

U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC

In the matter of:

Kymco USA, d/b/a STR Motorsports, Inc.,

Respondent.

SETTLEMENT AGREEMENT  
AED/MSEB # 7264

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Kymco USA, d/b/a STR Motorsports, Inc., 5 Stan Perkins Road, Spartanburg, South Carolina (Kymco or Respondent) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated there under at 40 C.F.R. Parts 86, 1051 and 1068.

**Purpose**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve and remediate any and all claims by EPA under the Act and 40 C.F.R. Parts 86, 1051 and 1068 (the relevant EPA Regulations), arising out of the importation of 278 engines and the equipment containing those engines, as described in Paragraph 9 of this Agreement, while ensuring that future violations are avoided.

**Definitions**

2. For purposes of this Agreement, the following definitions apply:
  - a. *Applicable regulation and dates:* 40 C.F.R. Part 86 is applicable to 1978 and later new highway motorcycles, 40 C.F.R. Parts 1051 and 1068 are applicable to recreational vehicles, such as all-terrain vehicles (ATVs).
  - b. *This matter:* as used in this Agreement, "this matter" means the Respondent's importation of the Subject ATVs and motorcycles and any civil liability that may apply to such violations of the Act and the implementing regulations at 40 C.F.R. Parts 86, 1051 and 1068.

- c. *Certificate of Conformity*: the document issued by EPA to an ATV or motorcycle manufacturer under 40 C.F.R. § 86.437-78, and § 1068.101(a)(1)), after EPA determines that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Parts 86 and 1068 and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of vehicles built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.
- d. *Certified engine*: a nonroad engine built after the applicable date of the regulations, and covered by a Certificate of Conformity.
- e. *Labeling requirements*: the requirements found at 40 C.F.R. § 86.413-2006, § 1068.101(a)(1), and § § 1051.135 137 require that vehicles be labeled at the time of manufacture and in the manner described.

#### **Statutory Authority**

- 3. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §§ 7522(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad engines, including engines contained in nonroad equipment or nonroad vehicles, unless the engine or vehicle is covered by a Certificate of Conformity issued and in effect.

#### **Regulatory Authority for ATVs**

- 4. 40 C.F.R. § 1051.135(b)(1) specifies the labels required on each ATV be (1) attached so it is not removable without being destroyed or defaced.
- 5. 40 C.F.R. § 1068.101(a)(1)), prohibits any person from importing into the United States any ATV unless it is covered by an EPA-issued Certificate of Conformity and bears a permanently affixed EPA emission control information label that confirms certification.

#### **Regulatory Authority for Motorcycles**

- 6. 40 C.F.R. § 86.407-78 requires that every new motorcycle imported into the United States be covered by a Certificate of Conformity.
- 7. 40 C.F.R. § 86.413-2006 requires the manufacturer of any motorcycle affix a permanent and legible label at the time of manufacture.

## Violations

8. On May 29 and June 19, 2007, Kymco imported into the Port of Savannah, Georgia the 278 vehicles detailed in the table below.

**Subject Vehicles** - All labels allegedly removable without destruction or defacement

Entry Number	Vehicle Type	Model	# Of Units
605-5029787-7	ATV	MXU 500 Standard	26
		MXU 150 Chain	36
605-5030052-3	Highway Motorcycle	Agility 50	108
		Agility 125	108

9. At the time of importation, the Department of Homeland Security's Customs and Border Protection (CBP) inspected the goods, and in consultation with EPA, determined that the subject vehicles were not in compliance with EPA's Regulations, since the labels were removable without destruction or defacement. Accordingly, on July 30, 2007, EPA recommended that the ATVs and motorcycles be seized by CBP.
10. The importer has confirmed that CBP released the ATVs and motorcycles to the importer, where they are being held, pending resolution with EPA.

## Corrective Action

11. Subsequently, the importer made representations to EPA and CBP that the labels on the motorcycles could not be removed without destruction or defacement. EPA and CBP agree that the 216 motorcycle labels appear to be compliant. The labels on the ATVs were removable and have been re-labeled, with labels which conform to the labels shown in KYMCO's Running Change, as submitted to EPA August 25, 2006.
12. Compliance Certification: For the two years following the effective date of this Agreement, Kymco shall prepare and submit to EPA, at the address provided in Paragraph 14, a signed certification of compliance for all ATVs and/or highway motorcycles imported during the period. This annual certification of compliance shall include the following:
- Number of ATVs and/or highway motorcycles imported;

- b. A description of each type of label applied to the imported vehicles, and description of any changes made to the label or the method of application of the label, during the preceding calendar year;
  - c. A description of the quality assurance/quality control procedures that Kymco implemented at the facility where the ATVs and/or highway motorcycles are manufactured to ensure that the vehicles are properly labeled;
  - d. An attestation by Kymco that all labels applied to the imported ATVs and/or highway motorcycles in the preceding calendar year were compliant with applicable EPA label requirements; and,
  - e. An attestation by Kymco that all ATVs and/or highway motorcycles imported or manufactured by Kymco comply with all applicable requirements of the Clean Air Act and the regulations that cover such ATVs and/or highway motorcycles.
13. Annual Compliance Certifications described in Paragraph 12, above shall be due at the address in Paragraph 15 below on the anniversary of the effective date of the Agreement.

**Civil Penalty**

14. Respondent has agreed to pay a civil penalty of \$10,000 to the United States of America no later than thirty days from 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, plus the stipulated penalties as specified in Paragraph 22 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 payments to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Attn: AED/MSEB - 7264

Respondent may also pay online at [www.pay.gov](http://www.pay.gov). From the "Agency List" select Environmental Protection Agency, then select "EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the "SFO Form Number 1.1."

**Notice**

15. A copy of the payment shall be faxed to Angela Fitzgerald at 202/564-0015 no later than 24 hours after making the payment. A copy of the payment and all correspondence and certifications to EPA concerning this Agreement shall be sent to:

**(Regular Mail)**

Angela E. Fitzgerald  
U.S. EPA  
Mail Code 2242A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
Attn: AED/MSEB # 7264

**(Courier Service)**

Angela E. Fitzgerald  
U.S. EPA  
Ariel Rios South, Room 1117A  
1200 Pennsylvania Ave., NW  
Washington, DC 20004

**General Provisions**

16. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), after which a copy will be returned to Respondent.
17. Notwithstanding any other provision of this Agreement, the parties agree 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 vehicles 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.
18. The parties represent 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.

19. 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.
20. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
21. This Settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, and the prompt and complete remediation of any violations in accordance with this Agreement.

### **Stipulated Penalties**

22. 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 pay the penalty, or provide proof thereof, pursuant to Paragraphs 14 and 15, \$250.00 per day; and
  - b. For failure to timely provide the reports specified in Paragraphs 12 and 13 of this Agreement, \$250 per day.
23. All stipulated penalties under Paragraph 22 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 simultaneous accrual of separate stipulated penalties for separate violations of this agreement. All stipulated penalties shall be paid in accordance with Paragraph 14 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 to seek 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**

24. 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 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, 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 laws or regulations.

The following agree to the terms of this Agreement:

Settlement Agreement In the Matter of Kymco USA, d/b/a STR Motorsports, Inc.

AED/ MSEB # 7264

---

**Kymco USA, d/b/a STR Motorsports, Inc.**

By: Eric K Bondy

Date: 1/2/2008

Typed or Printed Name: ERIC K. BONDY

Typed or Printed Title: PRESIDENT/CEO



Settlement Agreement In the Matter of Kymco USA, d/b/a STR Motorsports, Inc.

AED/ MSEB # 7264

---

**U.S. Environmental Protection Agency**

By: 

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

Date: January 22, 2008