

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

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In the Matter of:)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
Tank Sports, Inc.)	
)	AED/MSEB: 7135
Respondent.)	
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THIS SETTLEMENT AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (EPA) and Tank Sports, Inc., 109225 Schimdt Road, El Monte, CA 91733 (Respondent).

Purpose:

The purpose of this 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, or causing the importation of such a motor vehicle.
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.
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 Respondent imported into the United States ninety-four uncertified motorcycles as described in the Table below (the subject motorcycles). Respondent represented that the subject motorcycles were covered under an EPA-issued certificate of conformity. Respondent also explained that rather than affixing the EPA-emissions labels to each of the subject motorcycles as required by the CAA and the Motorcycle Regulations, the manufacturer of the subject motorcycles placed the EPA emissions labels into two containers that accompanied the subject motorcycles.

Table

Miami, Florida

Entry Date	Entry Number	Model	Quantity	Manufacturer
01/2/2006	AJ0-0041627-8	TK150T-7	90	KTM MEX
		TK150T-H	4	

13. Based on the forgoing, EPA alleges that Respondent committed ninety-four 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. Respondent has agreed to pay a civil penalty of \$15,500 under this Agreement. Accordingly, under this Agreement, within thirty days from the date of this Agreement Respondent shall pay \$15,500 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 certified check or cashier's check payable to the United States of America, and to mail the payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB- 7135

A copy of each check shall be sent to Jocelyn Adair at the address specified in Paragraph 17 of this Agreement.

15. Respondent shall export or destroy the subject motorcycles within thirty days of this Agreement, or such longer period of time if required by U.S. Customs and Border Protection (Customs). This exportation or destruction shall be carried out under the supervision of Customs. Respondent shall also certify to EPA and provide supporting documents that the subject motorcycles were either exported or destroyed.
16. Within thirty days of this Agreement, Respondent shall provide to EPA a copy of a compliance assurance plan that Respondent has developed and implemented to ensure its future compliance with the Motorcycle Regulations. The compliance assurance plan shall remain in effect for at least three years from the date of this Agreement. The compliance assurance plan at a minimum shall contain the following: (1) procedures implemented at the facility where the motorcycles are assembled to ensure that prior to shipment of the motorcycles from the facility each motorcycle's engine displacement, category of use (e.g., on-highway, off-highway, or dual-purpose) is correctly described, and each

motorcycle bears the appropriate EPA emissions label; and (2) the employment of an independent laboratory or inspector to randomly and periodically select at least ten percent of Respondent's motorcycles prior to shipment to the United States for inspection and testing to ensure that the motorcycles being imported are correctly described and labeled. Respondent shall also provide semi-annual reports to EPA. The reports shall be submitted no later than June 30 and December 31 of 2006, 2007, and 2008. Each report shall contain the following information:

- (a) A list of the motorcycles (i.e., manufacturer, make, model number, vehicle identification number, and a copy of the EPA emission label) that Respondent imported and/or sold to others for importation to the United States under Certificate of Conformity Number Tank-MC-2006-01;
- (b) A list of the motorcycles (i.e., manufacturer, make, model number, vehicle identification number, and a copy of the EPA emissions label) that Respondent imported into the United States; and,
- (c) A copy of the independent inspectors report that includes, but is not limited to, the name, address, and telephone number of the independent inspector (s), the date of the inspection, a description of how the motorcycles were randomly and periodically selected for inspection, a description of the inspection conducted, the location of the facility inspected, a description of each motorcycle inspected (i.e., the manufacturer, make, model number, vehicle identification number), a statement of whether or not each motorcycle inspected was described correctly on the invoice, and whether or not the EPA emissions label was affixed to each motorcycle.

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

Jocelyn Adair
Mail Code 2242A
1200 Pennsylvania Avenue, N.W., Room 1109A
Washington, DC 20460

Stipulated Penalties:

18. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 14 through 17 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.

- (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.
 - (c) For the failure to timely develop and implement a compliance assurance plan or to submit any semi-annual report as required by Paragraph 16 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day.
19. 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 17 of this Agreement.
 20. 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.
 21. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
 22. 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.
 23. 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.
 24. 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.
 25. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
 26. The effect of settlement described in Paragraph 27 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
 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:

Tank Sports, Inc.

By:  _____

Signature:


Print Name: Peng Ji

Print Title: General Manager

Date: 3/22/06

Administrative Settlement Agreement *In the Matter of: Tank Sports, Inc.,*
AED/MSEB: 7135.

U.S. Environmental Protection Agency

By: 
Adam M. Kushner
Director
Air Enforcement Division

Date: 4/7/06