UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Peace Industry Group (USA) Inc.,	)	**Docket No. CAA-HQ-2014-8119**
Zhejiang Peace Industry and Trade Co., Ltd.,	)	
Chongqing Astronautic Bashan Motorcycle	)	
Manufacturing Co., Ltd.,	)	
and Blue Eagle Motor Inc.,	)	**Dated: March 29, 2016**
	)	
Respondents.	)	

DEFAULT ORDER AND INITIAL DECISION
AS TO ZHEJIANG PEACE INDUSTRY AND TRADE CO., LTD., AND CHONGQING ASTRONAUTIC BASHAN MOTORCYCLE MANUFACTURING CO., LTD.

I. Procedural History

This proceeding was initiated on June 27, 2014, with the filing of a Complaint by the Director of the Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance ("Complainant") for the United States Environmental Protection Agency ("EPA") against Peace Industry Group (USA), Inc. ("Peace USA"), Zhejiang Peace Industry and Trade Co., Ltd. ("Zhejiang Peace"), Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd. ("Bashan"), and Blue Eagle Motor, Inc. ("Blue Eagle") (collectively, "Respondents"). The Complaint, filed under Section 205(c)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7524(c)(1), alleges that the Respondents manufactured and introduced into United States commerce highway motorcycles and recreational vehicles that do not comply with provisions of Title II of the CAA, 42 U.S.C. §§ 7521-7554 and regulations promulgated thereunder. More specifically, the Complaint charges various Respondents with five counts of importing or delivering for introduction into commerce motor vehicles with engines that were not covered by a certificate of conformity with EPA emission standards, and with one count of introducing into commerce vehicles without the required emissions-related warranty, and charges Peace USA with two counts of failure to keep required records.

On July 29, 2014, Peace USA and Blue Eagle through counsel filed a joint Answer to the Complaint, and Respondents Zhejiang Peace and Bashan each filed individual Answers to the

Complaint. All of the Respondents denied the substantive factual and legal allegations against them. The Answers of Respondents Zhejiang Peace and Bashan were signed in Chinese characters, without a printed name but only with the title "authorized representative" of the respective corporations. Upon inquiry from the Hearing Clerk of the Office of Administrative Law Judges, the person who transmitted the Answer, with the title of "Operations Controller" of Peace Industry Group, responded on July 29, 2014, by email that Qiuping Wang is the name of the authorized representative Zhejiang Peace and Bashan. Complainant provided copies of letters, each signed by an individual identified as "authorized officer" on letterhead of the respective Chinese corporations, Zhejiang Peace and Bashan, and dated September 29, 2014, certifying that "Qiuping Wand a/k/a Byron Wang is acting as the authorized representative and agent" for the respective corporations "in reference to the claims and allegations made by the EPA for violations of the U.S.A. Clean Air Act." Qiuping (Byron) Wang is the president of Peace USA and Blue Eagle.[1]

Thereafter, the parties entered into the Office of Administrative Law Judges' Alternative Dispute Resolution ("ADR") program. ADR did not result in a settlement, and was terminated on November 26, 2014, after which I was designated to preside over this proceeding.

On January 20, 2015, I issued a Prehearing Order directing the Complainant, and each Respondent either individually or jointly, to prepare and file prehearing exchanges of information. The parties were instructed to include in their respective prehearing exchanges, *inter alia,* the names of witnesses the party intends to call at the hearing and copies of all documents and exhibits intended to be introduced into evidence at the hearing. Complainant was ordered to file its prehearing exchange by February 27, 2015, and Respondents were ordered to file their prehearing exchange(s) no later than March 27, 2015.

Complainant timely filed its Initial Prehearing Exchange, with a Certificate of Service, showing that it was served on Zhejiang Peace and Bashan by U.S. Postal Service certified mail, return receipt requested, addressed to their representative, Qiuping Wang, at the address for Peace USA and Blue Eagle, 2649 Mountain Industrial Boulevard, Tucker, Georgia, 30084. G. Michael Smith, Esq., the attorney of record for Peace USA and Blue Eagle, filed an Initial Prehearing Exchange on behalf of those two Respondents on March 25, 2015,[2] and

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1 Respondents' Initial Prehearing Exchange ¶ 1 (Mar. 25, 2015); Complainant's Prehearing Exchange ¶ 19.

2 Respondent's Initial Prehearing Exchange contains the following paragraph:

> Confidential Business Information :
> Respondent shows it has no objection to the use of this corporate respondent's business and financial information being used in connection with any hearings before this Administrative Hearing, but request that it be sealed after the conclusion of the hearing and not be made generally available to the public at anytime.

Respondent's Initial Prehearing Exchange Supplemental Documents on April 9, 2015.[3] Complainant filed on April 10, 2015, a Rebuttal Prehearing Exchange, which included the penalty amounts that Complainant proposes to assess against the Respondents for the alleged violations. Specifically, Complainant proposes to assess a penalty in the amount of $525,988 for Counts 1 and 2, $1,048,215 for Counts 3 through 6, and $210,000 for Counts 7 and 8, for a total penalty of $1,784,203.

However, to date, Zhejiang Peace and Bashan have not submitted any prehearing exchange materials. On April 10, 2015, Complainant filed a Motion for a Default Order ("Motion") requesting that Zhejiang Peace and Bashan be held liable for the violations alleged against them in Counts 1 through 6 of the Complaint and, for these violations, that they be assessed jointly and severally the full proposed penalty for Counts 1 and 2, and that Zhejiang Peace be assessed the full proposed penalty for Counts 3 through 6. According to the Certificate of Service, the Motion was served on Zhejiang Peace and Bashan by first class mail sent to Mr. Qiuping Wang on April 10, 2015. The time for Zhejiang Peace and Bashan to respond to the Motion expired on April 30, 2015. *See* 40 C.F.R. §§ 22.7(c), 22.16(b). To date, no response to the Motion has been filed.

II. Standards for Default

The procedural rules governing this proceeding, 40 C.F.R. Part 22 ("Rules of Practice" or "Rules"), provide as follows regarding default:

Respondent's Initial Prehearing Exchange at 4. Based upon this request, the Office of Administrative Law Judges ("OALJ") has treated confidentially the proposed exhibits filed as part of Peace USA and Blue Eagle's prehearing exchange. However, they have failed to adhere to the proper procedures for protecting documents from public disclosure based upon a claim of business confidentiality. This failure may be construed as a waiver of such a claim. The procedures for asserting business confidentiality claims are described in a number of sources, including the regulations at 40 C.F.R. § 22.5(d) and the Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, which was referenced in the Order of Designation and Prehearing Order and is available on the OALJ website. Peace USA and Blue Eagle are hereby advised to resubmit any information for which a claim of business confidentiality is asserted in accordance with the aforementioned procedures no later than 30 days from the date of this Order. Failure to do so will result in the undersigned considering all business confidentiality claims waived.

[3] Throughout Respondent's Initial Prehearing Exchange, the term "Respondent" is used in singular form, and Mr. Smith identifies himself in closing as counsel only for Peace USA. However, in Respondent's Initial Prehearing Exchange Supplemental Documents, the term "Respondents" is used in plural form, with the exception of the title, and Mr. Smith identifies himself in closing as counsel for both Peace USA and Blue Eagle. Based upon the record as a whole, the undersigned construes Respondent's Initial Prehearing Exchange and Respondent's Initial Prehearing Exchange Supplemental Documents to be filed by both Peace USA and Blue Eagle.

> A party may be found to be in default: after motion, . . . upon failure to comply with the information exchange requirements of [40 C.F.R.] § 22.19(a) or an order of the Presiding Officer . . . . 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.

40 C.F.R. § 22.17(a). The Rules provide that a motion for default "may seek resolution of all or part of a proceeding." 40 C.F.R. § 22.17(b). The consequences of default are as follows:

> When the Presiding Officer finds that default has occurred, [she] 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 . . . . 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).

A finding of default requires a showing that the party against which default is sought has been properly served, including where the party had actual notice of the complaint. *Mid-Continent Wood Products, Inc. v. Harris,* 936 F.2d 297, 301 (7th Cir. 1991) (default judgment vacated where complaint not properly served; "actual knowledge of existence of a lawsuit is insufficient to confer personal jurisdiction over a defendant in the absence of valid service of process").

There is a strong preference in the law for cases to be resolved on their merits. *Fulton Fuel Co.,* CWA Appeal No. 10-03, 2010 EPA App. LEXIS 41, at *7 (EAB, Sept. 9, 2010). However, the Rules provide for default as an essential tool to prevent litigants from abusing the administrative litigation process. *Id.* at *8 (citing *JHNY, Inc.*, 12 E.A.D. 372, 385 (EAB 2005)). The administrative litigation process was "developed as a truncated alternative to Article III courts that intends expedition and does not allow for the kind of discovery available, for example, under the Federal Rules of Civil Procedure." *JHNY*, 12 E.A.D. at 382. In this context, the prehearing exchange is not "a procedural nicety" but rather "plays a pivotal function" by compelling the parties to identify and exchange all evidence to be used at hearing in a single submission. *Id.* The prehearing exchange thereby "clarifies the issues to be addressed at hearing and allows the parties and the court an opportunity for informed preparation for hearing." *Id.* Because the prehearing exchange plays a central role in making administrative litigation the swift and efficient proceeding it is intended to be, "failure to comply with an ALJ's order requiring exchange is one of the primary justifications for entry of default." *Id.* (citing 40 C.F.R. § 22.17(a)).

"[W]here a respondent fails to adhere to a procedural requirement, [the Environmental Appeals Board ("EAB")] has traditionally applied a 'totality of circumstances' test to determine whether a default order should be . . . entered . . . ." *JHNY*, 12 E.A.D. at 384. The EAB considers several factors under this test, including the alleged procedural omission, namely whether a procedural requirement was indeed violated, whether a particular procedural violation is proper grounds for a default order, and whether there was a valid excuse or justification for not complying with the procedural requirement. *Id.* The EAB has further considered a defaulting respondent's likelihood of success on the merits; however, it is that party's burden to demonstrate not just the possibility of a defense but "a strong probability that litigating the defense will produce a favorable outcome." *Id.* (quoting *Pyramid Chem. Co.,* 11 E.A.D. 657, 662, 669 (EAB 2004) (internal quotations omitted)). It is not necessary to find repeated failures to timely submit prehearing exchange information in order to issue a default order. *Id.* at 389-90. Indeed, the EAB has upheld a default order upon a respondent's mere tardiness in filing, and failure to attach copies of proposed exhibits to its prehearing exchange, where the respondent alleged that the documents had been provided to the complainant in earlier settlement discussions. *Id.* at 385-86, 393.

In administrative proceedings under the Rules, "Any party may appear in person or by . . . other representative" and such representative "must conform to the standards of conduct and ethics required of practitioners before the courts of the United States." 40 C.F.R. § 22.10. Accordingly, the EAB has rejected the contention that a party's lack of legal representation excuses its failure to comply with the Rules or with orders of the administrative law judge. *See, e.g.*, *Rybond, Inc.*, 6 E.A.D. 614, 626-627 (EAB 1996) ("A litigant who elects to appear *pro se* takes upon himself or herself the responsibility for complying with the procedural rules and may suffer adverse consequences in the event of noncompliance."); *House Analysis & Assocs.*, 4 E.A.D. 501, 505 (EAB 1993) ("The fact that [the individual respondent], who apparently is not a lawyer, chooses to represent himself and [the business entity respondent] does not excuse respondent from the responsibility of complying with the applicable rules of procedure.").

III. <u>Discussion and Conclusions as to Default</u>

The first question is whether Respondents Zhejiang Peace and Bashan were properly served. The Rules provide at 40 C.F.R. § 22.5(b)(1)(ii)(A), in pertinent part, regarding service of a complaint, "Where a respondent is a . . . foreign corporation, . . . complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment . . . to receive service of process." 40 C.F.R. § 22.5(b)(1)(ii)(A). Complainant filed on July 10, 2014, a Proof of Service of the Complaint. It includes two certified mail return receipts (Postal Service Form 3811), one addressed to Peace USA and marked "Attention: Qiuping Wang" and the other addressed to Blue Eagle and marked "Attention: Yuping Lu," with the same street address of 2649 Mountain Industrial Blvd., Tucker, GA 30084. The receipts were signed by "Amy Tang" but do not indicate whether she is an "agent" or "addressee," and do not establish that she is "an officer, partner, a managing or general agent, or any other person authorized by appointment . . . to receive service of process" for Zhejiang Peace and Bashan and therefore do not establish that they were properly served. 40 C.F.R. § 22.5(b)(1)(ii)(A). The United States

Postal Service Tracking documents included in the Proof of Service, indicating delivery of documents with tracking numbers, and city and zip code of delivery matching those on the return receipts, also do not establish proper service.

A respondent's filing of an answer to the complaint waives any defect in service. *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) ("A general appearance or responsive pleading by a defendant that fails to dispute personal jurisdiction will waive any defect in service or personal jurisdiction."). However, the Answers of Zhejiang Peace and Bashan appeared very similar to the Answers of the other Respondents, and were each signed in similar Chinese characters without any printed name or designation as an officer of the corporation, but instead with the title "authorized representative" of the respective corporations. This fact raises a question of whether the Answers were in fact filed or authorized to be filed by Respondents Zhejiang Peace and Bashan, and thus whether the defect in service should be deemed to be waived as to these Respondents. To address this question I examined the following documents. The letters dated September 29, 2014, identified the "authorized representative and agent" for the respective corporations as "Qiuping Wang a/k/a Byron Wang," and these letters bear a signature and printed name of "Dong lv" as the "authorized officer" of Zhejiang Peace, and bear a signature and printed name of "wenqian Wu" as the "authorized officer" of Bashan. Motion ¶ 14 & Appendices 1 & 2. Complainant's Prehearing Exchange includes copies of documents entitled "Contractual Agreement . . . for US Environmental Protection Agency." One identifies the parties to the agreement as Zhejiang Peace as Manufacturer and Peace USA as Distributor, signed by Bryon Wang as Vice President of Zhejiang Peace, and Qiuping Wang of Peace USA. The other identifies as the parties to the agreement Bashan as Manufacturer and Peace USA as Distributor, signed by Wu Wen Qian as Director of Bashan, and Qiuping Wang. The documents were submitted to EPA as part of applications for certificates of conformity for engine families involved in this case. Each document states,

> Manufacturer hereby appoints Distributor as its agent for service of process from the EPA . . . , and hereby certifies:
> A. This designation is in legal form required of the Manufacturer under the laws, corporate bylaws, or other requirements to make it binding on the Manufacturer at the place and time where it was made.
> B. The designation of Distributor as agency solely for the service of process shall remain in effect until it is withdrawn or replaced by the Manufacturer.

Complainant's Prehearing Exchange Exhibit ("CX") 2 ("Application for EPA Certificate of Conformity for Engine Family" 9PCGC.050SAA, submitted to EPA by Bashan on December 11, 2008, pp. 8-9); CX 98 ("Application for EPA Certificate of Conformity for Engine Family" 9PCGX.250AMA, submitted to EPA by Zhejiang Peace on December 11, 2008, pp. 8-9).
The Prehearing Order was served by electronic (email) and regular mail to Qiuping Wang and to the individual who electronically transmitted the Answers of Zhejiang Peace and Bashan. The Motion was served by first-class mail on Qiuping Wang. Collectively, these documents demonstrate that it is appropriate to deem the defect in service of the Complaint as waived, and

that Respondents Zhejiang Peace and Bashan were properly served with the Prehearing Order and the Motion.

The Prehearing Order included the following warning, in bold print, of the result of failure to comply with the Prehearing Order:

> **Each Respondent is hereby notified that if it fails to timely submit either a prehearing exchange as set forth herein, or a statement that it has chosen only to conduct cross-examination of the Complainant's witnesses, a default judgment may be issued against it. . . . <u>Active settlement negotiations or even a settlement in principle is NOT an excuse for failing to submit a timely prehearing exchange. Each party MUST comply with the filing deadlines UNLESS a fully executed CAFO is filed with the Regional Hearing Clerk OR the Administrative Law Judge has granted that party an extension of time to file.</u>**

Prehearing Order at 4.

Despite such clear warning of the potential consequences, Respondents Zhejiang Peace and Bashan did not comply with the prehearing exchange requirements set forth in 40 C.F.R. § 22.19(a) and in the Prehearing Order issued in this case. They have not communicated with the Office of Administrative Law Judges or filed any document to explain or remedy their omission.

When Respondents Zhejiang Peace and Bashan failed to submit a prehearing exchange, they failed to participate in a central aspect of the administrative litigation process. Their inability or refusal to comply with the Prehearing Order in this regard is a violation of basic procedural requirements. By not submitting their Prehearing Exchange, Respondents Zhejiang Peace and Bashan have unnecessarily prolonged this proceeding beyond the deadline set forth in the Prehearing Order. The delay frustrates the streamlined purpose of this administrative litigation. Furthermore, their failure to submit any documentation supporting their Answers precludes a determination of whether they have a meritorious defense. They also have not responded to Complainant's Motion, and are thus deemed to waive any objection to the granting of the relief sought. 40 C.F.R. § 22.16(b). Considering the totality of the circumstances, proper grounds exist for a finding of default and issuance of a default order, and the record does not show good cause as to why a default order should not be issued. *See* 40 C.F.R. § 22.17(c).

Consequently, because Respondents Zhejiang Peace and Bashan did not submit any prehearing exchange materials, they are hereby found to be in default. As the Rules of Practice provide, their default means they have admitted all facts in the Complaint alleged against them and they have waived their right to contest these allegations. Moreover, nothing in the prehearing exchange materials submitted by Respondents Peace USA and Blue Eagle refute a finding of liability against Respondents Zhejiang Peace and Bashan. The following facts, as set forth below, establish that Respondents Zhejiang Peace and Bashan are liable for the violations alleged against them in Counts 1 through 6 of the Complaint.

IV. Clean Air Act and Related Regulations

With respect to "manufacturer[s] of new motor vehicles [e.g., highway motorcycles] or new motor vehicle engines for distribution in commerce,"[4] the CAA Section 203(a)(1) prohibits "the sale or the offering for sale, or the introduction, or delivery for introduction, into commerce or . . . the importation into the United States, of any new motor vehicle or new motor vehicle engine . . . unless such vehicle is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part . . . ." 42 U.S.C. § 7522(a)(1). This statutory prohibition is further reflected in regulations issued under the CAA that establish standards applicable to emissions from new highway vehicles and engines, and new motorcycles specifically:

> Every new motorcycle manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States which is subject to any of the standards prescribed in this subpart is required to be covered by a certificate of conformity issued pursuant to this subpart.

40 C.F.R. § 86.407-78(a).

Under the CAA, a "manufacturer" is "any person[5] engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines," but is not a dealer receiving such new vehicles or engines in commerce. 42 U.S.C. § 7550(1); *see also* 40 C.F.R. § 1051.801 ("In general, this term includes any person who manufactures a vehicle or engine for sale in the United States or otherwise introduces a new vehicle or engine into commerce in the United States. This includes importers that import vehicles or engines for resale."); 40 C.F.R. § 1068.30 ("In general, this term includes any person who manufactures an engine or piece of equipment for sale in the United States or otherwise introduces a new engine or piece of equipment into U.S. commerce. This includes importers that import new engines or new equipment into the United States for resale."). A "motor vehicle" is "any self-propelled vehicle designed for transporting persons or property on a street or highway," and a "new motor vehicle" means "with respect to imported vehicles or engines . . . a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 202 [42

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[4] Commerce means "commerce between any place in any State and any place outside thereof." 42 U.S.C. § 7550(6).

[5] The term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof. 42 U.S.C. § 7602(e).

USCS § 7521] which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States)." 42 U.S.C. § 7550(2), (3); *see also* 40 C.F.R. § 85.1703 (a motor vehicle is, absent certain other traits, a "vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus"); 40 C.F.R. § 86.402-98 ("Motor vehicle has the meaning we give in 40 C.F.R. § 85.1703"). Beginning with the 1998 model year, the term "[*m*]*otorcycle* means any motor vehicle with a headlight, taillight, and stoplight and having: Two wheels, or Three wheels and a curb mass less than or equal to 793 kilograms (1749 pounds)." 40 C.F.R. § 86.402-98.

Regarding nonroad engines and vehicles, e.g., recreational engines and vehicles, the CAA authorizes the EPA to "promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles . . . which in the Administrator's judgment cause, or contribute to . . . air pollution." 42 U.S.C. § 7547(a)(3). The CAA further empowers the EPA to "revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section." 42 U.S.C. § 7547(d). Part 1068 of the regulations promulgated under the CAA, which applies to "everyone" with respect to "[r]ecreational engines and vehicles . . . regulate[d] under 40 C.F.R. part 1051," provides in part:

> (a) The following prohibitions and requirements apply to manufacturers of new engines, manufacturers of equipment containing these engines, and manufacturers of new equipment . . .
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> (1) *Introduction into commerce.* You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment . . . unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag. We may assess a civil penalty up to $37,500 for each engine or piece of equipment in violation.

40 C.F.R. §§ 1068.1(a)(9), 1068.101(a)(1).

A "nonroad engine" is "an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under [42 U.S.C. § 7411 or § 7521]." 42 U.S.C. § 7550(10). A "'nonroad vehicle' means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition." 42 U.S.C. § 7550(11). A "recreational" vehicle is one "relating to snowmobiles, all-terrain vehicles, off-highway motorcycles, and other vehicles that [the EPA] regulate[s] under this part." 40 C.F.R. § 1051.801. The term "new"

includes "[a]n imported vehicle or engine" subject to certain provisions. 40 C.F.R. § 1051.801.

In general, Part 86 of the regulations promulgated under the CAA describes the control of emissions from new highway vehicles and engines, including motorcycles. Part 1051 describes the control of emissions from recreational engines and vehicles. Part 1068 discusses general compliance provisions that apply to a number of types of engines and vehicles, including recreational engines and vehicles, but that expressly do not apply to highway motorcycles. *See* 40 C.F.R. § 1068.1(b)(2).

To obtain a Certificate of Conformity ("COC"), a manufacturer must submit an application to the EPA for each engine family[6] and each model year it intends to manufacture and sell in the United States. 40 C.F.R. §§ 86.416-80, 1051.201. Among other pieces of information, the application for the COC must identify the covered engine family and describe the vehicles, their engine, their emission control system, and test results from a prototype emissions data vehicle ("EDV") showing that the EDV satisfies exhaust emissions standards set forth in 40 C.F.R. §§ 86.410-2006 (motorcycles) and 1051.107 (all-terrain recreational vehicles). 40 C.F.R. §§ 86.416-80, 86.423-78, 86.431-78, 1051.205. The COC application for motorcycles must also include a description of all fuel system components and the range of available fuel and ignition system adjustments. 40 C.F.R. § 86.416-80; EPA Advisory Circular MC-6.[7] The COC application for recreational vehicles must describe all adjustable operating parameters. Where there are adjustable operating parameters, the applicant must demonstrate the vehicle meets emission standards throughout the adjustable range. 40 C.F.R. §§ 1051.115(c), (d), 1051.205(q).

A COC, once issued, covers only the vehicles within the engine family specified in the application, marked with a model name specified in the application, produced during the model year, and imported after the effective date of the certificate. 40 C.F.R. §§ 86.407-78(a), 86.437-78(a)(2), (b)(3), (b)(4), 1051.201(a), 1051.205, 1068.101(a)(1), (b)(5), 1068.103(a), (c)(2). With regard to motorcycles, by the express terms of each COC, the certificates cover only those motorcycles that conform in all material respects to the EDV tested for that certificate and all other specifications in the certificate application. *See, e.g.*, CX 1; *see also* 40 C.F.R. §§ 86.437-78(a)(2)(iii), (b)(4). As to recreational vehicles, the COC covers only those vehicles that conform in all material respects to the specifications in the certificate application. 40 C.F.R. § 1068.103(a).

Recreational vehicle manufacturers and holders of COCs must also honor their emission-

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[6] Engine family means, in the case of motorcycles, "the basic classification unit of a manufacturer's product line used for the purpose of test fleet selection and determined in accordance with § 86.420," or, in the case of recreational vehicles, the description given in 40 C.F.R. § 1051.230. 40 C.F.R. §§ 86.402-78, 1051.801.

[7] *Available at* http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=14384&flag=1 (last visited Mar. 15, 2016).

related warranty under 40 C.F.R. §§ 1051.120 and 1068.115. 40 C.F.R. § 1068.101(b)(6). They must state in each vehicle's owner's manual the emission-related warranty. 40 C.F.R. § 1051.120(e). Additionally, crankcase emissions from recreational vehicles may not be discharged directly into the ambient atmosphere from any vehicle throughout its useful life. 40 C.F.R. § 1051.115(a).

Anyone who sells, offers for sale, introduces into commerce, delivers for introduction into commerce, or imports any new motorcycle or recreational vehicle that is not covered by a COC has violated the CAA and is subject to civil penalties of up to $37,500 per vehicle or engine. 42 U.S.C. §§ 7522(a), 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (b)(6).

V. Findings of Fact and Conclusions of Law[8]

1. Respondents Zhejiang Peace and Bashan are both incorporated under the laws of the People's Republic of China, and are "persons" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

2. At all times relevant to this action, Zhejiang Peace and Bashan were engaged in the business of selling, offering for sale, introducing into commerce, delivering for introduction into commerce, importing, or causing to be imported vehicles regulated under the CAA. They manufacture, label, and deliver vehicles for introduction into United States commerce.

3. Zhejiang Peace and Bashan introduce vehicles into the United States' stream of commerce with the expectation that ultimate purchasers will acquire them through independent retailers in approximately 40 states. They collaborate with Respondents Peace USA and Blue Eagle, who acquire from the EPA the COC required by the CAA to introduce the vehicles into United States commerce. In their applications for these COCs, Zhejiang Peace and Bashan identified both Peace USA and Blue Eagle as agents for service of process.

4. Bashan manufactured or assembled the 10,707 highway motorcycles referenced in Counts 1 and 2, which are defined for regulation by 40 C.F.R. § 86.402-98. These motorcycles were produced under purported engine families 9PCGC.050SAA and ABLEC.049PCE.

5. Zhejiang Peace manufactured or assembled the 12,252 all-terrain recreational vehicles referenced in Counts 3 through 6, which are defined for regulation by 40 C.F.R. § 1051.801. These vehicles were produced under purported engine families 9BLEX0.11PCE, ABLEX0.11PCE, and APCGX.150AAA.

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[8] These findings are made in regard only to Respondents Zhejiang Peace and Bashan. These findings do not necessarily impact, and are not impacted by, any determination to be made later in these proceedings regarding Respondents Peace USA and Blue Eagle.

6. Zhejiang Peace and Bashan are "manufacturers" as defined by Section 216(1) of the CAA, 42 U.S.C. § 7550(1), and the regulations at 40 C.F.R. §§ 1051.801 and 1068.30.

7. Zhejiang Peace delivered for introduction into United States commerce every vehicle at issue in Counts 1 through 6.

8. Bashan delivered for introduction into United States commerce every vehicle referenced in Counts 1 and 2.

9. Between March 3, 2009, and March 7, 2011, the EPA, EPA contractors, or U.S. Customs and Border Protection employees conducted approximately 16 inspections of Respondents' vehicles at the Port of Long Beach, California, and at retail locations. The EPA also obtained information about the Respondents' vehicles through an October 2010 Request for Information under Section 208 of the CAA, 42 U.S.C. § 7542. These inspections and the response to the Request for Information revealed the violations that follow.

10. As alleged in Count 1 of the Complaint, Zhejiang Peace and Bashan "sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to)" 7,895 highway motorcycles that were purportedly covered by the COC for engine family 9PCGC.050SAA. For the following reasons, these vehicles in fact did not conform in all material respects to the certified configuration and were not covered by the COC for engine family 9PCGC.050SAA, or any other COC:

    a. their catalytic converters did not conform to the description provided in the application for the COC;
    b. their carburetors were equipped with adjustable parameters or other adjustments even though the application described a carburetor without adjustable parameters;
    c. the carburetors' manufacturer and parts number do not match the manufacturer and parts number provided in the application; and
    d. the engine displacement was 62 cubic centimeters even though the application described a displacement of 49 cubic centimeters.

    The 7,895 highway motorcycles referenced in Count 1 of the Complaint are "new motor vehicles" as defined by 42 U.S.C. §§ 7550(2) and (3). Therefore, Zhejiang Peace and Bashan sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) 7,895 new motor vehicles not covered by a COC, in violation of Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1).

11. As alleged in Count 2 of the Complaint, Zhejiang Peace and Bashan "sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to)" 2,812 highway motorcycles that were purportedly covered by the COC for engine family ABLEC.049PCE. However, for the

following reasons, these vehicles in fact did not conform in all material respects to the certified configuration and were not covered by the COC for engine family ABLEC.049PCE, or any other COC:

a. their carburetors were equipped with adjustable parameters or other adjustments even though the application for the COC described a carburetor without adjustable parameters; and
b. the carburetors' manufacturer and parts number do not match the manufacturer and parts number provided in the certificate application.

The 2,812 highway motorcycles referenced in Count 2 of the Complaint are "new motor vehicles" as defined by 42 U.S.C. §§ 7550(2) and (3). Therefore, Zhejiang Peace and Bashan sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) 2,812 new motor vehicles not covered by a COC, in violation of Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1).

12. As alleged in Count 3 of the Complaint, Zhejiang Peace "sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to)" 5,908 recreational vehicles that were purportedly covered by the COC for engine family 9BLEX0.11PCE. However, for the following reasons, these vehicles in fact did not conform in all material respects to the certified configuration and were not covered by the COC for engine family 9BLEX0.11PCE, or any other COC:

    a. their carburetors were equipped with adjustable parameters or other adjustments even though the application for the COC described a carburetor without adjustable parameters; and
    b. their crankcases discharged emissions directly into the ambient atmosphere.

    The 5,908 recreational vehicles referenced in Count 3 are "new" as defined by 40 C.F.R. § 1051.801. Therefore, Zhejiang Peace sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) 5,908 new recreational vehicles not covered by a COC, in violation of 40 C.F.R. § 1068.101(a)(1).

13. As alleged in Count 4 of the Complaint, Zhejiang Peace "sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to)" 6,122 recreational vehicles that were purportedly covered by the COC for engine family ABLEX0.11PCE. However, these vehicles in fact did not conform in all material respects to the certified configuration and were not covered by the COC for engine family ABLEX0.11PCE, or any other COC, because their carburetors were equipped with adjustable parameters or other adjustments even though the certificate application described a carburetor without adjustable parameters. The 6,122 recreational vehicles referenced in Count 4 are "new" as defined by 40 C.F.R. §

1051.801. Therefore, Zhejiang Peace sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) 6,122 new recreational vehicles not covered by a COC, in violation of 40 C.F.R. § 1068.101(a)(1).

14. As alleged in Count 5 of the Complaint, Zhejiang Peace "sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to)" 222 recreational vehicles that were purportedly covered by the COC for engine family APCGX.150AAA. However, for the following reasons, these vehicles in fact did not conform in all material respects to the certified configuration and were not covered by the COC for engine family APCGX.150AAA, or any other COC:

    a. their catalytic converters did not conform to that which was described in the application for the COC; and
    b. their carburetors were equipped with adjustable parameters or other adjustments even though the application for the COC described a carburetor without adjustable parameters.

    The 222 recreational vehicles referenced in Count 5 are "new" as defined by 40 C.F.R. § 1051.801. Therefore, Zhejiang Peace sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) 222 new recreational vehicles not covered by a COC, in violation of 40 C.F.R. § 1068.101(a)(1).

15. As alleged in Count 6 of the Complaint, Zhejiang Peace "sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to)" 5,908 new recreational vehicles from engine family 9BLEX0.11PCE for which the owner's manuals did not state the emissions-related warranty information required by 40 C.F.R. § 1051.120(e). The 5,908 recreational vehicles referenced in Count 6 are "new" as defined by 40 C.F.R. § 1051.801. Therefore, Zhejiang Peace did not meet its warranty obligations with respect to 5,908 new recreational vehicles in violation of 40 C.F.R. § 1068.101(b)(6).

VI. <u>Determination of Penalty</u>

The Complaint alleges violations in Count 1 not only by Zhejiang Peace and Bashan (the "Chinese Respondents") but also by Peace USA, and alleges violations in Count 2 by all four Respondents. It alleges violations in Counts 3 and 4 by not only Zhejiang Peace but also by Peace USA and Blue Eagle, and in Count 5 also by Blue Eagle. It alleges in Count 6 that "one or more of" the four Respondents were in violation. Yet, the Motion requests the full proposed penalties for these violations be assessed against the Chinese Respondents. The Motion refers to the calculation of the proposed penalty in the Rebuttal Prehearing Exchange, and to the Rule in 40 C.F.R. § 22.17(c) that "[t]he 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." Complainant does not explain why it requests the full penalties against only the Chinese Respondents where it had alleged liability also against the other Respondents. However, it is within Complainant's discretion to request that the penalties be assessed against all or fewer than all of the Respondents referenced in the respective counts of the Complaint. The only issue to be determined as to the proposed penalties is whether they are "clearly inconsistent with the record of the proceeding or the Act."

The record establishes that Bashan manufactured or assembled, and delivered for introduction into United States commerce, the 10,707 highway motorcycles referenced in Counts 1 and 2, which establishes Bashan's liability for Counts 1 and 2. Findings of Fact 4 and 8. The record also establishes that Zhejiang Peace not only manufactured or assembled the 12,252 all-terrain recreational vehicles referenced in Counts 3 through 6, but also delivered for introduction into United States commerce every vehicle at issue in Counts 1 through 6, which is the basis for finding Zhejiang Peace liable for Counts 1 through 6. Finding of Facts 5 and 7. Therefore, the record supports assessment of penalties against Bashan and Zhejiang Peace jointly and severally for Counts 1 and 2, and assessment of penalties against Zhejiang Peace for Counts 3 through 6.

As indicated above, under the CAA and EPA regulations, any person who sells, offers for sale, introduces into commerce, delivers for introduction into commerce, or imports any new highway motorcycle or recreational vehicle not covered by a COC or that violates warranty requirements is subject to civil penalties of up to $37,500 per vehicle or engine. 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (b)(6). Section 205(c)(2) of the CAA provides that the penalty shall take into account "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 noncompliance 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." Given the number of vehicles at issue in each of the counts of the Complaint and the maximum penalty of $37,500 per vehicle or engine, the proposed penalties are well within the maximum penalties allowed under the CAA. The next question is whether the statutory penalty assessment factors were taken into account in calculating the proposed penalties. As outlined below, it is clear that they were.

EPA has issued guidelines for penalties under the CAA titled Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (2009) ("Penalty Policy"). Complainant relies on these guidelines in requesting that a civil penalty of $525,988 be assessed jointly and severally against Zhejiang Peace and Bashan for Counts 1 and 2, plus an additional penalty against Zhejiang Peace of $1,048,215, for Counts 3 through 6. The Complainant explains its application of the Penalty Policy and its penalty calculation in the Rebuttal Prehearing Exchange ("RPHX") filed April 10, 2015.

As to the $525,988 proposed penalty, the Complainant seeks a preliminary deterrence amount of $439,723.[9] Of that, $152,175 is economic benefit that is the sum of $15 for each and

[9] The preliminary deterrence amount is the sum of the economic benefit and the gravity-based penalty. RPHX at 3.

every violative vehicle that was not remediated – 10,145 of the 10,707 motorcycles.[10] The remaining 562 motorcycles were detained by United States Customs and Border Protection and generated no economic benefit. RPHX at 4. The deterrence amount includes a gravity-based component of $287,548.[11] This is based on engine horsepower of 3.2 and 2.8 for engines in Counts 1 and 2 respectively; a 6.5-fold increase for "major" egregiousness of the 10,707 certification violations due to non-conforming carburetors, catalysts, engine displacements and adjustable parameters; and an additional thirty percent for failure to remediate 10,145 of the motorcycles. RPHX at 4. These calculations are consistent with the Penalty Policy.

The preliminary deterrence amount of $439,723 was increased to an initial penalty target figure of $525,988. This includes an adjusted gravity component based on the violator's degree of willfulness or negligence, degree of cooperation, and history of noncompliance. RPHX at 4. The Penalty Policy directs that a penalty may be increased up to twenty percent for degree of willfulness, which reflects how much control the violator had over the events constituting the violation, foreseeability of such events, whether the violator took reasonable precautions against these events, whether the violator knew or should have known about the possibility of violations, the sophistication within the industry in dealing with compliance issues, and whether the violator in fact knew of the legal requirement violated. Penalty Policy at 23-24. In this particular instance, Complainant assessed the full twenty percent increase for the Respondents' degree of willfulness and a ten percent increase for their non-cooperation. Complainant explains that Respondents continued to violate the CAA by importing the 10,707 noncompliant motorcycles even after the EPA and Customs and Boarder Patrol had detained, inspected, seized, and denied entry into the United States for hundreds or thousands of their vehicles throughout model years 2006 to 2008, which would disrupt the Chinese Respondents commercial transactions, thereby putting them on notice of noncompliance and the legal requirements, and rendering the present violations foreseeable. Complainant found no indication of reasonable precautions to prevent violations. RPHX at 5.

The Penalty Policy directs that a penalty may be increased or decreased up to ten percent for degree of cooperation or non-cooperation, and that the threshold indicator of this adjustment

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[10] The economic benefit is based on the vehicle and engine power. Vehicles stopped at import or whose violating conditions are addressed are considered "remediated" and are not used to calculate economic benefit. According to the Complainant, it used the rule of thumb under the Penalty Policy for calculating the per-vehicle economic benefit of $1 per unit of horsepower but no less than $15 per vehicle and engine. RPHX at 3.

[11] The gravity component is based on a figure calculated according to horsepower, then multiplied to reflect egregiousness (by 1 for minor, 3.25 for moderate, or 6.5 for major violations), then increased by zero to thirty percent for failure to remediate, and adjusted to reflect business size. RPHX at 3-4. In this case, the base per-vehicle gravity figure was scaled for engine horsepower per Table 1 of the Penalty Policy, and for the total number of vehicles under Table 3 of the Penalty Policy. RPHX at 4.

is whether the violator reported the noncompliance to EPA, and that there may be other facts that merit such adjustment. Penalty Policy at 24-25. Complainant assessed the full ten percent increase, explaining that Respondents never reported any violations to the EPA, and imported high volumes of noncompliant vehicles into the United States, relying on the government's ability to inspect only a fraction of the vehicles they imported. RPHX at 5. Zhejiang Peace and Bashan also refused to speak with the Complainant before the Complaint was filed and have barely participated in this proceeding. RPHX at 6. The Complainant's proposed adjustments for willfulness and non-cooperation are consistent with the record and appropriate to assess against the Chinese Respondents.

Regarding the penalty of $1,048,215 proposed for Counts 3 through 6 against Zhejiang Peace, the Complainant calculated a preliminary deterrence amount of $867,332. This includes an economic benefit amount of $264,390 using the $15 rule of thumb for each violative vehicle – 11,718 of the 12,252 recreation vehicles at issue were not remediated. Added to that is a gravity penalty of $602,942. This is based on the vehicles' power rating (6.3 horsepower for vehicles in Counts 3 and 4, 7.00 horsepower for vehicles in Count 5, and 6.30 horsepower for vehicles in Count 6) and a 6.5-fold increase for "major" egregiousness of the 12,252 certification violations due to non-conforming carburetors, catalysts, engine displacements, and adjustable parameters for Counts 3, 4, and 5. Count 6 includes a 3.25-fold increase for "moderate" egregiousness of the 5,908 warranty violations. The gravity figure is further increased an additional thirty percent for Respondents' failure to remediate 11,718 of the recreational vehicles.[12] RPHX at 6. These calculations are consistent with the Penalty Policy.

The preliminary deterrence amount of $867,332 was increased to an initial penalty target figure of $1,048,215. This includes an adjusted gravity component based on the violator's degree of willfulness or negligence, degree of cooperation, and history of noncompliance. In this particular instance, Complainant increased the gravity component of the preliminary deterrence amount by the full twenty percent to reflect Respondents' degree of willfulness. Complainant observes that Respondents continued to violate the CAA by importing the 12,252 noncompliant motorcycles even after the EPA and Customs and Boarder Protection had detained, inspected, seized, and denied entry into the United States for hundreds or thousands of their vehicles throughout model years 2006 to 2008. This would disrupt the Chinese Respondents commercial transactions, thereby putting them on notice of noncompliance and the legal requirements, and rendering the present violations foreseeable. Complainant found no indication of reasonable precautions to prevent violations. RPHX at 7. With respect to their non-cooperation, Complainant assessed the full ten percent, explaining that Respondents never reported any violations to the EPA, and imported high volumes of noncompliant vehicles into the United States, relying on the government's ability to inspect only a fraction of the vehicles they imported. RPHX at 7. Zhejiang Peace also refused to speak with the Complainant before the Complaint was filed and has barely participated in this proceeding. RPHX at 8. The Complainant's proposed adjustments for willfulness and non-cooperation are consistent with the

[12] This number was calculated according to the Penalty 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 total number of vehicles under Table 3 of the Policy. RPHX at 6.

record and are appropriate to assess against Zhejiang Peace.

Other factors not discussed above were also taken into account, including the size of Zhejiang Peace's and Bashan's businesses, their history of compliance with the CAA, the effect of the penalty on their ability to continue in business, and other factors justice may require. RPHX at 10-11. Complainant did not increase the penalty for business size partly because it found the proposed penalty would have a sufficient deterrent effect regardless of size, and partly due to the lack of clarity as to the Respondents' affiliations with each other and with other business entities. There was no increase for prior violations because Complainant has no information that Respondents previously committed similar violations under the CAA for which EPA took an enforcement action. As to the ability of Zhejiang Peace and Bashan to continue in business, they have not raised this as a defense, and based on Complainant's review of their websites and certification applications to the EPA, they are large manufacturing corporations with substantial assets to satisfy the proposed penalty. RPHX at 10. Additionally, there is no information in the record as to their financial condition or inability to pay. Finally, with respect to matters of justice, the only adjustments made by Complainant were those discussed above based on willfulness and non-cooperation. RPHX at 11.

Given the foregoing considerations, Complainant has shown that it calculated a penalty in accordance with the applicable statutory penalty assessment factors and with the Penalty Policy, and has provided a logical and reasonable analysis of its calculation. *New Waterbury, Ltd.*, 5 E.A.D. 529, 538 (EAB 1994) ("so long as each factor is touched upon and the penalty is supported by the analysis a prima facie case can be made"). Complainant has also carried its burden to show that it adequately considered Zhejiang Peace's and Bashan's ability to pay or continue in business.

In their lack of participation in this proceeding, Zhejiang Peace and Bashan have not contested Complainant's penalty calculation under the Penalty Policy. Nor have they presented any documents in support of a claim of inability to pay or to continue in business, despite being directed in the Prehearing Order to provide copies of such documents. As the EAB has stated, where a respondent "fails to produce any evidence to support an inability to pay claim after being apprised of that obligation during the pre-hearing process, the . . . presiding officer may conclude that any objection to the penalty based upon inability to pay has been waived under the Agency's procedural rules and thus this factor does not warrant a reduction of the proposed penalty." *New Waterbury, Ltd.,* 5 E.A.D. at 542.

Accordingly, I conclude that Zhejiang Peace and Bashan are liable for the violations alleged against them, and in the circumstances of this case, assessment of the proposed penalties is appropriate upon their default.

VII. <u>Severance</u>

The Rules provide that if the default order "resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision" under the Rules. 40 C.F.R. § 22.17(c). Complainant's request for assessment of the full proposed penalties for Counts 1 through 6

against Respondents Zhejiang Peace and Bashan is granted. Complainant included with its Motion a proposed order for Zhejiang Peace and Bashan to pay these penalties. This Order on the Motion for Default resolves all issues and claims with regard to Respondents Zhejiang Peace and Bashan, and therefore, it is appropriate to issue an initial decision and order for Zhejiang Peace and Bashan to pay the penalties.

However, Counts 7 and 8, alleging violations only by Respondent Peace USA, remain at issue in this proceeding. Complainant has not expressed any intention with regard to allegations of liability against Blue Eagle. The Rules provide that the administrative law judge "may, for good cause, order any proceedings severed with respect to any or all parties or issues." 40 C.F.R. § 22.12(b). Given these circumstances, I find good cause to sever this proceeding with regard to Respondents Zhejiang Peace and Bashan from proceedings against Respondents Peace USA and Blue Eagle. Accordingly, this Order constitutes an Initial Decision with respect to the present proceeding against Respondents Zhejiang Peace and Bashan. All issues with regard to Peace USA and Blue Eagle remain as a separate proceeding.

ORDER

1. The issues in this proceeding with respect to Respondents Zhejiang Peace and Bashan are hereby **SEVERED** from those with respect to Respondents Peace USA and Blue Eagle.

2. The Complainant's Motion for a Default Order is **GRANTED** with respect to the liability of Respondents Zhejiang Peace and Bashan. Respondents Zhejiang Peace and Bashan are hereby found in **DEFAULT**, and are liable for the violations alleged against them in Counts 1 through 6 of the Complaint.

3. Respondents Zhejiang Peace Industry and Trade Co., Ltd. and Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd., are **ORDERED** to pay, jointly and severally, a civil penalty in the amount of $525,988 in the manner directed below.

4. Respondent Zhejiang Peace Industry and Trade Co., Ltd. is **ORDERED** to pay a civil penalty in the amount of $1,048,215 in the manner directed below.

5. Respondents Zhejiang Peace and Bashan 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-2014-8119"; 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-2014-8119") 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:

Morgan E. Rog
U.S. EPA, Office of Civil Enforcement
1200 Pennsylvania Ave., N.W.
Mailcode 2249A
Washington, DC 20460

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

Morgan E. Rog
U.S. EPA, Office of Civil Enforcement
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building, Room 4146A
Washington, DC 20004

6. If Zhejiang Peace and Bashan fail to timely pay any portion of the penalties 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 ten 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 Zhejiang Peace's and Bashan's licenses or other privileges, or suspend or disqualify Zhejiang Peace and Bashan from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

7. Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order as to Zhejiang Peace and Bashan forty-five (45) days after its service upon the parties and without further proceedings unless: (1) a party moves to reopen the hearing within twenty (20) days after service of this Initial Decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties pursuant to 40 C.F.R. § 22.30(a); or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

____

M. Lisa Buschmann
Administrative Law Judge

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-HQ-2014-8119

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFAULT ORDER AND INITIAL DECISION AS TO ZHEJIANG PEACE INDUSTRY AND TRADE CO., LTD., AND CHONGQING ASTRONAUTIC BASHAN MOTORCYCLE MANUFACTURING CO., LTD.**, dated March 29, 2016, issued by M. Lisa Buschmann, Administrative Law Judge, were served to the following parties on this 29th day of March 2016, in the manner indicated.

____
Chronnia L. Warren
Paralegal

Dated: March 29, 2016
Washington, DC

Original and One Copy by Hand Delivery on March 30, 2016:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA / Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

Copy by Electronic and Regular Mail on March 30, 2016:

Evan M. Belser, Attorney Adviser
Office of Administrative Law Judges
U.S. Environmental Protection Agency
U.S. Dept. of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
William J. Clinton Federal Bldg.
Room 1142b, Mail Code 2242A
Washington, DC 20460
belser.evan@epa.gov

Morgan Rog
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building
Room 4146A, Mailcode 2249A
Washington, DC 20460
rog.morgan@epa.gov

G. Michael Smith, Attorney for
Respondent, Peace Industry Group(USA), Inc.
And Blue Eagle Motors, Inc.
Smith, Collins & Fletcher, P.A.
8565 Dunwoody Place, Bldg. # 15
Atlanta, Georgia 30350
gmichael@scandf.com

Copy by Regular Mail on March 30, 2016:

Quiping Wang
2649 Mountain Industrial Blvd.
Tucker, GA 30084