

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

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In the Matter of:)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
ABRO Distribution Services, LLC)	
)	AED/MSEB: 7160
Respondent.)	

THIS SETTLEMENT AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and ABRO Distribution Services, LLC, 1320 Garrott Avenue, Moncks Corner, SC 29461 (Respondent).

Purpose:

The purpose of this Settlement Agreement (Agreement) is to resolve Respondent's alleged violations of Section 203(a) of the Clean Air Act (Act), 42 U.S.C. § 7522(a), and the regulations promulgated there under at 40 C.F.R. Part 86, Subpart E, regarding the emissions certification requirements for motorcycles (the Motorcycle Regulations).

Applicable Statutory and Regulatory Provisions

1. 40 C.F.R. § 86.401-2006 provides that the Motorcycle Regulations apply to 2006 and later model year new motorcycles.
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. 40 C.F.R. § 86.410-2006 provides that the emission standards for Class I and Class II motorcycles are 1.0 grams per kilometer (g/km) of hydrocarbons, 12 g/km of carbon monoxide, and zero crankcase emissions (EPA motorcycle emissions standards).
5. 40 C.F.R. § 86.419-78 defines a Class I motorcycle as having an engine displacement of 50 cc to 169 cc.
6. 40 C.F.R. § 86.419-78 defines a Class II motorcycle as having an engine displacement of 170 cc to 279 cc.

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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, or causing the importation of such a motor vehicle.
11. 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.

Other Definitions:

12. For purposes of this Agreement the term “export” means to transport to a location outside of the United States and its territories.
13. 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:

14. During July 2006, Respondent imported into the port of Charleston, South Carolina ninety uncertified and unlabeled motorcycles as described in the Table below (the subject motorcycles). Respondent declared on the EPA Declaration Form 3520-1 that the subject motorcycles were identical in all material respects to a U.S. certified version.

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Table

Entry Date	Entry Number	Model	Quantity	Manufacturer
07/18/2006	791-3416480-9	AX100	15	ABRO
07/18/2006	791-3416480-9	YH125-2	50	ABRO
07/18/2006	791-3416480-9	YH125-T	5	ABRO
07/18/2006	791-3416480-9	YH150GY	20	ABRO

15. As the importer of the subject motorcycles, Respondent is liable for ninety separate violations of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and the Motorcycle Regulations.

Terms of Agreement:

16. Respondent has agreed to pay a civil penalty of \$20,000 under this Agreement. Accordingly, under this Agreement, within thirty days from the date of this Agreement Respondent shall pay \$20,000 to the United States of America. 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 19(a) 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- 7160

A copy of each check shall be sent to Jocelyn Adair at the address specified in Paragraph 18 of this Agreement.

17. 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.
18. All correspondence to EPA concerning this Agreement shall be sent to:

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

Stipulated Penalties:


19. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 16 through 18 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 16 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day.
 - (b) For the failure to export or destroy the motorcycles as required by Paragraph 17 of this Agreement, Respondent shall pay for each motorcycle a stipulated penalty of \$2,500.
20. All stipulated penalties shall be paid in the manner specified in Paragraph 16 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 18 of this Agreement.
21. 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.
22. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
23. 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.
24. 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.
25. 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.
26. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

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27. The effect of settlement described in Paragraph 28 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
28. 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:

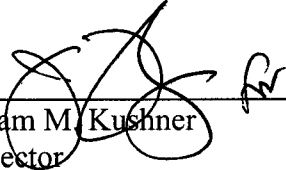
ABRO Distribution Services, LLC

By: 
Signature:
Print Name: Peter F. Baranay
Print Title: Partner

Date: 11/16/2006

Administrative Settlement Agreement – *In the Matter of ABRO Distribution Services, LLC*
AED/MSEB – 7160

U.S. Environmental Protection Agency

By:  _____
Adam M. Kushner
Director
Air Enforcement Division

Date: 11.22.06

PFM 11/16/2006