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U.S. EPA - REGION IX

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

_____)	Docket No. CAA-09-2020-0043
)	
Maxtrade LLC,)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
Respondent)	40 C.F.R. §§ 22.13 and 22.18
_____)	

I. CONSENT AGREEMENT

A. 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) and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and attached Final Order simultaneously initiates and concludes this matter.

2. Complainant is the United States Environmental Protection Agency (EPA). On the EPA's behalf, Claire Trombadore, Chief, Air, Waste and Analysis Branch, Enforcement and Compliance Assurance Division, EPA Region IX, has been duly delegated the authority to initiate and settle civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

3. Respondent is Maxtrade LLC ("Respondent"). Respondent imports recreational vehicles into the United States and thereafter introduces those vehicles into commerce.

4. Respondent is a corporation organized under the laws of the State of California with a business address at 9436 Rush Street, South El Monte, CA 91733.

5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement and attached Final Order without adjudication of any issues of law or fact herein and agree to comply with the terms of this Consent Agreement and attached Final Order.

B. GOVERNING LAW

Clean Air Act

7. 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, as set forth in section I.D. of this Consent Agreement, involve recreational vehicles as further described below.

8. General definitions:

- (a) “Person” includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. CAA § 302(e), 42 U.S.C. § 7602(e).
- (b) “Manufacturer” means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce. CAA § 216(1), 42 U.S.C. § 7550(1).

9. Recreational vehicles:

- (a) The term “recreational vehicle” includes, but is not limited to, all-terrain vehicles and off-highway motorcycles. 40 C.F.R. §§ 1051.1, 1051.801.
- (b) The term “all-terrain vehicle” is defined as a nonroad vehicle that either: (a) is designed to travel on four low-pressure tires, has a seat designed to be straddled by the operator and handlebars for steering control, and is intended for use by a single operator and no other passengers; or (b) has three or more wheels and one or more seats, is designed for operation over rough terrain, is intended primarily for transportation, and has a maximum vehicle speed of 25 miles per hour or higher. 40 C.F.R. § 1051.801.
- (c) The term “off-highway motorcycle” is defined as a two-wheeled vehicle with a nonroad engine and a seat. 40 C.F.R. § 1051.801.

(d) Each of the vehicles identified herein as a “recreational vehicle” or “all-terrain vehicle” or “off-highway motorcycle” meets the definition of such vehicle and is subject to the emission standards and other requirements set forth in 40 C.F.R. Parts 1051 and 1068. The requirements of 40 C.F.R. Parts 1051 and 1068 also apply to new recreational vehicles and new engines used in recreational vehicles. 40 C.F.R. §§ 1051.1(a), 1068.1(12).

10. Certificates of Conformity:

(a) Model year 2006 and later recreational vehicles must satisfy air pollutant emission standards in 40 C.F.R. §§ 1051.105 (off-highway motorcycles) and 1051.107 (all-terrain vehicles). These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbons, evaporative emissions, and impose other requirements.

(b) To demonstrate that an imported recreational vehicle satisfies emission standards, it must be covered by an EPA-issued certificate of conformity (COC). 40 C.F.R. § 1068.301(b); see 40 C.F.R. Part 1051 Subpart C (outlining COCs and the application requirements).

(c) All persons are prohibited from importing or causing another to import a new recreational vehicle into the United States unless that vehicle is covered by an EPA-issued COC that remains in effect. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1); 40 C.F.R. § 1068.101(b)(5).

(d) Manufacturers are prohibited from selling, offering for sale, or introducing or delivering for introduction into commerce—or causing any of the foregoing—any new motor vehicle or new motor vehicle engine unless the vehicle or engine is

covered by a COC issued, and in effect, by the EPA under regulations prescribed by the CAA. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).

(e) Anyone who, after November 2, 2015, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a recreational 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 \$48,192 for each such vehicle, if a penalty is assessed on or after January 3, 2020. This penalty amount is \$37,500 for violations that occurred after December 6, 2013, through November 2, 2015. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (h).

11. Reporting Requirements:

(a) All persons are prohibited from failing to make reports or provide information required under the CAA and its regulations. CAA § 203(a)(2)(A), 42 U.S.C. § 7522(a)(2)(A).

(b) Recreational vehicle manufacturers and COC holders must submit reports that include the U.S.-directed production volume under that COC for each model year. 40 C.F.R. § 1051.250(a).

(c) U.S.-directed production volume means the number of vehicle units, subject to the requirements of 40 C.F.R. Part 1051, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate purchasers in the United States. 40 C.F.R. § 1051.801.

(d) Anyone who, after November 2, 2015, failed to make required reports to the EPA is subject to a civil penalty of up to \$48,192 for each day they are in violation, if a penalty is assessed on or after January 3, 2020. This penalty amount is \$37,500 for

violations that occurred after December 6, 2013, through November 2, 2015. CAA §§ 203(a)(2)(A), 205(a), 208(a), 42 U.S.C. §§ 7522(a)(2)(A), 7524(a), 7542(a); 40 C.F.R. §§ 19.4, 1068.101(a)(2).

12. Revocation of COCs:

- (a) The EPA may void a COC for recreational vehicles upon finding that the COC holder submitted false or incomplete information to the EPA. 40 C.F.R. §§ 1051.255(d), (e).
- (b) The holder of a COC that has been voided by EPA may request a hearing to challenge that action. 40 C.F.R. §§ 1051.255(f), 1051.820.
- (c) When a COC is voided by the EPA, that COC is made void *ab initio*, and any vehicles or engines imported pursuant to that COC are considered uncertified or nonconforming and therefore not covered by a COC at the time they were imported or introduced into U.S. commerce. 40 C.F.R. §§ 1068.30 and 1068.103(h).

C. STIPULATED FACTS

- 13. The vehicles subject to this Consent Agreement and attached Final Order are recreational vehicles, as defined above, and are subject to the emission standards and compliance provisions of the CAA and its regulations. CAA §§ 203, 213(d), 42 U.S.C. §§ 7522, 7547(d).
- 14. Respondent is a “person” as defined above
- 15. Respondent is a “manufacturer” as defined above.
- 16. Respondent imported all the vehicles subject to this Consent Agreement and attached Final Order.
- 17. On May 24, 2018, the EPA sent Respondent an information request regarding Respondent’s U.S.-directed production volume (“Production Volume”) for several model years for which Respondent held COCs and imported recreational vehicles.

18. Respondent's response to the EPA's information request showed that: 1) for model year 2014, Respondent initially reported a Production Volume of 3,522 vehicles, later corrected this to 40,349 vehicles, and thus underreported its Production Volume by 36,827 vehicles; 2) for model year 2015, Respondent initially reported a Production Value of 6,301 vehicles, later corrected this to 41,405 vehicles, and thus underreported a Production Volume by 35,104 vehicles; and 3) for model year 2016, Respondent initially reported a Production Volume of 7,591 vehicles, later corrected this to 42,338 vehicles, and thus underreported its Production Volume by 34,747 vehicles. The total number of underreported vehicles is approximately 106,678.

19. On July 29, 2019, the EPA's Office of Transportation and Air Quality ("OTAQ") voided the COCs previously issued to Respondent for the 2015 and 2016 model year recreational vehicles described in paragraph 18.

D. VIOLATIONS OF LAW ALLEGED BY THE EPA

20. The EPA alleges that Respondent failed to submit complete and accurate Production Volumes, as described in paragraph 18, for three model years in violation of CAA § 203(a)(2)(A), 42 U.S.C. § 7522(a)(2)(A), and of 40 C.F.R. § 1051.250(a).

21. The EPA alleges that Respondent sold, offered for sale, introduced or delivered for introduction into commerce, or imported (or caused the foregoing acts with respect to) at least 83,743 recreational vehicles for model years 2015 and 2016, as described in paragraph 18. Because OTAQ voided the COCs for these recreational vehicles, as described in paragraph 19, these vehicles were imported in violation of sections 203(a)(1) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and of 40 C.F.R. § 1068.101(a)(1).

F. TERMS OF CONSENT AGREEMENT

22. For the purpose of this proceeding, as required by 40 C.F.R. 22.18(b)(2), Respondent:
- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement and over Respondent;
 - (b) admits to the stipulated facts contained in Section I.C. of this Consent Agreement;
 - (c) neither admits nor denies the specific factual allegations contained in Section I.D. of this Consent Agreement;
 - (d) consents to the assessment of a civil penalty under this Section, as stated below;
 - (e) consents to the conditions specified in this Consent Agreement;
 - (f) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to and issue of fact or law set forth in this Consent Agreement, including any right of judicial review under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

Civil Penalty

23. Respondent agrees to:
- (a) pay the civil penalty of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) (“EPA Penalty”) within 30 calendar days of the Effective Date of this Consent Agreement and attached Final Order. The EPA Penalty has been reduced to reflect the Respondent’s demonstrated limited ability to pay a larger civil penalty. The EPA has determined that the Respondent has a limited ability to pay a larger civil penalty after having conducted an evaluation and analysis of financial information provided by the Respondent;

- (b) pay the EPA Penalty using either the “Vendor Express” or “Fedwire” methods provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying the payment with “CAA-09-2020-0043”; and
- (c) Within 24 hours of payment of the EPA Penalty, send proof of payment via email to Zabel.Allan@epa.gov (“proof of payment” means, as applicable, 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 the EPA requirements, in the amount due, and identified with “CAA-09-2020-0043”).

24. If Respondent fails to pay the civil administrative penalty specified in paragraph 23(a) of this Consent Agreement within 30 days after the Effective Date of this Consent Agreement and attached Final Order, then Respondent shall pay to the EPA a stipulated penalty in the amount of ONE THOUSAND DOLLARS (\$1,000.00) for each day the default continues plus the penalty sum specified in paragraph 23(a), upon written demand by the EPA.

25. If Respondent fails to timely pay any portion of the penalty assessed under this Consent Agreement and 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, 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 EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

Additional Terms of Settlement

26. For the purposes of this proceeding, Respondent:
- (a) agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
 - (b) 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 Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - (c) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Central District of California;
 - (d) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (e) consents to personal jurisdiction in any action to enforce this Consent Agreement or Order, or both, in the United States District Court for the Northern District of California;

- (f) acknowledges that this Consent Agreement and attached Final Order will be available to the public and agrees that this Consent Agreement and attached Final Order does not itself contain any confidential business information or personally identifiable information.
 - (g) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement.
 - (h) acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
 - (i) represents that the email addresses provided in this Consent Agreement, onllyseller@hotmail.com and jmv818@yahoo.com, are his or her email addresses for purposes of service.
 - (j) acknowledges that penalties paid pursuant to this Consent Agreement and attached Final Order shall not be deductible for purposes of federal taxes.
27. For 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) the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement;

(c) 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 full 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;

(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 shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

28. The provisions of this Consent Agreement and attached Final Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assignees. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successors or assignees.

29. 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.

30. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act and 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.

31. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

32. The EPA reserves the right to revoke this Consent Agreement and attached Final Order and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement and attached Final Order, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.


H. EFFECTIVE DATE

33. Respondent and Complainant agree to issuance of the Consent Agreement and attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement and attached Final Order to Respondent by electronic mail. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of Maxtrade LLC, Docket No. CAA-09-2020-0043 is hereby stipulated, agreed, and approved for entry.

FOR RESPONDENT:

7-14-2020
Date


Signature

Printed Name: Jeff Ma

Title: Manager

Address: 9436 BUSH ST SOUTH EL MONTE, CA 91733

Respondent's Federal Tax Identification Number: 522384944

The foregoing Consent Agreement In the Matter of Maxtrade LLC, Docket No. CAA-09-2020-0043 is hereby stipulated, agreed, and approved for entry.

FOR COMPLAINANT:

Date

CLAIRE
TROMBADORE  Digitally signed by CLAIRE
TROMBADORE
Date: 2020.07.31 09:46:44
-07'00'

Claire Trombadore
Chief, Air, Waste and Analysis Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

II. FINAL ORDER

EPA Region IX and Maxtrade LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2020-0043 be entered, and Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED FIFTY THOUSAND (\$150,000) and otherwise comply with the terms set forth in the CAFO.

STEVEN JAWGIEL

Digitally signed by STEVEN
JAWGIEL
Date: 2020.08.12 10:31:18 -07'00'

Date

STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Maxtrade LLC (CAA-09-2020-0043), has been filed with the Regional Hearing Clerk, and a copy was served on Respondent, and on Complainant, as indicated below:

FOR RESPONDENT

By Electronic Mail

Jeff Ma, Manager
Maxtrade LLC
JMV818@yahoo.com
onlyseller@hotmail.com

FOR COMPLAINANT

By Electronic Mail

Allan Zabel
Office of Regional Counsel, EPA - Region 9
Zabel.Allan@epa.gov

Date: _____, 2020

Steven Armsey
Regional Hearing Clerk
EPA, Region 9