



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.

In the Matter of:

Pacific Rim International West Inc.,  
Respondent.

Administrative Settlement Agreement

Docket No.  
AED/MSEB #2016-8258

1. This is an Administrative Settlement Agreement (the Agreement) between the United States Environmental Protection Agency (the EPA) and Pacific Rim International West Inc. (Respondent or Pacific Rim) (collectively, the Parties). The purpose of this Agreement is to resolve 104 alleged violations the Clean Air Act (the CAA or the Act) and its regulations. These alleged violations arise from Respondent's importation of 104 all-terrain vehicles (ATVs) (the Subject ATVs).
2. Respondent in this matter is Pacific Rim International West, Inc. Respondent has an office located at 10580 Mulberry Avenue in Fontana, California 92337. Respondent imports and sells nonroad recreational vehicles, including ATVs, go karts, and scooters.
3. The delegated official of the EPA and signatory to this Agreement is the Director of the Air Enforcement Division in the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to Sections 205(c) and 213(d) of the CAA, 42 U.S.C. § 7524(c), and 40 C.F.R. 1068.125.

### Governing Law

4. A manufacturer is prohibited by Section 203(a)(1) of the Act from selling, offering for sale, introducing, or delivering for introduction into commerce, or any person from importing, any new motor 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. Section 213(d) of the Act, 42. U.S.C. § 7457(d), extends the prohibition in Section 203(a)(1) to new nonroad vehicles and nonroad engines. 42 U.S.C. § 7457(d).
6. The term “manufacturer,” as defined under Section 216 of the Act, includes persons who import vehicles or engines for resale. 42 U.S.C. § 7550.
7. The term “new,” as defined under Section 216 of the Act, includes any imported motor vehicle that was manufactured after the effective date of a regulation that first set standards for such vehicles. 42 U.S.C. § 7550(3).
8. Under Section 216 of the Act, the term “nonroad engine” is defined as an internal combustion engine that is not used in an on-road motor vehicle, a competition vehicle, or as a stationary source, and a nonroad vehicle is defined as a vehicle powered by a nonroad engine. 42 U.S.C. §§ 7550(10)-(11). *See also* 40 C.F.R. §§ 1051.801 and 1068.30.
9. New recreational vehicles, which include ATVs, are regulated under the provisions at 40 C.F.R. Part 1051 for the *Control of Emissions from Recreational Engines and Vehicles*. 40 C.F.R. § 1051.1(a)(3).

10. 40 C.F.R. § 1051.15(c) provides that anyone who manufactures, imports, installs, owns, operates, or rebuilds any of the vehicles (or vehicles containing applicable engines) subject to 40 C.F.R. Part 1051 is also subject to the *General Compliance Provisions for Highway, Stationary, and Nonroad Programs* under 40 C.F.R. Part 1068.
11. Manufacturers may not sell, offer for sale, or introduce or deliver into commerce in the United States, nor may any person import into the United States, any nonroad engine or vehicle unless such engine or vehicle is covered by a valid, EPA-issued COC for its model year and bears the required, permanently affixed EPA emission control information (ECI) label, or is properly exempted or excluded from the certification requirements. 40 C.F.R. §§ 1068.101(a)(1) and (b)(5). *See also* 40 C.F.R. § 1068.301(b).
12. Nonroad engines and vehicles are considered not covered by a COC unless they are in a configuration as described in the manufacturer's application for certification (AFC). 40 C.F.R. § 1068.101(a)(1)(i). Nonroad engines and vehicles are not covered by a COC unless they are produced during the period specified in the COC and conform to the specifications described in the COC and the AFC. 40 C.F.R. § 1068.103.
13. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a recreational vehicle unless it is covered by a COC or is otherwise exempt from certification. 40 C.F.R. § 1068.101(a)(1). A person who violates 40 C.F.R. § 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each violation. 40 C.F.R. § 1068.101(a)(1).



14. Rather than referring a matter to the United States Department of Justice to commence a civil action, the EPA may assess a civil penalty through its own administrative process. 42 U.S.C. § 7524(c)(1).

**Factual Background**

15. On or about June 14, 2015, Respondent imported into the United States at the Port of Long Beach, California, the 104 Subject ATVs under Entry No. ES3-2090853-7.
- (a) On June 24, 2015, the EPA inspected one of the Subject ATVs which was a representative sample. The ECI label on the inspected ATV indicated that it was certified under engine family FHALX.123A4V.
  - (b) Pacific Rim did not claim any exemptions or exclusions from the certification requirements for the Subject ATVs in the EPA Declaration Form 3520-21 which it submitted.
  - (c) At the inspection, the EPA inspectors took a sample of the muffler/exhaust assembly of the inspected Subject ATV, and sent it to an EPA contractor for analysis.
  - (d) Physical and chemical examination of the muffler assembly from the inspected catalyst revealed that the design of the catalyst contained therein was materially different from the design specified in the COC application for engine family FHALX.123A4V. Specifically, the ratio of precious metals in the tested sample differed significantly from the certified design.

(e) Because the inspected catalyst does not conform to the precious metal specifications in the AFC for engine family FHALX.123A4V, the EPA concludes that the Subject ATVs are not covered by the COC for this engine family.

**Alleged Violations of Law**

16. By importing the 104 Subject ATVs that are not covered by a COC, as described above in Paragraph 15, Respondent committed violations of CAA §§ 203(a)(1) and 213(d), 42 U.S.C. §§ 7522(a)(1) and 7547(d), and the corresponding regulations codified at 40 C.F.R. §§ 1068.101(a)(1) and (b)(5).

**Terms of the Agreement**

17. For purposes of this proceeding, Respondent:
- (a) agrees that the EPA has jurisdiction over this matter under Section 205(c) of the CAA, 42 U.S.C. § 7524(c);
  - (b) admits to the Factual Background stated above in Paragraph 15;
  - (c) neither admits nor denies the Alleged Violations of Law stated above in Paragraph 16;
  - (d) agrees to pay the civil penalty stated below in Paragraph 19;
  - (e) agrees to any conditions specified in this Agreement;
  - (f) waives any right to a hearing, trial, adjudication, or proceeding (including review under Sections 205(c) or 307(b)(1) of the CAA, 42 U.S.C. §§ 7524 or 7607(b)(1))

on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law and Factual Background stated above;

- (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
- (h) acknowledges that the EPA may proceed in an action based on the original claim of violations of the CAA, in the event that EPA's covenant not to sue terminates due to Respondent's failure to perform the terms of this Agreement;
- (i) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which may be granted, conditionally granted, or withheld at EPA's sole discretion;
- (j) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- (k) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
- (l) acknowledges that its federal tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);

- (m) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and
  - (n) acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment for submission of such information, under 18 U.S.C. § 1001.
18. For purposes of this proceeding, the Parties, desiring to settle this matter, each agree that:
- (a) this Agreement is in the public interest and is an appropriate way to resolve this matter;
  - (b) this Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings, whether written or oral, among the Parties with respect to the subject matter hereof;
  - (c) this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the Parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;

- (d) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party into this Agreement and to execute it on behalf of that Party;
- (e) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and
- (f) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.

- 19. Respondent agrees to pay to the United States a civil penalty of **\$30,000** (the Civil Penalty).
- 20. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement. EPA agrees to provide to Respondent at the email address provided on Respondent's signature page, below, a copy of the executed Agreement within 5 calendar days of that date.
- 21. Respondent agrees to pay the Civil Penalty in the manner specified below:
  - (a) Pay the EPA Penalty using any method provided on the following website:  
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;



- (b) Identify each and every payment with “AED/MSEB #2016-8258”; and
  - (c) Within 24 hours of payment, Respondent must provide EPA with proof of payment (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with case number AED/MSEB #2016-8258) in the manner specified in Paragraph 25.
22. Respondent acknowledges that the United States Department of Homeland Security’s Bureau of Customs and Border Protection (CBP) may assess penalties and fees (that are separate and in addition to the Civil Penalty) based on the facts stated in this Agreement.
23. Respondent has provided EPA with verifying documentation that the Subject ATVs have either been destroyed or exported to a country other than Canada, Mexico, or any U.S. Territories.
24. Respondent agrees to pay the following stipulated penalties to the EPA in the manner specified by Paragraph 21, not more than 30 days after receipt of written demand by the EPA for such penalties:
- (a) \$500 per day to the United States if and when Respondent fails to timely pay the Civil Penalty, or provide proof thereof in accordance with Paragraphs 20-21;

25. All correspondence to the EPA or notifications required by this Agreement must be in writing and shall be emailed to Desean Garnett at garnett.desean@epa.gov and Nathan Dancher at dancher.nathan@epa.gov, or mailed to:

Desean Garnett  
U.S. Environmental Protection Agency  
Region IX  
Mail Code (ORC-2)  
75 Hawthorne Street  
San Francisco, CA 94105  
Attn: AED/MSEB #2016-8258

26. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

#### **Effects of the Agreement**

27. By its signature below, the EPA covenants not to sue Respondent for legal or equitable relief for the Alleged Violations of Law stated above, but such covenant automatically terminates 90 days after the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraphs 19–21, and pay any and all stipulated penalties demanded under Paragraph 24. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA, as a matter of contract, or both.
28. Notwithstanding any other provision of this Agreement, upon Respondent's default, failure to perform, 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, recover any stipulated penalties, commence an action to enforce this Agreement, or pursue any other remedies available to it, which may include:

- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

29. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes. 26 U.S.C. § 162(f).

30. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or



otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.

31. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or regulations. Nothing in this Agreement shall limit the right of EPA to proceed against Respondent for other violations of law, or with respect to other matters not within the scope of the Agreement, nor shall this Agreement be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.
32. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was or is materially false or inaccurate. If and when such termination occurs, the EPA reserves the right to pursue legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.




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By my signature, I execute this Agreement on behalf of Pacific Rim International West Inc. and thereby enter Pacific Rim International West Inc. into this Agreement and bind Pacific Rim International West Inc. to this Agreement.

Signature 

Date

6/9/16

Printed Name:

Wendy Yin

Title:

General Manager

Address:



Respondent's Federal Tax Identification Number:



Print email for receipt of electronic copy of Agreement:



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By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.



Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460-0001

7/26/2016  
Date