

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

In the Matter of:)	
)	
MVP Enterprises, Inc.)	Administrative Settlement
)	Settlement
)	
Respondent.)	AED/MSEB # 7231
)	

This Administrative Settlement Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and MVP Enterprises, Inc., 135 Midway Drive, Russellville, Arkansas 72811 (MVP) regarding MVP's compliance with the requirements of the Clean Air Act (the Act) and the regulations promulgated thereunder for the control of emissions from recreational vehicles at 40 C.F.R. Parts 1051 and 1068 (the applicable regulations).

Purpose

1. The purpose of this Agreement is to resolve any and all claims by EPA under the Act and the applicable regulations arising out of MVP's importation into the Port of Chicago of the following 2007 model year all-terrain vehicles (the Subject Vehicles):

Importation Date	Customs Entry Number	Vehicle Model	Number Imported
7/13/2007	HK8-7993244-8	Typhoon TYU125	6
7/23/2007	HK8-7993389-1	Typhoon TY125	240
10/26/2007	52507452630	Typhoon TY125	120
10/26/2007	52507452630	Typhoon TY90	60

Definitions

2. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulations:* 40 C.F.R. Part 1051, Control of Emissions from Recreational Engines and Vehicles, and 40 C.F.R. Part 1068, General Compliance Provisions for Nonroad Engines.
 - b. *All-terrain vehicle, or ATV:* 40 C.F.R. § 1051.801 defines “all-terrain vehicle” as a category of recreational vehicle that includes, *inter alia*, land-based nonroad vehicles with three or more wheels and one or more seats, designed for operation over rough terrain, intended primarily for transportation, and with a maximum speed of 25 miles per hour or more.
 - c. *This matter:* “This matter” means MVP’s importation of the Subject Vehicles and any civil liability that may result from MVP’s violations of the Clean Air Act and the applicable regulations regarding the Subject Vehicles.
 - d. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA 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. Part 1051 and the Act. Issuance of the Certificate of Conformity permits production, introduction into commerce and importation of recreational vehicles

built in accordance with the manufacturer's application after the date of the Certificate and before expiration of the covered model year.

- e. *Destroy*: The term "destroy" means the complete destruction of the engine and the complete disassembly of the vehicle. 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.

Statutory Authority

- 3. Section 213 of the Act, 42 U.S.C. § 7547, authorizes EPA to promulgate emission standards for nonroad vehicles and engines, and regulations necessary to determine compliance with and enforce these standards.

Regulatory Authority

- 4. Under 40 C.F.R. § 1051.1, beginning with the 2006 model year, ATVs are subject to the emissions standards and other requirements applicable to recreational vehicles under 40 C.F.R. Part 1051. This includes, *inter alia*: emission standards under 40 C.F.R. §§ 1051.107 and 1051.110; emission-related warranty requirements under 40 C.F.R. § 1051.120; and emissions labeling requirements under 40 C.F.R. § 1051.135.

5. Under 40 C.F.R. § 1051.230, applications for certification must identify families of recreational vehicles that are expected to have similar emission characteristics, or “engine families.” Recreational vehicles must be in the same engine family if they are the same with regard to, *inter alia*, the number, location, volume and composition of catalytic converters.
6. Under 40 C.F.R. § 1051.255, EPA issues a certificate of conformity for an engine family if the certification application demonstrates the engine family meets the emissions and other requirements of 40 C.F.R. Part 1051.
7. Under 40 C.F.R. § 1051.801, the term recreational vehicle “manufacturer” means a company that manufactures a recreational vehicle for sale in the United States, and includes a company that imports recreational vehicles into the United States for resale.
8. Under 40 C.F.R. § 1051.15, the provisions of 40 C.F.R. Part 1068 apply to any person that manufactures or imports recreational vehicles. 40 C.F.R. § 1068.101(a)(1) prohibits the manufacturer of new recreational vehicles from introducing into commerce or importing any new recreational vehicle after emission standards take effect for that equipment unless it is covered by a valid certificate of conformity.

Alleged Violations

9. MVP imported into the United States at the Port of Chicago, Illinois, the 426 Subject Vehicles as described in Paragraph 1.

10. The Subject Vehicles are model year 2006 or newer ATVs, and are subject to the emission standards and other requirements applicable to recreational vehicles under 40 C.F.R. Part 1051.
11. The Subject Vehicles were labeled with emission control labels that stated they were manufactured under a certificate of conformity issued to FYM-USA Group, LLC (FYM), engine family 7FYMX.125AM4. The application for the certificate of conformity FYM submitted to EPA states that recreational vehicles in this engine family are equipped with catalytic converters, and specifies the precious metal types and amounts, and the reactive surface area, for these catalytic converters.
12. The certificate of conformity issued by EPA for engine family 7FYMX.125AM4 states the certificate covers only those recreational vehicles that conform, in all material respects, to the design specifications that applied to those recreational vehicles described in the application for certification.
13. United States Customs and Border Protection (CBP) inspected samples of the Subject Vehicles. This inspection determined that the Subject Vehicles from entry numbers HK8-7993244-8 and HK8-7993389-1 were not equipped with catalytic converters, and that the Subject Vehicles from entry number 52507452630 were equipped with catalytic converters that did not contain the precious metal types and amounts, or the reactive surface area, specified in the FYM application for certification for engine family 7FYMX.125AM4.

14. The presence of a catalytic converter, the catalytic converter precious metal types and amounts, and the catalytic converter reactive surface area are material aspects of the design specifications for engine family 7FYMX.125AM4.
15. The Subject Vehicles are not covered by the certificate of conformity for engine family 7FYMX.125AM4 because they do not conform, in all material respects, to the design specifications for this engine family.
16. As the importer of the Subject Vehicles, MVP is liable for 426 violations of the prohibition against importing a new recreational vehicle unless it is covered by a valid certificate of conformity, under 40 C.F.R. § 1068.101(a)(1).

Corrective Action

17. With the exception of the Sample ATVs identified in Paragraph 22 of this Agreement, within thirty days from the date that CBP releases the Subject Vehicles, or from the effective date of this Agreement if CBP has released the Subject Vehicles prior to the effective date of this Agreement, whichever is applicable, MVP shall export or destroy the Subject Vehicles. This exportation or destruction shall be carried out under the supervision of CBP. Within forty-five days from the applicable date under this Paragraph, MVP shall certify to EPA and provide supporting documents that each of the Subject Vehicles has been either destroyed or exported under the supervision of CBP.

Civil Penalty

18. MVP shall pay to the United States a civil penalty of twenty-five thousand dollars (\$25,000.00) (EPA penalty) in satisfaction of the violations described herein, provided MVP successfully completes the terms of this Agreement.
19. MVP agrees to pay the EPA penalty to the United States of America within thirty 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. MVP agrees 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
- Simultaneously, a photocopy of the check shall be faxed to (202) 564-0069 to the attention of George Lawrence. Such check shall be identified with the case number and MVP's name; or
- b. MVP 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) 564-0069 to the attention of George E. Lawrence. Such receipt shall be identified with the case number and MVP's

name.

20. Separate and apart from this EPA penalty, MVP will pay to CBP a forfeiture/remission amount of twenty-five thousand dollars (\$25,000.00). It is understood that this forfeiture/remission payment to CBP does not include any payment for seizure and/or storage costs CBP may require for release of the Subject Vehicles for export.

Notice

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

Jacqueline Robles-Werner, Acting Chief
Mobile Source Enforcement Branch
Air Enforcement Division, Mail Code 2242A
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Attn: AED/MSEB # 7231

and

George Lawrence, Esq.
2130 Fisburn Mountain Road
Rocky Mount, Virginia 24151
Attn: AED/MSEB # 7231

Transfer of Sample ATVs to EPA for Testing

22. Within thirty calendar days of the effective date of this Agreement, MVP agrees to transfer custody to EPA of two Typhoon TY125 ATVs from Customs Entry Number HK8-7993389-1, two Typhoon TY125 ATVs from Customs Entry Number 52507452630 and two Typhoon TY90 ATVs from Customs Entry Number 52507452630 (Sample

ATVs), for inspection and testing to determine compliance with the emissions standards and other requirements of 40 C.F.R. Part 1051. The six Sample ATVs will be selected by CBP from the Subject Vehicles, and custody of the Sample ATVs will be transferred from CBP to EPA. At the conclusion of the testing, the Sample ATVs will be returned to MVP. MVP agrees to export or destroy the each Sample ATVs no later than thirty days after it is received, and no later than sixty days after it is received MVP shall certify to EPA and provide supporting documents that the Sample ATV has been either destroyed or exported under the supervision of CBP. EPA may elect that this testing will require less than all six of the Sample ATVs, or EPA may elect to conduct no testing under this Paragraph in which case MVP would transfer no ATVs to EPA under this Paragraph. Prior to the date the Sample ATVs are transferred from MVP to EPA, EPA will notify MVP if the number of Sample ATVs is fewer than six, and if so, which of the Sample ATVs are to be transferred.

Quality Assurance Program

23. MVP agrees to conduct a quality assurance program to ensure that any vehicles it imports in the future comply with the emission certification requirements of the Act (Quality Assurance Program). This Quality Assurance Program shall cover any vehicle or engine imported by MVP that is regulated under the Clean Air Act, including, *inter alia*, recreational vehicles, motorcycles, highway vehicles, and nonroad vehicles and engines (collectively called vehicles for purposes of this Quality Assurance Program). This Quality Assurance Program shall begin 60 days following the effective date of this

Agreement (Quality Assurance Program Beginning Date), and shall continue for the following 24 months. This Quality Assurance Program shall consist of the actions described in Paragraphs 24 through 39.

Vehicle Information

24. MVP agrees that after the Quality Assurance Program Beginning Date it will not import any vehicle unless and until MVP:
 - a. Obtains from EPA a copy of the certificate of conformity that covers the vehicle, by contacting the EPA Imports Team by telephone (734-214-4100) or email (imports@epa.gov), and informing the Imports Team of the engine family number for which a certificate of conformity is required; and
 - b. In the case of vehicles for which the certificate of conformity states the vehicle is equipped with a catalytic converter, obtains from the company that applied to EPA for the certificate of conformity that covers the vehicle, in writing, a description of the catalytic converter, including the type and amount of precious metals present (in grams per liter), the cell density (in cells per square inch) and the overall dimensions of the catalyst substrate.

Vehicle Inspections

25. For each vehicle model it imports, MVP shall inspect one vehicle selected from the first fifty vehicles of the model that are imported after the Quality Assurance Program Beginning Date, and one vehicle selected from each subsequent 100 vehicles of the model that are imported.
26. MVP shall conduct each vehicle inspection in the following manner: obtain a copy of the

EPA certificate of conformity that covers the vehicle; confirm that each emission control device identified on the certificate is present on the vehicle; and confirm that the emissions label conforms with the applicable requirements for label content, placement and durability. In addition, the inspection shall confirm the vehicle complies with the emission-related warranty requirements in the following manner: review the owner's manual for the vehicle and confirm that the emission-related warranty is described as being in effect for at least the minimum time period, and as covering the components, required by the applicable regulations; and that appropriate procedures and infrastructure are described and are in place for vehicle owners to obtain warranty coverage.

27. For each vehicle inspected, MVP shall keep records of: the vehicle model; the vehicle identification number; the engine family number; the results of the inspection; pictures of the emission control label that are sufficiently legible to read the label's contents; and copies of the emission-related warranty description and information about the warranty procedures and infrastructure.
28. A vehicle shall be classified as having failed an inspection if an emission control device identified on the certificate is not present on the vehicle, if the emissions label does not conform with the applicable requirements for label content, placement and durability, or if the emission control warranty requirements are not met.
29. Each vehicle inspection shall be completed no later than thirty days following the date the vehicle is imported into the United States.

Catalytic Converter Testing

30. For each vehicle model it imports that is equipped with a catalytic converter, MVP shall

have an independent laboratory test the catalytic converter that is removed from a vehicle selected from the first fifty vehicles of the model that are imported after the Quality Assurance Program Beginning Date, and the catalytic converter from one vehicle selected from each subsequent 500 vehicles of the model that are imported.

31. MVP shall conduct this catalytic converter testing as follows: MVP shall have an independent laboratory inspect and test the catalytic converter to determine the type and amount of precious metals present, cell density and overall dimensions of the catalyst substrate.
32. For each catalytic converter that is inspected, MVP shall keep records of: the vehicle from which the catalyst was taken, including the model, the vehicle identification number and the engine family number; the written representation from the holder of the certificate of conformity regarding the catalyst's intended type and amount of precious metals present, cell density and overall dimensions of the catalyst substrate; the name and address of the independent laboratory that conducted the tests; and a signed report from the independent laboratory that includes the dates and results of the catalytic converter inspection and testing.
33. A vehicle shall be classified as having failed an inspection if the independent laboratory determines the catalytic converter taken from the vehicle, as compared to the catalytic converter description in the certificate application, is missing a type of precious metal, or has a smaller amount of precious metal or a smaller cell density or smaller overall dimensions of the catalyst substrate.
34. This catalytic converter testing shall be completed no later than sixty days following the

date the vehicle from which the catalytic converter is taken is imported into the United States.

35. Prior to the Quality Assurance Program Beginning Date, MVP shall submit to EPA, for approval, a detailed plan for the conduct of this testing (the Catalytic Converter Test Plan). The Catalytic Converter Test Plan shall include the following: the identification of the independent laboratory; the test instrument and method to be used to conduct the catalytic converter testing; the test instrument operating parameters; and the procedures that will be used to collect and prepare the samples of the catalysis material for testing. Following receipt of MVP's written Catalytic Converter Test Plan, EPA will either approve the Plan as submitted, or conditionally approve the Plan, requiring specified changes thereto. MVP agrees it will conduct catalytic converter testing according to the plan as approved by EPA.

Consequences if a Vehicle Fails an Inspection

36. If a vehicle fails an inspection under Paragraphs 28 or 33, MVP agrees to take the following actions:
- a. MVP will immediately stop any sales or distribution of any vehicles of that model in MVP's inventory, and no later than thirty days following the failed inspection, MVP will export or destroy any vehicles of that model in MVP's inventory;
 - b. MVP will submit a written report to the vehicle manufacturer that describes, in detail, the reason for the failed inspection;
 - c. MVP will not import any additional vehicles of that model until MVP receives from the manufacturer a written representation that the condition that caused the

failed inspection has been corrected;

- d. MVP will not distribute or sell any vehicles of that model subsequent to the failed inspection until it has inspected one vehicle produced after the manufacturer has corrected the condition that caused the inspection failure, and this inspection demonstrates that the condition that caused the failed inspection has been corrected; and
- e. MVP will increase the frequency of inspections and testing for that vehicle model under Paragraph 25 to one vehicle selected from each subsequent 50 vehicles of the model that are imported, and under Paragraph 30 to one vehicle selected from each subsequent 250 vehicles of the model that are imported. The increased rates of inspection and testing specified in this Paragraph will continue unless the two subsequent vehicle inspections and the two subsequent catalytic converter tests pass the inspections and testing specified in this Agreement, in which case the testing rates shall revert to the rates specified in Paragraphs 25 and 30.

MVP agrees to keep records sufficient to demonstrate its compliance with the provisions of this Paragraph 36.

Reports to EPA

- 37. MVP agrees to submit annual reports to EPA regarding this Quality Assurance Program. These reports shall include:
 - a. A summary of the number of each vehicle model imported each month during the year;
 - b. Information about each inspection conducted under Paragraphs 25 through 29,

including: the vehicle model and vehicle identification number of each vehicle inspected; the date of the inspection; a copy of the EPA certificate of conformity that covers the vehicle; the results of the inspection for the presence of emission control devices; the results of the inspection of the emission control label and a copy of the picture of the emission control label; and a copy of the owner's manual to include the emission-related warranty description;

- c. Information about each inspection conducted under Paragraphs 30 through 35, including the identification of the vehicle from which the catalyst was taken, a copy of the written representation from the holder of the certificate of conformity regarding the intended catalyst construction, and a copy of the catalyst testing report from the independent laboratory.
 - d. If any vehicle failed an inspection, the report also shall include a copy of MVP's report to the vehicle manufacturer, a copy of the manufacturer's written response, a detailed description of MVP's actions to stop the importation, sale and distribution of vehicles as a result of the failed inspection, and the basis on which MVP resumed the importation, sale or distribution of these vehicles.
38. The first report shall include information about MVP's activities under this Quality Assurance Program during months one through twelve subsequent to the Quality Assurance Program Beginning Date, and the second report shall include information about MVP's activities during months 13 through 24 subsequent to the Quality Assurance Program Beginning Date.
39. These reports shall be submitted to EPA no later than 60 days following the end of each

reporting period, to the individuals and address identified in Paragraph 21.

General Provisions

40. This Agreement becomes effective upon the date executed by EPA (the effective date of the Agreement), at which time a copy will be returned to MVP.
41. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of MVP 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. MVP expressly waives its right to assert that such ATVs 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.
42. The parties represent that the individual or individuals executing this Agreement on behalf of MVP are authorized to do so on behalf of MVP and that such execution is intended and is sufficient to bind MVP, its agents, assigns, or successors.
43. MVP 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.
44. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
45. This Settlement is contingent upon the truthfulness, accuracy and completeness of MVP's

disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Attachment 1, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties

46. For failure to comply with the terms of this Agreement on a timely basis, MVP 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 14 and 15, \$250.00 per day;
 - b. For failure to export or destroy the Subject Vehicles or provide proof thereof, pursuant to Paragraph 17, \$250.00 per day; and
 - c. For failure to conduct the Quality Assurance Program under Paragraph 23, \$5,000 for each inspection not conducted.

47. All stipulated penalties under Paragraph 46 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 14 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 MVP's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

Effect of Agreement

48. 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 MVP 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 MVP of responsibility to comply with other state, federal, or local laws or regulations.

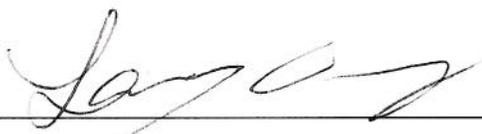
U.S. Environmental Protection Agency

Settlement Agreement In the Matter of MVP Enterprises, Inc.

AED/MSEB #7231

The following agrees to the terms of this Agreement:

MVP Enterprises, Inc.

By:  Date: 1-28-08
Typed or Printed Name: LARRY WANG
Typed or Printed Title: CEO

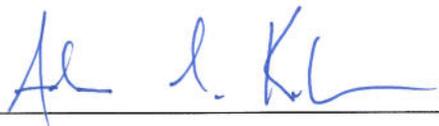
U.S. Environmental Protection Agency

Settlement Agreement In the Matter of MVP Enterprises, Inc.

AED/MSEB #7231

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By:  Date: 2/19/08
Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency