



UNITED STATES  
**CONSUMER PRODUCT SAFETY COMMISSION**  
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**COMMISSIONER PETER A. FELDMAN**

**STATEMENT OF COMMISSIONER PETER A. FELDMAN:  
CPSC'S TERMINATION OF ATV ACTION PLAN VIOLATES DUE PROCESS,  
HARMS CONSUMERS**

**JUNE 26, 2023**

Today, the U.S. Consumer Product Safety Commission (CPSC) announced the unprecedented action of terminating an ATV Action Plan over the manufacturer's objections. By terminating this plan, CPSC has banned EGL Motor, Inc. (EGL) from selling its ATVs in the United States. EGL sold ATVs that did not comply with federal standards and violated its ATV Action Plan. EGL's violations are serious and I do not condone its conduct.

Nevertheless, I voted against termination because the Commission's action in this case sets a consequential precedent that denies the firm – and future parties – due process. As Supreme Court Justice Felix Frankfurter [wrote](#), “[t]he history of liberty has largely been the history of observance of procedural safeguards.” Such safeguards were missing here.

I am concerned about the one-sided nature of this proceeding and the overall lack of a fair and impartial adjudicative process. There was no formal hearing on this matter nor, from my perspective, did the Commission base its decision on well-developed record. I believe I heard only one side of the story. In my view, such a unique and consequential action must include full procedural due process, consistent with our other enforcement cases. What the Commission has done in this matter sets future precedent.

Specifically, the Commission alleges that EGL violated various provisions of the ATV standard, using these violations as a basis to find the firm can no longer comply with its plan. I am aware, however, that numerous other firms have committed similar violations without Commission termination over their objections. I am also aware that delays are not unique to EGL and other firms have been similarly tardy in their reporting. That EGL would be singled out for a first-of-its-kind action plan termination underscores the capricious nature of the remedy in this case.

It is not clear to me that CPSC has the legal authority to terminate ATV Action Plans. The Consumer Product Safety Act requires manufacturers to have an ATV Action Plan filed with and approved by the Commission. It says nothing of CPSC's authority to terminate such plans. The Commission apparently is proceeding under theories of contract law arising from the Action Plan itself and inferred authority, without any clear direction from Congress or the courts. This is questionable.

Assuming such legal authority exists, expelling a firm from the U.S. ATV market is the most drastic step CPSC can take. There were other remedies available to hold the firm accountable. For example, CPSC could have: (1) suspended the plan without terminating it and quarantined the firm's products at the border; (2) approved a significant civil penalty, which is clearly authorized under our statute; or (3) sought to settle charges with an agreement to impose a third-party monitor at the firm's expense. In my view, these options were not adequately assessed.

There will be collateral damage from today's action. There are open safety recalls on several of EGL's products. By forcing the firm from the U.S. market, the Commission could jeopardize the availability of remedies, leaving consumers on their own. It could leave other EGL products unsupported. Further, if EGL permanently exits from the market, that would render it effectively judgment proof if a consumer were to file suit. For these reasons, CPSC's action today is not in the best interest of consumers.