

Purpose

3. The purpose of this Agreement is to resolve 2,481 violations of section 203(a) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a), and the regulations promulgated thereunder at 40 C.F.R. Part 1051 (the Recreational Vehicle Regulations).

Statutory Authority

4. Section 203(a)(1) of the Act prohibits a manufacturer from selling, offering for sale, introducing, or delivering for introduction into commerce, or any person from importing, any vehicle or engine manufactured after the applicable effective date of the regulations unless such vehicle or engine is covered by a Certificate of Conformity (COC) issued by the EPA. 42 U.S.C. § 7522(a)(1).
5. Under section 216 of the Act, the definition of a manufacturer includes persons who import vehicles or engines for resale. 42 U.S.C. § 7550.
6. Section 213(d) of the Act, 42 U.S.C. § 7547(d), extends the prohibition in section 203(a)(1) to the sale or importation of any nonroad vehicle or engine. 42 U.S.C. § 7547(d).
7. Any person who violates section 203(a)(1) or 203(a)(4), 42 U.S.C. § 7522(a)(1) or § 7522 (a)(4), is subject to a civil penalty of not more than \$37,500 for each vehicle or engine in violation. 42 U.S.C. § 7524(a).
8. A nonroad engine is defined as an internal combustion engine that is not used in an on-road motor vehicle, a competition vehicle, or a stationary source, and a nonroad vehicle is defined as a vehicle powered by a nonroad engine. 42 U.S.C. §§ 7550(10)-(11).

Regulatory Authority

9. 40 C.F.R. Part 1051 applies to recreational vehicles, which includes off-highway motorcycles and ATVs. 40 C.F.R. § 1051.1.
10. An adjustable parameter is defined as any device, system or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation. 40 C.F.R. § 1051.801.
11. All vehicles subject to 40 C.F.R. Part 1051 are required to have closed crankcases that may not discharge crankcase emissions directly into the ambient atmosphere at any time throughout the useful life of the vehicle. 40 C.F.R. § 1051.115(a).
12. An applicant for a COC must certify that all vehicles and/or engines comply with the requirements of 40 C.F.R. § 1051. 40 C.F.R. § 1051.205(s).
13. The prohibitions in 40 C.F.R. § 1068.101 apply to vehicles regulated under 40 C.F.R. Part 1051. 40 C.F.R. § 1051.15.
14. Engines and equipment are covered by a COC only if they are in a configuration described in the application for certification (AFC) and are materially the same as the design of the test engine and design description in the AFC. 40 C.F.R. § 1068.101(a)(1)(i).
15. Manufacturers may not sell, offer for sale, or introduce or deliver into commerce in the United States, or import into the United States, any new engine or equipment manufactured after emission standards take affect for the engine or equipment, unless it is covered by a valid COC for its model year and has the required label or tag. 40 C.F.R. § 1068.101(a)(1).

Background

16. On different occasions specified below, Respondent imported into the port of Long Beach, California, 428 off-highway motorcycles (the Subject Motorcycles), and 2,053 ATVs (the Subject ATVs) in violation of section 203(a)(1) of the Act into the United States, as described in Appendix I attached hereto.
17. Entries DZ1-30966374 and DZ1-30966390 (3/19/09): On March 19, 2009, Respondent imported 428 Subject Motorcycles under the entry numbers specified above. Pursuant to 40 C.F.R. § 1051.205(s), Respondent certified in its AFCs that the Subject Motorcycles were in compliance with all requirements of 40 C.F.R. Part 1051, including the prohibition against open crankcases on off-highway motorcycles. 40 C.F.R. § 1051.115(a). Respondent also stated in its AFC that the Subject Motorcycles did not have any adjustable parameters. On March 30, 2009, the EPA inspected a Subject Motorcycle from each entry. Based on these inspections, the EPA found that each of the Subject Motorcycles has an open crankcase and contains a screw in its carburetor that allows adjustment of the idle fuel/air mixture. Any such adjustment may affect emissions from the engine and is considered by the EPA to be an adjustable parameter as defined in the regulations. A COC only covers those vehicles that conform in all material respects to the design specifications disclosed in the AFC. The Subject Motorcycles do not conform to the design specifications for these engine families with respect to the adjustable parameters and crankcases and therefore are not covered by a COC. Respondent has committed 428 violations of CAA § 203(a)(1) and 40 C.F.R. § 1068.101(a)(1)(i) and 101(b)(5) by importing uncertified off-highway motorcycles.
18. Entries DZ1-30966465 (3/19/09); DZ1-30973941 (4/5/09); DZ1-30973958 (4/5/09); DZ1-30978429 (4/12/09); DZ1-30978387 (4/12/09): Between March 19, 2009 and April 12, 2009, Respondent imported 621 Subject ATVs under the entry numbers specified above. Pursuant to 40

C.F.R. § 1051.205(s), Respondent certified in its AFCs that the Subject ATVs were in compliance with all requirements of 40 C.F.R. Part 1051, including the prohibition against open crankcases. 40 C.F.R. § 1051.115(a). Respondent also stated in its AFCs that the Subject ATVs did not have any adjustable parameters. The EPA inspected a Subject ATV from these entries on March 30, 2009 (entry DZ1-30966465); April 22, 2009 (entry DZ1-30973958); April 23, 2009 (entry DZ1-30973941); April 27, 2009 (entry DZ1-30978429); and May 4, 2009 (DZ1-30978387). Based on these inspections, the EPA found that each of the Subject ATVs has an open crankcase and contains a screw in its carburetor that allows adjustment of the idle fuel/air mixture. Any such adjustment may affect emissions from the engine and is considered by the EPA to be an adjustable parameter as defined in the regulations. A COC only covers those vehicles that conform in all material respects to the design specifications disclosed in the AFC. The Subject ATVs do not conform to the design specifications for these engine families with respect to the adjustable parameters and crankcases and therefore are not covered by a COC. Respondent has committed 621 violations of CAA § 203(a)(1) and 40 C.F.R. § 1068.101(a)(1)(i) and 101(b)(5) by importing uncertified all-terrain vehicles.

19. Entries DZ1-3163902-0 (3/13/12); DZ1-3163920-2 (3/20/12); DZ1-3163921-0 (3/20/12);
EPG-8005357-5 (3/15/12); EPG-8005358-3 (3/15/12); EPG-8005388-0 (3/21/12);
EPG-8005399-7 (3/19/12); EPG-8005403-7 (3/19/12); EPG-8005443-3 (3/28/12): Between March 13 and March 28, 2012, Respondent imported 1,092 Subject ATVs with 110 cubic centimeter (cc) engines under the entry numbers specified above. Pursuant to 40 C.F.R. § 1051.205(s), Respondent submitted an AFC that identified a single exhaust emission control system configuration consisting of a catalytic converter along with its dimensions; no other emission controls were identified in the AFC. On March 29, 2012, the EPA inspected a 110cc

model Subject ATV from Entry EPG-8005357-5 at a warehouse located in Carson, California. During the March 29, 2012 inspection, the EPA removed the exhaust system from the Subject ATV and shipped it to the EPA contractor, Eastern Research Group (ERG), for analysis. The ERG analysis showed that the catalytic converter in the 110cc model Subject ATV was approximately 40% shorter than the design specifications in the AFC. Subsequently, Respondent informed the EPA that the catalyst specifications provided in the AFC are for the 125cc models only, and that the 110cc models are manufactured with a catalytic converter that is shorter than the catalytic converter for the 125cc models. The ERG analysis also showed that the 110cc model Subject ATV was equipped with a pulsed air injection reactor system (PAIR); this PAIR is not described in the AFC. A PAIR system is used to supply extra air to the exhaust system to aid in reduction of emissions. A COC only covers those vehicles that conform in all material respects to the design specifications disclosed in the AFC. Thus, the 110cc model Subject ATVs are not covered by a COC. Respondent has committed 1,092 violations of CAA § 203(a)(1) and 40 C.F.R. § 1068.101(a)(1)(i) and 101(b)(5) by importing uncertified all-terrain vehicles.

20. Entries EPG-8005387-2 (3/19/12); EPG-8005426-8 (3/26/12); EPG-8005437-5 (3/26/12); EPG-8005443-3 (3/28/12): Between March 19 and March 28, 2012, Respondent imported 340 Subject ATVs containing 125cc engines under the entry numbers specified above. Pursuant to 40 C.F.R. § 1051.205(s), Respondent submitted an AFC that identified a single exhaust emission control system consisting of a catalytic converter along with its dimensions; no other emission controls were identified in the AFC. At EPA's request, Respondent removed the exhaust system from a 125cc model Subject ATV from Entry EPG-8005357-5 and shipped it on April 17, 2012, to the ERG for analysis. Subsequent analysis by ERG showed that the 125cc model Subject ATV contained a PAIR not described in the AFC. A COC only covers those vehicles that conform in all

material respects to the design specifications disclosed in the AFC. Thus, the Subject ATVs are not covered by a COC. Respondent has committed 340 violations of CAA § 203(a)(1) and 40 C.F.R. § 1068.101(a)(1)(i) and 101(b)(5) by importing uncertified all-terrain vehicles.

21. Respondent submitted an AFC for 2012 model year engine family CMXTX.125M1A that includes a PAIR system and covers models Coolster Challenger 125 and Coolster Mountopz 125. The EPA issued the COC for this engine family on May 8, 2012.

Alleged Violations

22. Respondent is liable for 2,481 separate violations of Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and the Recreational Vehicle Regulations, 40 C.F.R. Part 1051, for the introduction into commerce of the Subject Vehicles for all the reasons summarized above in Paragraphs 16 through 20.

Civil Penalty

23. For the violations of the CAA and the regulations promulgated thereunder at 40 C.F.R. Parts 1051 and 1068 arising from the importation of the Subject ATVs and Subject Motorcycles into the United States, Respondent shall to pay to the United States a civil penalty of \$80,000 within 30 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, plus the stipulated penalties as specified in Paragraphs 28-29 of the Agreement. Respondent agrees to pay the amount upon demand by the United States by certified check or cashier's check payable to the "United States of America," and shall 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 #7892

This check must be identified with case number AED/MSEB # 7892 and state that it is remitted by Maxtrade, LLC. Respondent may also pay online through the Department of the Treasury using www.pay.gov. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1. The payment must be identified with case number AED/MSEB # 7892.

Remediation

24. Within 30 days of either the effective date of this Agreement or the date that the United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP) releases the entries, whichever occurs later, Respondent will export the 1,092 Subject ATVs contained in entries DZ1-3163902-0, DZ1-3163920-2, DZ1-3163921-0, EPG-8005357-5, EPG-8005358-3, EPG-8005388-0, EPG-8005399-7, EPG-8005403-7, and EPG-8005443-3, to a country other than Canada, Mexico, or to any U.S. Territories.
25. The EPA agrees to allow the COC for engine family CMXTX.125M1A to cover the 125cc model Subject ATVs covered by Entry Numbers EPG-8005387-2, EPG-8005426-8, EPG-8005437-5, and EPG-8005443-3, even though the regulatory requirements allow COCs to apply only to vehicles produced after the effective date of the COC. 40 C.F.R. § 1068.103.
26. Respondent may sell or distribute the 125cc model Subject ATVs covered by Entry Numbers EPG-8005387-2, EPG-8005426-8, EPG-8005437-5, and EPG-8005443-3 after the civil penalty is paid.

Notice

27. A copy of the payment check(s) and the transmittal letter(s) (if payment is submitted by mail) or a copy of the electronic receipt (if payment is submitted online) shall be faxed to David H. Kim at (415) 947-3570 no later than 24 hours after payment. All correspondence to the EPA concerning this Agreement shall be sent to:

(Regular Mail or Courier Service)

David H. Kim
U.S. Environmental Protection Agency,
Region IX
Mail Code (ORC-3)
75 Hawthorne Street
San Francisco, CA 94105
Attn: AED/MSEB #7892

Stipulated Penalties

28. Respondent shall pay a penalty of \$1,000 per day for failure to timely pay the penalty pursuant to Paragraph 23 of this Agreement or provide proof thereof pursuant to Paragraph 27 of this Agreement.
29. Respondent shall pay a penalty of \$500 per day for failure to comply with Paragraphs 24 or 26 of this Agreement.
30. Stipulated penalties under Paragraphs 28 or 29 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. Stipulated penalties shall be paid upon demand by the United States in accordance with Paragraph 23 of this Agreement. In addition, a copy of the transmittal letter(s) and check(s) shall be sent to David H. Kim at the address specified in Paragraph 27 of this Agreement.

General Provisions

31. This Agreement becomes effective upon the date executed by the EPA (Effective Date of the Agreement), at which time an electronic copy will be returned to Respondent.
32. Respondent hereby represents that the individual or individuals 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 and its agents, assigns, and successors.
33. Notwithstanding any other provision of this Agreement, upon Respondent's failure to perform, or default, or failure to comply with any term of this Agreement, the EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to Section 205 of the CAA, 42 U.S.C. § 7524 or any stipulated penalties, commence an action to enforce this Agreement, or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, the EPA may proceed in an action based on the original claim of violations of the CAA and 40 C.F.R. Parts 1051 and 1068. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, any applicable statute of limitation, or other provisions limiting actions as a result of passage of time. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement. 31 U.S.C. § 7701.
34. 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 agreed to herein.
35. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

36. This settlement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to the EPA under this Agreement and the prompt and complete remediation of any violations in accordance with this Agreement.


Effect of Agreement

37. This Agreement resolves the EPA civil claims for the violations alleged in Paragraph 22. This resolution of claims will take effect when the United States receives the civil penalty required by Paragraph 23 and when Respondent completes the remedial work required by Paragraphs 24 and 26, whichever occurs later. Nothing herein shall limit the right of the EPA to proceed against Respondent in the event of default or noncompliance with 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 Maxtrade, LLC
AED/MSEB – 7892*

Maxtrade, LLC

By: 
Signature

Date: 9-17-2012

Print Name: JEFF MA

Print Title: President

Federal Tax Identification Number: 522384944

*Settlement Agreement
In the Matter of Maxtrade, LLC
AED/MSEB – 7892*

U.S. Environmental Protection Agency

By:  Date: 8/28/2012
Phillip A. Brooks, Director
Air Enforcement Division

APPENDIX 1

Subject ATVs

Entry Date	Entry No.	Model(s)/ (Quantity¹)	Alleged Engine Family/Year	Total Qty.
3/19/09	DZ1-3096646-5	Coolster Mountopz 110, ATV-3050-D	9MXTX.125M1A 2009	115
4/5/09	DZ1-3097394-1	Coolster Mountopz 110, ATV-3050-D	9MXTX.125M1A 2009	115
4/5/09	DZ1-3097395-8	Coolster Mountopz 110, ATV-3050-D	9MXTX.125M1A 2009	115
4/12/09	DZ1-3097838-7	Coolster Mountopz 150, ATV-3150-DX-2	9MXTX.250M3A 2009	102
4/12/09	DZ1-3097842-9	Coolster Mountopz 150, ATV-3150-DX-2	9MXTX.250M3A 2009	174
3/13/12	DZ1-3163902-0	Coolster Mountopz 110, ATV-3050C	BMXTX.125M1A 2011	140
3/15/12	EPG-8005357-5	Coolster Mountopz 110, ATV-3050C	BMXTX.125M1A 2011	140
3/15/12	EPG-8005358-3	Coolster Mountopz 110, ATV-3050C	BMXTX.125M1A 2011	136
3/19/12	EPG-8005399-7	Coolster Mountopz 110, ATV-3050B	BMXTX.125M1A 2011	120
3/19/12	EPG-8005403-7	Coolster Mountopz 110, ATV-3050B	BMXTX.125M1A 2011	118
3/19/12	EPG-8005387-2	Coolster Mountopz 125, ATV-3125CX	BMXTX.125M1A 2011	91

¹ Where more than one model was imported under the same entry, we have listed the quantities of each model imported here. The total quantity imported under the entry is listed elsewhere.

3/20/12	DZ1-3163920-2	Coolster Mountopz 110, ATV-3050B	BMXTX.125M1A 2011	120
3/20/12	DZ1-3163921-0	Coolster Mountopz 110, ATV-3050B	BMXTX.125M1A 2011	118
3/21/12	EPG-8005388-0	Coolster Mountopz 110, ATV-3050B	BMXTX.125M1A 2011	120
3/26/12	EPG-8005426-8	Coolster Mountopz 125, ATV-3125A	BMXTX.125M1A 2011	107
3/26/12	EPG-8005437-5	Coolster Mountopz 125, ATV-3125A	BMXTX.125M1A 2011	107
3/28/12	EPG-8005443-3	Coolster Mountopz 110, ATV-3050C (69), ATV-3050B (11); Coolster Mountopz 125, ATV-3125R (9), ATV-3125XR-8 (26)	BMXTX.125M1A 2011	115

Subject Motorcycles

Entry Date	Entry No.	Model(s)/ (Quantity)	Alleged Engine Family/Year	Total Qty.
3/19/09	DZ1-3096637-4	Coolster Speedmax QG-213A (60); Coolster Speedmax QG-214S (128)	9MXTX.125M4A 2009	188
3/19/09	DZ1-3096639-0	Coolster Speedmax QG-213A (80); Coolster Speedmax QG-210 (160)	9MXTX.125M4A2 009	240