

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

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ENVR. APPEALS BOARD

In the Matter of:  
Arctic Cat, Inc.  
Respondent.

Docket No.  
CAA-HQ-2016-7854

**CONSENT AGREEMENT**

**Preliminary Statement**

1. This is a civil administrative penalty assessment proceeding instituted under section 205(c)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7524(c)(1). The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
2. Complainant in this matter is the United States Environmental Protection Agency ("EPA"). On the EPA's behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-6-A (Aug. 4, 1994); Office of Enforcement and Compliance Assurance Redeflegation 7-6-A (March 5, 2013); Office of Civil Enforcement Redeflegation 7-6-A (March 5, 2013).
3. Respondent in this matter is Arctic Cat, Inc. ("Arctic Cat"). Respondent is a corporation organized under the laws of the State of Minnesota with an office at 500 N 3<sup>rd</sup> Street,

Minneapolis, Minnesota 55401. Respondent is a manufacturer of all-terrain vehicles ("ATVs") and snowmobiles.

4. The EPA and Respondent, having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order before taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

#### **Jurisdiction**

5. This Consent Agreement is entered into under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Consolidated Rules").
6. The EPA may administratively assess a civil penalty if the penalty sought is less than \$320,000. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. §§ 19.4 and 1068.125(b).
7. The Administrator and the Attorney General jointly determined that this matter, although it involves a penalty amount greater than \$320,000, is appropriate for administrative penalty assessment. CAA §§ 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. §§ 19.4 and 1068.125(b).
8. The Environmental Appeals Board is authorized to issue consent orders memorializing settlements between the EPA and Respondent resulting from administrative enforcement actions under the CAA, and to issue final orders assessing penalties under the CAA. 40 C.F.R. § 22.4(a)(1); EPA Delegation 7-41-C.
9. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously

commenced and concluded by the issuance of a Consent Agreement and Final Order.  
40 C.F.R. §§ 22.13(b), 22.18(b).

#### **Governing Law**

10. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202-219, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen, and carbon monoxide. The Alleged Violations of Law, stated below, regard ATVs and snowmobiles, specifically violations of the certification and reporting provisions of section 203(a) of the CAA, 42 U.S.C. § 7522(a), pursuant to section 213(d) of the CAA, 42 U.S.C. § 7547(d). What follows is a summary of the law that governs these allegations.
11. Definitions:
  - (a) “All-terrain vehicle” and “ATV” means, among other things, a vehicle designed to travel on four low pressure tires, having a seat designed to be straddled by the operator and handlebars, for steering controls, and intended for use by a single operator and no other passengers. 40 C.F.R. § 1051.801.
  - (b) “Auxiliary emission-control device” and “AECD” is an element of design that senses temperature, motive speed, engine revolution per minute, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission-control system. 40 C.F.R. § 1051.801.
  - (c) “Commerce” means commerce between any place in any State and any place outside thereof. CAA § 216(6), 42 U.S.C. § 7550(6).

- (d) "Day" means calendar days, including weekends and holidays, 40 C.F.R. § 1068.30.
- (e) "Emission Data Vehicle" and "EDV" means a vehicle or engine that is tested for certification. 40 C.F.R. § 1051.801.
- (f) "Engine configuration" means a unique combination of engine hardware and calibration within an engine family. Engines within a single engine configuration differ only with respect to normal production variability or factors unrelated to emissions. 40 C.F.R. § 1068.30.
- (g) "Engine Control Module" and "ECM" is a computer installed in a vehicle that determines how the vehicle functions. An ECM collects input signals from multiple sensors on the vehicle (e.g., engine revolutions per minute, engine temperature, air temperature, throttle position, manifold pressure, and crankshaft position). Based on these input signals, and according to the map installed on the ECM, an ECM sends output signals that direct vehicle functions including ignition timing and fueling strategy.
- (h) "Engine family" and "EF" has the meaning provided at 40 C.F.R. § 1051.230.
- (i) "Engine management strategy" is the software installed in an ECM that determines, based on input signals received by the ECM, the output signals that direct vehicle functions.
- (j) "Fueling strategy" means the elements of control of the timing, amount of fuel delivered, and the duration of injection of fuel into the cylinder(s) as a function of engine speed, throttle position, engine load and other operating parameters or ambient conditions. Fueling strategy is contained in map(s).

- (k) "Ignition timing" means when and for how long the spark-plug is ignited in relation to piston position. Ignition timing is contained in the map(s).
- (l) "Map" is a look-up table or matrix referred to by the engine management strategy.
- (m) "Model year" and "MY" means a manufacturer's annual production period (as determined by the Administrator) which includes January first of such calendar year. If the manufacturer has no annual production period, the term model year shall mean the calendar year. 40 C.F.R. § 1051.801.
- (n) "Person" includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. CAA § 302(e), 42 U.S.C. § 7602(e).
- (o) "Recreational vehicle" has the meaning provided in 40 C.F.R. § 1051.801.
- (p) "Subject ATVs" means the 28,925 ATVs identified in Appendix A to this Consent Agreement.

12. Certification Requirements:

- (a) The EPA's certification program is designed to ensure that every vehicle sold or imported into the United States conforms in all material respects to a vehicle that has been approved by the EPA. The EPA approves vehicles by issuing certificates of conformity ("COCs").
- (b) To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each MY vehicle that it intends to manufacture and sell in the United States. 40 C.F.R. § 1051.201(a).
- (c) The COC application must include, among other things, (i) the engine family's specifications and other basic parameters of the vehicle's design and emission

controls; (ii) a description of all system components for controlling exhaust emissions, including all AECDs and all fuel-system components that will be installed on any production or test vehicle, and these must be described with sufficient detail to allow the EPA to evaluate whether the AECDs are consistent with the defeat device prohibition of 40 C.F.R. § 1051.115(f); (iii) emission data to show that the vehicles meet emission standards; and (iv) a description of all adjustable operating parameters, including production tolerances. 40 C.F.R. §§ 1051.107 and 1051.205.

- (d) Once issued, a COC covers only those vehicles that, among other requirements, conforms in all material respects to the terms of the COC and the specifications in the associated COC application. 40 C.F.R. §§ 1051.201(a), 1051.205, 1068.101(a)(1)(i), 1068.103(a), (c)(1).
- (e) After the EPA has issued the COC, a manufacturer must amend its application if, among other reasons, any changes occur with respect to any information included in the application. For example, a manufacturer must amend its application before adding a vehicle configuration to an engine family or before changing a vehicle configuration in a way that may affect emissions. 40 C.F.R. § 1051.225.
- (f) A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import into the United States a recreational vehicle—or cause any of the foregoing—unless that vehicle is covered by an EPA-issued COC. 40 C.F.R. § 1068.101(a)(1). *See also* CAA §§ 203(a)(1) and 213(d), 42 U.S.C. §§ 7522(a)(1) and 7547(d).

- (g) Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a vehicle that was not covered by a COC—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (b)(6), (c). This penalty amount increased from \$32,500 to \$37,500 for violations that occur after January 12, 2009. 40 C.F.R. § 19.4.

13. Defect Reporting Requirements:

- (a) Manufacturers must investigate certain circumstances to determine whether or not the equipment they have introduced into United States commerce have incorrect, improperly installed, or otherwise defective emission-related components or systems. 40 C.F.R. § 1068.501.
- (b) Manufacturers must submit a defect report to EPA within 21 days if the number of engines with the defect exceeds a threshold specified at 40 C.F.R. §§ 1068.501(f), 1068.501(c).
- (c) The threshold for filing a defect report is based on the engine power and the engine family annual sales. For engines with a maximum power at or below 560 kilowatts (“kW”) and for engine families with annual sales from 1,000 to 50,000, the threshold for filing a defect report is 2.0 percent of the total number of engines in the engine family. In this case, the engines have a maximum power of 200 kW. For engine family 73AXY.794LE2 with annual sales of 7,040, the threshold was 140 engines. For engine family 73AXY.999LE2 with annual sales of 4,436, the threshold was 88 engines. 40 C.F.R. § 1068.501(f).

- (d) A manufacturer is prohibited from failing to make and keep records and failing to submit accurate reports and information to the EPA without delay, including those reports required pursuant 40 C.F.R. § 1068.501, 40 C.F.R. § 1068.101(a)(2). See also CAA §§ 203(a)(2) and 213(d), 42 U.S.C. §§ 7522(a)(2) and 7547(d). For each reporting violation committed between March 14, 2004, and January 12, 2009, 40 C.F.R. § 1068.101(a)(2) and 40 C.F.R. § 19.4 provide a civil penalty of up to \$32,500 per day per violation.

### **Stipulated Facts**

Respondent stipulates to the following facts:

#### ***MY 2009 – 2013 ATVs***

14. On July 5, 2011, and June 25, 2013, pursuant to section 208 of the CAA, the EPA issued an “Information Request” to Arctic Cat.
15. The Information Request concerned, among other things, Arctic Cat’s 2008 through 2013 MY ATVs with engine displacements of 550 cubic centimeter (“cc”) and 950 cc, which Arctic Cat manufactured, sold, or delivered for introduction into commerce.
16. On August 16 and September 16, 2011, September 16, 2013, and February 28, 2014, Arctic Cat replied to the Information Request and reported the following:
  - a. Between May 2008 and 2012, Arctic Cat obtained from the EPA eighteen COCs covering its 2009 through 2013 MY 550 cc and 950 cc electronic fuel injected ATVs. Over all, the eighteen COCs covered the 28,925 Subject ATVs as described in Appendix A.
  - b. Each of the Subject ATVs were equipped with seven AECDs. In its applications for certification of the Subject ATVs, Arctic Cat made the following three statements: (1) “Under Compliance Statements,” Arctic Cat stated that the ATVs



“covered by [the] application are free of defeat devices or strategies;” (2) under “Adjustable Parameters and [AECDs],” Arctic Cat stated that the ATVs have “no adjustable parameters;” and (3) under “This application contains,” Arctic Cat checked boxes indicating that the application contains a “detailed description of any [AECD] and a statement of the vehicles/engines covered by the application are free of defeat devices or strategies.” In subsequent communications, Arctic Cat further explained that it submitted images and/or parts listing with its certification applications and that it believed, along with its “no defeat devices” certification, that such information provided the EPA certification engineers with the information they needed to understand Arctic Cat’s ATV emission control system components.

17. The Subject ATVs were equipped with an ECM. The ECM reacts to operator action by measuring throttle movement and other parameters to adjust spark and fuel delivery. Arctic Cat produced some of the ATVs with ECM calibration maps that differed from the EDV calibration maps. Arctic Cat asserts that it used good engineering judgment to determine that such calibration changes were not “reasonably expected to affect emission controls,” and, therefore, did not require new or modified COC applications.

***MY 2017 ATVs***

18. On January 20, 2016, Arctic Cat informed the EPA that it was expecting a shipment of 264 MY 2017 Alterra 90 cc ATVs arriving at the port of Tacoma WA. Arctic Cat further informed the EPA that the 264 ATVs were manufactured using an incorrect Vehicle Emission Control Information label and Normalized Emission Rate (“NER”) hangtag. On or about January 25, 2016, Arctic Cat imported into the United States the 264 ATVs.

19. On January 26, 2016, Arctic Cat transmitted a proposed procedure for the EPA's approval to correct the Vehicle Emission Control Information label and NER hangtag. The EPA approved Arctic Cat's proposed procedure on January 27, 2016.

***LATE DEFECT REPORTS FOR MY 2007 SNOWMOBILES***

20. Arctic Cat reported to EPA that ,starting in January 2007, it began receiving reports of occasional melting damage to the side panel/belly pan area of snowmobiles covered by COCs issued for the 73AXY.794LE2 (34 U.S. warranty claims) and 73AXY.999LE2 (27 U.S. warranty claims) engine families. Arctic Cat subsequently informed the EPA that its engineers devised a way to correct the melting issue by lowering the snowmobile's exhaust temperature through adjusting certain parameters in the engine's Map. Arctic Cat implemented this solution for its MY 2008 snowmobile engines and included the test results from the engine with the reconfigured map in its COC applications submitted to the EPA on May 4, 2007 (EF 83AXY.999LE2), and June 11, 2007 (EF 83AXY.794LE2).
21. Arctic Cat reached out to the EPA via email on November 5, 2007 to obtain concurrence that such a map change to its MY 2007 snowmobile engines would not trigger the requirement to file a defect report pursuant to 40 C.F.R. § 1068.501. Arctic Cat subsequently submitted formal "Investigation of Possible Defects Report(s)" on November 15, 2007 and formal defect reports for both engine families at issue on November 20, 2007.

***Alleged Certification Violations***

22. The certification violations are attributed to Respondent (a) failing to provide a detailed description of the AECs in the applications for certification of its 550 cc and 950 cc ATVs, (b) producing some of the ATVs with a map that differed from the corresponding

EDV's map(s), and (c) importing certain ATVs before receipt of a COC. These alleged certification violations are described below.

- a. Between May 2008 and 2012, Respondent obtained from the EPA eighteen COCs that purportedly covered its MY 2009 through 2013 electronic fuel injected, 550 cc and 950 cc, ATVs. Over-all, the eighteen COCs purportedly covered the 28,925 Subject ATVs as described in Appendix A.
  - b. Although each of the Subject ATVs were equipped with seven AECDs, the applications for certification of the Subject ATVs did not describe or justify any of the AECDs.
  - c. An AECD is material to the type and amount of pollution emitted by the ATV with that AECD.
  - d. Respondent also produced some of the ATVs with ECM maps that differed from the EDV's maps.
  - e. The ECM map is material to the type and amount of pollution emitted by the ATV. Moreover, the map(s), among other things, determines ignition timing and fueling strategy, which may affect the type and amount of pollution emitted by the ATVs.
23. The EPA alleges that the subject ATVs are not covered by the eighteen COCs because the Subject ATVs produced under the engine families were equipped with AECDs that were neither described nor justified in the applications for certification of the engine families. In addition, as described in Appendix A, some of the Subject ATVs were equipped with calibration maps that differed from the EDVs' maps. As a manufacturer who sold or introduced into United States commerce the 28,925 Subject ATVs that were

not covered by a COC, Respondent committed 28,925 violations of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 1068.101(a)(1).

24. On or about January 25, 2016, Respondent imported into the United States 264 MY 2017 Alterra 90 cc ATVs
25. On February 22, 2016, the EPA issued to Respondent a COC that would cover the 2017 Alterra 90 cc ATVs (EF H3AXX.0901K2).
26. The EPA alleges that Respondent imported into the United States 264 MY 2017 Alterra 90 cc ATVs before obtaining a COC from the EPA, and that therefore the Respondent committed 264 violations of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 1068.101(a)(1).

#### **Alleged Late Defect Reporting Violations**

27. On November 15, 2007, Respondent submitted defect reports for two MY 2007 snowmobile EFs: 73AXY.794LE2 and 73AXY.999LE2. In general, the defect report contained the following information:
  - a. Respondent's snowmobile's exhaust system overheat under certain driving conditions. In some cases, these conditions, along with backfiring, may cause melting damage to the side panel/belly pan area of the snowmobile.
  - b. Respondent decided to correct the problem by lowering the exhaust temperature by adjusting certain parameters in the ECM map.
28. Respondent proposed to reprogram the snowmobiles' ECMs with maps developed for EF 83AXY.794LE2 on or about March 18, 2007, and developed for EF 83AXY.999LE2 on or about May 3, 2007.
29. Based on the nature of the defect reports (*i.e.*, the exhaust system overheating and backfiring, and melting a side panel) and the requirement that manufacturers exercise

good engineering judgment, the EPA alleges that Respondent either knew or should have known by March 19, 2007 (the date of testing of the ECM map for EF 83AXY.794LE2) and May 3, 2007 (the date of testing of the ECM map for EF 83AXY.999LE2) that the ECM maps for EFs: 73AXY.794LE2 and 73AXY.999LE2, respectively, might be defective and require recalibration to fix the exhaust system overheating problem. The EPA alleges Respondent was required to submit a defect report to the EPA within 21 days of such knowledge. Thus, the EPA alleges that the defect report was 225 days late for EF 73AXY.794LE2 and 180 days late for EF 73AXY.999LE2. The EPA alleges that the submission of two allegedly late defect reports constitutes two violations of section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2), and 40 C.F.R. § 1068.101(a)(2).

#### **Terms of Agreement**

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent: admits that the EPA has jurisdiction over this matter as stated above; admits to the stipulated facts stated above; neither admits nor denies the alleged violations of law stated above; consents to the assessment of a civil penalty as stated below; consents to the issuance of any specified compliance or corrective action order; consents to any conditions specified in this Consent Agreement, and to any stated permit action; waives any right to contest the alleged violations of law; and waives its rights to appeal the Final Order accompanying this Consent Agreement.
31. For the purpose of this proceeding, Respondent:
  - a. agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
  - b. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any

issue of fact or law set forth in this Consent Agreement and Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

- e. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to enforce this Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- d. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Columbia;
- e. agrees that Respondent may not delegate duties under this Consent Agreement to any other party without the written consent of the EPA, which may be granted or withheld at EPA's unfettered discretion. If the EPA so consents, the Consent Agreement is binding on the party or parties to whom the duties are delegated;
- f. acknowledges that this Consent Agreement and attached Final Order will be available to the public and agree that it does not contain any confidential business information or personally identifiable information;
- g. acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (*see* 31 U.S.C. § 7701);
- h. certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

- i. acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment (*see* 18 U.S.C. § 1001).
32. For the purposes of this proceeding, the parties each agree that:
- a. this Consent 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;
  - b. this Consent 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 Consent Agreement.
  - c. its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Consent Agreement and to execute it on behalf of that Party;
  - d. each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations under this Consent Agreement and attached Final Order; and
  - e. each party will bear their own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.

33. Respondent agrees to pay to the United States a civil penalty of \$552,000 (the "Civil Penalty").
34. Respondent agrees to pay the Civil Penalty to the United States within six months following the issuance of the attached Final Order (*i.e.*, the effective date of this Consent Agreement and attached Final Order). Respondent shall make an initial payment of \$100,000 within 30 days of the effective date of this Consent Agreement, and a final payment of \$453,883.33, which includes interest.
35. Respondent agrees to pay the Civil Penalty in the manner specified below:
  - a. Pay the Civil 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 "Docket No. CAA-HQ-2016-7854"; and
  - c. Within one (1) business day of making a payment, email proof of payment to Jocelyn Adair at [Adair.Jocelyn@epa.gov](mailto:Adair.Jocelyn@epa.gov) ("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 "Docket No. CAA-HQ-2016-7854".
36. Respondent agrees that the time period from July 31, 2016, until complete payment of the Civil Penalty (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Alleged Violations of Law section of this Consent Agreement. Respondent shall not assert, plead, or raise in any fashion, whether



by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolloed Claims.

#### **Effect of Consent Agreement and Attached Final Order**

37. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and attached Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
38. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in the following Paragraph of this Consent Agreement, Respondent must timely pay the penalty.
39. If Respondent fails to timely pay any portion of the penalty assessed by the attached Final Order, the EPA may:
  - a. request the Attorney General to 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 percent 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 Government), which includes, but is not limited to,

referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H); and

- d. suspend or revoke Respondent's licenses or other privileges, or (ii) 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.
40. Penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
  41. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and 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.
  42. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
  43. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess, and enforce 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.

44. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
45. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

**APPENDIX A – ENGINES SUBJECT TO THE DECREE**

**Subject ATVs**

550 ccs

MY	a. Commercial/Advertised Model Names	b. US Sales	c. Model Year Production Period	d. Engine Family	d. Certificate of Conformity Number
2009	550H1 4X4 ATV AUTO	3657	7/8/08 - 3/19/09	93AXX.5452H1	93AXX.5452H1-012
	550H1 4X4 TRV AUTO	1287	8/27/08 - 3/19/09		
	Prowler 550H1	831	7/17/08 - 3/25/09	93AXX.5452PR	93AXX.5452PR-011
2010	550H1 4X4 AUTO ATV	1860	7/13/09 - 4/23/10	A3AXX.5452H1	A3AXX.5452H1-008
	550H1 4X4 TRV Auto	855	6/9/09 - 4/22/10		
	Prowler 550H1	804	6/18/09 - 3/25/10		
2011	550H1 4X4 AUTO ATV	1335	5/24/10 - 4/25/11	B3AXX.5452H1	B3AXX.5452H1-003
	550H1 4X4 TRV Auto	722	7/29/10 - 3/16/11		
	Prowler 550H1	442	6/22/10 - 5/3/11		
2012	550H1 4X4 AUTO ATV	2002	6/6/11 - 7/19/2012	C3AXX.5452H1	C3AXX.5452H1-002-R01
	550H1 4X4 TRV Auto	704	6/24/11 - 7/13/2012		
	Prowler 550H1	559	6/6/11 - 6/15/2012		
2013	550H1 4X4 AUTO ATV	1333	7/25/12 - 6/14/2013	D3AXX.5452H1	D3AXX.5452H1-005
	550H1 4X4 TRV Auto	478	8/28/12 - 6/1/2013		
	Prowler 550H1	465	7/31/12 - 5/1/13		

950 ccs

MY	a. Commercial/Advertised Model Names	b. US Sales	c. Model Year Production Period	d. Engine Family	d. Certificate of Conformity Number
2009	ThunderCat 4X4	730	6/17/08 - 3/13/09	93AXX.9522H2	93AXX.9522H2-007-R01
	ThunderCat TRV 4X4	345	8/21/08 - 3/19/09		
	Prowler XTZ 1000 H2	1277	12/15/08 - 3/20/09	93AXX.9522PR	93AXX.9522PR-013
2010	ThunderCat	256	6/9/09 - 3/25/10	A3AXX.9522H2	A3AXX.9522H2-009
	ThunderCat TRV	122	8/11/09 - 3/11/10		
	ThunderCat MudPro	122	10/26/09 - 3/12/10		
	Prowler XTZ 1000 H2	679	9/14/09 - 3/26/10	A3AXX.9522PR	A3AXX.9522PR-010-R01
2011	ThunderCat	80	9/17/10 - 1/21/11	B3AXX.9522H2	B3AXX.9522H2-012
	ThunderCat TRV	26	11/15/10 - 2/16/11		
	ThunderCat MudPro	68	8/13/10 - 4/28/11		

MY	a. Commercial/Advertised Model Names	b. US Sales	c. Model Year Production Period	d. Engine Family	d. Certificate of Conformity Number
	Prowler XTZ	386	8/28/10 - 4/28/11	B3AXX.9522PR	B3AXX.9522PR-009
2012	1000 FIS	121	7/25/2011 - 6/19/12	C3AXX.9522H2	C3AXX.9522H2-012-R01
	1000 MudPro	78	9/25/11 - 6/19/12		
	1000 TRV	59	10/21/11 - 6/19/12		
	Prowler XTZ	277	6/20/11 - 6/16/12	C3AXX.9522PR	C3AXX.9522PR-010
	WildCat	2971	11/30/11 - 6/23/12	C3AXX.9522WC	C3AXX.9522WC-013
2013	1000 FIS	88	8/31/12 - 4-17-13	D3AXX.9522H2	D3AXX.9522H2-0007
	1000 MudPro	64	8/14/12 - 4/18-13		
	1000 TRV	27	8/16/12 - 4/19/13		
	Prowler XTZ	140	7/30/12 - 5/1/2013	D3AXX.9522PR	D3AXX.9522PR-011
	WildCat / WildCat 4	2690	8/16/12 - 6/4/2013	C3AXX.9522WC	D3AXX.9522WC-012-R01
	WildCatX	985	3/16/13 - 6/20/2013	C3AXX.9522WC	D3AXX.9522WX-013

### Other ATVs

#### *Alterra 90s*

MY	a. Commercial/Advertised Model Names	b. US Imports	c. Model Year Production Period	d. Engine Family	d. Certificate of Conformity Number
2017	Alterra 90 / DVX 90	264	1/16-12/17	H3AXX.090K2	H3AXX.0901K2-005

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

The foregoing Consent Agreement In the Matter of Arctic Cat, Inc., Docket No. CAA-HQ-2016 7854, is Hereby Stipulated, Agreed, and Approved for Entry.

For Arctic Cat, Inc.:

Chris Eperjesy                      7-28-2016  
Signature                                      Date

Printed Name: CHRISTOPHER EPERJESY

Title: CHIEF FINANCIAL OFFICER

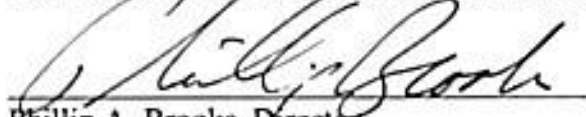
Address: 505 Hwy 169 North, Suite 1000, Plymouth, MN 55441

Respondent's Federal Tax Identification Number: 41-1443470

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

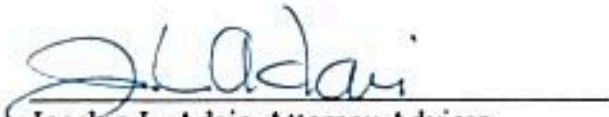
The foregoing Consent Agreement In the Matter of Arctic Cat, Inc., Docket No. CAA-HQ-2016 7854, is Hereby Stipulated, Agreed, and Approved for Entry.

**For United States Environmental Protection Agency:**



Phillip A. Brooks, Director  
Date 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

7/29/2016  
Date



Jocelyn L. Adair, Attorney Adviser  
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

7/28/2016  
Date