

U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC

In the Matter of: )  
Dixie Sales Co, Inc. )  
Respondent )

Administrative Settlement  
Settlement

AED/MSEB # 7231

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), Dixie Sales Co., Inc., 5920 Summit Ave., Greensboro, NC 27402-1408 (Dixie or Respondent) regarding Respondent's compliance with the requirements of the Clean Air Act (the Act) and the regulations promulgated thereunder at 40 C.F.R. Parts 86, 1051, and 1068.

**Purpose**

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and EPA's Emissions Regulations for 1978 and Later New Motorcycles, 40 C.F.R. Part 86, Subpart E, and EPA's Regulations for the Control of Emissions from Recreational Engines and Vehicles, 40 C.F.R. Part 1051, Subpart B. These claims arise out of Dixie's importation of two hundred and twenty-two (222) motorcycles and recreational vehicles, as described in Attachments 1, 2, and 3.

**Definitions**

2. For the purposes of this Agreement, the following definitions apply:
  - a. *Applicable regulation and dates:* 40 C.F.R. Part 86, Subpart E, is applicable to 1978 and later model year, new, gasoline-fueled motorcycles built after December 31, 1977, and to 1990 and later model year, new, methanol-fueled motorcycles built after December 31, 1989. 40 C.F.R. Part 1051, Subpart B, is applicable to 2006 and later model year snowmobiles, off-highway motorcycles, all-terrain vehicles, and offroad utility vehicles with engines with displacement less than or

equal to 1000 cc, maximum brake power less than or equal to 30 kW, and maximum vehicle speed of 25 miles per hour or higher.

- b. *This matter*: As used in this Agreement, this matter means the Respondent's importation of the Subject Motorcycles and Recreational Vehicles identified in Attachments 1, 2 and 3, and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Parts 86, 1051 and 1068.
- c. *Certificate of Conformity*: A Certificate of Conformity means the document issued by EPA to a manufacturer of motorcycles under 40 C.F.R. §§ 86.437-78 and 86.447-2006, and to a manufacturer of recreational vehicles under 40 C.F.R. § 1051.201, after EPA has determined that the manufacturer's application is complete and that the engine family meets the applicable requirements of 40 C.F.R. Parts 86 and 1051 and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of engines built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.
- d. *Certificate Holder*: Certificate Holder means the manufacturer whose name appears on the Certificate of Conformity issued for the motorcycles and all-terrain vehicles (ATVs) covered by this Agreement pursuant to 40 C.F.R. §§ 86.437-78 and 1051.201.
- e. *Destroy*: The term destroy means the complete destruction of the engine and the complete disassembly of the equipment. The water jackets of the cylinder block and the head shall be impaled in multiple locations such that they can not thereafter be made to retain coolant regardless of whether repair is attempted and the equipment shall be crushed or disassembled and damaged in such a manner that it can never be reassembled.

- f. *Export*: The term export means to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Labeling requirements*: Labeling requirements means collectively the requirements found at 40 C.F.R. §§ 86.413-78(a)(1), 86.447-2006(c)(3), 86.447-2206(e)(2) and 1051.135(b) that require that certified motorcycles and recreational vehicles be labeled at the time of manufacture.

### **Statutory Authority**

- 3. Section 213(d) of the Clean Air Act, 42 U.S.C. § 7547(d), authorizes EPA to promulgate regulations “as may be necessary to determine compliance with, and enforce, standards in effect” under the vehicles section.

### **Regulatory Authority**

#### ***Motorcycle Regulatory Authority***

- 4. 40 C.F.R. § 86.407-78 prohibits anyone from importing into the United States any motorcycle unless it is covered by an EPA-issued Certificate of Conformity.
- 5. 40 C.F.R. § 86.447-2006 allows small-volume manufacturers to certify on-highway motorcycles to recreational vehicle standards.
- 6. 40 C.F.R. § 86.413-2006 requires the manufacturer of any motorcycle to affix a permanent, legible label identifying each motorcycle engine offered for sale to the public and covered by a certificate of conformity, including, but not limited to, the following requirements:
  - a. Under 40 C.F.R. § 86.413-2006(a)(3), the label must be affixed in such a manner that it cannot be removed without destroying or defacing the label;
  - b. Under 40 C.F.R. § 86.413-2006(a)(4)(iii), the label must state the engine displacement; and
  - c. Under 40 C.F.R. § 86.413-2006(a)(4)(vi), the label must identify the exhaust emission control system.

#### ***All-Terrain Vehicle and Off-Highway Motorcycle Regulatory Authority***

7. Under 40 C.F.R. § 1051.10, an importer of recreational vehicles or the engines used in them must obtain a certificate of conformity for each engine family before it is imported in the U.S.
8. Under 40 C.F.R. § 1051.620, any person may request an exemption from 40 C.F.R. Part 1051 regulations for off-highway motorcycles to be used solely for competition.

**Alleged Violations**

9. On or about February 26, 2007, and March 27, 2007, Respondent Dixie imported into the United States at the Port of Savannah, GA, two entries containing the one hundred fourteen (114) motorcycles and all-terrain vehicles (ATVs) listed in Attachment 1 and the fifty-four (54) motorcycles and ATVs listed in Attachment 2. Both entries were made up of the same four models of motorcycles and ATVs manufactured by Certificate Holder Adly Moto, LLC. Upon examination by the Department of Homeland Security's Customs and Border Protection (CBP) and consultation with EPA, EPA determined that the motorcycles were imported in violation of Section 203(a)(1) and (4) of the Clean Air Act, 42 U.S.C. § 7522(a)(1) and (4):
  - a. The SF-50 motorcycles in both entries were not certified in accordance with 40 C.F.R. § 86.437-78(b)(4) because the SF-50 motorcycles in both entries were not labeled in compliance with 40 C.F.R. § 86.447-2006, and,
  - b. The ATV-90, ATV-50, and ATV-300U ATVs in both entries were not labeled in compliance with 40 C.F.R. § 1051.135.
10. On or about May 7, 2007, Respondent Dixie imported into the United States at the Port of Charleston, SC, one entry containing the fifty-four (54) off-highway motorcycles listed in Attachment 3. Upon examination by CBP and consultation with EPA, EPA determined that the off-highway motorcycles were imported in violation of 40 C.F.R. § 1068.101(a)(1) because the off-highway motorcycles were not covered by a Certificate of Conformity, they were not labeled in compliance with 40 C.F.R. Part 1051, nor were they exempted from the regulations pursuant to 40 C.F.R. § 1051.620.

**Corrective Action**

11. Within thirty (30) days from the date that CBP releases the Subject Motorcycles and ATVs, or within thirty (30) days from the effective date of this Agreement, whichever is earlier Respondents shall export or destroy the Subject Motorcycles and ATVs. This exportation or destruction shall be carried out under the supervision of CBP. Within forty-five (45) days from the applicable date under this Paragraph, Respondent shall certify to EPA and provide supporting documents that each of the Subject Motorcycles and ATVs has been either destroyed or exported under the supervision of CBP.

**Civil Penalty**

12. Respondent shall pay to the United States a civil penalty of sixty five thousand dollars (\$65,000) (EPA penalty) in satisfaction of the violations described herein, provided Respondent successfully complete the terms of this Agreement.
13. Respondent agree to pay the \$65,000 penalty to the United States of America within thirty (30) calendar days of the effective date of this Agreement (penalty due date), but not before the effective date. Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agree to pay the amount by either:

- a. Certified check or cashier's check payable to the United States of America, and mailed via United States Postal Service to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
ATTN: AED/MSEB # 7231

or sent, via overnight courier to:

U.S. Bank ATTN: AED/MSEB # 7231  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
(314) 418-4087

Simultaneously, a photocopy of the check shall be faxed to (202) 564-0069 to the attention of David E. Alexander. Such check shall be identified with the case number and Respondent's names; or

- b. Respondent may make an online payment through the Department of the Treasury by visiting WWW.PAY.GOV. Enter "sfo 1.1" in the search field, then open the form and complete the required fields as directed. Simultaneously, a photocopy of the electronic receipt shall be faxed to (202) 564-0068 to the attention of David E. Alexander. Such check shall be identified with the case number and Respondent's names.

14. Separate and apart from this EPA penalty, CBP may require payment of a forfeiture remission amount for the release of the goods from seizure.

**Notice**

15. A copy of all correspondence and certifications to EPA concerning this Agreement shall be sent to:

**(Regular Mail)**

David E. Alexander, Esq.  
U.S. EPA  
Mail Code 2242A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
Attn: AED/MSEB # 7231

**(Courier Service)**

David E. Alexander, Esq.  
U.S. EPA  
Ariel Rios South, Room 1119A  
1200 Pennsylvania Ave., NW  
Washington, DC 20004  
Attn: AED/MSEB # 7231

**General Provisions**

16. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time 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, if any, to assert that the Adly SF-50 and Gas Gas motorcycles 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 executing this Agreement on behalf of Respondent is authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, their agents, assigns, or successors.
19. Respondent waives their 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. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
20. This Settlement is contingent 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 Attachments 1, 2 and 3, and the prompt and complete remediation of any violations in accordance with this Agreement.

**Stipulated Penalties**

21. 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 civil penalty or provide proof thereof, pursuant to Paragraphs 12 and 13, \$250.00 per day;
  - b. For failure to export or destroy each and every one of the Subject Motorcycles or ATVs or provide proof thereof, pursuant to Paragraph 11, \$250.00 per day;
  - c. All stipulated penalties under Paragraph 21 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 13 and shall be paid within five (5) 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**

22. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement 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 Sections 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 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. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal, or local laws or regulations.

**U.S. Environmental Protection Agency**

**Settlement Agreement In the Matter of Dixie Sales Co., Inc.**

**AED/MSEB #7231**

The following agree to the terms of this Agreement:

**Dixie Sales Co., Inc.**

By:

Laura S. Garrett

Date: 5/5/08

Typed or Printed Name: Laura S. Garrett

Typed or Printed Title: Treasurer

**U.S. Environmental Protection Agency**

**Settlement Agreement In the Matter of Dixie Sales Co., Inc.**

**AED/MSEB #7231**

The following agrees to the terms of this Agreement:

**United States Environmental Protection Agency**

By: Adam M. Kushner

Date: 5/30/08

Adam M. Kushner, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

ATTACHMENT 1

SUBJECT MOTORCYCLES & ATVs IMPORTED BY DIXIE  
ENTRY # 310/78740136, February 26, 2007 (Savannah, GA)

Mfr.	Certificate Holder	Engine Family on Label	Year/Model	Qty.
Her Chee Industrial Co., Ltd., Taiwan	Adly Moto, LLC	7HRCX.0824CT	2007/SF-50 motorcycle	4
Her Chee Industrial Co., Ltd., Taiwan	Adly Moto, LLC	7HRCX.0824CT	2007/ATV-90	65
Her Chee Industrial Co., Ltd., Taiwan	Adly Moto, LLC	"exempt for Model Year 2007"	2007/ATV-50	37
Her Chee Industrial Co., Ltd., Taiwan	Adly Moto, LLC	"exempt for Model Year 2007"	2007/ATV-300U	8

ATTACHMENT 2

SUBJECT MOTORCYCLES & ATVs IMPORTED BY DIXIE  
ENTRY # 310/78740763, March 27, 2007 (Savannah, GA)

Mfr.	Certificate Holder	Engine Family on Label	Year/Model	Qty.
Her Chee Industrial Co., Ltd., Taiwan	Adly Moto, LLC	7HRCX.0824CT	2007/SF-50 motorcycle	30
Her Chee Industrial Co., Ltd., Taiwan	Adly Moto, LLC	7HRCX.0824CT	2007/ATV-90	4
Her Chee Industrial Co., Ltd., Taiwan	Adly Moto, LLC	"exempt for Model Year 2007"	2007/ATV-50	5
Her Chee Industrial Co., Ltd., Taiwan	Adly Moto, LLC	"exempt for Model Year 2007"	2007/ATV-300U	15

**ATTACHMENT 3**

**SUBJECT MOTORCYCLES & ATVs IMPORTED BY DIXIE  
ENTRY # 101-7453119-3, May 7, 2007 (Charleston, SC)**

<b>Mfr.</b>	<b>Certificate Holder</b>	<b>Engine Family on Label</b>	<b>Year/Model</b>	<b>Qty.</b>
GasGas	Not Certified	Unlabeled	2007/Cross GG-CI0607-MK	6
GasGas	Not Certified	Unlabeled	2007/Pampera GG-EP4507-US4	5
GasGas	Not Certified	Unlabeled	2007/Enduro GG-E3007-USMZ	10
GasGas	Not Certified	Unlabeled	2007/Enduro GG-E2507-USMZ	16
GasGas	Not Certified	Unlabeled	2006/Enduro GG-EH2006USM	3
GasGas	Not Certified	Unlabeled	2007/FSR GG-EC4507-USM	5
GasGas	Not Certified	Unlabeled	2007/FSR SUPERMOTARD	2
Gas Gas	Not Certified	Unlabeled	2007/Cross GG-C1207-USMZ	2
Gas Gas	Not Certified	Unlabeled	2007/Cross GG-C2507-USMZ	5