure to timely pay the above listed penalties in accordance with Paragraphs 15 and 18: an additional \$100 per day.
 - c. For failure to submit a compliance plan in accordance with Paragraphs 16 and 17: \$100 per day.
24. All stipulated penalties under Paragraph 23 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 21 and shall be paid within five 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.

Enforcement

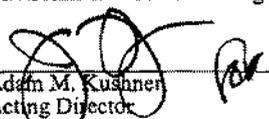
25. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved. The following agree to the terms of this Agreement:

Vito Motors, Inc.

By: Javier Hernandez October 25/04
 Javier Hernandez, President Date

U.S. Environmental Protection Agency

By:


Adam M. Kushner
Acting Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

11-4-04
Date