

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

<p>In the Matter of:</p> <p>John Oliver Brown d/b/a Brownell's Mini-Bikes</p> <p style="text-align: center;">Respondent.</p>	<p>)))))))</p>	<p>ADMINISTRATIVE SETTLEMENT AGREEMENT</p> <p>AED/MSEB: 7088</p>
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THIS SETTLEMENT AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and John Oliver Brown d/b/a Brownell's Mini-Bikes, 5112 North Golder, Odessa, Texas 79746 (Respondent).

Purpose:

The purpose of the 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 thereunder 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. § 86.401-97 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. 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).

5. 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).
6. 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).
7. 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.
8. 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.
9. 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:

10. For purposes of this Agreement, the term "export" means to transport to a location outside of the United States and its territories, Canada, and Mexico.
11. 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:

12. EPA alleges that in August 2004, Respondent imported into the United States seventy motorcycles that are described in the Table below (the subject motorcycles). The subject motorcycles were not covered by an EPA-issued certificate of conformity and did not bear an EPA emissions label. EPA further alleges that each of the subject motorcycles was equipped with an engine having a displacement greater than 50 cc, and, as a consequence, was required to be covered by an EPA-issued certificate of conformity.

Table

Entry Date	Entry Number	Model	Qty	Measured Engine Displacement	Manufacturer
8/30/04	WRM-0019064-6	GA-629	10	52 cc	China Longstar
8/30/04	WRM-0019064-6	GA-630	40	51 cc	China Longstar
8/30/04	WRM-0019064-6	GA-632	20	53 cc	China Longstar
Total:			70		

13. Based on the forgoing, EPA alleges that Respondent committed seventy separate violations of Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and the Motorcycle Regulations.

Terms of Agreement:

14. EPA has determined to reduce the civil penalty for the seventy violations alleged in Paragraph 13 of this Agreement to \$2,000, provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$2,000 to the United States of America within thirty days from the date that this Agreement is executed by EPA (the due date). Late payment of the civil 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-7088

A copy of the check shall be sent to Jeffrey A. Kodish at the address specified in Paragraph 16 of this Agreement.

15. Within thirty days of this Agreement, or such longer period of time if required by the United States Customs and Border Protection (Customs), Respondent shall export or destroy the subject motorcycles. This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall certify to EPA and provide supporting documents that the subject motorcycles were either exported or destroyed.

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

Jeffrey A. Kodish, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch
12345 West Alameda Parkway, Suite 214
Denver, CO 80228

facsimile: (303) 236-9514

Stipulated Penalties:

17. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 14 or 15 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 14 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day. However, if after sixty days of this Agreement, Respondent has failed to pay the civil penalty, Respondent shall be in default of this Agreement. Upon such default, Respondent shall pay a stipulated penalty of \$2,500 per subject motorcycle.
 - (b) For the failure to export or destroy the motorcycles as required by Paragraph 15 of this Agreement, Respondent shall pay for each motorcycle a stipulated penalty of \$2,500.
18. All stipulated penalties shall be paid in the manner specified in Paragraph 14 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to Jeffrey A. Kodish at the address specified in Paragraph 16 of this Agreement.
19. 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.
20. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.

21. 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.
22. 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.
23. 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.
24. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
25. The effect of settlement described in Paragraph 26 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
26. 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 § 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:

John Oliver Brown

By: 

Date: 3-16-05

U.S. Environmental Protection Agency

By: 

Adam Kushner
Acting Director
Air Enforcement Division

Date: 3/22/05