

they have a valid certificate of conformity for their model year and the required label or tag pursuant to 40 C.F.R. § 1051.135.

5. 40 C.F.R. § 1051.135(b) requires the original vehicle manufacturer to affix, at the time of manufacture of a certified nonroad recreational vehicle, a permanent and legible label identifying the vehicle which must be attached in a manner that it is not removable without being destroyed or defaced.
6. 40 C.F.R. § 1068.30 defines a nonroad engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or a person acting for, and under the control of, such person.

Definitions

4. For the purposes of this Agreement, the following definitions apply:
 - a. *Applicable regulation and dates:* 40 C.F.R. Part 1051 is applicable to recreational vehicles and engines built after the applicability dates in 40 C.F.R. Part 1051.
 - b. *This matter:* As used in this Agreement, “this matter” means the Respondent’s importation of the Subject ATVs and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Parts 1051 and 1068.
 - c. *Certificate of Conformity:* A “Certificate of Conformity” means the document issued by EPA to a manufacturer of the Subject ATVs, 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 and introduction into commerce of engines built in accordance with the manufacturer’s application after the date of the Certificate and before expiration of the covered model year.

- d. *Certificate Holder*: The manufacturer whose name appears on the Certificate of Conformity issued for the engines covered by this Agreement pursuant to 40 C.F.R. Part 1051 is the “Certificate Holder.”
- e. *Labeling requirements*: “Labeling requirements” means collectively the requirements found at 40 C.F.R. Part 1051.135 that require that certified recreational vehicles be labeled at the time of manufacture.

Alleged Violations

- 5. On or about December 19, 2007, Respondent imported into the United States 272 all-terrain recreational vehicles (Subject ATVs), as described in the Table below.

Subject ATV Table

Importer	Entry Number	Entry Date	ATV Model	Manufacturer	Number of Units
Ham Trading Inc., Plano TX	AK5-0925444-2	12-19-07	SLA-110	Xiongtai Group Co Ltd	272

- 6. On or about January 10, 2008, the U.S. Customs and Border Protection (CBP) determined that the Subject ATVs were not acceptable for immediate import due to their failure to bear labels meeting the requirements pursuant to 40 C.F.R. § 1051.135(c)(6) along with the failure to include the required information in the owner’s manual in lieu of providing this information on the labels. CBP released the Subject ATVs to the custody of the Respondent pending correction of the defective labels. The Subject ATVs continue to be held under the control of Respondent.
- 7. EPA investigation confirmed that Respondent is the importer and Xiongtai USA, Inc, is the Certificate Holder of the Subject ATVs and that the Subject ATVs did not bear the labels required pursuant to 40 C.F.R. § 1051.135.
- 8. Based upon the foregoing, EPA has determined that Respondent is liable for 272 violations of Sections 203(a) and 213(d) of the Act, resulting from 272 violations of

40 C.F.R. §1068.101(a)(1).

Corrective Action

9. Respondent will sign and return this agreement by close of business February 8, 2008.
10. Respondent will submit to EPA, at the address below, a sample label identical to the labels to be used as replacement labels:

<p>(By regular mail) U.S. Environmental Protection Agency Air Enforcement Division Ariel Rios Building (2242A) 1200 Pennsylvania Avenue, NW Washington, DC 20460 Attention: Anne K. Wick</p>	<p>(By courier service) U.S. Environmental Protection Agency Air Enforcement Division Ariel Rios Building (Room 1111B) 1200 Pennsylvania Avenue, NW Washington, DC 20004</p>
--	--
11. Respondent will request that the Certificate Holder (Xiongtai USA) (or its authorized representative) replace the existing emission labels on the Subject ATVs with emission information labels meeting all the regulatory requirements of 40 C.F.R. § 1051, to be provided by Xiongtai USA, Inc. (the certificate holder).
12. Within thirty (30) days from the date Respondent signs this Agreement, Respondent shall provide EPA with an affidavit from an authorized Xiongtai USA representative verifying that he/she has affixed the replacement EPA emission information labels to the Subject ATVs. The affidavit must include:
 - a. the Vehicle Identification Numbers,
 - b. a statement that the labels are readily visible once installed,
 - c. photos of emission labels on ten of the Subject ATVs chosen at random once the replacement labels are installed,
 - d. a statement that the Subject ATVs are covered by a warranty that complies with 40 C.F.R. § 1051, and
 - e. a statement concerning the final disposition of the removed (incomplete) labels.
13. Respondent agrees not to sell the Subject ATVs until after the labels have been replaced and EPA has been given the opportunity to inspect and review the affidavit.

14. This agreement does not preclude any other action by EPA for violations that are not part of this Agreement, or any future violations of the Clean Air Act or regulations promulgated thereunder.

Notice

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

(Regular Mail)

Anne Wick
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7268

(Courier Service)

Anne Wick
U.S. EPA
Ariel Rios South, Room 1111B
1200 Pennsylvania Ave., NW
Washington, DC 20004
Facsimile: 202-564-0069

General Provisions

16. This Agreement becomes effective upon the date executed by EPA (effective date of the Agreement), at which time a copy will be returned to Respondent.
17. Notwithstanding any other provision of this Agreement, the parties agree 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.
18. The parties represent that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such

execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.

19. 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.
20. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
21. This Settlement is contingent upon the truthfulness, accuracy and completeness of Respondent'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

22. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
 - a. For failure to relabel the Subject ATVs prior to sale pursuant to Paragraphs 11 and 13, above, \$250.00 per ATV;
 - b. For failure to submit the affidavit described in Paragraph 12 by the dates specified, \$250.00 per day.
23. All stipulated penalties under Paragraph 22 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. Nothing herein shall prevent simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid to the United States of America within 5 days of written demand by EPA (the due date). 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 stipulated penalty 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 # 7268

Simultaneously, a photocopy of the check shall be faxed to 202-564-0069 to the attention of Anne Wick. This check shall be identified with the case number and Respondent's name; or

- b. Respondent may make an online payment through the Department of the Treasury by visiting 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." Within twenty-four hours of payment, Respondent shall fax a copy of the online payment receipt to Anne Wick at 202-564-0069.

Effect of Agreement


24. 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 Respondent 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 Respondent of responsibility to comply with other state, federal, or local laws or regulations.

* **U.S. Environmental Protection Agency**

Settlement Agreement In the Matter of Ham Trading Inc.

AED/MSEB # 7268

The following agrees to the terms of this Agreement:

By:  _____

Date: 01/30/08

Typed or Printed Name: MEI ZHOU

Typed or Printed Title: President

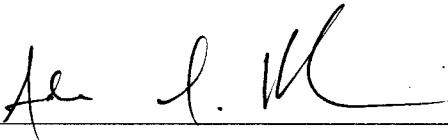
U.S. Environmental Protection Agency

Settlement Agreement In the Matter of Ham Trading Inc.

AED/MSEB # 7268

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