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

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ENVIR. APPEALS BOARD

In the Matter of:

PEACE INDUSTRY GROUP (USA), INC.,
ZHEJIANG PEACE INDUSTRY AND
TRADE CO., LTD., CHONGQING
ASTRONAUTIC BASHAN MOTORCYCLE
MANUFACTURING CO., LTD., and BLUE
EAGLE MOTOR INC.,

Respondents.

Docket No.
CAA Appeal No. 16-01

OPENING BRIEF
OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Introduction

The United States Environmental Protection Agency (“EPA”) submits this brief (“Brief”) pursuant to the Environmental Appeals Board’s (“the Board’s”) May 12, 2016 Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule (“Order”), and in accordance with EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

The Complaint in this matter was filed by the EPA on June 27, 2014, pursuant to section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1). The Respondents were Zhejiang Peace Industry and Trade Co., Ltd. (“Zhejiang Peace”), Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd. (“Bashan”) (collectively, “Respondents”), Peace Industry Group (USA), Inc. (“Peace USA”), and Blue Eagle Motor Inc. (“Blue Eagle”). The Air Enforcement Division (“AED” or “Complainant”) alleged two counts of highway motorcycle certification violations pursuant to section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1) (Counts 1 and 2); three counts of recreational vehicle certification violations pursuant to 40 C.F.R. § 1068.101(a)(1) (Counts 3, 4, and 5); one count of recreational vehicle warranty violations pursuant to 40 C.F.R. § 1068.101(b)(6) (Count 6); and two counts of recordkeeping violations pursuant to 40 C.F.R. § 1068.101(a)(2) (Counts 7 and 8).

In its Rebuttal Prehearing Exchange, Complainant gave a detailed narrative description of the legal grounds for the proposed penalties. In that document, Complainant walked through the Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (Jan. 16, 2009) (“Policy”), *available at* <https://www.epa.gov/enforcement/policy->

vehicle-and-engine-certification-requirements (last visited June 9, 2016), justifying the penalty demands made on the Respondents.

In response to the Board's May 12, 2016 Order, AED here briefs the Board on two issues. First, AED details the calculations used in determining its proposed penalty. As detailed below, AED respectfully requests that the Board assess a penalty of \$959,594, which is a different, lower amount than the penalty assessed by the Default Order here on appeal. The difference is based on an error in AED's original calculation of economic benefit of Count 6. Second, AED details how it properly served the Complaint on Respondents in this case.

I. Civil Penalty Calculations¹

In its Order, the Board specifically requested a "detailed, count-by-count worksheet" to demonstrate that the penalty calculations performed by AED are consistent with the CAA and Policy. Order at 5. A printout of the worksheets that EPA used in its penalty calculations is included as Attachment A. However, AED believes that these worksheets fail to provide sufficient detail such that another party could recreate the penalty calculations. This is because the worksheets are generated by a Microsoft Excel spreadsheet that incorporates the formulas laid out in the Policy. This spreadsheet calculates the final civil penalty figures without requiring staff to do a long-form calculation for each case.

Although AED's penalty calculations could be recreated using the inputs displayed on the attached worksheets, this section intends to make that process more accessible to the Board and

¹ For a narrative description of the penalty calculations, see Complainant's Rebuttal Prehearing Exchange at 3-11.

to the public. As such, Part I walks step-by-step through the process of calculating proposed civil penalties under the Policy.²

A. Civil Penalty Assessed for Counts 1 and 2

Under the Policy, one must first calculate the preliminary deterrence amount when determining the civil penalties for a case. Then, one adjusts the gravity component to yield the initial penalty target figure. Lastly, one may adjust the initial penalty target figure to account for unique factors of a case.

1. Preliminary Deterrence Amount

Under the Policy, the preliminary deterrence amount is the sum of the economic benefit and gravity components.

a. Economic Benefit Component

AED calculated economic benefit using the Policy's rule of thumb because there was no case-specific information on economic benefit. Policy at 8-11. The rule of thumb assigns \$1 per unit of horsepower ("HP"), with a minimum of \$15 per vehicle. AED applied \$15 for each vehicle because the HP of the units in both Counts 1 and 2 are under 15 HP; however no economic benefit was applied to the vehicles that were remediated. The number of non-remediated vehicles in Count 1 is 7,333 (7,895 total vehicles minus 562 remediated vehicles). Count 2, with no remediated vehicles, consists of 2,812 vehicles. Thus, total non-remediated vehicles is 10,145 (7,333 + 2,812). The economic benefit for Counts 1 and 2 is therefore \$152,175 (\$15 per vehicle x 10,145 non-remediated vehicles).

b. Gravity Component

² Some minor discrepancies exist between the calculations in this brief and the attached worksheet due to variances created by rounding figures throughout the calculation process.

The Policy calls for several steps to calculate the gravity component.

i. Calculate base per-vehicle gravity, scaled for HP

Under the Policy, one calculates base per-vehicle gravity by multiplying the vehicle's HP by the corresponding dollars-per-HP figure in Table 1 from the Policy. Policy at 16. Table 1 designates \$80 per HP for engines with 1-10 units of HP. Below are AED's calculations for the base per-vehicle gravity.

Count 1: $3.20 \text{ HP} \times \$80 \text{ per HP} = \$256 \text{ base per-vehicle gravity}$
Count 2: $2.80 \text{ HP} \times \$80 \text{ per HP} = \$224 \text{ base per-vehicle gravity}$

ii. Adjust for egregiousness

AED determined that these violations qualify under the Policy's "major" egregiousness category, resulting in an adjustment multiplier of 6.5. *Id.* at 17, Table 2. Below are the calculations of the adjusted base per-vehicle gravity.

Count 1: $\$256 \text{ base per-vehicle gravity} \times \text{adjustment factor of } 6.5 = \$1,664$
Count 2: $\$224 \text{ base per-vehicle gravity} \times \text{adjustment factor of } 6.5 = \$1,456$

iii. Calculate the multiple vehicle gravity

Table 3 from the Policy gives the scaling factors for this calculation. *Id.* at 18. The factors decrease as the number of vehicles increases. AED's calculations are in the table below. In each row, AED multiplied the first three columns to reach the row total, and then summed the right column to reach the multiple vehicle gravity. AED grouped Counts 1 and 2 for purposes of scaling per the Policy. *Id.* at 18-20. AED applied the scaling factors first to vehicles with the highest adjusted base per-vehicle gravity (Count 1), then to vehicles with lower adjusted base per-vehicle gravity (Count 2). *Id.* AED added all row totals to yield the total multiple vehicle gravity for all violations in Counts 1 and 2: \$224,448.

Count	Adjusted per vehicle gravity	Number of Vehicles	Scaling Factor (as found in Table 3 of Policy)	Row total
1	\$1664	10	1	\$16,640
	\$1664	90	0.2	\$29,952
	\$1664	900	0.04	\$59,904
	\$1664	6895	0.008	\$91,786
2	\$1456	2105	0.008	\$24,519
	\$1456	707	0.0016	\$1,647

iv. Adjust gravity to reflect remediation

AED determined a 30% increase to reflect Respondents' failure to remediate. *See Id.* at 24. To calculate this, AED multiplied the average per-vehicle gravity by the number of vehicles not remediated, and that product by 30%. *See id.* AED calculated the average per-vehicle gravity for each Count separately. To do so, AED summed the row totals for that Count in the previous table and then divided that sum by the total number of vehicles for that Count. This yields an average gravity per unit of \$25.11 for Count 1 and \$9.31 for Count 2. Next, for each Count separately as illustrated below, AED multiplied the average per-vehicle gravity by the number of vehicles not remediated, then that product by 30%. The sum of the results, \$63,100, is the total added gravity for failure to remediate.

$$\begin{aligned}\text{Count 1: } & \$25.11 \times 7,333 \text{ non-remediated vehicles} \times 30\% = \$55,240 \\ \text{Count 2: } & \$9.305 \times 2,812 \text{ non-remediated vehicles} \times 30\% = \$7,850\end{aligned}$$

v. Adjust gravity to reflect business size

Although the Policy allows increasing the penalty to reflect business size, AED did not increase the penalty calculation based on this factor.

Thus, the total gravity component for Counts 1 and 2 is the sum of multiple vehicle gravity (\$224,448) and added gravity for failure to remediate (\$63,100): \$287,548.

The preliminary deterrence amount for Counts 1 and 2, as stated above, is the sum of economic benefit (\$152,175) and the gravity component (\$287,548), or \$439,723.

2. Initial Penalty Target Figure

Next, AED calculated the initial penalty target figure, which required adjusting the gravity component of the preliminary deterrence amount for three additional gravity factors: degree of willfulness and/or negligence; degree of cooperation/noncooperation; and history of noncompliance.

a. Degree of Willfulness and/or Negligence

AED increased the gravity component 20% to reflect Respondents' degree of willfulness. Twenty percent of the gravity component (\$287,548) is \$57,510.

b. Degree of Non-Cooperation

AED increased the gravity component 10% to reflect Respondents' degree of non-cooperation. Ten percent of the gravity component (\$287,548) is \$28,755.

c. History of Noncompliance

There was no adjustment for history of noncompliance.

Total gravity after adjustments = $\$287,548 + \$57,510 + \$28,755 = \$373,813$.

Summing the adjusted gravity component with the economic benefit yields the initial penalty target figure: $\$373,813 + \$152,175 = \$525,988$.

Thus, the total requested civil penalty, per the Policy, for Counts 1 and 2 is \$525,988.

B. Civil Penalty Assessed for Counts 3, 4, 5, and 6

1. Preliminary Deterrence Amount

Under the Policy, the preliminary deterrence amount is the sum of the economic benefit and gravity components.

a. Economic Benefit

AED calculated economic benefit using the Policy's rule of thumb because there was no case-specific information on economic benefit. Policy at 8-11. The rule of thumb assigns \$1 per unit of HP, with a minimum of \$15 per vehicle. AED applied \$15 for each vehicle because the HP of the units in Counts 3, 4, 5, and 6 are under 15 HP; however no economic benefit was applied to the vehicles that were remediated. The original penalty calculation for Counts 3, 4, 5, and 6 tallied the number of non-remediated vehicles as 17,626 (18,160 (total vehicles) minus 534 (remediated vehicles in Counts 4 and 5)). The economic benefit for Counts 3, 4, 5, and 6 was therefore calculated to be \$264,390 (\$15 per vehicle x 17,626 non-remediated vehicles).

The Policy discusses situations in which the rule of thumb method is intended to be applied, and situations where it may be inappropriate. *Id.* at 10-11. Included in examples of inappropriate uses for the rule of thumb are violations such as failure to honor emission control warranties. *Id.* That category encompasses Count 6, which alleges that one or more of Respondents Peace USA, Zhejiang Peace, and Bashan failed to meet their warranty obligations. Due to an error in AED's use of the spreadsheet used to generate the worksheet for Counts 2, 4, 5, and 6 (Attachment A at A-2), AED inadvertently included an economic benefit for Count 6 (\$88,620) that is based on the rule of thumb. The correct way would have been for AED to input all vehicles in the row for Count 6 as having been remediated, and this would have eliminated any economic benefit for Count 6; this is reflected in a corrected worksheet also in Attachment A, at page A-3. To better reflect the Policy, AED recalculated the economic benefit without the Count 6 violations by including the vehicles in Count 6 among those that have been remediated. This has the effect of yielding \$0 in economic benefit for Count 6. The recalculated economic

benefit for Counts 3, 4, 5, and 6 is therefore \$175,772,390 (\$15 per vehicle x 11,718 non-remediated vehicles).

This recalculation does not affect the gravity component calculations; the calculations of the total preliminary deterrence amount and the initial penalty target figure will be affected, and that is reflected below.

b. Gravity Component

The Policy calls for several steps to calculate the gravity component.

i. Calculate base per-vehicle gravity, scaled for HP

Under the Policy, one calculates base per-vehicle gravity by multiplying the vehicle's HP by the corresponding dollars-per-HP figure in Table 1 from the Policy. Policy at 16. Table 1 designates \$80 per HP for engines with 1-10 units of HP. Below are AED's calculations of the base per-vehicle gravity.

Counts 3, 4, 6: $6.30 \text{ HP} \times \$80 \text{ per HP} = \$504 \text{ base per vehicle gravity}$
Count 5: $7.00 \text{ HP} \times \$80 \text{ per HP} = \$560 \text{ base per vehicle gravity}$

ii. Adjust for egregiousness

AED determined that the violations in Counts 3, 4, and 5 qualify under the Policy's "major" egregiousness category, resulting in an adjustment multiplier of 6.5. *Id.* at 17, Table 2. AED determined that the violations in Count 6 qualify under the Policy's "moderate" egregiousness category, resulting in an adjustment multiplier of 3.25. *Id.* Below are the calculations of the adjusted base per-vehicle gravity.

Counts 3 and 4: $\$504 \text{ base per engine gravity} \times \text{adjustment factor of } 6.5 = \$3,276$
Count 6: $\$504 \text{ base per engine gravity} \times \text{adjustment factor of } 3.25 = \$1,638$
Count 5: $\$560 \text{ base per engine gravity} \times \text{adjustment factor of } 6.5 = \$3,640$

iii. Calculate the multiple vehicle gravity

Table 3 from the Policy gives the scaling factors for this calculation. *Id.* at 18. The factors decrease as the number of vehicles increases. AED's calculations are in the table below. In each row, AED multiplied the first three columns to reach the row total, and then summed the right column to reach the multiple vehicle gravity. AED grouped Counts 3, 4, 5, and 6 for purposes of scaling per the Policy. *Id.* at 18-20. AED applied the scaling factors first to vehicles with the highest adjusted base per-vehicle gravity (Count 5), then to vehicles with lower adjusted base per-vehicle gravity (Counts 3, 4, and 6). *Id.* AED added all row totals to yield the total multiple vehicle gravity for all violations in Counts 3, 4, 5 and 6: \$484,792.

Count	Adjusted per vehicle gravity	Number of Vehicles	Scaling Factor (as found in Table 3 of Policy)	Row total
5	\$3,640	10	1	\$36,400
5	\$3,640	90	0.2	\$65,520
5	\$3,640	122	0.04	\$17,763.20
3	\$3,276	778	0.04	\$101,949.12
3	\$3,276	5130	0.008	\$134,447.04
4	\$3,276	3870	0.008	\$101,424.96
4	\$3,276	2252	0.0016	\$11,804.08
6	\$1,638	5908	0.0016	\$15,483.69

iv. Adjust gravity to reflect remediation

AED determined a 30% increase to reflect Respondents' failure to remediate. To calculate this, AED multiplied the average per-vehicle gravity by the number of vehicles not remediated, and that product by 30%. AED calculated the average per-vehicle gravity for each Count separately. To do so, AED summed the row totals for that Count in the previous table and then divided that sum by the total number of vehicles for that count. This yields an average gravity per unit of \$40.01 for Count 3; \$18.495 for Count 4; \$539.11 for Count 5; and \$2.62 for Count 6.

Next, for each Count separately as illustrated below, AED multiplied the average per-vehicle gravity by the number of vehicles not remediated, then that product by 30%. The sum of the results, \$118,150, is the total added gravity for failure to remediate.

Count 3: $\$40.01 \times 5,908 \text{ non-remediated vehicles} \times 30\% = \$70,913.72$
Count 4: $\$18,495 \times 5,714 \text{ non-remediated vehicles} \times 30\% = \$31,704.13$
Count 5: $\$539.11 \times 96 \text{ non-remediated vehicles} \times 30\% = \$15,526.37$
Count 6: $\$2.62 \times 0 \text{ non-remediated vehicles} \times 30\% = \0.00

v. Adjust gravity to reflect business size

Although the Policy allows increasing the penalty to reflect business size, AED did not increase the penalty calculation based on this factor.

Thus, the total gravity component for Counts 3, 4, 5, and 6 is the sum of multiple vehicle gravity (\$484,792) and added gravity for failure to remediate (\$118,150): \$602,942.

The preliminary deterrence amount originally calculated is the sum of economic benefit (\$264,390) and total gravity (\$602,942), or \$867,332. The corrected preliminary deterrence amount is \$778,712 (\$175,770 (economic benefit) and \$602,942 (total gravity)).

2. Initial Penalty Target Figure

Next, AED calculated the initial penalty target figure, which required adjusting the gravity component of the preliminary deterrence amount for three additional gravity factors: degree of willfulness and/or negligence; degree of cooperation/noncooperation; and history of noncompliance.

a. Degree of Willfulness and/or Negligence

AED increased the gravity component 20% to reflect Respondents' degree of willfulness. Twenty percent of the gravity component (\$602,942) is \$120,588.

b. Degree of Non-Cooperation

AED increased the gravity 10% to reflect Respondents' degree of non-cooperation. Ten percent of the gravity component (\$602,942) is \$60,294.

c. History of Noncompliance

There was no adjustment for history of noncompliance.

Total gravity after adjustments = \$602,942 + \$120,588 + \$60,294 = \$783,824.

Summing the adjusted gravity component with the economic benefit yields the initial penalty target figure: \$783,824 + \$175,770 = \$959,594.³

Thus, the total requested civil penalty for Counts 3, 4, 5, and 6 is \$959,594.

The original requested assessment of a civil penalty for Counts 3, 4, 5, and 6, which used the previously calculated economic benefit figure incorporating the Count 6 vehicles, was \$1,048,215. AED hereby respectfully asks the Board to assess a modified civil penalty reflecting the recalculated and lower economic benefit figure calculated in Part I.B.1.a. above. AED requests assessment of a civil penalty of \$959,594 for Counts 3, 4, 5, and 6. If granted, the new total civil penalty assessment would amount to \$1,485,582, calculated by summing the original initial penalty target figure of \$525,988 for Counts 1 and 2 and the recalculated initial penalty target figure of \$959,594 for Counts 3, 4, 5, and 6.

II. The EPA Properly Served Respondents with the Complaint

The Board asked for additional briefing to aid in determining if Complainant had properly served Respondents with the Complaint. As explained below, under the Consolidated Rules and according to caselaw, Complainant did properly serve Respondents.

³ The previously calculated initial penalty target figure reflected the previous economic benefit calculation, and amounted to \$1,048,215.

A. Service of complaints under the Consolidated Rules

The Consolidated Rules state the requirements for serving complaints at 40 C.F.R. § 22.5(b)(1). The provisions that concern service on corporations are section 22.5(b)(1)(i) and (ii)(A), quoted here:

40 C.F.R. § 22.5(b)(1) Service of complaint.

- (i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. 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.*
- (ii) (A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, 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.*

The plain meaning of this section is that service of the complaint by mail on corporations is proper under the Consolidated Rules—that is, complainant satisfies each of four distinct applicable provisions of (and therefore the entirety of) section 22.5(b)(1)—if:

- (1) complainant makes service with a **proper method** (in satisfaction of the provision:
“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.”);
- (2) complainant uses the **proper materials** (in satisfaction of the provision:
“Complainant shall serve . . . a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice.”);
- (3) complainant uses a **proper addressee** (in satisfaction of section 22.5(b)(1)(ii)(A));
and

(4) a **proper recipient** receives and signs for the materials (in satisfaction of the provision: “*on respondent, or a representative authorized to receive service on respondent’s behalf*”).

These separate provisions are not redundant. The plain meaning of these separate provisions is that the addressee need not personally sign for the service materials. Rather, that person’s representative may receive and sign on that person’s behalf.

Once a complainant has served the complaint in satisfaction of the Consolidated Rules, section 22.5(b)(1)(iii) requires complainant to file proof of service. This provision does not set any additional requirements for serving complaints under the Consolidated Rules.

1. Complainants must use a proper *method of service*.

Section 22.5(b)(1)(i) requires complainant to serve the complaint by one of three methods: “personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.” Here, Complainant chose to serve the Complaint by United States Postal Service (“USPS”). When a complainant chooses this method of delivery service, it is “obligated to follow the procedural rules for that type of service.” *In the Matter of Lester Sykes*, Docket No.TSCA-05-2008-0013, at 3–4 (ALJ July 30, 2013) (“[T]he standard for service of a complaint by reliable commercial delivery service . . . is the same as that of certified mail—the signature of the intended recipient or its authorized representative is required for proper service.”).

The language “certified mail with return receipt requested” is one method of service that is comprised of two distinct USPS services. *Id.* at 5 (complainant “must use *both* the certified mail *and* return receipt requested services available from the U.S. Postal Service for this *method of service to be proper*” (emphasis added)); 64 Fed. Reg. 40138 (July 23, 2009) (changing “by

certified mail, return receipt requested” in section 22.5(b)(1)(i) to “by certified mail with return receipt requested” to clarify that the language “refers to one method of service”).

The Mailing Standards of the United States Postal Service, Domestic Mail Manual, *available at* http://pe.usps.com/text/dmm300/dmm300_landing.htm (last visited June 10, 2016) (“USPS DMM”), specifies what these services do—and do not—entail. “Certified Mail provides the sender with a mailing receipt and, upon request, electronic verification that an article was delivered or that a delivery attempt was made. . . . USPS maintains a record of delivery (which includes the recipient’s signature).” USPS DMM § 503.3.1.1. Next, “A return receipt . . . provides a mailer with evidence of delivery (to whom the mail was delivered and date of delivery), and information about the recipient’s actual delivery address.” USPS DMM § 503.6.1.1.

These definitions show that when tasked to deliver an article “certified mail with return receipt requested,” USPS delivers the article and provides the sender with evidence of delivery including who signed for the package, and when and where they signed. USPS does not need the signature of the addressee. USPS satisfies “certified mail return receipt requested” by delivering the package to, and obtaining the signature of, any agent of the addressee. “Unless otherwise directed, an addressee’s mail may be delivered to an employee . . . or to any person authorized to *represent* the addressee.” USPS DMM § 508.1.4 (entitled “Delivery to Addressee’s Agent”) (emphasis added).

The term “certified mail with return receipt requested” does not include a separate USPS service: Restricted delivery. Section 22.5(b)(1)(i) allows for service by USPS, provided Complainant uses “certified mail” and “return receipt requested,” but does not require “restricted delivery.”

2. Complainants must use proper service materials.

Section 22.5(b)(1)(i) requires that complainant serve “a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice.”

3. Complainants must state a proper addressee for service by mail on Respondents.

Where respondent is a corporation and complainant uses certified mail with return receipt requested, section 22.5(b)(1)(ii) requires that complainant address the service materials to any person identified by section 22.5(b)(1)(ii) (“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”). Courts distinctly analyze whether the addressee is a person identified by section 22.5(b)(1)(ii), especially where another person signs on behalf of the addressee. *See, e.g., In the Matter of Katzson Bros., Inc.*, 2 E.A.D. 134, 136 (EAB 1986) (“[S]ervice was in fact *properly addressed* to Petitioner’s registered agent, Seymour Katzson, and was *received* from the corporation’s point of view, by the employee” (emphasis added)), *reversed on other grounds, Katzson Bros., Inc. v EPA*, 839 F.2d 1396 (10th Cir. 1988); *In the Matter of Herman Roberts*, 2000 EPA RJO LEXIS 211, at **6-7 (ALJ Apr. 14, 2000) (finding service proper, in part, because service materials were properly addressed); *In the Matter of C.W. Smith, et al.*, 2002 EPA ALJ LEXIS 7, at **14, 17–18 (ALJ Feb. 6, 2002) (same).

The structure of section 22.5(b)(1) shows distinct purposes for subsection (i) and subsection (ii). Subsection (i) explains *how* to serve through detailing the method to serve, what to serve, and who can receive the service materials. Subsection (ii), however, explains *who* to serve. Subsection (ii) states a requirement for a proper addressee, distinguishing it from the requirement for a proper recipient found in subsection (i). Reading this section this way is

important, as it gives meaning to every clause of this rule and does not render phrases duplicative or surplusage.

An examination of caselaw further supports this reading. “By providing that the complaint be addressed to the Respondent (or, in the case of a corporation, an officer, agent, etc.) the Consolidated Rules ensure that the representative who actually receives the mail will know to whom it should be delivered.” *In the Matter of A.B.E.F. Dev. Corp. and Herminio Cotto Constr., Inc.*, Docket No. CWA-02-2010-3465, at 18 (ALJ Feb. 15, 2012); *see also In the Matter of Medzam, Ltd.*, 4 E.A.D. 87, 94 (EAB 1992) (stating that “a threshold question, then, is how the envelope was addressed” and holding service was defective because “the Complaint was mailed addressed only to ‘Medzam, Ltd.’ without further addressing it to one of the persons specified in § 22.05(b)(1)(ii)”)”; *In the Matter of Geason Enterprises et al.*, 2014 EPA ALJ LEXIS 1, at *5 (ALJ Jan. 13, 2013) (denying motion for default, in part, because complainant had not established “that the person to whom the Complaint was *mailed* is” a person identified by section 22.5(b)(1)(ii)(A)); *cf. In the Matter of City of Orlando, Florida*, 1999 EPA ALJ LEXIS 38, at **3–7 (ALJ July 7, 1999) (reasoning that subsequent actual notice to a proper addressee cured complainant’s failure to properly address the service materials).

In summary, the third requirement for service of complaints, in cases of service by mail on corporations, is for the service materials to bear a proper addressee.

4. A proper recipient of service by mail on corporations is a proper addressee or a representative of any such person.

Where complainant employs certified mail with return receipt requested, section 22.5(b)(1)(i) requires that complainants (through USPS) deliver the service materials “on respondent, or a representative authorized to receive service on respondent’s behalf.”

a. Proper addressees are proper recipients.

One of two ways to satisfy this requirement is for USPS to deliver directly to, and get the signature of, any person identified by section 22.5(b)(1)(ii). In other words, a proper addressee is always a proper recipient. Service in these cases is tantamount to personal service. *See, e.g., In re: Pyramid Chemical Co.*, 11 E.A.D. 657, 662–63 (EAB 2004) (finding service proper where CEO signed certified mail receipt).

b. Representatives are proper recipients.

The second way to satisfy the requirement to serve the service materials “on respondent, or a representative authorized to receive service on respondent’s behalf,” is by delivering service materials directly to “a representative authorized to receive service on” that addressee’s behalf. Abundant cases demonstrate that the return receipt need not bear the addressee’s signature. *See, e.g., A.B.E.F.*, at 20 (“Although Herminio Cotto did not sign for the Complaint, the Complaint was properly addressed to him”); *In the Matter of Jonway Motorcycle (USA), Ltd.*, CAA Appeal No. 14-03, at 8 (“Mr. Qi’s signature on the return receipt, rather than Ms. Yang’s, was not a necessary prerequisite to a finding of valid service on a corporation”).

“The term ‘representative’ as used in section 22.5(b)(1) of the Consolidated Rules, as cited above, is to be construed broadly and with flexibility, and is not limited to an officer, partner, agent or comparable relationship when serving a corporation.” *A.B.E.F.*, at 14. In reviewing a decision from the Board, the United States Court of Appeals for the Tenth Circuit held: “[The] Consolidated Rules do not require direct personal service. . . . Service to a ‘representative’ encompasses a personal secretary . . . who regularly receives and signs for certified mail. . . . If ‘representative’ was intended to be read narrowly to include only officers,

partners, and agents, it would have been [so] qualified.” *Katzson*, 839 F.2d at 1399.⁴ In the decision that was the subject of the appeal in *Katzson*, the Board stated:

EPA is not accountable for Respondent’s internal policies which allowed employees . . . to sign receipts for mail properly addressed to the Respondent’s registered agent. . . . Notions of fundamental fairness do not impose a duty on EPA to look behind the corporation’s doors to ensure that its chosen methods for mail distribution guarantee receipt by the individual addressee. A corporation, and its registered agent, on the other hand, have a duty to ensure that properly addressed certified mail is correctly processed.

Katzson, 2 E.A.D. at 136, *reversed on other grounds*, *Katzson*, 839 F.2d 1396. This is consistent with how USPS uses the same term: “Unless otherwise directed, an addressee’s mail may be delivered to an employee . . . or to any person authorized to *represent* the addressee.” USPS DMM § 508.1.4 (entitled “Delivery to Addressee’s Agent”).

Where a person receives and signs for the service materials, the question is whether that person “has some representative relationship to the Respondent.” *In the Matter of Cheerful Cesspool Serv.*, 2011 EPA RJO LEXIS 389 (RJO Nov. 15, 2011) (stating that the complaint was not properly served because there was *no recipient at all* in light of the fact that the commercial delivery service simply left the service materials on the doorstep). This relationship is often established by facts indicating that person is an employee or business associate. “We think the proper focus of our inquiry in determining the effectiveness of service under § 22.05(b) is

⁴Although a prior version of the Consolidated Rules was in effect when *Katzson* was decided, “the minor differences between the current Rules and the former do not indicate any significant changes.” *C.W. Smith*, 2002 EPA ALJ LEXIS at **16–17; *see also*, *A.B.E.F.*, at 15 (same); 64 Fed. Reg. 40138 (July 23, 2009) (establishing current version of section 22.5(b)(1), and explaining: “The CROP has not been substantially revised since 1980. This Rule will remove inconsistencies, fill in gaps in the CROP by codifying accepted procedures, and make the CROP more clear and easily understood. Most of these changes will not produce any procedural or substantive difference in the Agency’s administrative enforcement actions.”). A diligent search by Complainant revealed no other relevant rulemaking materials.

therefore on whether the Complaint was properly addressed and mailed and whether the return receipt was signed by an employee of the Respondent, rather than on the authority of the employee who signed the receipt on behalf of the Respondent.” *Medzam*, 4 E.A.D. at 93; see also *City of Orlando*, 1999 EPA ALJ LEXIS at *n.4 (persons identified by section 22.5(b)(1)(ii) “of necessity operate through assistants and the clerical act of signing a return receipt would commonly, if not universally, be delegated to subordinate employees”).

In the case of *Herman Roberts*, “service of the Complaint [was] achieved in accordance with 40 C.F.R. § 22.5(b)(1)(i)” where the recipient was not the addressee but rather “someone associated with Respondent’s business [who] had to go to the post office and sign for the envelope containing the complaint.” *Herman Roberts*, 2000 EPA RJO LEXIS 211, **6-7. The recipient in that case was a representative of the addressee because “this person had the authority to collect mail for the Respondent.” *Id.* Relying on no other information about this person than the fact that they received USPS mail for the respondent, the *Herman Roberts* court reasoned that this representative “would be responsible for ensuring that all mail addressed to the Respondent would actually be delivered to the Respondent.” *Id.*

Herman Roberts employed the same reasoning as the Tenth Circuit in *Katzson*. In that case, the court interpreted similarly the term “representative,” and held that “[a]ny other interpretation would severely hinder service of process on corporations by certified mail, since the postal service employee would have to wait on the corporation’s premises until the officer, partner, or agent could sign for the return receipt.” *Katzson*, 839 F.2d at 1399.

This reasoning seems to underlie the Board’s recent decision to affirm a default order for failure to answer. *In re: Ross Transport Co., Inc. & Arnold Steinman*, 2014 EPA App. LEXIS 16 (EAB Apr. 10, 2014). In *Ross*, complainant served Ross Transport Co., Inc. by United Parcel

Service next day delivery, signature required. *In re: Ross Transport Co., Inc. & Arnold Steinman*, Docket No. RCRA-03-2010-0268, RCRA (9006) Appeal No. 14-01, at 6 (March 11, 2014) (Supplemental Brief). The signature was illegible, and the recipient was otherwise not identified. *Id.* at 9, Exhibit 2. Despite this, the service materials were “delivered to Respondent’s business and signed by a person staffing the office at the time the UPS delivery was made.” *Id.* Under these circumstances, the Board held that complainant satisfied section 22.5(b)(1).⁵

In *Jomway*, the Board determined that service was proper when the complaint was served on someone other than the designated agent. The recipient, Tina Yang, was someone whom “the record does not identify [a] title or position. . . . or whether she has any position with or relationship to any of the Respondents.” *Jomway*, Appeal No. 1403 at n. 12. The service materials were mailed to two addresses: one, the address listed for service with the state, and the other a place that the EPA knew respondent conducted business. The complaint package was not accepted at the first location, but Ms. Yang signed for the package delivered to the second location. *Id.* at 7. Signature of the designated agent on the return receipt was “not a necessary prerequisite to a finding of valid service.” *Id.* at 8. Thus, service was proper and the Board accepted the certified mail receipt signed by Ms. Yang as a “properly executed receipt” as required by section 22.5(b)(1)(iii), considering too that the respondent had acknowledged receipt. *Id.* at 8.

c. Actual notice to addressee shows that recipient was a representative of that addressee.

Even where the recipient’s relationship to the addressee is unknown, that person is a “representative” under section 22.5(b)(1)(i) if the addressee timely gets *actual notice*. Such

⁵ While complainant’s argument in *Ross* was made, in part, on state law, the Board nonetheless held that the facts satisfied the Consolidated Rules.

actual notice confirms that the recipient knew “to whom it should be delivered.” *Katzson*, 839 F.2d at 1399; *A.B.E.F.*, at 16. The existence of subsequent actual notice by the addressee is an appropriate consideration to assess compliance with section 22.5(b)(1). Indeed, the question of whether the recipient is a proper recipient may be appropriately determined by considering the totality of the circumstances. *See, e.g., A.B.E.F.*, at 19 (finding the recipient to be proper based on fact that he had previously met with complainant). For example, any kind of *response* from the addressee demonstrates actual notice, and establishes that the recipient of the service materials was a “representative.”

In one case where default was ordered for failure to answer, the return receipt was “illegible and the recipient, if any, cannot be identified,” but there was actual notice as demonstrated by a response (although not an answer) to the complaint. *In the Matter of Pan Am Growers Supply, Inc.*, 2010 EPA ALJ LEXIS 26, at *n.2 (ALJ Nov. 30, 2010).

In *Jonway*, someone other than the agent signed, and although the record did not reflect any position or title for recipient, her signature of the certified mail receipt, coupled with the designated agent’s acknowledgement to the EPA that he had received the complaint, constituted a “properly executed receipt” sufficient to meet the requirements of section 22.5(b)(1)(ii). *Jonway*, Appeal No. 14-03 at 7-8.

Next, in the case of *C.W. Smith*, USPS delivered the complaint to someone who was not a respondent, an employee of either respondent, nor otherwise authorized to receive process. *C.W. Smith*, 2002 EPA ALJ LEXIS at *20. The recipient was not even at the intended address for the delivery, but at a separate location down the road. *Id.* Regardless, the recipient timely provided the complaint to the respondents and thereby provided actual notice. *Id.* Under these circumstances, the court found that service of process was achieved. *Id.* at **14–16.

The foregoing caselaw confirms the plain meaning of section 22.5(b)(1): Service is proper if a person identified by section 22.5(b)(1)(ii), *or that person's representative*, receives and signs for the service materials. Someone is a representative if they routinely sign for certified mail, are an employee or business associate, or the facts—including timely actual notice—show that the person knew to whom the service materials should be delivered. This is the fourth and final requirement for service of a complaint by mail on corporations.

Service of a complaint by mail on a corporation satisfies the Consolidated Rules where each of four applicable—and distinct—provisions of section 22.5(b)(1) are satisfied. These provisions require proper method, proper service materials, proper addressee, and proper recipient.

B. Complainant satisfied each of the four distinct, applicable provisions of section 22.5(b)(1), and therefore served the Complaint in satisfaction of the Consolidated Rules.

a. Certified mail with return receipt requested was a proper method of service.

Complainant satisfied the requirement for proper method of service in section 22.5(b)(1), including the requirement that “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.”

The signed return receipt evidences that Complainant used both “certified mail” and “return receipt requested” services from USPS. See Complainant’s Proof of Service, filed July 10, 2014. Where a complainant chooses to serve the complaint by USPS or other courier, it is “obligated to follow the procedural rules for that type of service.” *Lester Sykes*, at 3-4. There is nothing in the record to indicate that the method used by Complainant to serve the Complaint

deviated in any way from the definitions for these USPS services. USPS DMM §§ 503.3.1.1, 503.6.1.1. Complainant here used the correct USPS services, and no errors occurred in executing this particular method of service. Therefore, Complainant used the proper method to serve the Complaint in compliance with section 22.5(b)(1)'s requirements.

b. Complainant used proper service materials

Complainant satisfied the requirement for proper service materials in section 22.5(b)(1), which requires that complainant use "a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice." The Certificate of Service filed with the Complaint certifies that the EPA attorney who filed the Complaint sent to the Respondents, "by United States Postal Service Certified Mail, one copy of the foregoing Complaint and one copy of the Consolidated Rules of Practice." Complaint at 22. Complainant therefore used proper service materials to serve the Complaint.

c. Quiping Wang⁶ was a proper addressee for service on each Respondent.

Complainant satisfied the requirement for a proper addressee in section 22.5(b)(1), namely the requirement that, "Where respondent is a domestic or foreign corporation, . . . complainant shall serve an officer, partner, managing or general agent, or any other person authorized by appointment or Federal or State law to receive service of process." This requirement was satisfied by Complainant addressing the service materials to Quiping Wang, who was the authorized agent for Bashan and Zhejiang Peace. *See* Appendix to Complainant's Motion for Default Order, at App. 1-2.

⁶ Mr. Quiping Wang sometimes goes by Byron Wang, or Quiping "Byron" Wang. For clarity, he is referred to only as Quiping Wang or Mr. Wang in this brief.

The Certificate of Service included with the Complaint shows that Complainant sent to Peace Industry Group (USA), Inc., Attention Quiping Wang, one copy each of the service materials for Respondents Peace USA, Zhejiang Peace, and Bashan. Mr. Wang is a proper addressee for service materials because he has been authorized to act as a representative and agent for Zhejiang Peace and Bashan. See Appendix to Complainant's Motion for Default Order, at App. 1–2.

With respect to the requirement for a proper addressee, the case at hand is analogous to many previous cases involving service by mail to a respondent of the type identified by section 22.5(b)(1)(ii)(A). *E.g.*, *Herman Roberts*, 2000 EPA RJO LEXIS at **6-7; *C.W. Smith*, 2002 EPA ALJ LEXIS at **17–19; *A.B.E.F.*, at 14; . There are no problems here as seen in *City of Orlando*, 1999 EPA ALJ LEXIS, at *3 (where complainant used an improper addressee), *Geason*, 2014 EPA ALJ LEXIS at *3 (where complainant neither attested nor showed that the addressee was someone identified by section 22.5(b)(1)(ii)(A)), or *Medzam*, 4 E.A.D. at 94 (complainant addressed service materials to the company but not to the attention of any individual person). In summary, Quiping Wang is “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,” so Complainant satisfied this provision of the rule by addressing the service materials to him.

d. Amy Tang was a proper recipient of service materials.

Complainant satisfied the requirement for a proper recipient in section 22.5(b)(1)(i), namely the requirement that complainant shall serve the service materials “on respondent, or a representative authorized to receive service on respondent’s behalf.”

Mr. Wang did not sign the return receipt. While he would have been a proper recipient, so was any “representative authorized to receive service on” his behalf. Amy Tang was such a “representative,” and she received and signed for the service materials.

The certified mail return receipt shows that Ms. Tang signed for the service materials at the intended address, 2649 Mountain Industrial Blvd., Tucker, GA 30084. If Ms. Tang had signed at another address, USPS rules mandate that the return receipt would have indicated thus. USPS DMM § 503.6.1.1 (stating that return receipts provide, in part, “information about the recipient’s actual delivery address”).

As detailed above, “The term ‘representative’ as used in section 22.5(b)(1) of the Consolidated Rules, as cited above, is to be construed broadly and with flexibility, and is not limited to an officer, partner, agent or comparable relationship when serving a corporation.” *A.B.E.F.*, at 14. As was the case with the “office assistant” who was held to be a proper recipient in *City of Orlando*, 1999 EPA ALJ LEXIS 38 at *n.4, Ms. Tang plainly demonstrates that she too assists with an office function—receiving and signing for mail. Respondents’ Initial Prehearing Exchange includes Ms. Tang on a list of potential witnesses to be called at hearing, and identifies her as a “former in house book keeper, accountant [sic],” who is “familiar with the books and records and book keeping policy and procedures for the Respondent.” Resp. Prehearing Exchange ¶ A.7. Like the “someone associated with Respondent’s business [who] had to go to the post office and sign for the envelope containing the complaint” in *Herman*

Roberts, 2000 EPA RJO LEXIS at **6-7, Ms. Tang was on site at Peace USA and evidently signed for mail addressed to Mr. Wang. She is a “representative” because she has “the authority to collect mail for the Respondent.” *Id.* “Any other interpretation would severely hinder service of process on corporations by certified mail, since the postal service employee would have to wait on the corporation’s premises until the officer, partner, or agent could sign for the return receipt.” *Katzson*, 839 F.2d at 1399.

Although the “representative relationship to the Respondent,” *Cheerful Cesspool Serv.*, 2011 EPA RJO LEXIS at 3, is not as well documented as other cases like *A.B.E.F.*, at 19-20 (recipient, while not identified by section 22.5(b)(1)(ii), was an employee who represented the respondent to the EPA), the above-cited facts adequately establish that Ms. Tang is a representative. Unlike in *Cheerful Cesspool*, a courier did not simply leave the service materials on the doorstep; rather, USPS arrived at the intended address, was met by someone with apparent authority, and that person accepted the package.

Ms. Tang’s status of an authorized representative is further supported by Quiping Wang’s receipt of actual notice of service of the Complaint. Zhejiang Peace and Bashan filed Answers to the Complaint on July 30, 2014. Mr. Wang later participated in ADR, beginning August 27, 2014, and ending in November 2014. Mr. Wang’s receipt of actual notice of service demonstrates that Ms. Tang was an authorized representative for the receipt of mail. *See Jomway*, Appeal No. 14-03 at 7-8 (service was valid where the certified mail receipt was signed by someone other than the addressee, and respondent acknowledged actual receipt of the complaint).

In summary, Amy Tang was “a representative authorized to receive service” on behalf of Quiping Wang. The first sentence of section 22.5(b)(1)(i) was therefore satisfied when she received and signed for the Complaint in this matter.

c. Quiping Wang received actual notice of service.

Quiping Wang received actual notice of service of the Complaint, as evidenced by his response to the Complaint and participation in Alternative Dispute Resolution (“ADR”). As noted above, Answers to Administrative Complaint were filed on behalf of Zhejiang Peace and Bashan on July 30, 2014. Further, Quiping Wang participated in ADR beginning August 27, 2014 and ending in November, 2014. The filing of Answers on behalf of Zhejiang Peace and Bashan, and Mr. Wang’s participation in ADR, demonstrate that Mr. Wang received actual notice of service of the Complaint.

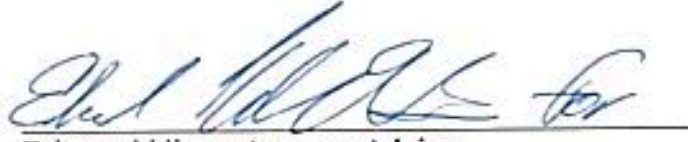
Conclusion

For these reasons, Complainant requests the Board assess a civil penalty of \$525,988 against Zhejiang Peace and Bashan jointly and severally for the violations identified in Counts 1 and 2, and \$959,594 against Zhejiang Peace individually for the violations identified in Counts 3, 4, 5, and 6, for a total assessed penalty of \$1,485,582. Complainant further requests the Board find that Complainant properly served the Complaint on Respondents in this case.

Respectfully Submitted,

6-16-2016

Date



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CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Opening Brief of the United States Environmental Protection Agency ("Brief") *In the Matter of Peace Industry Group (USA), Inc., et al.*, CAA-Appeal No. 16-01 was filed this day by hand delivery with the Environmental Appeals Board at the address listed below:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Room 3334
Washington, D.C. 20004

I certify that I sent, by United States Postal Service Certified Mail with return receipt requested, one copy of the foregoing Brief *In the Matter of Peace Industry Group (USA), Inc., et al.*, CAA-Appeal No. 16-01 to each of the following Respondents at the address below on the date below: Peace Industry Group (USA), Inc. and Blue Eagle Motor Inc.

G. Michael Smith
W. Anthony Collins, Jr.
Smith, Collins & Fletcher, P.A.
8565 Dunwoody Place, Building 15, Suite B
Atlanta, Georgia 30350

I certify that I sent, by United States Postal Service Certified Mail with return receipt requested, one copy of the foregoing Brief to each of the following Respondents at the address below on the date below: Zhejiang Peace Industry and Trade Co., Ltd. and Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd.

Quiping Wang
2649 Mountain Industrial Blvd.
Tucker, GA 30084

6-16-2016

Date



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Attachment A to the Opening Brief of the EPA
In re: Peace Industry Group (USA) Inc., et al., CAA Appeal No. 16-01
Civil Penalty Worksheet: Counts 1 and 2

Vehicle/Engine Violation Penalty Calculation (Rev 2.7 5-23-09)										
Name of Case:		Analysis Performed:								
Peace Industry et al counts 1, 2		6/16/16 8:09 AM								
Business Size (See penalty policy for ranges and values to add here)										
Willfulness / Negligence Adjustment (up to +, 20%)		20%								
Cooperation / Noncooperation Adjustment (up to +, 10%)		10%								
History of Noncompliance Adjustment (1 prior, up to + 25%; > 1, up to + 70%)										
Other Unique Factors Adjustment										
Violation Category	Violation Category Description	Nonroad Engines		Highway Vehicles - Number	Egregiousness	Number Remediated	Added Gravity for Failure to Correct (%)	Multiple V/E Gravity	Added Gravity for Failure to Correct	Net Economic Benefit
1	count 1: 9PCGC 050SAA	Number	7,895	3.20	3	562	30%	\$198,282	\$55,250	\$109,995
2	count 2: ABLEC 040PCE		2,812	2.80	3		30%	\$26,166	\$7,850	\$42,180
3								\$0	\$0	\$0
4								\$0	\$0	\$0
5								\$0	\$0	\$0
6								\$0	\$0	\$0
7								\$0	\$0	\$0
TOTAL			10,707			562		\$224,448	\$63,100	\$152,175
Total Number of Vehicles/Engines				10,707	0					
Gravity										
Multiple-Vehicles/Engine Gravity										
Additional Gravity for Failure to Remediate										
Additional Gravity for Larger Business Size										
Total Gravity										
Average Per-V/E Gravity										
Economic Benefit -- Total Net Economic Benefit										
Preliminary Deduction Amount										
Adjustments										
Willfulness/Negligence										
Cooperation/Noncooperation										
History of Noncompliance										
Other Unique Factors										
Initial Penalty Target Figure										

Attachment A to the Opening Brief of the EPA
In re: Peace Industry Group (USA) Inc., et al., CAA Appeal No. 16-01
Civil Penalty Worksheet: Counts 3, 4, 5, and 6: Original Calculation

Vehicle/Engine Violation Penalty Calculation (Rev 2.7 1-23-09)										
Name of Case:		Analysis Performed:								
Peace Industry et al counts 3, 4, 5, 6		6/16/16 8:05 AM								
Business Size (See penalty policy for ranges and values to add here)		20%								
Willfulness / Negligence Adjustment (up to +, 20%)		10%								
Cooperation / Noncooperation Adjustment (up to +, 10%)										
History of Noncompliance Adjustment (1 prior, up to + 25%; > 1, up to + 70%)										
Other Unique Factors Adjustment										
Violation Category	Violation Category Description	Nonroad Engines		Highway Vehicles - Number	Egregiousness	Number V/E Remediated	Added Gravity for Failure to Correct (%)	Multiple V/E Gravity	Added Gravity for Failure to Correct	Net Economic Benefit
		Number	HP							
1	count 3: 9BLEX0.11PCE	5,908	6.30		3	0	30%	\$236,396	\$70,919	\$88,620
2	count 4: ABLEX0.11PCE	6,122	6.30		3	408	30%	\$113,229	\$31,705	\$85,710
3	count 5: APCGX.150AAA	222	7.00		3	126	30%	\$119,683	\$15,526	\$1,440
4	Count 6 warranty	5,908	6.30		2	0		\$15,484	\$0	\$88,620
5								\$0	\$0	\$0
6								\$0	\$0	\$0
7								\$0	\$0	\$0
TOTAL		18,160				534		\$484,792	\$118,150	\$264,390
Total Number of Vehicles/Engines				18,160	0					
Gravity										
Multiple-Vehicle/Engine Gravity								\$484,792		
Additional Gravity for Failure to Remediate								\$118,150		
Additional Gravity for Larger Business Size								\$0		
Total Gravity								\$602,942		
Average Per-V/E Gravity								\$33.20		
Economic Benefit -- Total Net Economic Benefit								\$264,390		
Preliminary Deterrence Amount								\$667,332		
Adjustments										
Willfulness/Negligence									\$120,588	
Cooperation/Noncooperation									\$60,294	
History of Noncompliance									\$0	
Other Unique Factors									\$0	
Initial Penalty Target Figure									\$1,048,215	

Attachment A to the Opening Brief of the EPA
In re: Peace Industry Group (USA) Inc., et al., CAA Appeal No. 16-01
Civil Penalty Worksheet: Counts 3, 4, 5, and 6: Corrected Calculation

Vehicle/Engine Violation Penalty Calculation (Rev 2.7 1-23-09)										
Name of Case:		Analysis Performed:								
Peace Industry et al counts 3, 4, 5, 6		6/16/16 8:06 AM								
Business Size (See penalty policy for ranges and values to add here)										
Willfulness / Negligence Adjustment (up to +/- 20%)		20%								
Cooperation / Noncooperation Adjustment (up to +/- 10%)		10%								
History of Noncompliance Adjustment (1 prior: up to + 35%; > 1: up to + 70%)										
Other Unique Factors Adjustment										
Violation Category	Violation Category Description	Nonroad Engines		Highway Vehicles - Number	Egregiousness	Number Remediated	Added Gravity for Failure to Correct (%)	Multiple V/E Gravity	Added Gravity for Failure to Correct	Net Economic Benefit
		Number	HP							
1	count 3: 98LEX0.11PCE	5,908	6.30		3	0	30%	\$236,396	\$70,919	\$88,620
2	count 4: ABLEX0.11PCE	6,122	6.30		3	408	30%	\$113,229	\$31,705	\$85,710
3	count 5: APCGX.150AAA	222	7.00		3	126	30%	\$119,683	\$15,526	\$1,440
4	Count 6 warranty	5,908	6.30		2	5,908		\$15,484	\$0	\$0
5								\$0	\$0	\$0
6								\$0	\$0	\$0
7								\$0	\$0	\$0
TOTAL		18,160		0		6,442		\$484,792	\$118,150	\$175,770
Total Number of Vehicles/Engines										
Gravity										
Multiple-Vehicle/Engine Gravity										
Additional Gravity for Failure to Remediate										
Additional Gravity for Larger Business Size										
Total Gravity										
Average Per-V/E Gravity										
Economic Benefit -- Total Net Economic Benefit										
Preliminary Deterrence Amount										
Adjustments										
Willfulness/Negligence										
Cooperation/Noncooperation										
History of Noncompliance										
Other Unique Factors										
Initial Penalty Target Figure										
\$959,595										