

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

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<b>In the Matter of:</b> )	<b>ADMINISTRATIVE SETTLEMENT</b>
)	<b>AGREEMENT</b>
<b>David Nelson</b> )	
)	<b>AED/MSEB: 7171</b>
<b>Respondent.</b> )	
_____ )	

**THIS SETTLEMENT AGREEMENT** is made and entered into by and between the United States Environmental Protection Agency (EPA) and David Nelson of Tacoma, Washington (Respondent).

**Purpose**

1. The purpose of this Agreement is to resolve any and all claims by EPA under the Act and Part 85 arising out of the importation of 17 uncertified motor vehicles in Respondent's U.S. Customs entry number AC1-8261233-6 as described in Table 1, and to ensure that future violations are avoided.

**Applicable Statutory and Regulatory Provisions**

2. 40 C.F.R. § 85.1501 applies to motor vehicles which are offered for importation or imported into the United States and for which the Administrator has promulgated regulations under part 86 prescribing emission standards.
3. EPA promulgated emission regulations for model year 1977 and later model year new motor vehicles including emission standards and requirements to obtain certificates of conformity in 40 C.F.R. Part 86, subpts. A- C.
4. 40 C.F.R. § 85.1513 prohibits the importation of a motor vehicle which is not covered by a certificate of conformity.
5. Section 216(a)(2) of the Act defines motor vehicle as any self-propelled vehicle designed for transporting persons or property on a street or highway. EPA has further explained that a disassembled vehicle or an approximate disassembled vehicle constitutes a motor vehicle. EPA Kit Car Policy (July 8, 1994).
6. Certificate of Conformity: A "Certificate of Conformity" means the document issued by EPA to a manufacturer under 40 C.F.R. Part 86 after EPA has determined that the manufacturer's application is complete and that the engine family meets the requirements of the applicable regulations and the Act. Issuance of the Certificate of Conformity permits production of motor vehicles built in accordance with the manufacturer's

application provided that the production is within the Model Year for which the Certificate of Conformity is issued.

7. 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.
8. 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.

### **Background**

9. EPA alleges that Respondent imported into the United States 17 uncertified motor vehicles as described in Table 1 attached.
10. Based on the forgoing, EPA alleges that the Respondent violated Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and its implementing regulations.
11. In August of 2006, Respondent imported 17 motor vehicles (Customs and Border Protection (Customs) entry number AC1-8261233-6). Customs detained this shipment at the Port of Portland, Oregon, and has subsequently siezed the shipment.
12. Respondent is the importer of the 17 motor vehicles identified in Table 1.
13. The motor vehicles listed in Table 1 were manufactured after the dates of the applicable regulations. As a consequence, EPA requires the importation of certified motor vehicles.
14. The motor vehicles listed in Table 1 are not certified. Accordingly, as the importer of these motor vehicles, the Respondent imported these engines in violation of Section 203(a) of the Clean Air Act, 42 U.S.C. §§7542(a), and the implementing regulations.

### **Terms of Agreement**

15. Within 60 days of the date of this Agreement or such other time as required by U.S. Customs, Respondent shall submit to EPA the U.S. Customs documentation proving that each of the motor vehicles listed in Table 1 has been exported to a location outside the North American continent.
16. All submissions shall be sent to EPA at the following address:  
Leslie A. Kirby-Miles  
U.S. EPA, OECA/AED (mailcode 2242A)  
1200 Pennsylvania Ave NW

Washington, DC 20460-0001  
Facsimile: (312) 886-0747

17. Respondent shall pay to the United States a civil penalty of \$6,000 within 30 calendar days of 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 and stipulated penalties pursuant to Paragraph 23 of this 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 payment to:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 360277M  
Pittsburgh, Pennsylvania 15251  
ATTN: AED/MSEB # 7171

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 16 or faxed to (312) 866-0747 to the attention of Leslie A. Kirby-Miles. Such check shall be identified with the AED/MSEB number and Respondent's name.

18. Respondent agrees that it will not import any motor vehicles or engines manufactured on or after the dates of the applicable regulations unless the motor vehicles or engines comply with all applicable regulations.

### **General Provisions**

19. The effective date of this Agreement is the date that EPA signs the Agreement.
20. Respondent hereby represents that the individual or individuals signing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such signature is sufficient to bind Respondent, its agents, assigns, or successors.
21. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default of or failure to comply with any terms of this Agreement, 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, and 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 the Act, and 40 C.F.R. Part 85. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.
22. The Effect of Settlement as described in Paragraph 25 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations

regarding importations contained in Table 1 and the prompt and complete exportation of all motor vehicles identified in Table 1 in accordance with this Agreement.

**Stipulated Penalties:**

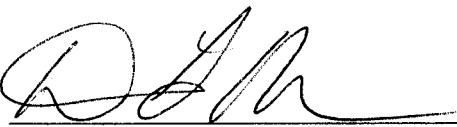
23. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
- A. For failure to timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 17, \$500 per day.
  - C. For failure to timely export the motor vehicles identified in Table 1, or provide proof of such exportation, pursuant to Paragraph 15, \$500 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 17 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.

**Effect of Agreement**

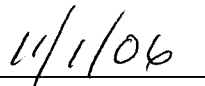
25. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

David Nelson

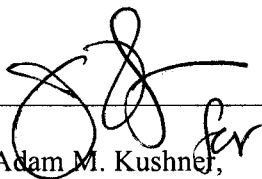
By: 

David Nelson  
Respondent



Date:

**U.S. Environmental Protection Agency    AED/MSEB # 7171**  
***In the Matter of David Nelson***

By:  \_\_\_\_\_  
Adam M. Kushner,  
Director  
Air Enforcement Division  
Office of Civil Enforcement

11-1-06  
Date

**Table 1: Description of Subject Motor Vehicles**

Manufacturer	Model	VIN	Model Year	Quantity
Nissan	Skyline	BCNR33008371	1995	1
Toyota	Aristo	JZS1470103366	1995	1
Nissan	Skyline	ECR33012807	1995	1
Nissan	180 SX	RPS13027518	1992	1
Nissan	Skyline	ECR33012456	1993	1
Nissan	Silvia	PS12091226	1993	1
Nissan	180 SX	KPRS13502893	1996	1
Toyota	Soarer	JZZ300026653	1993	1
Nissan	Skyline	HCR32288471	1993	1
Nissan	180 SX	RPS13202291	1993	1
Nissan	180 SX	RPS13306735	1996	1
Nissan	180 SX	RPS13302247	1995	1
Nissan	180 SX	RPS13057254	1992	1
Subaru	WRX	GC8003748	1992	1
Mazda	RX 7	FC3S123415	1988	1
Nissan	180 SX	RPS13328831	1997	1
Nissan	Silvia	KS13213739	1989	1