

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

In the Matter of:

Geason Enterprises, L.L.C., GE Ventures, L.P.,
Hammerhead Off-Road, Inc., TJ Power Sports
L.L.C., Shanghai Howhit Machinery
Manufacture Co., Ltd., and Shanghai Tong
Jian Sports Equipment Co., Ltd.

Respondents.

Docket No.
CAA-HQ-2013-8050

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ENVIR. APPEALS BOARD

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CONSENT AGREEMENT

Preliminary Statement

1. This civil administrative penalty assessment proceeding was commenced under section 205(c)(1) of the Clean Air Act ("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").
2. Complainant in this matter is the United States Environmental Protection Agency ("EPA").
3. Respondents in this matter are Geason Enterprises, L.L.C., d/b/a Geason Powersports and d/b/a Hammerhead, GE Ventures, L.P., d/b/a Hammerhead Off-Road, Hammerhead Off-Road, Inc., TJ Power Sports L.L.C. (collectively "Hammerhead"), Shanghai Howhit Machinery Manufacture Co., Ltd. ("Howhit"), and Shanghai Tong Jian Sports Equipment Co., Ltd. ("Tong Jian") (collectively with Hammerhead and Howhit, "Respondents").

4. This action was commenced on or about July 30, 2013, when the EPA filed a Complaint against Respondents alleging that Respondents violated sections 203(a)(1), 203(a)(2)(A), 207(c)(3)(C), and 213(d) of the CAA (42 U.S.C. §§ 7522(a)(1), 7522(a)(2)(A), 7541(c)(3)(C), and 7547(d)), and the implementing regulations.
5. On September 30, 2013, the Hammerhead Respondents collectively, and Respondent Howhit each filed an Answer denying certain facts, admitting others, raising affirmative defenses, and requesting a hearing in this matter. Respondent Tong Jian did not file an answer.
6. Based on information obtained by the EPA subsequent to the filing of the Complaint, it appears Tong Jian Sports Equipment Co., Ltd., ceased operations in approximately 2010 and therefore is not a party to this Consent Agreement.
7. Hammerhead and Howhit (collectively the "Settling Parties") and the EPA, subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. The EPA and Settling Parties have agreed that settlement of this matter is in the public interest, and that this Consent Agreement and the issuance of the attached Final Order are the most appropriate means of resolving this matter.
8. Thus, the Settling Parties and the EPA, having agreed to settle this action, enter this Consent Agreement and consent to the issuance of the attached Final Order before taking testimony and without adjudication of any issues of law or fact. Pursuant to 40 C.F.R. § 22.18(b)(3), issuance of a Final Order ratifying this Consent Agreement disposes of and concludes this proceeding with respect to the EPA and the Settling Parties.

Terms of Agreement

9. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), each Settling Party:

- (a) admits to the jurisdictional allegations of the Complaint as they relate to such Settling Party;
- (b) neither admits nor denies the factual allegations of the Complaint;
- (c) neither admits nor denies the alleged violations of law as stated in the Complaint;
- (d) consents to the assessment of a civil penalty as stated below;
- (e) consents to any conditions specified in this Consent Agreement;
- (f) waives any right to contest the alleged violations of law; and
- (g) waives its right to appeal the Final Order accompanying this Consent Agreement.

10. Settling Parties must pay to the United States civil penalties totaling \$560,000 as set forth below (the Civil Penalty).

- (a) Hammerhead must pay a civil penalty in the amount of \$260,000. The EPA has reviewed tax returns, balance sheets, financial statements, bank records, and other information submitted by the Hammerhead entities to the EPA (Financial Information) and has agreed to this lower civil penalty against Hammerhead than would otherwise be assessed based on the likely effect of a higher civil penalty on Hammerhead's ability to continue in business. Hammerhead must make an initial payment of \$60,000 within 30 days of the issuance of the Final Order, followed by payments of the remaining portion of its civil penalty plus interest, which shall be no later than eight quarterly payments of \$25,000 each plus interest as detailed below.

- (1) \$60,000.00 within 30 days of the issuance of the Final Order
- (2) \$25,666.67 within 120 days of the issuance of the Final Order
- (3) \$26,020.83 within 210 days of the issuance of the Final Order
- (4) \$26,250.00 within 300 days of the issuance of the Final Order
- (5) \$26,354.17 within 390 days of the issuance of the Final Order
- (6) \$26,333.33 within 480 days of the issuance of the Final Order
- (7) \$26,187.50 within 570 days of the issuance of the Final Order
- (8) \$25,916.67 within 660 days of the issuance of the Final Order
- (9) \$25,520.83 within 750 days of the issuance of the Final Order

(b) Howhit must pay a civil penalty in the amount of \$300,000 within 30 days of the issuance of the Final Order.

11. Hammerhead must make its initial payment of \$60,000, and Howhit must make its payment of \$300,000, to the United States within 30 days of the date of the issuance of the Final Order. If these payments are made within 30 days of the date of the issuance of the Final Order, no interest will be assessed on these payments.

12. Each Settling Party agrees to pay its portion of the Civil Penalty in the manner specified below:

- (a) Pay its portion of the Civil Penalty using any method, or combination of methods, 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-2013-8050"; and
- (c) Within 24 hours of payment, email proof of payment to Meetu Kaul at kaul.meetu@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-2013-8050").

13. Failure of a Settling Party to pay the full amount of its portion of the Civil Penalty assessed against it under this Consent Agreement may subject such Settling Party to a civil action to collect any unpaid portion of its portion of the Civil Penalty and interest. In order to avoid the assessment of interest, administrative costs, and a late payment penalty in connection with such Civil Penalty, as described in the following Paragraph of this Consent Agreement, each Settling Party must timely pay its portion of the Civil Penalty.

14. If a Settling Party fails to timely pay any portion of the penalty assessed under this Agreement, 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 the Settling Party's licenses or other privileges, or suspend or disqualify the Settling Party from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
15. Under 28 U.S.C. § 162(f), penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes.
16. By signing this Consent Agreement:
- (a) Hammerhead certifies that it does not have any remaining inventory in its possession or control, or, to the best of its knowledge, and based upon an electronic inventory search and reasonable inquiry with its dealers, in the control of any of its dealers, related to any of the engine families specified in Appendix A of the Complaint.
 - (b) Howhit certifies that it does not have any remaining inventory in its possession or control related to any of the engine families specified in the Complaint.
17. By signing this Consent Agreement, Complainant hereby terminates Hammerhead's obligation to respond to any CAA section 208 requests for information issued by the EPA's Air Enforcement Division to Hammerhead prior to the Effective Date of this Consent Agreement.
18. By signing this Consent Agreement, the EPA and Hammerhead hereby mutually terminate the tolling agreement previously entered into by the EPA and Hammerhead, dated November 15, 2012, which defined a tolling period of September 15, 2011, to June 30, 2013.
19. The Hammerhead entities hereby certify that they have submitted to the EPA Financial Information that (a) fairly, accurately, and materially sets forth their financial

circumstances; (b) that those circumstances have not materially changed between the time the Financial Information was submitted to the EPA and the time the Hammerhead entities execute this Consent Agreement; and (c) that they have fully disclosed the existence of any insurance policies that may cover any payment of a civil penalty relating to this matter.

20. Settling Parties agree that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraphs 10 and 11 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action, including any action for injunctive or other equitable relief, brought by Complainant on any of the alleged violations of law set forth in this Consent Agreement ("Tolled Claims"). Settling Parties 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 Tolled Claims.

Effect of Consent Agreement and Final Order

21. Completion of the terms of this Consent Agreement and Final Order resolves, fully satisfies, and releases Hammerhead and its successors and assigns from liability for federal civil penalties for the violations and facts specifically alleged in the Complaint.
22. Completion of the terms of this Consent Agreement and Final Order resolves, fully satisfies, and releases Howhit and its successors and assigns from liability for federal civil penalties for the violations and facts specifically alleged in the Complaint, and from liability for federal civil penalties related to the sale, offering for sale, introduction into

commerce, delivery for introduction into commerce, or importing – or causing the foregoing with respect to – an additional approximately 1,170 vehicles from engine family BGSNX.150LUV, and an additional approximately 696 vehicles from engine family 9TJPX.150GAL.

23. This Consent Agreement and Final Order apply to and are binding upon the Complainant and the Settling Parties. Successors and assigns of Settling Parties are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Settling Parties. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Settling Parties' successors or assignees.
24. This Consent Agreement constitutes the entire agreement and understanding between Complainant and Settling Parties and supersedes any prior agreements or understandings, whether written or oral, among the Complainant and Settling Parties with respect to the subject matter hereof.
25. The parties agree that 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 may be detached from any counterpart and attached to any other counterpart of this Agreement.
26. Complainant and the Settling Parties each certify that its undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and

conditions of the Consent Agreement, to execute it on behalf of that party, and to legally bind that party on whose behalf he or she signs this Consent Agreement. Complainant and Settling Parties agree that each party's obligations under this Consent Agreement and Final Order constitute sufficient consideration for the other party's obligations under this Consent Agreement and Final Order.

27. By signing this Consent Agreement, Settling Parties acknowledge that this Consent Agreement and Final Order will be available to the public and agree that it does not contain any confidential business information.
28. Nothing in this Consent Agreement shall relieve Settling Parties 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.
29. By signing this Consent Agreement, each Settling Party certifies that the information such Settling Party has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response, and statement. Settling Parties realize 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.
30. 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 Settling Parties 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 Settling Parties oral notice of its intent to revoke, which shall not be effective until received by Settling Parties in writing.

31. Settling Parties must provide any and all information requested by the EPA in order for the EPA to determine Settling Parties' compliance with the terms of this Consent Agreement.
32. By signing this Consent Agreement, Complainant and Settling Parties agree each to bear their own costs and attorney's fees in the action resolved by this Consent Agreement and Final Order.
33. If a Settling Party fails to comply with any provision contained in this Consent Agreement and Final Order, such Settling Party waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with the Consent Agreement and Final Order or to seek an additional penalty for such noncompliance.
34. The Complainant and Settling Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
35. Settling Parties 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 Settling Parties. This Consent Agreement and Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk ("Effective Date").

The foregoing Consent Agreement In the Matter of Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., TJ Power Sports L.L.C., Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., Ltd., Docket No. CAA-HQ-2013-8050, is Hereby Stipulated, Agreed, and Approved for Entry.

For: Geason Enterprises, L.L.C.

Federal Taxpayer Identification Number: 26-4750624



Henry G. Li, Manager
Geason Enterprises, L.L.C.
1200 Lakeside Parkway #325
Flower Mound, TX 75028

Dec. 12, 2014
Date

The foregoing Consent Agreement In the Matter of Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., TJ Power Sports L.L.C., Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., Ltd., Docket No. CAA-HQ-2013-8050, is Hereby Stipulated, Agreed, and Approved for Entry.

For: GE Ventures, L.P.

Federal Tax Identification Number: 20-2448364




Holmes H. Ge, Partner
GE Ventures, L.P.
1200 Lakeside Parkway #325
Flower Mound, TX 75028

Dec. 12, 2014
Date

The foregoing Consent Agreement In the Matter of Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., TJ Power Sports L.L.C., Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., Ltd., Docket No. CAA-HQ-2013-8050, is Hereby Stipulated, Agreed, and Approved for Entry.

For: Hammerhead Off-Road, Inc.

Federal Tax Identification Number: 26-1196048



Henry G. Li, CEO
Hammerhead Off-Road, Inc.
1200 Lakeside Parkway #325
Flower Mound, TX 75028

Dec. 12, 2014
Date

The foregoing Consent Agreement In the Matter of Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., TJ Power Sports L.L.C., Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., Ltd., Docket No. CAA-HQ-2013-8050, is Hereby Stipulated, Agreed, and Approved for Entry.

For: Shanghai Howhit Machinery Manufacture Co., Ltd.

Zhang Jun

Zhang Jun, General Manager
Shanghai Howhit Machinery Manufacture Co., Ltd.
No. 880 Rong Dong Road, Jinshan District
LVXiang Town, Shanghai 201518, China

2014.12.16

Date


The foregoing Consent Agreement In the Matter of Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., TJ Power Sports L.L.C., Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., Ltd., Docket No. CAA-HQ-2013-8050, is Hereby Stipulated, Agreed, and Approved for Entry.

For Complainant:



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

2/20/2015
Date



Meetu Kaul, Attorney Advisor
Air Enforcement Division
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U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

2/20/15
Date