

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

In the Matter of:	)	
	)	<b>ADMINISTRATIVE SETTLEMENT</b>
	)	<b>AGREEMENT</b>
Ferrari North America, Inc.	)	<b>AED/MSEB - 7133</b>
Englewood Cliffs, New Jersey	)	
Respondent.	)	

**THIS SETTLEMENT AGREEMENT** is made and entered into by and between the United States Environmental Protection Agency (EPA) and Ferrari North America, Inc., 250 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 (hereafter, "Ferrari NA" or "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 Independent Commercial Importer Regulations, 40 C.F.R. Part 85, Subpart P, regarding the importation of racing vehicles or nonconforming motor vehicles (the ICI Regulations).

**Applicable Statutory and Regulatory Provisions**

1. 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-issued certificate of conformity (COC).
2. Under Section 205(a) of the Act, 42 U.S.C. § 7524(a), persons who violate Section 203(a)(1) of the Act are subject to a penalty of up to \$32,500 for each violation.

**Regulatory Authority**

3. 40 C.F.R. § 85.1513 prohibits the importation of a motor vehicle that is not covered by a certificate of conformity unless the importation meets the requirements of 40 C.F.R. Part 85, Subpart P.
4. 40 C.F.R. § 85.1502(a)(7) defines an independent commercial importer (ICI) as an importer of motor vehicles who is not an original equipment manufacturer (OEM) or does not have a contractual agreement with an OEM to act as its authorized representative for the distribution of motor vehicles in the United States.

5. 40 C.F.R. § 85.1502(a)(9) defines a nonconforming vehicle as a motor vehicle that is not covered by a certificate of conformity prior to importation into the United States.
6. 40 C.F.R. § 85.1503(a) provides that a nonconforming motor vehicle offered for importation into the United States must be imported by an ICI who is a current holder of a valid certificate of conformity for the motor vehicle unless EPA grants an exemption or exclusion under 40 C.F.R. § 85.1511.
7. 40 C.F.R. § 85.1511(e) provides that a racing vehicle may be imported by any person provided the vehicle meets one or more of the exclusion criteria specified in 40 C.F.R. § 85.1703. Racing vehicles may not be registered or licensed for use on or operated on public roads and highways in the United States.
8. 40 C.F.R. § 85.1703 provides the criteria that EPA uses, before the importation of the vehicle, to determine whether or not a vehicle is a racing vehicle and therefore not a motor vehicle within the meaning of Section 216(2) of the CAA.

**Background:**

9. As described in the Table below, Respondent imported three vehicles into the United States (Subject Vehicles). On the EPA Declaration Form 3520-1, used to import the Subject Vehicles, Respondent marked “code A,” which indicates that the vehicles were being imported by an ICI for modification in accordance with a valid EPA certificate of conformity issued for the specific make, model, and model year in accordance with 40 C.F.R. § 85.1505. Respondent is not an ICI and is not a holder of a valid EPA-issued certificate of conformity for the Subject Vehicles.

Entry Date	Port	Manufacturer	Model	VIN
11/15/2005	NY/Newark	Ferrari S.P.A.	360 Modena	ZFFYR51B000131573
11/15/2005	NY/Newark	Ferrari S.P.A.	360 Modena	ZFFYR51B000126986
01/04/2006	Ft. Everglades, FL	Ferrari S.P.A.	360 Modena	ZFFYR51B000123032

10. On January 4, 2006, the U.S. Customs detained one of the vehicles to determine its compliance status. Thereafter, Respondent represented to U.S. Customs and EPA that the vehicles were manufactured by Ferrari S.P.A. and were designed exclusively for racing at close-course competitions. Respondent also subsequently forwarded to EPA an EPA-issued racing exclusion for all of the Subject Vehicles.

**Alleged Violations:**

11. EPA alleges that Respondent is not an ICI and imported the Subject Vehicles into the United States in violation Section 203 of the CAA and the ICI Regulations. Moreover, if

the vehicles were racing vehicles, Respondent was obligated to seek EPA's approval prior to importing the vehicles, mark "code L" on the EPA Declaration Form 3520-1, and attach the EPA approval letter to the EPA Declaration Form 3520-1.

12. Based on the forgoing, EPA alleges that Respondent committed three separate violations of Section 203 of the Act, 42 U.S.C. § 7522, and the ICI Regulations, 40 C.F.R. Part 85.
13. Respondent denies all of the alleged violations and has obtained an EPA-issued racing exclusion for all three of the Subject Vehicles. Respondent avers that, unbeknownst to it, its agents simply checked the "code A" box on the EPA 3520-1 Declaration Form in error, and failed to attach the EPA-issued racing exclusion letters. In addition, Respondent has conducted a self-audit and implemented procedures to prevent such future errors or omissions.

**Terms of Agreement:**

14. Respondent has agreed to pay a civil penalty of \$16,000 under this Agreement. Accordingly, under this Agreement, within thirty days from the date of this Agreement Respondent shall pay \$16,000 to the United States of America. 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 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 - 7133

A copy of the check shall be sent to Jocelyn Adair at the address specified in Paragraph 15.

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

Jocelyn Adair  
US EPA/OECA/ORE  
Mail Code 2242A  
Room 1109A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

16. EPA has agreed that, upon its receipt of a copy of this Agreement that has been signed by Respondent, it will notify U. S. Customs that any issues relating to Clean Air Act

compliance regarding importation of the Subject Vehicles has been resolved, so that there is no longer an EPA request that U.S. Customs hold the Subject Vehicles in detention or seizure.

**Stipulated Penalties:**

17. Time is of the essence to this Agreement. Upon the failure of Respondent 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 the due date, 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 \$36,000.
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 Jocelyn Adair at the address specified in Paragraph 15 of this Agreement.

**General Provisions:**

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 is authorized to do so and that such execution is intended and is sufficient to bind Respondent.
22. Respondent waive 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 25 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
26. In the event Respondent discloses additional information that may constitute violations of the Clean Air Act and claims such disclosure meets the criteria for the EPA April 11, 2000 Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations; Notice, Final Policy Statement (the Audit Policy), EPA will apply the Audit Policy to the disclosure if EPA determines that the Audit Policy criteria are met.

**Enforcement:**

27. 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:

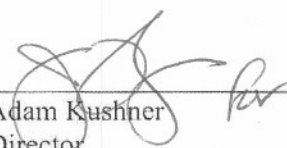
**Ferrari North America:**

By:  Date: 4/13/06  
(Signature)

Print Name: DAVID M. WERTHEIM  
VICE PRESIDENT & GENERAL COUNSEL

**Administrative Settlement Agreement *In the Matter of: Ferrari North America;*  
*AED/MSEB: 7133.***

U.S. Environmental Protection Agency

By:  \_\_\_\_\_  
Adam Kushner  
Director  
Air Enforcement Division

Date: 4.13.06