

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

In the Matter of:

Baja, Inc.,

Respondent

**Administrative Settlement
Agreement**

AED/MSEB # 7874

Purpose

1. The United States Environmental Protection Agency (EPA) and Baja, Inc. (Baja), enter into this Administrative Settlement Agreement (Agreement) to resolve alleged violations of Title II of the Clean Air Act (Act), 42 U.S.C. §§ 7521-7590, and its implementing regulations at 40 C.F.R. Parts 1051 and 1068 (2009).

Statutory and Regulatory Authority

2. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing into the United States any new motor vehicle or new motor vehicle engine except where the vehicle or engine is covered by an EPA-issued certificate of conformity (COC). Section 203(a) also prohibits any person or entity from causing these actions.
3. Section 216(1) of the Act, 42 U.S.C. § 7550(1), defines “manufacturer” to include any person engaged in the manufacturing or assembly of new motor vehicles and any person engaged in importing such vehicles for resale.

4. 19 C.F.R. § 101.1 defines “importer” as the person or entity primarily liable for the payment of any duties on the subject imported merchandise, or as an authorized agent acting on that person’s or entity’s behalf.
5. Regulations adopted under section 213(d) of the Act, 42 U.S.C. § 7547(d), extend the prohibition from section 203(a)(1) to prohibit a manufacturer from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing into the United States any recreational vehicle, including the off-road motorcycles at issue in this Agreement, except where the vehicle is covered by a COC issued by EPA. 40 C.F.R. § 1068.101(a)(1).
6. As explicitly stated in each COC, a COC covers only those vehicles that conform in all material respects to the design specified in its corresponding COC application. *See also* 40 C.F.R. §§ 1068.101(a)(1)(i), 1068.103(a).
7. New recreational vehicles, including the off-road motorcycles at issue in this Agreement, have been subject to the COC requirement since 2006. 40 C.F.R. § 1051.1(c).
8. An adjustable parameter is “any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emissions testing or normal in-use operation. This includes, but is not limited to, parameters related to injection timing and fueling rate.” 40 C.F.R. § 1051.801.
9. Vehicles with adjustable parameters must, for every adjustment in the physically adjustable range, satisfy every requirement applicable to recreational vehicles. 40 C.F.R. § 1051.115(c).

10. With respect to other carburetor features such as carburetor jets and needles, “if an experienced mechanic can change [an] engine’s air-fuel ratio in less than one hour with a few parts whose total cost is under \$50 (in 2001 dollars),” then the engine “must meet all the requirements of [Part 1051] for any air-fuel ratio within the adjustable range” of the carburetor jets and needles. 40 C.F.R. § 1051.115(d).
11. The application for certification for an engine family must specify the adjustable range of air-fuel ratios expected to occur during use, and any adjustable operating parameters. 40 C.F.R. §§ 1051.115(d), 1051.205(q). With respect to other carburetor features such as carburetor jets and needles this range may be expressed in terms of a manufacturers’ recommended jetting chart. 40 C.F.R. § 1051.115(d).
12. Any person who violates section 203(a)(1) is subject to a civil penalty of not more than \$37,500 for each vehicle or engine not covered by a COC. 42 U.S.C. §§ 7524(a), 7547(d); 40 C.F.R. § 19.4.

Violations

13. Between January 2010 and August 2010, Baja imported into the United States 2,907 off-road motorcycles (Subject Vehicles) as described in Exhibit A. These are recreational vehicles regulated under 40 C.F.R. Parts 1051 and 1068.
14. The United States Department of Homeland Security’s Bureau of Customs and Border Protection (CBP) seized the Subject Vehicles.
15. The COC applications for the engine families listed in Exhibit A state that there are no adjustable parameters (e.g., adjustable air-fuel mixture screws) or other parameters (e.g., accessible and replaceable carburetor jets) on the Subject Vehicles. Such features allow

adjustment of an engine's air-fuel ratio and, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation.

16. EPA inspectors were able to adjust the air-fuel mixture screw on the sampled model year 2010 MB196 motorcycles that arrived in CBP Entry Number EJD-0002671-5.
17. EPA inspectors were also able to adjust the jet needles with five clip position grooves on the sampled model year 2009 DR70 off-road motorcycles listed in Exhibit A.
18. EPA inspectors were able to change the air-fuel ratios of the Subject Vehicles in under one hour, for less than \$50, and using only simple tools (wrenches, pliers, and screwdrivers). Specifically, EPA inspectors were able to open the carburetor bowl, access removable jets, replace those jets with readily available replacement jets, and reinstall the carburetor in the Subject Vehicles. These adjustments of the air-fuel ratio may affect emissions or engine performance during emission testing or normal in-use operation.
19. Therefore, the Subject Vehicles do not conform in all material respects to the design specifications in their respective COC applications. As such, the Subject Vehicles are not covered by a COC, and Baja's importation of the Subject Vehicles constitutes 2,907 violations of 40 C.F.R. § 1068.101(a)(1).

Civil Penalty

20. Baja must pay to the United States a civil penalty of \$35,000 (EPA penalty).
21. Baja agrees to pay the EPA penalty to the United States within the 30 calendar days immediately following the effective date of this Agreement (as defined in ¶ 28). Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C.

§ 3717, and must be paid by Baja on demand by the United States. Baja agrees to pay the EPA penalty in the manner specified in subparagraph a. or b. below:

- a. Mail by United States Postal Service a certified check or cashier's check, payable to the United States of America, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB #7874

This check must be identified with case number AED/MSEB # 7874 and state that it is remitted by Baja. Simultaneously, scan and email a copy of the check to thompson.christopher@epa.gov.

- b. Pay online through the Department of the Treasury using 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. The payment must be identified with case number AED/MSEB # 7874. Within 24 hours of payment, scan and email a copy of the receipt to thompson.christopher@epa.gov.
22. Beside the EPA penalty, Baja acknowledges that CBP may require payment of a forfeiture remission amount or another penalty for release of the Subject Vehicles. Within five days of the effective date EPA will provide a copy of the Agreement to CBP and request that CBP release the Subject Vehicles.

Remedial Action

23. Baja must complete one of the following courses of action for each of the 2,907 Subject Vehicles identified in Exhibit A:

- a. Export the Subject Vehicle to a country other than the United States, United States territories, Canada, and Mexico no later than 90 calendar days after the Subject Vehicles are released by CBP. Exportation must be carried out under the supervision of CBP. Within 60 days of exportation, Baja must certify to EPA in writing and provide EPA with supporting documents that the Subject Vehicle was exported. This course of action will be complete when EPA receives definitive evidence of exportation;
- b. Destroy the Subject Vehicle so that the engine, vehicle, and parts cannot be used or repaired. Destruction must be carried out under the supervision of CBP and no later than 90 calendar days after the Subject Vehicle is released by CBP. Within 60 days of destruction, Baja must certify to EPA in writing and with supporting documents and photographs that the Subject Vehicle was destroyed. This course of action will be complete when EPA receives definitive evidence of destruction; or
- c. Remediate the Subject Vehicle according Exhibit B no later than 90 calendar days after the Subject Vehicle is released by CBP. This course of action will be complete when EPA receives the certification and other documents and photographs described in Exhibit B. If such remediation cannot be completed, Baja must destroy or export the Subject Vehicle under ¶ 23(a)-(b).
- d. For each Subject Vehicle, Baja must notify EPA in writing of its election of the options set forth in ¶ 23(a)-(c) within 15 days of the effective date of this Agreement and in the manner set forth in ¶ 27.

Stipulated Penalties

24. Time is of the essence to this Agreement. Baja agrees to pay a stipulated penalty of:

- a. \$1,000 per day for the first 15 days and \$5,000 per day thereafter for its failure to timely pay the civil penalty or provide proof of such payment according to ¶ 21.
 - b. \$1,000 per Subject Vehicle for failure to timely export, destroy, or remediate the Subject Vehicle as required by ¶ 23(a)-(c) and Exhibit B. After 30 days, this stipulated penalty will accrue on a per day per Subject Vehicle basis.
 - c. \$1,000 per Subject Vehicle for distributing, offering for sale, or selling in the United States, United States territories, Canada, or Mexico any Subject Vehicle not destroyed or remediated under ¶ 23(a)-(c).
 - d. \$500 per day for the first 15 days and \$1,000 thereafter for its failure to timely certify to the EPA that each of the 2,907 Subject Vehicles was exported, destroyed, or remediated according to ¶ 23(a)-(c) and Exhibit B.
 - e. \$500 per report/notification per day for failure to timely submit any reports or make any notifications required by this Agreement.
25. All stipulated penalties must be paid in the manner specified in ¶ 21 of this Agreement.

Effect of Agreement

26. On completion of the terms of this Agreement, the alleged violations described in this Agreement will be deemed resolved. Nothing herein limits EPA's rights to proceed against Baja 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, 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.

General Provisions

27. All correspondence to EPA or notifications required by this Agreement must be in writing and emailed to thompson.christopher@epa.gov or mailed to:

(Postal Service Mail)

Christopher Thompson
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7874

(Courier Service)

Christopher Thompson
U.S. EPA
Ariel Rios South, Room 5039A
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7874

28. This Agreement becomes effective on the date executed by EPA (effective date of the Agreement), at which time a fully executed electronic copy will be returned to Baja.
29. The individual or individuals executing this Agreement on behalf of Baja are authorized to do so on behalf of Baja and such execution is intended and is sufficient to bind Baja, its agents, successors, and assigns.
30. This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts. Any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement. The parties agree that a facsimile copy, photocopy, or electronic copy of this Agreement will be of full effect as the original document for all purposes.

31. This Agreement (including the Exhibits) constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
32. Baja may not assign this Agreement to any other party without the written consent of EPA, which consent may be granted or withheld in EPA's sole discretion. Subject to the foregoing and if assigned, the Agreement is binding on Baja's successors and assigns.
33. Notwithstanding any other provision of this Agreement, the parties agree that on Baja's default or failure 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, or pursue any other remedies available to it. Baja 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. Baja acknowledges that EPA intends to use Baja's tax identification number, which Baja has appended to this Agreement, for the purpose of collecting or reporting any delinquent monetary obligations arising from this Agreement. 31 U.S.C. § 7701.
34. Baja waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters agreed to herein.
35. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than EPA and Baja, any rights, remedies, or other benefits under or by reason of this Agreement.

36. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.
37. This Agreement is contingent on the truthfulness, accuracy, and completeness of Baja's disclosures and representations to EPA including, but not limited to, representations regarding importations, the construction and configuration of the Subject Vehicles, and the prompt and complete remediation of any violations in accordance with this Agreement.
38. This Agreement in no way affects or relieves Baja of responsibility to comply with other federal, state, or local laws or regulations.

[SIGNATURES ON FOLLOWING PAGES]

U.S. Environmental Protection Agency

Administrative Settlement Agreement

In the Matter of Baja, Inc.

AED/MSEB # 7874

The following agrees to the terms of this Agreement:

Baja, Inc.

By: Brett G. Smith

Date: 1/31/2011

Typed or Printed Name: Brett G. Smith

Typed or Printed Title: VP/GM Baja, Inc.

Tax Identification Number: 20-4490801

U.S. Environmental Protection Agency

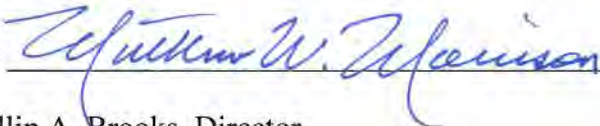
Administrative Settlement Agreement

In the Matter of Baja, Inc.

AED/MSEB # 7874

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By:  Date: 2/22/11

for Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Exhibit A: Table of Subject Vehicles

CBP ENTRY NUMBER	IMPORTER	ENTRY DATE	MODEL NAME	MODEL YEAR	NUMBER OF VEHICLES	DECLARED VALUE	
E6B-0001523-0	BAJA, INC.	2/2/2010	DR70	2009	108	\$29,160	
E6B-0001398-7	BAJA, INC.	1/18/2010	DR70	2009	432	\$116,640	
E6B-0001397-9	BAJA, INC.	1/18/2010	DR70	2009	432	\$116,640	
E6B-0001583-4	BAJA, INC.	2/8/2010	WR65	2009	525	\$145,425	
E6B-0001728-5	BAJA, INC.	2/24/2010	WR65	2009	420	\$116,340	
E6B-0001555-2	BAJA, INC.	2/4/2010	MB165	2009	105	\$29,085	
E6B-0001553-7	BAJA, INC.	2/4/2010	MB165	2009	105	\$29,085	
E6B-0001556-0	BAJA, INC.	2/4/2010	MB165	2009	105	\$29,085	
E6B-0001554-5	BAJA, INC.	2/4/2010	MB165	2009	105	\$29,085	
E6B-0001730-1	BAJA, INC.	2/24/2010	MB165	2009	105	\$29,085	
E6B-0001733-5	BAJA, INC.	2/24/2010	MB165	2009	105	\$29,085	
E6B-0001732-7	BAJA, INC.	2/24/2010	MB165	2009	105	\$29,085	
EJD-0002671-5	BAJA, INC.	4/12/2010	DB30	2010	90	\$12,195	
EJD-0002671-5	BAJA, INC.	4/12/2010	MB196	2010	60	\$16,830	
EJD-0004103-7	BAJA, INC.	8/13/2010	MB196	2010	105	\$29,768	
					Totals:	2,907	\$786,593

Exhibit B: Subject Vehicle Corrective Action Plan

I. MY 2009 DR70 Off-Road Motorcycles

Prior to the sale of any MY 2009 DR70 model Subject Vehicles, Baja must either:

1. install new replacement carburetors that are materially identical to that particular carburetor approved by EPA (Sheng Wey brand - serial number C100E 17C10 0611 0542) and shown on Photograph 1; and
2. affix a permanent supplemental label to each of the Subject Vehicles that states:

NOTICE: Vehicle has been field modified to conform to the design specifications described in the application for certification for engine family 9CGQX.049DB1. Vehicle is legal for sale pursuant to an agreement with the United States in connection with settlement of disputed claims in an enforcement action under the Clean Air Act.

OR

3. submit a running change under 40 C.F.R. § 1051.225 to the appropriate MY 2010 certificate of conformity application for the model DR70 off-road motorcycle (ABJMX.072DB1) with a jetting chart as set forth at 40 C.F.R. § 1051.115(d)(3) and pre-approved by EPA; and
4. affix a permanent supplemental label to each of the Subject Vehicles that states:

Vehicle has been field modified to conform to the design specifications described in the application for certification for ABJMX.072DB1. Vehicle is legal for sale pursuant to an agreement with the United States in connection with settlement of disputed claims in an enforcement action under the Clean Air Act.

II. MY 2009 and 2010 WR65, MB165, and MB196 Off-Road Motorcycles

Prior to the sale of any MY 2009 and 2010 WR65, MB165, and MB196 model Subject Vehicles, Baja must:

1. submit a running change under 40 C.F.R. § 1051.225 to the appropriate MY 2010 certificate of conformity application for the model WR65, MB165, and MB196 off-road motorcycles (ABJMX.196MB1) with a jetting chart as set forth at 40 C.F.R. § 1051.115(d)(3) and pre-approved by EPA; and
2. affix a permanent supplemental label to each of the Subject Vehicles that states:

Notice: Vehicle has been field modified to conform to the design specifications described in the application for certification for engine family ABJMX.196MB1. Vehicle is legal for sale pursuant to an agreement with the United States in connection with settlement of disputed claims in an enforcement action under the Clean Air Act.

III. MY 2010 DB30 Off-Road Motorcycles

No corrective action is required for the DB30 model off-road motorcycles.

IV. Implementation

- A. For each engine that Baja chooses to remediate under this Corrective Action Plan, Baja must notify EPA in writing of its election of the options set forth in sections I. and II. above, within 15 days of effective date of this agreement.
- B. Within 120 calendar days after the Subject Vehicles are released by CBP, Baja must provide a corrective action report to EPA that includes the following:
 1. certification, supporting documents (certificate, list of vehicle identification numbers, label identical to those applied), and representative photographs of the completion of the necessary modifications to each Subject Vehicle as described above or proof of the submission of a running change for the appropriate model Subject Vehicle; and
 2. certification of the completion of the required supplemental labeling of each vehicle as described above.
- C. All supplemental labels must be affixed so they are not removable without being destroyed or defaced. The labels must be secured to a part of the vehicle that does not normally require replacement, near the vehicle emission control information label, and in a location that is easily visible to the purchasers of the vehicles. Baja must provide a legible photograph of a representative label as applied.
- D. Baja must issue a written service bulletin to every Baja-authorized service center to notify all of its service centers that any modification to the carburetor that results in a change to a vehicle's air-fuel ratio—other than those changes described in the pre-approved jetting chart and corresponding revised certificate application—is considered tampering, is a violation of federal law, and may result in the imposition of penalties. Baja must also provide a copy of this service bulletin (or similar written notification with the same information) to each customer that purchases a Subject Vehicle.
- E. For Subject Vehicles addressed with the jetting chart option (Part I.3 or Part II.1, above), Baja must make available for sale those jets that are included in the approved jetting chart (Jet Kit). The jets must be clearly marked to indicate the size, and the markings must be consistent with the terminology used on the jetting chart. Baja must provide the Jet Kit upon order and include installation instructions specifying the ambient conditions under

which the use of each jet is permitted. The installation instructions must state that the installation of a jet not in accordance with the instructions is a violation of federal law.

- F. Before Baja ships any one of these Subject Vehicles to any dealer or outlet, Baja must issue a service bulletin to all service centers, dealers, and outlets that informs them of the availability of the Jet Kit. Baja may include this information in the bulletin required by Part IV.D, above. Baja must also add the same information to the appropriate technical service manual for each Subject Vehicle.
- G. Baja must provide a copy of the service bulletin(s) and installation instructions to EPA for approval before any one of the Subject Vehicles is shipped to any dealer or outlet. Baja must provide a copy of the information added to the technical service manual and copies of all bulletins or notifications as sent or distributed no later than 60 days after the effective date of this Agreement.
- H. Baja alone will implement the requirements of this Subject Vehicle Corrective Action Plan.
- I. Each report or document submitted by Baja to EPA must be signed by a corporate officer, and must contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.