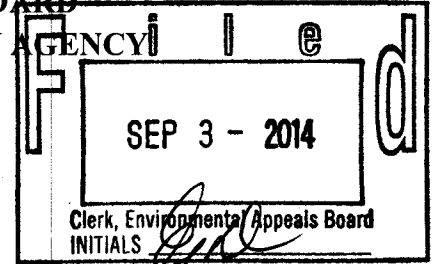


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_  
In re: )  
)  
Jonway Motorcycle (USA) Co., Ltd., )  
Shenke USA, Inc., Jonway Group Co., Ltd. )  
Shanghai Shenke Motorcycle Co., Ltd., )  
Zhejiang JMStar Shenke Motorcycle Co., )  
Ltd., and Zhejiang Jonway Motorcycle )  
Manufacturing Co., Ltd. )  
\_\_\_\_\_)

CAA Appeal No. 14-(03)

**ORDER FOR SUPPLEMENTAL BRIEFING**

The Environmental Appeals Board hereby directs complainant U.S. Environmental Protection Agency (“EPA”) to provide supplemental briefing to demonstrate that the Complaint in this matter was properly and effectively served on the respondents in this matter in accordance with the requirements of 40 C.F.R. § 22.5(b)(1).

EPA has filed a Motion for a Default Order against the respondents under the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a). To support a finding of default, there must be proof that the respondent was properly served with the complaint. *See id.* § 22.15(a) (requiring an answer be filed “within 30 days after service of the complaint”); *see also, e.g., In re Las Delicias Community*, 14 E.A.D. 382, 387 (EAB 2009).

For domestic or foreign corporations, the Consolidated Rules of Practice require EPA “to serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.” 40 C.F.R. § 22.5(b)(1)(ii)(A). In the case of service by mail, proof of service is demonstrated by a “properly executed receipt.” *Id.* § 22.5(b)(1)(iii), 22.7(c). The regulations do not include a definition of “properly executed receipt.” The Board, however, has indicated that, to be

“properly executed,” the return receipt must be signed by someone authorized to receive service. *See Las Delicias*, 14 E.A.D. at 388 & n.9, 391, 396; *In re Ross Transport Co.*, RCRA (9006) Appeal No. 14-01, at 2 (Feb. 14, 2014) (Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule); *In re Fulton Fuel Co.*, CWA Appeal No. 10-03, at 6-8 (EAB Sept. 9, 2010); *cf. In re Geason Enters., LLC*, Docket No. CAA-HQ-2013-8050, at 5-6 (ALJ Jan. 13, 2014).

EPA’s Motion for a Default Order indicates that EPA relies on the following facts to demonstrate that service of the Complaint was properly effected on the respondents: (1) EPA mailed copies of the Complaint and other required documents (the “Complaint Package”) by certified mail to Mr. Xiaotong Qi, the official agent for service for each respondent, at both the official addresses provided by the respondents and at an address where Mr. Qi is known to do business for another company, Nitro Power Sports;<sup>1</sup> (2) the Complaint Packages mailed to respondents’ official address were returned by the postal service, unopened and with no signature on the certified mail return receipt; (3) the Complaint Package mailed to the Nitro Power Sports address was accepted and the return receipt was signed by an individual named “Tina Yang” (who is not identified by title or affiliation anywhere in the Motion or accompanying documents); and (4) Mr. Qi later acknowledged to EPA’s attorney that he had received the Complaint Package. Motion at 17-25.

EPA’s Motion for a Default Order does not specify what legal and factual basis EPA relies upon to assert that service of the complaint was properly effected on respondents in this

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<sup>1</sup> EPA’s Motion does not indicate that EPA attempted to serve the complaint on Mr. Qi by any other methods authorized by the regulations, such as by personal service, 40 C.F.R. § 22.5(b)(1)(i), or according to federal or State law, *id.* § 22.5(b)(1)(ii)(A).

case. For example, EPA does not specify whether it contends that the mailings were sufficient to effect service, whether it relies on the delivery to Ms. Yang as a person who is authorized to receive service for the respondents, or whether EPA's proof of service is based on the alleged actual notice to Mr. Qi of the Complaint. Accordingly, EPA is ORDERED to provide additional briefing to specify its legal and factual bases for contending that service of the Complaint was properly effected in accordance with the requirements of part 22. Such additional briefing should address both relevant Board case law and any other applicable or relevant legal authority. EPA must file its brief no later than September 19, 2014.

So ordered.<sup>2</sup>

Dated: SEP 3 2014

ENVIRONMENTAL APPEALS BOARD

By: 

for Catherine R. McCabe  
Environmental Appeals Judge

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<sup>2</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Leslye M. Fraser, Randolph L. Hill, and Catherine R. McCabe.

### CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order for Additional Briefing, in the matter of Jonway Motorcycle (USA) Co., Ltd., Shenke USA, Inc., Jonway Group Co., Ltd., Shanghai Shenke Motorcycle Co., Ltd., Zhejiang JMStar Shenke Motorcycle Co., Ltd., and Zhejiang Jonway Motorcycle Manufacturing Co., Ltd., CAA Appeal No. 14-(03), were sent to the following persons in the manner indicated:

**First Class Mail  
Postage Prepaid:**

Jonway Motorcycle (USA) Co., Ltd.  
Shenke USA, Inc.  
Attention: Xiaotong Qi  
1503 Kelly Boulevard  
Carrolton, TX 75006

Jonway Motorcycle (USA) Co., Ltd.  
Shenke USA, Inc.  
Attention: Xiaotong Qi  
1501 Kelly Boulevard  
Carrolton, TX 75006

Jonway Motorcycle (USA) Co., Ltd.  
Shenke USA, Inc.  
Attention: Xiaotong Qi  
c/o Nitro PowerSports, LLC  
1942 I-35 E. North  
Carrolton, TX 75006

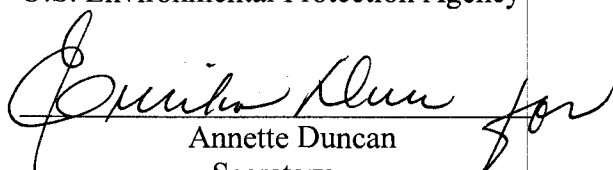
Shenke USA, Inc.  
Attention: Huai Yi Wang or Wei Guo  
1503 Kelly Boulevard  
Carrolton, TX 75006

**By Interoffice Mail:**

Sybil Anderson (1900R)  
Headquarters Hearing Clerk  
Office of Administrative Law Judges

Evan Belser (2242A)  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: 9/3/2014

  
Annette Duncan  
Secretary