

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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.,

Respondents.

Docket No.  
CAA-HQ-2014-8032

**MOTION FOR A DEFAULT ORDER**

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## Introduction

1. By this Motion for a Default Order (“Motion”), Complainant requests that the Presiding Officer find that default has occurred in this matter based on Respondents’ failure to answer the Complaint, and issue a default order requiring Respondents to pay civil penalties.
2. The Environmental Appeals Board (“Board”) is the Presiding Officer in this matter because Complainant commenced this proceeding at EPA Headquarters and none of the six Respondents have filed an answer. 40 C.F.R. § 22.4(a)(1).
3. The Board may rule on this Motion because it is made before an answer to the Complaint is filed. *Id.* § 22.16(c).
4. Issuance of the Default Order requested here would resolve all outstanding issues and claims in this proceeding, and would therefore constitute an initial decision under 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”). *Id.* § 22.17(c).
5. In recognition that the Board is authorized both to rule on this Motion and to hear appeals of default orders that constitute initial decisions, 40 C.F.R. §§ 22.17(d), 22.27(c), Complainant suggests that the Board consider either of the following two alternatives for retaining the ability to independently adjudicate this Motion and any appeals:
  - a. refer this Motion to an Administrative Law Judge (*see, e.g.,* Order, *In the Matter of Geason Enterprises, L.L.C., et al.*, Docket No. CAA-HQ-2013-8050 (Dec. 16, 2013) (Board sending motion for default for a respondent’s failure to answer a

complaint to the Administrative Law Judge who was already presiding over the case involving other respondents who answered that same complaint); or

- b. assign no more than two Environmental Appeals Judges to rule on this Motion, so that at least two other Environmental Appeals Judges may be available to constitute a quorum to hear any appeals.
6. The EPA and the United States Department of Justice jointly determined that this matter, although it may involve a penalty assessment above \$295,000, is appropriate for an administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4. App. 1.
7. This Motion begins by stating the relevant factual background. In doing so, this Motion refers to the enclosed Appendix (“App.”), which includes primary documents and an affidavit from Complainant’s counsel, Evan M. Belser. This Motion then summarizes the law governing the Default Order requested here. Next, this Motion explains how default has occurred in this matter, and that the Presiding Officer is authorized to issue a Default Order akin to the Proposed Order at the close of this Motion. Lastly, this Motion states the factual and legal grounds for ordering: all Respondents to pay a civil penalty of \$908,962; and Jonway Motorcycle (USA) Co., Ltd. and Shenke USA, Inc. to pay another civil penalty of \$349,620.

### **Procedural Background**

8. Complainant, the United States Environmental Protection Agency (“EPA”), filed the Complaint in this proceeding on November 20, 2013 (“Complaint”).
9. Complainant filed proof of service of the Complaint on January 15, 2014.

### **Factual Background: The EPA's Vehicle Certification Program**

10. The EPA administers Title II of the Clean Air Act (CAA), 42 U.S.C. §§ 7521 – 7590, in part, by running a vehicle certification program. This program is designed to ensure that every vehicle sold, offered for sale, introduced into commerce, delivered for introduction into commerce, and imported into the United States conforms in all material respects to a vehicle that meets emission standards for oxides of nitrogen, carbon monoxide, hydrocarbons, and other pollutants, and has otherwise been approved by the EPA.
11. The EPA approves vehicles by issuing certificates of conformity (COCs).
12. To obtain a COC, a manufacturer must submit a COC application to the EPA for each *engine family* and each model year that it intends to manufacture vehicles for introduction into United States commerce. 40 C.F.R. §§ 86.416-80, 1051.201(a).
13. An *engine family* is a group of vehicles of a single model year (often a subset of a manufacturer's production for a model year) that are expected to have similar emission characteristics throughout their useful life. *Id.* §§ 86.420-78, 1051.230. COC applicants certify their vehicles according to their engine family, and the EPA generally makes any subsequent compliance determinations on the basis of engine family. Any given EPA COC covers one and only one engine family.
14. The COC application must include, among other things, identification of the covered engine family, a description of the vehicles and their emission control system, and test results from a prototype emissions data vehicle showing that the vehicle satisfies the emission standards in 40 C.F.R. § 86.410-2006 (setting emission standards for highway motorcycles) or 40 C.F.R. § 1051.107 (setting emission standards for all-terrain vehicles, a subset of recreational vehicles). *Id.* §§ 86.416-80, 1051.205.

15. COC applicants must identify in each application “an agent for service of process located in the United States . . . for any action by EPA or otherwise by the United States related to the requirements” of the EPA’s vehicle certification program. *Id.* § 86.416-80(a)(2)(ix) (requiring agent in applications for highway motorcycle COCs); *Id.* § 1051.205(w) (requiring agent in applications for recreational vehicle COCs).

### **Factual Background: Respondents**

16. Respondent Jonway Motorcycle (USA) Co., Ltd. (“Jonway USA”) is a corporation incorporated in the state of Texas, and is registered with the Office of the Secretary of the State of Texas as an entity currently “in existence.” App. 8. Jonway USA applied for and obtained EPA COCs for five of the ten engine families for which the Complaint alleges violations (“Subject Engine Families”), namely 9JNYC0.05NFG, 9JNYC0.15NFG, AJNYC.050SA1, AJNYC0.05NFG, and BJNYC0.05NFG. App. 30, 40, 50, 60, 70. See Table A, below on page 10, for a summary of the Subject Engine Families. In its filings with the Office of the Secretary of the State of Texas, Jonway USA has registered Mr. Xiaotong Qi as its agent for service of process, president, director, and secretary. App. 8, 9, 12, 13, 15. Xiaotong Qi also acts as a managing agent for Jonway USA. He signed for Jonway USA as its “General Manager” in the applications for five Subject Engine Families. App. 32, 33, 39, 42, 43, 49, 56, 57, 58, 59, 62, 63, 69, 72, 73, 80. Xiaotong Qi also acted as the EPA’s point of contact at Jonway USA throughout the EPA’s investigation in this matter, and in this role oversaw the company’s response to a formal EPA request for information under section 208 of the CAA, 42 U.S.C. § 7542. App. 164–166.

17. Respondent Shenke USA, Inc. (“Shenke USA”) is (or was) a corporation incorporated in the state of Texas, and is registered with the Office of the Secretary of the State of Texas as an entity that has been in “forefeited existence” since August 2, 2013. App. 18, 19. Shenke USA applied for and obtained EPA COCs for five of the ten Subject Engine Families, namely CSHKC0.15NFG, 9SHKX.150AAA, ASHKX.150AAA, ASHKX.250ML, and CSHKX.150ATA. App. 82, 94, 104, 114, 124. In its filings with the Office of the Secretary of the State of Texas, Shenke USA has registered Xiaotong Qi as its agent for service of process. App. 17, 18, 20, 21. Xiaotong Qi also acts (or acted) as an officer and managing agent for Shenke USA. He signed for Shenke USA as its “General Manager” in the application for three Subject Engine Families. App. 98, 100, 101, 102, 103, 108, 110, 112, 113, 118, 120, 121, 122, 123. Xiaotong Qi also acted as the EPA’s point of contact at Shenke USA throughout the EPA’s investigation in this matter, and in this role oversaw the company’s response to a formal EPA request for information under section 208 of the CAA, 42 U.S.C. § 7542. App. 164–166.
18. Respondent Jonway Group Co., Ltd. (“Jonway Group”) is or was a corporation incorporated in the People’s Republic of China (“China”). Jonway Group is located at Houran, Lunan, Luqiao District, Taizhou City, Zhejiang Province, China. App. 32, 38, 39, 42, 48, 49. Jonway Group manufactured the vehicles purportedly covered by the COCs for two of the Subject Engine Families, namely 9JNYC0.05NFG and 9JNYC0.15NFG. App. 30–39, 40–49. In the COC applications for these two Subject Engine Families that one or more Respondents submitted to the EPA, Jonway Group identified Jonway USA as its “Authorized Representative relative to the requirements of the US EPA.” App. 39, 49.

19. Respondent Shanghai Shenke Motorcycle Co., Ltd. (“SSM”) is (or was) a corporation incorporated in China. SSM is (or was) located in Shanghai, China. App. 135, 141, 142. SSM manufactured the vehicles from, among others, engine family 8SHKX.150AAA. App. 135–143. In the COC application for this engine family that one or more Respondents submitted to the EPA, SSM identified Shenke USA as its “agent for service of process.” App. 143. One or more Respondents *carried over* emissions test data and design specifications from engine family 8SHKX.150AAA in order to obtain the COC for one of the Subject Engine Families, namely 9SHKX.150AAA. App. 97. A carry over COC application means a COC application that includes emission test data used in a COC application for a prior model year. 40 C.F.R. § 1051.235(d).
20. Respondent Zhejiang JMStar Shenke Motorcycle Manufacturing Co., Ltd. (“ZJS”) is (or was) a corporation incorporated in China. App. 79. ZJS is (or was) located at Houran, Lunan, Luqiao District, Taizhou City, Zhejiang Province, China. App. 95, 101, 102. ZJS manufactured the vehicles purportedly covered by the COC for one of the Subject Engine Families, namely 9SHKX.150AAA. App. 94–103. In the COC application for this engine family that one or more Respondents submitted to the EPA, ZJS identified Shenke USA as its “agent for service of process.” App. 103.
21. Respondent Zhejiang Jonway Motorcycle Manufacturing Co., Ltd. (“ZJM”) is a corporation incorporated in China. App. 81. ZJM is located at Houran, Lunan, Luqiao District, Taizhou City, Zhejiang Province, China. App. 51, 57, 62, 69, 72, 79, 81, 86, 105, 115, 128. ZJM manufactured the vehicles from seven Subject Engine Families, namely AJNYC.050SA1, AJNYC0.05NFG, BJNYC0.05NFG, CSHKC0.15NFG, ASHKX.150AAA, ASHKX.250AML, and CSHKX.150ATA. App. 50–59, 60–69, 70–81,

- 82–93, 104–113, 114–123, 124–134. In the COC applications for these engine families that one or more Respondents submitted to the EPA, ZJM identified both Jonway USA and Shenke USA as its “agent for service of process,” “Authorized Representative,” and “US agent.” App. 59, 69, 80, 88, 92, 113, 123, 133.
22. Respondents Jonway Group, ZJS, and ZJM all share the same physical address, phone number, and fax number. App. 38, 79, 102.
  23. In at least one COC application that one or more Respondents submitted to the EPA, one or more Respondents state that SSM merged with Jonway Group in November 2008 and thereby formed ZJS. App. 97.
  24. In multiple COC applications that one or more Respondents submitted to the EPA, one or more Respondents state that ZJS was renamed ZJM in September 2009. App. 53, 68, 79, 81, 107, 117.
  25. On information and belief, ZJM and Shenke USA or Jonway USA currently certify, import, and sell recreational vehicles and highway motorcycles in the United States. They hold multiple model year 2014 COCs including, for example, COCs for engine families ESHKC.049SC1 and ESHKX.150ATA. App. 144 – 151, 152 – 159. In the applications for these COCs submitted to the EPA by one or more Respondents (as recently as November 12, 2013—eight days prior to the filing of the Complaint in this matter), ZJM again identified Shenke USA as its “agent for service of process.” App. 149, 157.
  26. On information and belief, each and every Respondent is within an affiliation known as Jonway Group. *See, e.g.,* <http://www.jonway.com/about.asp> (last visited March 24, 2014) (identifying numerous companies whose names include “Jonway” or “Shenke,” including Jonway Group, ZJS, and SSM; stating SSM remains in business);



<http://www.shenkemotor.com/about.html> (last visited March 24, 2014) (describing SSM and ZJS as one and the same); <http://www.jonway.com/contact.asp> (last visited March 24, 2014) (listing Jonway Group's "U.S. Company" as existing at the same address as Jonway USA and Shenke USA).

27. On information and belief, each and every Respondent is owned and operated by members of the same family. Specifically, Wang Huaiyi and Yang Suhua are husband and wife, and have a son, Wang Gang, and a daughter, Wang Xiaoying. Yang Suhua has a brother, Yang Jianhua. *See, e.g.,* <http://baike.baidu.com/client/view/6580653.htm?app=3&font=2&statwiki=1> (last visited March 24, 2014) (Chinese publically created online encyclopedia explaining familial relationships and stating that Jonway Group is owned by Wang Huaiyi (40%), Wang Gang (40%), and Wang Xiaoying (20%); stating that ZJM is owned by Jonway Group (51%), Wang Gang (34%), and Yang Suhua (15%)); App. 10 (Jonway USA appointing Wang Huaiyi as a director); App. 22 (Shenke USA appointing Wang Huaiyi as a director); Taizhou Administration for Industry and Commerce ("AIC"), <http://qycx.tzsszt.gov.cn/view.php?id=3310046000007097> (last visited March 24, 2014) (Chinese governmental website identifying Wang Huaiyi as a representative for Jonway Group); Taizhou AIC, <http://qycx.tzsszt.gov.cn/view.php?id=3310040097036687> (last visited March 24, 2014) (identifying Yang Suhua as a representative for ZJM).
28. Wang Huaiyi signed on behalf of Jonway Group in the COC applications for Subject Engine Families 9JNYC0.05NFG and 9JNYC0.15NFG. App. 39, 49. Yang Suhua signed on behalf of ZJM in the COC applications for Subject Engine Families AJNYC.050SA1, AJNYC0.05NFG, BJNYC0.05NFG, ASHKX.150AAA, and ASHKX.250AML. App. 59, 69, 80, 113, 123. Yang Suhua signed on behalf of ZJS in the COC application for Subject

Engine Family 9SHKX.150AAA. App. 103. Yang Suhua signed on behalf of SSM in the COC application for engine family 8SHKX.150AAA. App. 143.

29. In sum, the six Respondents in this proceeding coordinate to manufacture and obtain EPA COCs for highway motorcycles and recreational vehicles for introduction into United States commerce. Both domestic Respondents have authorized Xiaotong Qi as their agent for service of process. The four foreign Respondents have authorized, in documents submitted directly to the EPA, one or both of the domestic Respondents as their agents for service of process. Respondents have told the EPA that the four foreign Respondents have merged together and currently operate under the name ZJM, who continues to introduce vehicles into United States commerce.

30. The following Table A summarizes the Subject Engine Families.

<b>TABLE A: SUBJECT ENGINE FAMILIES</b>			
<b>Engine Family</b>	<b>COC Holder and Representative Authorized to Receive Service of Process</b>	<b>Vehicle Manufacturer Listed in COC Application</b>	<b>Appendix Reference for COC and COC Application Excerpts</b>
9JNYC0.05NFG	Jonway USA	Jonway Group	30 – 39
9JNYC0.15NFG	Jonway USA	Jonway Group	40 – 49
AJNYC.050SA1	Jonway USA	ZJM	50 – 59
AJNYC0.05NFG	Jonway USA	ZJM	60 – 69
BJNYC0.05NFG	Jonway USA	ZJM	70 – 81
CSHKC0.15NFG	Shenke USA	ZJM	82 – 93
9SHKX.150AAA	Shenke USA	ZJS	94 – 103
ASHKX.150AAA	Shenke USA	ZJM	104 – 113
ASHKX.250AML	Shenke USA	ZJM	114 – 123
CSHKX.150ATA	Shenke USA	ZJM	124 – 134

### **Factual Background: Service of Process**

31. On November 20, 2013, concurrently with the filing of the Complaint in this proceeding, Complainant mailed three duplicative packages, identical except for the addressee, in order to serve the Complaint on Respondents per 40 C.F.R. § 22.5(b)(1). These three packages are described as mailings A, B, and C in Table B, below. Each of these three packages contained six separately addressed envelopes (one for each of the six Respondents), each with a copy of the Complaint, a copy of the Consolidated Rules, and a cover letter explaining this proceeding, the need to answer, and the possibility of default.
32. All mailings were sent by United States Postal Service Certified Mail. *E.g.*, App. 2.
33. The “1503 Kelly Boulevard” address in Table B is the address on file for Shenke USA with the Office of the Secretary of State of Texas. App. 17, 18, 20, 21, 25. It is also the address for Shenke USA that one or more Respondents submitted to the EPA in recent applications for COCs. App. 132, 149, 157. It is also the address for Jonway USA that one or more Respondents submitted to the EPA in COC applications, including the COC applications for every Subject Engine Family for which Jonway USA held the COC. App. 32, 39, 42, 49, 51, 54, 57, 62, 69, 72, 79, 80, 161. Based on a January 2013 inspection and other information, Complainant believes that little or no activity occurs at this “1503 Kelly Boulevard” address. App. 164–166.
34. The “1501 Kelly Boulevard” address in Table B is the address on file for Jonway USA with the Office of the Secretary of State of Texas. App. 8, 9, 15, 160. Based on a January 2013 inspection and other information, Complainant believes that little or no activity occurs at this “1501 Kelly Boulevard” address. App. 164–166.

35. The “1942 I-35 E. North” address is the location of a business named Nitro PowerSports, LLC, where Complainant knows, based in part on a January 2013 inspection and other information, to be a location where Xiaotong Qi does business. App. 162, 163, 164–166. Specifically, Xiaotong Qi manages sales of Jonway-branded vehicles at this location. App. 164–166.
36. Package B, as described below in Table B, was delivered. One Tina Yang signed the Certified Mail Receipt on November 23, 2013. App. 2.
37. Xiaotong Qi received Package B. On December 20, 2013, in an email and identical hard-copy letter to Evan M. Belser, Xiaotong Qi acknowledged actual notice. App. 3 – 7.
38. Complainant has not emailed to Respondents, nor otherwise transmitted to Respondents except by Package B as described above, the Complaint in this matter. App. 164–166.
39. Complainant filed proof of service on January 15, 2014. Concurrently, Complainant mailed three identical packages in order to serve the proof of service on Respondents according to 40 C.F.R. § 22.5(b)(2). Each of these three packages contained six copies of the proof of service (one for each of the six Respondents). These three packages are described as mailings F, G, and H in Table B, below.
40. Package F, as described below in Table B, was delivered. One Ken Rooks signed the Certified Mail Receipt on January 21, 2014. App. 2.
41. Delivery of Packages A, C, D, E, G, and H was attempted and notice was left, but these packages were never claimed and thereafter returned to Complainant. App. 164–166
42. See Affidavit of Evan M. Belser, App. 164–166, for a summary of all mailings made by Complainant. The table from that Affidavit is reproduced below as Table B for ease of reference.

**TABLE B: MAILINGS BY COMPLAINANT**

	<b>Date Sent</b>	<b>Address</b>	<b>Contents</b>	<b>Mail Result</b>
A	Nov. 20 2013	Jonway Motorcycle (USA) Co., Ltd. Shenke USA, Inc. Attention: Xiaotong Qi 1503 Kelly Boulevard Carrollton, Texas 75006	Six separately addressed and sealed envelopes, each with a copy of the Complaint, a copy of the Consolidated Rules, and a cover letter explaining this proceeding, the need to answer, and the possibility of default.	Notice left; unclaimed; returned to sender.
B	Nov. 20 2013	Jonway Motorcycle (USA) Co., Ltd. Shenke USA, Inc. Attention: Xiaotong Qi c/o Nitro PowerSports, LLC 1942 1-35 E. North, Carrollton, TX 75006		Delivered. Greencard signed by Tina Yang on Nov. 23, 2013.
C	Nov. 20 2013	Shenke USA, Inc. Attention: Huai Yi Wang or Wei Guo 1503 Kelly Boulevard Carrollton, Texas 75006		Notice left; unclaimed; returned to sender.
D	Jan. 15 2014	Jonway Motorcycle (USA) Co., Ltd. Shenke USA, Inc. Attention: Xiaotong Qi 1501 Kelly Boulevard Carrollton, Texas 75006		Notice left; unclaimed; returned to sender.
E	Jan. 15 2014	Shenke USA, Inc. Attention: Huai Yi Wang or Wei Guo 1501 Kelly Boulevard Carrollton, Texas 75006		Notice left; unclaimed; returned to sender.
F	Jan. 15 2014	Jonway Motorcycle (USA) Co., Ltd. Shenke USA, Inc. Attention: Xiaotong Qi c/o Nitro PowerSports, LLC 1942 1-35 E. North, Carrollton, TX 75006	Six copies (one marked for each Respondent) of the Proof of Service that Complainant filed January 15, 2014.	Delivered. Greencard signed by Ken Rooks on Jan. 21, 2014.
G	Jan. 15 2014	Jonway Motorcycle (USA) Co., Ltd. Shenke USA, Inc. Attention: Xiaotong Qi 1501 Kelly Boulevard Carrollton, Texas 75006		Notice left; unclaimed; returned to sender.
H	Jan. 15 2014	Shenke USA, Inc. Attention: Huai Yi Wang or Wei Guo 1501 Kelly Boulevard Carrollton, Texas 75006		Notice left; unclaimed; returned to sender.

### **Governing Law**

43. The CAA authorizes the EPA to assess civil penalties for violations of CAA § 203, 42 U.S.C. § 7522. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1). Such an assessment “shall be by an order made on the record after opportunity for a hearing.” *Id.* “Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator’s proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.” *Id.*
44. The EPA issues these orders and provides these notices and opportunities to request a hearing by following the Consolidated Rules. 40 C.F.R. §§ 22.1(a)(2), 22.34.
45. Penalty assessment proceedings initiated at EPA Headquarters are commenced by filing with the Hearing Clerk a complaint conforming to 40 C.F.R. § 22.14. *Id.* §§ 22.3, 22.13(a).
46. “Complainant shall serve on the respondent [to an administrative penalty assessment proceeding], or a representative authorized to receive service on the respondent’s behalf, a copy of the signed original of the complaint, together with a copy of [the Consolidated Rules].” *Id.* § 22.5(b)(1)(i).
47. “Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.” *Id.*
48. “Where respondent is a domestic or foreign corporation, . . . complainant shall 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.” *Id.* § 22.5(b)(1)(ii)(A).

49. “*Person* includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not . . . .” *Id.* § 22.3(a).
50. Courts read the service provisions of section 22.5 broadly. *See, e.g., Katzson Bros., Inc. v. EPA*, 839 F.2d 1396, 1399 (10th Cir. 1988) (“[W]hen service is effectuated by certified mail, the letter need only be addressed, rather than actually delivered, to an officer, partner, agent, or other authorized individual. . . . [a]ny other interpretation would severely hinder service of process on corporations by certified mail.”); *In the Matter of C.W. Smith et al.*, Docket No. CWA-04-2001-1501, 2002 EPA ALJ Lexis 7, 16–17 (EPA ALJ 2002) (“The achievement of actual service of process obviates the failure of Complainant to strictly comply with the service of process procedures of the Rules of Practice.”).
51. “Proof of service of the complaint must be made by affidavit of the person making personal service, or by properly executed receipt. *Id.* § 22.5(b)(1)(iii).
52. “Where respondent: Contests any material facts upon which the complaint is based; contends that [a] penalty . . . is inappropriate . . . ; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the [Hearing Clerk] within 30 days after service of the complaint.” *Id.* § 22.15(a).
53. The Consolidated Rules authorize a default order in 40 C.F.R. § 22.27. Section 22.17 reads, in pertinent part, as follows:
- a. “A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint . . . . Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint

and a waiver of respondent's right to contest such factual allegations.”

*Id.* § 22.17(a).

- b. “A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.”

*Id.* § 22.17(b).

- c. “When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. . . . If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. . . . The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” *Id.* § 22.17(c).

- d. “Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c).” *Id.* § 22.17(d).



**Default has Occurred in this Matter**

54. As detailed in this section, default has occurred based on Respondents' failures to file a timely answer to the Complaint.
55. Complainant commenced this penalty assessment proceeding according to 40 C.F.R. §§ 22.3, 22.13(a), and 22.14, when it filed the Complaint with the Hearing Clerk on November 20, 2013.
56. Complainant served on each and every Respondent a copy of the signed original of the Complaint, together with a copy of the Consolidated Rules according to 40 C.F.R. § 22.5(b)(1)(i). Complainant so served each and every Respondent on November 23, 2013, when one Tina Yang signed the United States Postal Service Certified Mail Receipt for the package identified in Table B, above, as Package B. App. 2. This package contained six separately addressed envelopes (one for each of the six Respondents), each with a copy of the Complaint, a copy of the Consolidated Rules, and a cover letter explaining this proceeding, the need to answer, and the possibility of default. This package was addressed and delivered to the following address:

Jonway Motorcycle (USA) Co., Ltd.  
Shenke USA, Inc.  
Attention: Xiaotong Qi  
c/o Nitro PowerSports, LLC  
1942 1-35 E. North,  
Carrollton, TX 75006

App. 164–166.

57. Xiaotong Qi received the delivered package. On December 20, 2013, Xiaotong Qi notified counsel for Complainant that he received the package. Xiaotong Qi restated and discussed the contents of the package, which confirms that he received actual notice. App. 3–7. Complainant has not emailed to Xiaotong Qi or any representative of Respondents, or

otherwise transmitted to Respondents except by Package B as described above, the Complaint in this matter. App. 164–166.

58. The delivery of Package B constituted service of process as defined by 40 C.F.R.

§ 22.5(b)(1) for each of the six Respondents for the following reasons.

a. Jonway USA:

- i. Jonway USA is a domestic corporation for which Xiaotong Qi acts as an officer, managing agent, and agent for service, so service on Xiaotong Qi would satisfy 40 C.F.R. § 22.5(b)(1)(ii)(A). Specifically, in its filings with the Office of the Secretary of the State of Texas, Jonway USA has registered Xiaotong as its agent for service of process and an officer (president, director, and secretary). App. 8, 9, 12, 15. Xiaotong Qi also acts as a managing agent for Jonway USA. He signed for Jonway USA as its “General Manager” in the applications for five Subject Engine Families. App. 32, 33, 39, 42, 43, 49, 56, 58, 59, 62, 63, 69, 72, 73, 80. Xiaotong Qi also acted as the EPA’s point of contact at Jonway USA throughout the EPA’s investigation in this matter, and in this role oversaw the company’s response to a formal EPA request for information under section 208 of the CAA, 42 U.S.C. § 7542. App. 164–166.
- ii. Package B contained an envelope specifically addressed to Jonway USA that contained a copy of the signed original of the Complaint together with a copy of the Consolidated Rules. App. 164–166.
- iii. Complainant delivered (by certified mail return receipt requested) Package B to Xiaotong Qi’s attention at an address where Xiaotong Qi is known to

do business. App. Xiaotong Qi subsequently received and acknowledged actual notice. App. 3–7.

- iv. Thus, Complainant served the Complaint on Respondent Jonway USA according to 40 C.F.R. § 22.5(b)(1).

b. Shenke USA:

- i. Shenke USA is a domestic corporation for which Xiaotong Qi acts as a managing agent and agent for service, so service on Xiaotong Qi would satisfy 40 C.F.R. § 22.5(b)(1)(ii)(A). Specifically, in its filings with the Office of the Secretary of the State of Texas, Shenke USA has registered Xiaotong Qi (at 1503 Kelly Blvd., Carrollton, TX 75006) as its agent for service of process. App. 17, 18, 20, 21. Xiaotong Qi also acts as a managing agent for Shenke USA. He signed for Shenke USA as its “General Manager” in the application for three Subject Engine Families. App. 102, 103, 112, 113, 122, 123. Xiaotong Qi also acted as the EPA’s point of contact at Shenke USA throughout the EPA’s investigation in this matter, and in this role oversaw the company’s response to a formal EPA request for information under section 208 of the CAA, 42 U.S.C. § 7542. App. 164–166.
- ii. Package B contained an envelope specifically addressed to Shenke USA that contained a copy of the signed original of the Complaint together with a copy of the Consolidated Rules. App. 164–166.
- iii. Complainant delivered (by certified mail return receipt requested) Package B to Xiaotong Qi’s attention at an address where Xiaotong Qi is known to

do business. App. 164–166. Xiaotong Qi subsequently received and acknowledged actual notice. App. 3–7.

- iv. Thus, Complainant served the Complaint on Respondent Shenke USA according to 40 C.F.R. § 22.5(b)(1).

c. Jonway Group:

- i. Jonway Group is a foreign corporation that authorized Jonway USA as its agent for service of process, so Jonway USA is a “person authorized by appointment . . . to receive service of process,” and service on Jonway USA would satisfy 40 C.F.R. § 22.5(b)(1)(ii)(A). Specifically, in the COC applications for two Subject Engine Families submitted to the EPA, Jonway Group identified Jonway USA as its “Authorized Representative” relative to EPA requirements, including the requirement to identify in all COC applications an agent for service of process. 40 C.F.R. §§ 86.416-80(a)(2)(ix), 1051.205(w); App. 39, 49.
- ii. Although 40 C.F.R. § 22.5(b) is silent on how a complainant should serve a “person authorized by appointment . . . to receive service of process” where that person is a corporation, Complainant asserts that service on that corporation’s “agent for service of process” on file with the company’s state of incorporation is sufficient. Here, as stated above, Xiaotong Qi is Jonway USA’s agent for service of process on file with the Office of the Secretary of the State of Texas.

- iii. Package B contained an envelope specifically addressed to Jonway Group that contained a copy of the signed original of the Complaint together with a copy of the Consolidated Rules. App. 164–166.
- iv. Complainant delivered (by certified mail return receipt requested) Package B to the attention of Xiaotong Qi at Jonway USA at an address where Xiaotong Qi is known to do business. App. 164–166. Xiaotong Qi subsequently received and acknowledged actual notice. App. 3–7.
- v. Alternatively, Complainant served the Complaint on Jonway Group when it served ZJM because ZJM is a successor in liability to Jonway Group. App. 53, 68, 79, 81, 97, 107, 117.
- vi. Thus, Complainant served the Complaint on Respondent Jonway Group according to 40 C.F.R. § 22.5(b)(1).

d. SSM:

- i. SSM is a foreign corporation that authorized Shenke USA as its agent for service of process, so Shenke USA is a “person authorized by appointment . . . to receive service of process,” and service on Shenke USA would satisfy 40 C.F.R. § 22.5(b)(1)(ii)(A). Specifically, in the COC application for at least one engine family submitted to the EPA, SSM identified Shenke USA as its “agent for service of process.” App. 141.
- ii. Although 40 C.F.R. § 22.5(b) is silent on how a complainant should serve a “person authorized by appointment . . . to receive service of process” where that person is a corporation, Complainant asserts that service on that company’s “agent for service of process” on file with the corporation’s

state of incorporation is sufficient. Here, as stated above, Xiaotong Qi is Shenke USA's agent for service of process on file with the Office of the Secretary of the State of Texas.

- iii. Package B contained an envelope specifically addressed to SSM that contained a copy of the signed original of the Complaint together with a copy of the Consolidated Rules. App. 164–166.
- iv. Complainant mailed (by certified mail return receipt requested) Package B to the attention of Xiaotong Qi at Shenke USA at an address where Xiaotong Qi is known to do business. App. 164–166. Xiaotong Qi subsequently received and acknowledged actual notice. App. 3–7.
- v. Alternatively, Complainant served the Complaint on SSM when it served ZJM because ZJM is a successor in liability to SSM. App. 53, 68, 79, 81, 97, 107, 117.
- vi. Thus, Complainant served the Complaint on Respondent SSM according to 40 C.F.R. § 22.5(b)(1).

e. ZJS

- i. ZJS is a foreign corporation that authorized Shenke USA as its agent for service of process, so Shenke USA is a “person authorized by appointment . . . to receive service of process,” and service on Shenke USA would satisfy 40 C.F.R. § 22.5(b)(1)(ii)(A). Specifically, in the COC application for one Subject Engine Family submitted to the EPA, ZJS identified Shenke USA as its “agent for service of process.” App. 103.

- ii. Although 40 C.F.R. § 22.5(b) is silent on how a complainant should serve a “person authorized by appointment . . . to receive service of process” where that person is a corporation, Complainant asserts that service on that corporation’s “agent for service of process” on file with the company’s state of incorporation is sufficient. Here, as stated above, Xiaotong Qi is Shenke USA’s agent for service of process on file with the Office of the Secretary of the State of Texas.
- iii. Package B contained an envelope specifically addressed to ZJS that contained a copy of the signed original of the Complaint together with a copy of the Consolidated Rules. App. 164–166.
- iv. Complainant mailed (by certified mail return receipt requested) Package B to the attention of Xiaotong Qi at Shenke USA at an address where Xiaotong Qi is known to do business. App. 164–166. Xiaotong Qi subsequently received and acknowledged actual notice. App. 3–7.
- v. Alternatively, Complainant served the Complaint on ZJS when it served ZJM because ZJM is a successor in liability to ZJS. App. 53, 68, 79, 81, 97, 107, 117.
- vi. Thus, Complainant served the Complaint on Respondent ZJS according to 40 C.F.R. § 22.5(b)(1).

f. ZJM

- i. ZJM is a foreign corporation that authorized both Jonway USA and Shenke USA as agents for service of process, so Jonway USA and Shenke USA are “person[s] authorized by appointment . . . to receive service of

process,” and service on either company would satisfy 40 C.F.R.

§ 22.5(b)(1)(i). Specifically, in the COC applications for seven Subject Engine Families submitted to the EPA, ZJM identified Jonway USA and Shenke USA as its “agent[s] for service of process,” “Authorized Representative[s],” and “US agent[s].” App. 59, 69, 81, 88, 92, 113, 123, 133.

- ii. Although 40 C.F.R. § 22.5(b) is silent on how a complainant should serve a “person authorized by appointment . . . to receive service of process” where that person is a corporation, Complainant asserts that service on that corporation’s “agent for service of process” on file with the company’s state of incorporation is sufficient. Here, as stated above, Xiaotong Qi is the agent for service of process on file with the Office of the Secretary of the State of Texas for both Jonway USA and Shenke USA.
- iii. Package B contained an envelope specifically addressed to ZJM that contained a copy of the signed original of the Complaint together with a copy of the Consolidated Rules. App. 164–166.
- iv. Complainant mailed (by certified mail return receipt requested) Package B to the attention of Xiaotong Qi at Jonway USA and Shenke USA at an address where Xiaotong Qi is known to do business. App. 164–166. Xiaotong Qi subsequently received and acknowledged actual notice. App. 3–7.
- v. Thus, Complainant served the Complaint on Respondent ZJM according to 40 C.F.R. § 22.5(b)(1).



59. Complainant made proof of service by properly executed receipt and filed such proof with the Hearing Clerk in accordance with 40 C.F.R. § 22.5(b)(1)(iii). Specifically, on January 15, 2014, Complainant filed a copy of the Certified Mail Receipt with the Hearing Clerk.
60. Complainant served the filed proof of service on each and every Respondent according to 40 C.F.R. § 22.5(b)(2). Specifically, Complainant mailed by United States Postal Service Certified Mail the package identified in Table B, above, as Package F to the same address where the Complaint was delivered. App. 164–166. This package was delivered, as evidenced by the signed Certified Mail receipt. App. 2.
61. No Respondent has filed an answer as of the date of this Motion. Their answer, or answers, was due 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). Here, the Complaint was served on November 23, 2013, so any answer was due December 23, 2013. Alternatively, Complaint was served no later than December 20, 2013, when Xiaotong Qi acknowledged actual notice, so any answer was due January 19, 2014.
62. The facts outline above provide the Presiding Officer with an ample basis to find that default has occurred based on Respondents’ failure to file a timely answer to the Complaint. 40 C.F.R. § 22.17(a). Complainant therefore moves the Presiding Officer to find that default has occurred with respect to each and every Respondent, and thereby issue a default order akin to the Proposed Order at the close of this Motion.

### **Request for a Civil Penalty**

63. “Where the motion [for a default order] requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.” 40 C.F.R. § 22.17(b).
64. “The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” 40 C.F.R. § 22.17(c).
65. Here, Complainant’s requested relief is a civil penalty of \$1,258,582. The remainder of this section states the legal and factual grounds for this request.
66. Legal Grounds for the Requested Civil Penalty
- a. In determining civil penalties, the CAA requires that the EPA consider “the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator’s business, the violator’s history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator’s ability to continue in business, and such other matters as justice may require.” CAA § 205(c)(2), 42 U.S.C. § 7524(c)(2); see also 40 C.F.R. § 1068.125(a)(1), (b)(1) (listing these same factors).
  - b. Complainant uses a penalty policy that incorporates these statutory factors and calculates civil penalties for specific cases. Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (Jan. 16, 2009) (Policy), available at [http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy\\_0.pdf](http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf).

- c. The Policy calculates civil penalties as follows. First, the Policy requires the calculation of the *preliminary deterrence amount*. This is the sum of the *economic benefit* and the *gravity*. The economic benefit is based on the vehicle and engine power; the rule of thumb for calculating the per-vehicle economic benefit is \$1 per unit of horsepower, but no less than \$15 per vehicle and engine. If a vehicle or engine is stopped upon importation and exported, or if the violation is addressed, for example, through physical modification, then that vehicle or engine is considered remediated and there is no economic benefit. Where case-specific information is available to calculate economic benefit, that information is used rather than the rule of thumb. To determine the gravity component, a base gravity figure is calculated according to horsepower, then multiplied to reflect egregiousness (using a factor of 1 for minor violations, 3.25 for moderate violations, or 6.5 for major violations), further increased by 0 – 30% for failure to remediate, scaled down according to the number of vehicles, and adjusted to reflect business size. Second, the Policy requires the calculation of the *initial penalty target figure*. This figure is the preliminary deterrence amount, but with the gravity component adjusted to reflect the violator's degree of willfulness or negligence, degree of cooperation or non-cooperation, and history of noncompliance. Finally, the initial penalty target figure can be adjusted to account for unique factors, and such adjustments yield the *adjusted penalty target figure*.
- d. For purposes of this Motion, the facts alleged in the Complaint are deemed to be admitted because default has occurred. 40 C.F.R. § 22.17(a). The facts alleged in the Complaint establish the fourteen claims stated in the Complaint. Liability for

these fourteen claims subjects each Respondent to a civil penalty that is the sum of not more than \$32,500 or \$37,500: for each and every vehicle that Respondent introduced into commerce and; for each and every day they failed to keep or maintain a mandatory record or failed to provide the EPA with information reasonably required to assess their compliance with the CAA. Complaint ¶¶ 21, 22. By this Motion, Complainant has specified the penalties sought and the legal and factual grounds for these penalties. *Id.* § 22.17(b). This requested relief is consistent with the record of this proceeding and the CAA, so the Presiding Officer shall order the relief requested. *Id.* § 22.17(c). Issuance of the Default Order requested here would resolve all outstanding issues and claims in this proceeding, and would therefore constitute an initial decision. *Id.* The penalties assessed by this initial decision would become due and payable by Respondents without further proceedings 30 days after such decision becomes a final order under 40 C.F.R. § 22.27(c). *Id.* § 22.17(c).

67. Factual Grounds for the Requested Civil Penalty For All Violations Except Recordkeeping
  - a. The preliminary deterrence amount here is \$733,575. See Table C, below, for a detailed summary of the calculations that yield this amount. Below is a narrative description of how this amount was calculated.
    - i. The first component of this preliminary deterrence amount, the economic benefit, is \$148,950. This amount is based on the Penalty Policy's rule of thumb and is the sum of \$15 for each and every violative vehicle because each vehicle is less than 15 horsepower. Of the 10,995 vehicles for which the Complaint alleges violations, approximately 1,065 were detained by

United States Department of Homeland Security's Bureau of Customs and Border Protection at the point of importation then remediated by either correcting the compliance problem or, more commonly, by denying their entry to United States markets. So, these approximately 1,065 vehicles generated no economic benefit for Respondents. Respondents realized an economic benefit of \$15 on each of the remaining 9,930 vehicles, resulting in an economic benefit figure of \$148,920.

- ii. Next, the subject vehicles require a gravity-based penalty of approximately \$584,625. Where the Complaint alleges multiple violations for a vehicle, Complainant seeks only a penalty for the most egregious of the alleged violations. As detailed below, the gravity portion of the preliminary deterrence amount is the sum of the gravity for certification violations and the gravity for warranty violations.

1. The gravity for certification violations is \$584,625. This amount is based on: the vehicles' power rating as provided in Table C, below; a 6.5-fold increase for the "major" egregiousness of the 10,655 certification violations based on non-conforming catalysts, carburetors, and model names; a 3.25-fold increase for the "moderate" egregiousness of the 338 certification violations based on manufacturing vehicles after the COC expired; and an additional 30% for Respondents' failure to remediate 9,930 of these uncertified vehicles. (This includes no additional gravity-

based penalty for failure to remediate the approximately 1,065 vehicles that were, in fact, remediated.)

2. The gravity for the 2 warranty violations is only \$7. This amount is based on: the vehicle's power rating; a 3.25-fold increase for the "moderate" egregiousness of these warranty violations; and an additional 30% increase for failure to remediate these warranty violations.
3. The numbers from the previous two subparagraphs were calculated according to the Policy's scaling factors. Specifically, the base per-vehicle gravity figure was scaled both for engine horsepower per Table 1 of the Policy and for the total number of vehicles per Table 3 of the Policy. Policy at 15–18.

**Table C - Summary of Preliminary Deterrence Amount  
for All Violations Except Recordkeeping**

Purported Engine Family	Total Quantity Vehicles	Quantity Remediated	Horsepower	Base Gravity	Economic Benefit	Gravity Scaled	Gravity for Failure to Correct	Total Gravity
ASHKX.250AML	140	41	14.75	\$ 5,818	\$ 1,485	\$ 172,198	\$ 36,531	\$ 208,729
CSHKC0.15NFG	2	2	8.70	\$ 4,524	\$ 0	\$ 362	\$ -	\$ 362
CSHKX.150ATA	162	2	8.70	\$ 4,524	\$ 2,400	\$ 29,316	\$ 8,686	\$ 38,002
9JNYC0.15NFG	1,867	0	7.78	\$ 4,046	\$ 28,005	\$ 150,529	\$ 45,159	\$ 195,687
9SHKX.150AAA	84	84	6.70	\$ 3,484	\$ 0	\$ 2,341	\$ -	\$ 2,341
BJNYC0.05NFG	4,955	792	3.35	\$ 1,742	\$ 62,445	\$ 69,053	\$ 17,405	\$ 86,458
9JNYC0.05NFG	3,445	144	3.35	\$ 1,742	\$ 49,515	\$ 40,707	\$ 11,702	\$ 52,409
AJNYC.050SA1	84	0	3.75	\$ 975	\$ 1,260	\$ 131	\$ 39	\$ 170
AJNYC0.05NFG	254	0	3.35	\$ 871	\$ 3,810	\$ 354	\$ 106	\$ 460
ASHKX.150AAA	2	0	6.70	\$ 1,742	\$ 30	\$ 6	\$ 2	\$ 7
<b>Totals:</b>	<b>10,995</b>	<b>1,065</b>			<b>\$ 148,950</b>	<b>\$ 464,996</b>	<b>\$ 119,629</b>	<b>\$ 584,625</b>

- b. The initial penalty target figure is \$908,962. This is the preliminary deterrence amount, but with the gravity component adjusted to reflect the Respondents' degree of willfulness or negligence and their degree of non-cooperation.

Complainant increased the gravity component of the preliminary deterrence amount by:

- i. 20% to reflect the Respondents' degree of willfulness or negligence. This increase is warranted because: Respondents collectively had total control over the design, certification, manufacture, and sale of the vehicles identified by the Complaint; and despite abundant fair notice including numerous occasions where Respondents' vehicles were seized at the point of importation by the United States Department of Homeland Security's Bureau of Customs and Border Protection, Respondents continued to introduce into United States commerce large volumes of noncompliant vehicles. Policy at 23–24.
- ii. 10% to reflect the Respondents' degree of non-cooperation. This increase is warranted because: Respondents paid no attention, and then only limited attention, to the EPA's 2011 Request for Information under section 208 of the CAA, 42 U.S.C. § 7542; Respondents obfuscated their corporate organization; the foreign Respondents refused to discuss the case with Complainant and all Respondents refused to participate in negotiations; and Respondents have failed to answer the Complaint in this proceeding. Policy at 24–25.

- c. Finally, there are no unique factors of this case to warrant any reduction of the initial penalty target figure.
  - d. For the foregoing reasons, the requested civil penalty for all violations except recordkeeping (Counts 1–11 of the Complaint) is \$908,962. Complainant requests that the Presiding Officer order all Respondents, jointly and severally, to pay this civil penalty. A joint and several penalty order is appropriate because: that is the relief requested in Paragraph 32 of the Complaint Respondents have failed to answer; seeking only one penalty per vehicle is reasonable in light of the CAA’s authorization to seek a penalty against each Respondent each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) a noncompliant vehicle (thereby authorizing two or more penalties for each subject vehicle); the four foreign respondents have stated that they have reorganized themselves into one entity; all Respondents appear to act as a single enterprise; and Respondents’ failure to appear in this matter deprives Complainant of the ability to further develop the facts.
68. Factual Grounds for the Requested Civil Penalty for Recordkeeping Violations
- a. The requested civil penalty for recordkeeping violations is \$349,620. This is entirely a gravity-based penalty; Complainant seeks no economic benefit-based penalty for these recordkeeping violations. The Policy does not provide a method to calculate civil penalties for recordkeeping violations, so this penalty was calculated according to the statutory factors as follows. (Note, Complainant has applied this method in numerous prior cases.) For each record Respondent failed



to keep (or category of records, as appropriate), Complainant assessed a \$5,000 - \$25,000 gravity-based penalty. The amount was determined based on Complainant's review of the extent of the missing information, the disorganization of the information, the number of vehicles involved, the risk of unlawful emissions from those vehicles, and importance of the missing information to understanding vehicle emissions, assessing compliance, and facilitating recalls and other remediation. Violations were counted and penalties were assessed for each separate engine family for which there are recordkeeping violations. Finally, Complainant adjusts the calculated penalty to reflect the violator's degree of willfulness or negligence, degree of cooperation or non-cooperation, and history of noncompliance (in the manner directed by the Policy at pages 23–25). This approach is reasonable, especially in light of the CAA's authorization of \$37,500 per day per violation. 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). Here, the Complaint alleges that Jonway USA and Shenke USA:

- i. failed to provide to the EPA importation records and information about the total quantities of vehicles covered by Respondents' COCs that entered United States commerce for at least seven engine families. These are mandatory records that are essential to the EPA's ability to assess compliance, especially to understand the volume of Respondents' business and the scope of any noncompliance. 40 C.F.R. §§ 86.440-78, 1051.250. Complainant assessed a \$25,000 penalty for each engine family, or \$175,000 total.

- ii. failed to keep or provide to EPA certification and emission testing records for at least 16 engine families. These are mandatory records that are essential to the EPA's ability to assess compliance, especially to understand emission consequences of vehicles in use in the United States. 40 C.F.R. §§ 86.440-78, 1051.250. Complainant assessed a \$5,000 penalty for each engine family, or \$80,000 total.
  - iii. failed to timely respond to the EPA's Request for Information under section 208 of the CAA, 42 U.S.C. § 7542. The Act prescribes penalties that accrue over time—for as long as a party fails to demonstrate that they have met their obligations. Jonway USA and Shenke USA completed their response to the EPA's Request for Information on June 14, 2011, which is 209 days after the November 17, 2010 deadline set by the Request for Information. This substantial delay deprived EPA of the ability to assess compliance and take appropriate enforcement measures. Complainant assessed a one-time \$5,000 penalty for the failure to timely respond and a \$150 penalty for each of the 209 days that the response was late. This amounts to \$36,350.
- b. The foregoing sums to \$291,350. Complainant increased this amount by:
- i. 10% to reflect the Respondents' degree of willfulness or negligence. Jonway USA and Shenke USA certified to the EPA that all vehicles under their COCs would comply with the CAA and its regulations. Upon investigation, Complainant discovered that these companies failed to even keep track of the quantity of vehicles introduced in to United States

commerce (Count 12 of the Complaint). This information is fundamental to compliance, and specifically listed as a mandatory record by 40 C.F.R. §§ 86.440-78 and 1051.250. This increase is also warranted because Jonway USA and Shenke USA explicitly stated to the EPA that they kept and would make available to the EPA emission test records that, upon inspection, they did not have (Count 13 of the Complaint). *E.g.*, App. 33, 47, 55, 63, 67, 73, 78, 86, 99, 109, 119, 128, 139, 147.

ii. 10% to reflect the Respondents' degree of non-cooperation. This increase is warranted because: Jonway USA and Shenke USA paid no attention, and then only limited attention, to the EPA's 2011 Request for Information under section 208 of the CAA, 42 U.S.C. § 7542; they obfuscated their corporate organization; they refused to participate in negotiations; and they have failed to answer the Complaint in this proceeding.

c. For the foregoing reasons, the requested civil penalty for recordkeeping violations (Counts 12–14 of the Complaint) is \$349,620. Complainant requests that the Presiding Officer order Jonway USA and Shenke USA, jointly and severally, to pay this civil penalty. A joint and several penalty order is appropriate because: that is the relief requested in Paragraph 32 of the Complaint Respondents have failed to answer; Jonway USA and Shenke USA appear to act as a single enterprise; and their failure to appear in this matter deprives Complainant of the ability to further develop the facts.

69. As detailed in this section, by this Motion, Complainant requests that the Presiding Officer issue a default order requiring: all Respondents, jointly and severally, to pay a civil penalty of \$908,962; and Jonway USA and Shenke USA, jointly and severally, to pay a civil penalty of \$349,620. These amounts are consistent with the record of the proceeding and the Act. 40 C.F.R. § 22.17(c). Accordingly, the Consolidated Rules direct that the Presiding Officer order this requested relief. *Id.*

Respectfully Submitted,



April 7, 2014

Date

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Evan M. Belser, Attorney Adviser  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance

1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building  
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Evan M. Belser is authorized to receive service relating to this proceeding.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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.,

Respondents.

Docket No.  
CAA-HQ-2014-8032

**ORDER**

Pursuant to sections 203, 205, and 213 of the Clean Air Act, 42 U.S.C. §§ 7522, 7524, 7547, 40 C.F.R. § 1068.101, and the Consolidated Rules at 40 C.F.R. §§ 22.17 and 22.27:

1. Complainant's Motion for a Default Order is hereby GRANTED.
2. Respondents 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., are ordered to pay, jointly and severally, a civil penalty in the amount of \$908,962 in the manner directed below.
3. Respondents Jonway Motorcycle (USA) Co., Ltd. and Shenke USA, Inc., are ordered to pay, jointly and severally, a civil penalty in the amount of \$349.620 in the manner directed below.
4. This Order constitutes an Initial Decision as provided in 40 C.F.R. §§ 22.17(c) and 22.27(a). This Initial Decision shall become a Final Order 30 days after its service upon the Complainant and Respondent unless a party appeals or moves to set aside this Initial Decision, and unless the Board elects to review this Initial Decision on its own initiative.
5. Within 30 days after this Order becomes final, Respondents shall pay the above-stated civil penalties as follows: use any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/makepayment>; identify each and every payment with "Docket No. CAA-HQ-2014-8032"; and, within 24 hours of payment, send proof of payment ("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 the EPA requirements, in the

amount due, and identified with “Docket No. CAA-HQ-2014-8032”) to both the EPA Office of Administrative Law Judges and the Complainant, as follows:

- a. The EPA Office of Administrative Law Judges: If by USPS (except Express Mail), send to:

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900R  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

If by any other carrier or hand-delivery, deliver to:

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., N.W.  
Washington, DC 20460

- b. Complainant: If by USPS (except Express Mail), send to:

Evan M. Belser  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Ave., N.W.  
Mailcode 2242A  
Washington, DC 20460

If by any other carrier or hand-delivery, deliver to:

Evan M. Belser  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building, Room 1142  
Washington, DC 20004

6. If Respondents fails to timely pay any portion of the penalty ordered, 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 Respondents' licenses or other privileges, or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

It is so ordered.

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DATE

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[Name]  
[Title]

## CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Motion for a Default Order *In the Matter of Jonway Motorcycle (USA) Co., et al.*, dated, March \_\_, 2014, was filed this day by hand delivery with the EPA Office of Administrative Law Judges at the address listed below:

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., N.W.  
Washington, DC 20460

I certify that I sent by United States Postal Service Certified Mail one copy of the foregoing Motion to each of the six Respondents at the following address on the date below:

Jonway Motorcycle (USA) Co., Ltd.  
Shenke USA, Inc.  
Attention: Xiaotong Qi  
c/o Nitro PowerSports, LLC  
1942 1-35 E. North,  
Carrollton, TX 75006

April 7, 2014

Date



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Evan M. Belser, Attorney Adviser  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance

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