

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

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In the Matter of:)	ADMINISTRATIVE SETTLEMENT
)	AGREEMENT
Tank Sports, Inc.)	
)	AED/MSEB: 7120
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., 1718 Floradale Avenue, South 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, Canada, and Mexico.
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 or caused the importation into the United States the seventy-eight motorcycles described in Tables 1 and 2 below (the subject motorcycles). For the subject motorcycles described in Table 1, Respondent imported the motorcycles as vehicles with an engine displacement less than 50 cc, and not covered by an EPA issued-certificate of conformity. However, according to EPA’s engine displacement measurements, the motorcycles had an engine displacement of 72 cc. Such motorcycles are required to be covered by an EPA-issued certificate of conformity and to bear an EPA emissions label. For the subject motorcycles described in Table 2, Respondent represented that the subject motorcycles were covered under an EPA-issued

certificate of conformity, and caused Import Motorcycles Distributors to import the subject motorcycles. However the subject motorcycles did not bear the required EPA emissions label.

Table 1

Baltimore, Maryland Port No. 1303

Entry Date	Entry Number	Model	Quantity	Measured Engine Displacement	Manufacturer
06/03/05	K80-0908432-9	TK50QT-9	56	72 cc	Tank

Table 2

San Juan, Puerto Rico Port

(Imported by Import Motorcycle Dist., Inc.)

Entry Date	Entry Number	Model	Quantity	Advertised Engine Displacement	Manufacturer
06/30/05	438-0654459-9	TK150 cc T	22	150 cc	Tank

13. Based on the forgoing, EPA alleges that Respondent committed seventy-eight 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. EPA has determined to reduce the civil penalty for the seventy-eight violations alleged in Paragraph 13 of this Agreement to \$23,000, provided Respondent successfully completes the terms of this Agreement. Respondent shall pay \$23,000 to the United States of America in two payments of \$11,500 each. Payments shall be due within thirty days and within ninety from the date that this Agreement is executed by EPA. 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 payment to:

U.S. Environmental Protection Agency
 Washington Accounting Operations
 P.O. Box 360277M
 Pittsburgh, Pennsylvania 15251
 Attn: AED/MSEB- 7120

A copy of each check shall be sent to Jocelyn Adair at the address specified in Paragraph 18 of this Agreement.

15. For the subject motorcycles described in Table 1, Respondent shall export or destroy the subject motorcycles within thirty days of this Agreement. 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. For the subject motorcycles described in Table 2, Respondent shall either export or destroy the subject motorcycles as described in Paragraph 15, or Respondent shall provide to EPA a copy of the EPA emissions label that should have been affixed to the subject motorcycles, and under Customs's supervision Respondent shall affix the EPA emissions label to each of these subject motorcycles. Respondent shall also certify to EPA and provide supporting documents demonstrating that the EPA emissions label was affixed to each of these subject motorcycles.
17. 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 at a minimum shall contain the following: (1) procedures implemented at the manufacturing facility to ensure that prior to shipment of the motorcycles from the manufacturing 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 Respondent's motorcycles prior to shipment for inspection and testing to ensure that the motorcycles being imported are correctly described and labeled. The compliance assurance plan shall remain in effect for at least three years from the date of this Agreement.
18. All correspondence to EPA concerning this Agreement shall be sent to:

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

Stipulated Penalties:

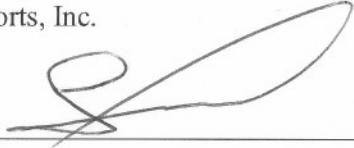
19. Time is of the essence to this Agreement. Upon the failure to comply or timely perform pursuant to Paragraphs 14 through 17 of this Agreement, Respondent agrees to the following stipulated penalties:

- (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. 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 \$2,500 per subject motorcycle.
 - (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 export, destroy or affix the EPA emissions label, or the failure to provide proof of such action as required by Paragraph 16 of this Agreement, Respondent shall pay for each motorcycle a stipulated penalty of \$1,000.
 - (d) For the failure to timely develop and implement a compliance assurance plan or to provide proof of such plan as required by Paragraph 17 of this Agreement, Respondent shall pay a stipulated penalty of \$200 per day. However, if after sixty days of this Agreement, Respondent has failed to develop and implement a compliance assurance plan or provide proof of such plan to EPA, Respondent shall be in default of this Agreement. Upon such default, Respondent shall pay a stipulated penalty of \$2,500 per subject motorcycle.
20. 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 18 of this Agreement.
21. 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.
22. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.
23. 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.

24. 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.
25. 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.
26. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
27. The effect of settlement described in Paragraph 28 of this Agreement is conditional upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA.
28. 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: 10-27-05

Administrative Settlement Agreement *In the Matter of: Tank Sports, Inc.,*
AED/MSEB: 7120.

U.S. Environmental Protection Agency

By: _____


Adam M. Kushner
Director
Air Enforcement Division

Date: 11.16.05