

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:

JONWAY MOTORCYCLE (USA) CO.,
LTD., SHENKE USA, INC., JONWAY
GROUP CO., LTD., SHANGHAI SHENKE
MOTORCYCLE CO., LTD., ZHEJIANG
JMSTAR SHENKE MOTORCYCLE CO.,
LTD., and ZHEJIANG JONWAY
MOTORCYCLE MANUFACTURING CO.,
LTD.,

Respondents.

Docket No.
CAA Appeal No. 14-03

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ENVIR. APPEALS BOARD

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**SUPPLEMENTAL BRIEF IN SUPPORT OF COMPLAINANT'S
MOTION FOR A DEFAULT ORDER**

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Introduction

Pursuant to the Environmental Appeals Board's ("Board") September 3, 2014 Order for Supplemental Briefing, Complainant in this matter hereby provides supplemental briefing to specify the legal and factual bases for Complainant's assertion that it has served the Complaint on each Respondent according to 40 C.F.R. § 22.5(b)(1), and therefore the Consolidated Rules.¹

Under the Consolidated Rules, complainants must satisfy four distinct provisions of section 22.5(b)(1) to serve complaints. They must (1) use a proper method of service, (2) use proper service materials, and in cases of service by mail on corporations, complainant must (3) address the service materials to a person identified in section 22.5(b)(1)(ii) and (4) deliver them either to a person identified in section 22.5(b)(1)(ii) or that person's representative.

Here, Complainant (1) used certified mail with return receipt requested, (2) used proper service materials, namely a complaint and copy of the Consolidated Rules for each Respondent, (3) addressed the service materials to Xiaotong Qi, a registered agent for service of process for each Respondent, and (4) delivered the service materials to Xiaotong Qi's place of business, where a representative, Tina Yang, received and signed for the service materials and timely provided the service materials to Xiaotong Qi. Ms. Yang is a *representative* because she serves in a role of receiving and signing for mail addressed to Xiaotong Qi (including mail from the EPA that was unrelated to this proceeding). Also, Ms. Yang actually and timely provided the service materials to Xiaotong Qi, and this further shows that she is a representative who could receive service materials on Mr. Qi's behalf. Therefore, the Complaint was served in satisfaction of section 22.5(b)(1).

1. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules").

Alternatively, Complainant properly served the Complaint because Respondents' agent for service of process, Xiaotong Qi, *actually received* the service materials. This person sent the undersigned a signed letter, dated December 20, 2013 (before answers were due), which undoubtedly confirms that he received the Complaint in this matter. This satisfies the Consolidated Rules, regardless of any possible shortcomings of the proof of service or of the proof that Tina Yang was a proper recipient.

After a complaint has been served, complainants must file proof of service in order to obtain a default order against respondents for failure to answer. Proof of service is not part of service itself—it is not required to properly serve complaints. Here, Complainant filed proof of service in this matter, and has satisfied this prerequisite to a default order

These are the legal and factual bases for Complainant's Motion for a Default Order ("Motion" or "Mot."). Complainant has served the Complaint on each Respondent in full satisfaction with the Consolidated Rules, then timely filed proof of service. No Respondent has answered the Complaint. Thus, Complainant reaffirms its Motion and requests that the Board issue an order like the proposed order in the Motion.

I. Factual Background Regarding Service of Complaint

A. Synopsis of facts stated in Motion

The four foreign corporation Respondents are Jonway Group Co., Ltd. ("Jonway Group"), Shanghai Shenke Motorcycle Co., Ltd. ("SSM"), Zhejiang JMStar Shenke Motorcycle Manufacturing Co., Ltd. ("ZJS"), and Zhejiang Jonway Motorcycle Manufacturing Co., Ltd. ("ZJM"). Each has repeatedly identified one or both of the domestic corporation Respondents (Jonway Motorcycle (USA) Co., Ltd. ("Jonway USA") and Shenke USA, Inc. ("Shenke USA")) as their agents for service of process. Respondents provided these authorizations pursuant to

regulatory requirement² to the EPA in many recent applications for Certificates of Conformity (which are required by the Clean Air Act to sell vehicles in the United States). Jonway USA and Shenke USA maintain Xiaotong Qi as their agent for service of process on file with the Office of the Secretary of State of Texas. Mot. ¶¶ 16–21.

On November 20, 2013, Complainant mailed by certified mail with return receipt requested three packages, each with six separately addressed envelopes (one for each of the six Respondents). Each envelope contained a copy of the Complaint, a copy of the Consolidated Rules, and a cover letter explaining this proceeding, the need to answer, and the possibility of default. Mot. ¶¶ 31–32.

Complainant mailed one package to the “1503 Kelly Boulevard” address and another to the “1501 Kelly Boulevard” address. These are the addresses on file for Shenke USA and Jonway USA, respectively, with the Office of the Secretary of State of Texas. These are also the addresses that Shenke USA and Jonway USA, again pursuant to regulatory requirements, provided to the EPA in many recent applications for Certificates of Conformity. These packages were “unclaimed” and “unable to forward.” This confirmed Complainant’s information and belief that these addresses are abandoned. Mot. ¶¶ 33–34.

Complainant mailed the third and final package to “Jonway Motorcycle (USA) Co., Ltd., Shenke USA, Inc., Attention: Xiaotong Qi, c/o Nitro PowerSports, LLC, 1942 1-35 E. North, Carrollton, TX 75006.” This is the location where Complainant knows, based in part on a January 2013 inspection and other information, to be a location where Xiaotong Qi does business for one or more companies. USPS delivered this package at the intended address. A person named Tina Yang received and signed for this package on November 23, 2013. Mot. 35–36.

2. 40 C.F.R. §§ 86.416-80(a)(1), 1051.205(w).

Then, on December 20, 2013, in an email and identical hard-copy letter to the undersigned, *Xiaotong Qi acknowledged actual notice*, meaning he received and read the materials received by Tina Yang. Mot. ¶ 37.

Complainant filed proof of service on January 15, 2014. The return receipt, or green card, clearly identifies “Tina Yang” as the recipient and “11-23” as the date of receipt. Mot. ¶¶ 36, 39.

B. Facts not stated in Motion

- (i) Complainant provides documentation of the following facts in the enclosed “Supplemental Appendix to Supplemental Brief in Support of Complainant’s Motion for a Default Order,” abbreviated here as “Supp. App.”
- (ii) As of September 16, 2014, Respondents Shenke USA and Jonway USA continue to maintain Xiaotong Qi as their agent for service on process on file with the Office of the Secretary of State of Texas. Jonway USA continues to cite “1501 Kelly Boulevard” as its address. Shenke USA continues to cite “1503 Kelly Boulevard” as its address. Supp. App. 167, 170.
- (iii) Nitro Powersports, LLC is a Texas corporation whose registered address is “1501 Kelly Boulevard, Carrollton, TX, 75006.” The company is located at 1942 I-35 E. North, Carrollton, TX, 75006. Supp. App. 171–72.
- (iv) On September 11, 2014, Xiaotong Qi, as president of Jonway USA, voluntarily terminated Jonway USA. Supp. App. 168–69.
- (v) On or about July 31, 2014, and again on or about August 8, 2014, Respondents Shenke USA and ZJM, jointly submitted to the EPA’s Office of Transportation and Air Quality (“OTAQ”) applications for Certificates of Conformity for model year 2015 highway motorcycles and recreational vehicles. Supp. App. 173–82. In these recent applications,

ZJM again identified Shenke USA as its “agent for service of process, for process from the US EPA.” Supp. App. 181.

- (vi) On information and belief, ZJM continues to sell vehicles to numerous buyers in the United States. The primary buyer and importer for ZJM vehicles is Yamazuki, Inc., a corporation incorporated in the State of California with a registered address of 2041 South Turner Avenue, Ontario, CA 91761. EPA personnel inspected a shipment from ZJM to Yamazuki, Inc. at the Port of Long Beach on or about September 10, 2014.
- (vii) The EPA, specifically OTAQ, reached Xiaotong Qi by a commercial delivery service at 1942 I-35 E. North, Carrollton, TX, 75006³ throughout 2013. This is shown by at least three letters (the first from OTAQ to Mr. Qi, the second from Mr. Qi to OTAQ, and the third from OTAQ to Mr. Qi). The third letter was received and signed for at the “front desk” of Nitro Powersports on October 30, 2014, by the same person who received and signed for the Complaint in this matter, Tina Yang. Supp. App. 183–90.

II. Law Governing Service of Complaints under the Consolidated Rules

A. The Consolidated Rules and the requirements of due process alone determine whether EPA’s service is proper.

This is a penalty assessment proceeding under section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1). This statute authorizes EPA to assess civil penalties, provided such assessment are made by an “order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of Title 5,” and provided the order comes at least 30 days after the EPA gives “written notice to the person to be assessed an administrative penalty.” *Id.*

3. Another address for the same location is “1942 N. Stemmons Freeway.”

The statute further directs the EPA to “issue reasonable rules for discovery and other proceedings for hearings.” *Id.*

Administrative agencies are not bound by the Federal Rules of Civil Procedure, but “the agencies are governed by the same basic requirements of fairness and notice, and these include specificity of notice and opportunity to respond if what is instituted is intended to be a procedure for summary disposition without hearing.” *Hess & Clark v. FDA*, 495 F.2d 975, 984 (D.C. Cir. 1974). Federal agencies “are free to fashion their own rules of procedure, so long as these rules satisfy the fundamental requirements of fairness and notice. EPA has availed itself of this opportunity by establishing its Consolidated Rules of Practice. These rules and the requirements of due process alone determine whether EPA’s service is proper.” *Katzson Bros., Inc. v EPA*, 839 F.2d 1396, 1399 (10th Cir. 1988).

Part II(B), below, states the requirements under the Consolidated Rules for serving complaints. Part II(C), below, states the requirements under the Consolidated Rules for proof of service of complaints. While Complainant must also satisfy due process requirements for proper notice, Complainant reads the Board’s Order for Supplemental Briefing as requesting only clarification on how the Consolidated Rules were satisfied, so due process is beyond the scope of this Brief.⁴

4. Complainant notes, however, that the service of the Complaint in this matter would easily satisfy the requirements of due process, especially in light of the fact that Complainant used certified mail with return receipt requested and Xiaotong Qi actually received the service materials. “[I]ndividuals whose property interests are at stake are entitled to notice and an opportunity to be heard.” *Dusenbery v. United States*, 534 U.S. 161, 167 (2002). “[W]hen confronted with questions regarding the adequacy of the method used to give notice,” the standard is whether the notice was “reasonably calculated under all the circumstances” to apprise interested parties of the pending action. *Id.* at 167–68 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)); see also *Jones v. Flowers*, 547 U.S. 220, 234 (2006) (“[U]se of certified mail makes actual notice more likely, because requiring the recipient’s signature protects against misdelivery . . . when someone is home to sign for the letter, or to inform the

B. 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 provision 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.”);

mail carrier that he has arrived at the wrong address.”); *United States v. \$73,919.00*, 41 Fed. Appx. 421, 424 (5th Cir. 2011) (affirming default order that was issued for defendant’s failure to appear after government sent notice by certified mail, even though it may not have reached the appellant, because the “Government’s attempt . . . was reasonably calculated to apprise him of the pending default.”).

(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”*).

When interpreting codified law, “the cardinal principle . . . [is] that courts must give effect, if possible, to every clause and word of a statute.” *Williams v. Taylor*, 529 U.S. 362, 364 (2000). Reading the rule as described above embodies this principle. Each of the four clauses that apply in cases of service by mail on corporations have a distinct effect; each sets a distinct requirement for service of complaints. As demonstrated by the remainder of this Part II(B), this reading clarifies the precedential meaning of numerous cases that applied section 22.5(b)(1), and shows that courts have consistently applied this rule.

Other applicable canons of construction are that “the specific governs the general,” and that courts should not read “a text in a way that makes part of it redundant.” *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007); *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 668–69 (2007). These canons support the reading that section 22.5(b)(1)(ii) requires a proper addressee, and separately, section 22.5(b)(1)(i) requires a proper recipient. Many cases do not distinguish these separate requirements (and thereby read them together in a general way and treat them as redundant), especially—and understandably—in cases where a proper addressee *is the very person* who receives and signs for the service

materials. The provisions are not redundant. As described below in Part II(B)(3), subpart (i) specifies who may receive service materials, and subpart (ii) specifies to whom such materials must be addressed. The plain meaning of these separate provisions, as confirmed by caselaw, 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. Parts II(B)(1)–(4), below, analyze each of the four applicable provisions of section 22.5(b)(1)

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. Part II(C), below, explains that proof of service is prerequisite to default for failure to answer.

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.” Where a complainant chooses to serve the complaint by United States Postal Service (“USPS”) or commercial 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.”).⁵

5. Errors by Respondent or USPS may mean that the method employed does not satisfy section 22.5(b)(1)(i). *See, e.g., In the Matter of Burnham Assocs., Inc.*, 2010 EPA ALJ LEXIS 25, at *7–8 (ALJ Dec. 21, 2010) (stating service was improper due to lack of a return receipt where “the green card was no longer attached to the document by the time it reached

The language “certified mail with return receipt requested” is one method of service 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 September 12, 2014) (“USPS DMM”), specifies what these services do—and do not—entail. “Certified Mail service 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 addressee’s, *or their agent’s*, signature) for a two year period.” USPS DMM § 503.3.1.1 (emphasis added). Next, “Return receipt service 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. Plainly, 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

Respondent”); *Lester Sykes*, Docket No. TSCA-05-2008-0013 (finding that service by USPS priority mail does not satisfy section 22.5(b)(1)(i)).

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.

Restricted delivery service permits a mailer to direct delivery only to the addressee or addressee’s authorized agent. The addressee must be an individual specified by name. . . . Mail marked “Restricted Delivery” is delivered only to the addressee or to the person authorized in writing as the addressee’s agent to receive the mail An addressee who regularly receives restricted delivery mail may authorize an agent on Form 3801 or by letter to the postmaster.

USPS DMM §§ 503.8.1.1, 503.8.3.1, 503.8.3.3. In sum, 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 corporations.

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) (any “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 often, especially where another person signs on behalf of the addressee, distinctly analyze whether the addressee is a person identified by section 22.5(b)(1)(ii). *See, e.g., In the Matter of Katzson Bros., Inc.*, 2 E.A.D. 134, at 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*, 839 F.2d 1396; *In the Matter of Herman Roberts*, 2000 EPA RJO LEXIS 211, 214 (ALJ Apr. 14, 2000) (finding service proper, in part, because service materials 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 use of the term “serve” and the structure of section 22.5(b)(1) reveals the separate purposes of subsection (i) versus subsection (ii). The first sentence of subsection (i) is written to state that “complainant shall serve” service materials. “Complainant” is the subject, “serve” is the verb, and service materials are the object. The phrase “on respondent, or a representative authorized to receive service on respondent’s behalf” is a prepositional phrase that relates its objects (respondent or representative) to the words that follow (complaint and Consolidated Rules). The second sentence states “Service shall be made” using one of three methods. So, subsection (i) explains the method to serve, what to serve, and who can receive the service materials. That is, subsection (i) explains *how* to serve.

In contrast, subsection (ii) explains *who* to serve. Subsection (ii) also has “complainant” as its subject and “serve” is the verb. However, the object of “serve” in subsection (ii) is a list of people “authorized . . . to receive service of process.” People identified by subsection (ii) can receive process by virtue of their title or legal authority. In contrast, the phrase “or a representative authorized to receive service” in subsection (i) is qualified by “on respondent’s behalf.” Thus, subsection (ii) states a requirement for a proper addressee, and this is distinct from the requirement for a proper recipient in subsection (i). This reading gives meaning to every clause of this rule and does not render phrases duplicative or surplusage.

This reading also comports with caselaw and makes practical sense. “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 9 (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 (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 (July 7, 1999) (reasoning that subsequent actual notice to a proper addressee cured complainant’s failure to properly address the service materials).

In sum, 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). Note that any person identified by section 22.5(b)(1)(ii) is a proper recipient, even if that person is not the addressee on the service materials. *In re: Las Delicias Cmty.*, 14 E.A.D. 382, 391–97 (EAB 2009) (affirming default for failure to answer because respondent was an unincorporated association and the recipient of the service materials, while not the addressee, was a person identified by section 22.5(b)(1)(ii)(A)).

b. Representatives are proper recipients.

Besides delivering service materials directly to a proper addressee, the other way to satisfy the requirement to serve the service materials “on respondent, or a representative authorized to receive service on respondent’s behalf,” of course, 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 9 (“Although Herminio Cotto did not sign for the Complaint, the Complaint was properly addressed to him . . .”).

“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.” *Id.* 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 1399.⁶ 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 therefore on whether the Complaint was properly addressed and mailed and whether the return

6. Although 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 10 (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.

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, 214. 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 1399.⁷

7. One court, in analyzing a FIFRA notice requirement, employed similar reasoning, saying: “In this case, the notice was not returned to EPA as undeliverable, and delivery was not refused. The return receipt on its face shows that delivery was accomplished The return receipt was signed by someone at that address, although the signature is illegible. The signed return receipt, in effect, creates a presumption that the notice was delivered as shown on the receipt.” *In the Matter of Scotts-Sierra Crop Prot. Co.*, 1997 EPA ALJ LEXIS 144, at *7 (ALJ Feb. 11, 1997).

This reasoning seems to underly 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. 15, 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. That said, 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).⁸

c. Actual notice to addressee shows 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 actual notice confirms that the recipient knew “to whom it should be delivered.” *Katzson*, 839 F.2d at 1399; *A.B.E.F.*, at 10. 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 11 (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.”

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

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).

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 only 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.

As this Part II(B) has shown, 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 each satisfied. These provisions require proper method, proper service materials, proper addressee, and proper recipient.

C. Default requires proof of service.

The Consolidated Rules, at 40 C.F.R. § 22.5(b)(1)(iii), state: “Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly

executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.” The filing of proof of service is prerequisite to an order for default for failure to answer the complaint. *See, e.g., In the Matter of Taylor Auto. Co.*, CAA Docket No. VII-94-CAA-137, 1995 EPA RJO LEXIS 4, 5 (ALJ Mar. 8, 1995) (denying motion for default, in part, for failure to file proof of service, and stating that where “complainant is requesting a default order, [proof of service] must be evidenced in the record.”).

Sometimes, like in some cases where the recipient of the service materials is a proper addressee under section 22.5(b)(1)(ii), a signed USPS return receipt fully evidences proper service. *See, e.g., Pyramid* 11 E.A.D. 662–63 (CEO signed and dated return receipt).

However, neither the Consolidated Rules nor courts require that the return receipt on its face fully evidence service of process. *See, e.g., Herman Roberts*, 2000 EPA RJO LEXIS at n.7 (ALJ Apr. 14, 2000) (“In the future, Complainant should make the necessary arguments demonstrating service when it is not readily apparent from the return receipt, rather than just submitting the return receipt green card.”); *A.B.E.F.*, at 13 (reasoning that “[n]othing the Rules specifies that, for service to be effective, the return receipt must be dated,” and ordering default even though green card was not dated, because other information demonstrated that respondent’s deadline to answer, whatever it was, had passed).

The requirement to file proof of service does not in any way impose additional requirements (beyond the four requirements detailed above) for service of the complaint. By its plain meaning, “proof of service” is not service itself, and filing an affidavit or return receipt is not part of service itself. Rather, it is a notice to the court and all parties that complainant has properly served the complaint. Courts have held that service of process is proper even where proof of service is missing or useless. *See, e.g., Burnham*, 2010 EPA ALJ LEXIS at *7–8 (“It

would not be appropriate to dismiss this case [for lack of proof of service] where Respondent actually received a copy of the Complaint and it appears that Complainant will be able to establish proof of service within a reasonable amount of time.”); *Pan Am. Growers*, 2010 EPA ALJ LEXIS at n.2 (ordering default for failure to answer where proof of service was “illegible and the recipient, if any, cannot be identified,” because there was actual notice as demonstrated by a response to the complaint).

III. Complainant Served the Complaint According to the Consolidated Rules

A. 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.

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

Complainant satisfied the requirement for proper method in section 22.5(b)(1), namely 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 and the affidavit of the undersigned evidence that complainant used both “certified mail” and “return receipt requested” services from USPS. Mot. ¶¶ 32, 36. Complainant did not use “restricted delivery” because this USPS service is not required by section 22.5(b)(1) and, 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. Nothing in the record indicates that the method used to serve the Complaint in this matter deviated in any way from the definitions for these USPS services. USPS DMM §§ 503.3.1.1, 503.6.1.1. Unlike complainant in *Lester Sykes* who used priority mail, Complainant

here used the correct USPS services. Docket No. TSCA-05-2008-0013. Unlike the facts of *Burnham* where there was no return receipt because it got lost before the service materials reached their recipient, no errors occurred in executing this method of service.

2010 EPA ALJ LEXIS 25. Unlike the complainant in *In re: Fulton Fuel Co.* who eventually used personal service after numerous attempts to serve by mail went unclaimed, Complainant's first attempt at service by mail was successful. 2010 EPA App. LEXIS 41 (EAB Sept. 9, 2010). Complainant therefore used a proper method to serve the Complaint.

2. Complainant used proper service materials.

Complainant satisfied the requirement for proper service materials in section 22.5(b)(1), namely the requirement that complainant use "a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice."

The affidavit of the undersigned evidences that the delivered package contained, "Six separately addressed and sealed envelopes, each with a copy of the Complaint, a copy of the Consolidated Rules, and a cover letter explaining this proceeding, the need to answer, and the possibility of default." Mot. ¶ 31, Table B. Complainant therefore used proper service materials to serve the Complaint.

3. Xiaotong Qi 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, a managing or general agent, or any other person

authorized by appointment or by Federal or State law to receive service of process.”Complainant satisfied this requirement by addressing the service materials to Xiaotong Qi. Mot. at Table B.⁹

Both domestic corporation Respondents (Jonway USA and Shenke USA) have maintained Xiaotong Qi as their agent for service of process with the Secretary of the State of Texas for many years, and still do at the time this Brief was drafted. Mot. 16–17; Supp. App. 167, 170. Mr. Qi has also acted as an officer and managing agent for both domestic Respondents. Mot. 16–17; Supp. App. 169.

The four foreign corporation Respondents (Jonway Group, SSM, ZJS, and ZJM) have each repeatedly identified one or both of the domestic corporation Respondents as their agents for service of process. Mot ¶¶ 18–21; Supp. App. 181.

As stated in the Motion, “Although 40 C.F.R. § 22.5(b) is silent on how a complainant should serve a ‘person authorized by appointment . . . to receive service of process’ where that

9. The recipient of the service materials was the location of a business called “Nitro Powersports.” This address is not on file for Respondents with the Secretary of the State of Texas, nor have any Respondents used this address in the dozens of applications for Certificates of Conformity that they submitted to the EPA; those addresses appear to be abandoned and certified mail to that address goes unclaimed. Note that Nitro Powersports also reports to Texas that it is located at one of the abandoned “Kelly Boulevard” addresses.

However, based on site visits by EPA inspectors, Mr. Qi is known to do business at Nitro Powersports. This business includes selling vehicles that are certified and manufactured by one or more Respondents in this action. Mot. ¶¶ 31–42. The EPA’s Office of Transportation and Air Quality successfully reached Xiaotong Qi at this address throughout 2013. Supp. App. 183–90. The most recent such correspondence was received and signed for at the “front desk” by the same person who received and signed for the Complaint in this matter, Tina Yang. Supp. App. 186.

Under section 22.5(b)(1), Complainant needed only serve Xiaotong Qi; Complainant need not serve him at any particular location. Also, “certified mail with return receipt requested” is specifically designed to get the parcel to someone who knows how to get the parcel to the addressee, but not necessarily at the address used on the parcel. USPS DMM §§ 503.3.1.1, 503.6.1.1. So, it is of no consequence that the complaint was served at Nitro Powersports rather than one of the incorrect addresses Respondents provide to the EPA and the Secretary of the State of Texas.

person is a corporation, Complainant asserts that service on that corporation's 'agent for service of process' on file with the company's state of incorporation is sufficient." Mot. ¶ 58(c)(ii), (d)(ii), (e)(ii), (f)(ii).

For the foregoing reasons, for each and every Respondent, Xiaotong Qi qualifies under section 22.5(b)(1)(ii)(A) and was therefore a proper addressee for service of the complaint.

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 *214; *C.W. Smith*, 2002 EPA ALJ LEXIS at *17–19; *A.B.E.F.*, at 9–10; *Las Delicias*, 14 E.A.D. at 392–93. 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 sum, Xiaotong Qi 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.

4. Tina Yang 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."

Xiaotong Qi 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. Tina Yang was such a “representative,” and she received and signed for the service materials. Mot. ¶ 36.

The certified mail return receipt shows that Ms. Yang signed for the service materials at the intended address, 1942 I-35 E. North, Carrollton, TX 75006. Had it been another address, the return receipt would have indicated this. USPS DMM § 503.6.1.1 (stating that return receipts provide, in part, “information about the recipient’s actual delivery address”). Ms. Yang received and signed a return receipt at the “front desk” of Nitro Powersports for mail from the EPA to Xiaotong Qi less than a month before November 23, 2013 (when she signed for the Complaint in this matter). Supp. App. 186.

As detailed above in Part II(B)(4), “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 9. 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. Yang plainly demonstrates that she too assists with an office function—receiving and signing for mail. 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 *214, Ms. Yang is on site at Nitro Powersports and signs for mail addressed to Mr. Qi. 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.

Perhaps the most compelling evidence that Ms. Yang is a “representative” to Mr. Qi is that *Mr. Qi acknowledged that he actually and timely obtained the service materials Ms. Yang received*. Mr. Qi wrote and signed a letter (and sent an email with an identical message) on December 20, 2013, to the undersigned. Mot. ¶ 37. These missives overwhelmingly demonstrate that Mr. Qi obtained the service materials. The undersigned’s affidavit also establishes that the only copy of the Complaint that Complainant conveyed to Respondents in this matter was the hard-copy in the service materials received by Ms. Yang.

Such facts were sufficient in *Pan Am. Growers Supply*, 2010 EPA ALJ LEXIS at *n.2 (although the return receipt was illegible and the recipient unknown, respondent’s answer demonstrated actual notice and proper service of the complaint), and *C.W. Smith*, 2002 EPA ALJ LEXIS at *16–17. Also, the Board recently, and appropriately, affirmed a default order for failure to answer where the recipient was never even identified and there is no evidence in the record that respondents received actual notice of the complaint (at least, not for three years after someone signed for the service materials at respondents’ place of business). *Ross*, 2014 EPA App. LEXIS 16.¹⁰

Although the “representative relationship to the Respondent,” *Cheerful Cesspool Serv.*, 2011 EPA RJO LEXIS at *389, is not as well documented as other cases like *A.B.E.F.*, at 6 (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. Yang is a representative. Unlike in *Cheerful Cesspool*, a courier did not simply leave the service materials

10. Complainant used United Parcel Service, not USPS, to serve the complaint in *Ross*, but “the 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.” *Lester Sykes* at 3–4.

on the doorstep; rather, USPS arrived at the intended address, was met by someone with apparent authority and indeed a history of signing for mail addressed to Xiaotong Qi, and that person accepted the package. Supp. App. 186. There are no facts like in *Fulton*, 2010 EPA App. LEXIS at *10–11, where the recipient was an attorney who did not represent respondent in the matter. Lastly, *Las Delicias* is inapplicable to the issue of whether Tina Yang was a “representative” because that case was determined on the grounds that the recipient, while not the addressee, was nonetheless a person identified as a proper addressee under section 22.5(b)(1)(ii)(A).

The final reason that Tina Yang is a “representative” is because to read otherwise would frustrate the regulatory enforcement scheme. The Respondents here provided addresses and identified agents for service of process *because EPA regulations required Respondents to do so*. Applicants for Certificates of Conformity must name in their applications, “an agent for service of process located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.” 40 C.F.R. § 86.416-80(a)(1)–(2) (highway motorcycles); 40 C.F.R. § 1051.205 (recreational vehicles). So, maintaining an agent for service of process is a condition of selling vehicles in the United States. These regulatory requirements address the EPA’s significant need “to ensure that we will have a person in the United States who is able to speak for the company and receive communication regarding any aspect of our effort to certify engines and oversee compliance of certified products.” Amendments to Regulations for Heavy-Duty Diesel Engines, 71 Fed. Reg. 51,481, 51,483 (Aug. 30, 2006) (establishing agent requirement for highway motorcycles). Similarly, “For companies based outside the United States, this ensures that we will be able to maintain contact regarding any official communication that may be required.” Control of Emissions From Nonroad Spark-Ignition Engines and Equipment, 73 Fed.

Reg. 59,034, 59,073 (Oct. 8, 2008) (establishing agent requirement for various nonroad vehicle and engine categories).

In light of these regulatory requirements, the present case is analogous to *In the Matter of Health Care Products, Inc., et al.*, 1996 EPA ALJ LEXIS 142 (ALJ June 13, 1996). In that case, service of the complaint was proper because it was served on persons authorized to receive process by virtue of authorizations made by the respondents as required by EPA regulation. *Id.* Like the *Health Care Products* court, the Board here should consider the “regulatory enforcement scheme” and the government interests cited in the rulemaking preambles above. *Id.* Here, the addresses Respondents provided to the EPA—in dozens of applications—were false. EPA could not reach respondents at the Kelly Boulevard addresses for inspections or for service of the Complaint. These circumstances support an interpretation of “representative” that includes those people who receive mail for someone at that person’s place of business, then actually provide that mail to its addressee. This is especially true, as here, where companies regulated by federal environmental law volunteered that addressee as their agent for service of process for EPA’s purposes. To read “representative” otherwise would reward those designated agents that evade service, which appears to be underway here. Again, both agents have abandoned their registered addresses. Since filing of the Complaint in this matter, the functions of Shenke USA have largely transferred to yet another affiliate of the foreign Respondents, Yamazuki, Inc. Since the Board’s September 3 Order for this Brief, Jonway USA has voluntarily dissolved.

In sum, Tina Yang was “a representative authorized to receive service” on behalf of Xiaotong Qi. The first sentence of section 22.5(b)(1)(i) was therefore satisfied when she received and signed for the Complaint in this matter.

B. Alternatively, Complainant served the Complaint in satisfaction of the Consolidated Rules because Xiaotong Qi actually obtained the service materials.

Complainant properly served the Complaint because each Respondent's agent for service of process, Xiaotong Qi, *actually received* the service materials. Mr. Qi sent the undersigned a signed letter, dated December 20, 2013 (before answers were due), which undoubtedly confirms that he timely received the Complaint in this matter. Mr. Qi's December 20 reply is analogous to the reply of the respondent in *Pan Am. Growers*, 2010 EPA ALJ LEXIS at n.2., which was sufficient to demonstrate that service of the complaint satisfied the Consolidated Rules.

"The achievement of actual service of process obviates the failure of Complainant to strictly comply with the service of process procedures of the Rules of Practice." *C.W. Smith*, 2002 EPA ALJ LEXIS at 16–17. Specifically, here, the fact that Mr. Qi at his place of business (a proper addressee) actually received a copy of the complaint and the Consolidated Rules (proper materials) sent by certified mail return receipt requested (a proper method) cures any lack of proof that the recipient was a "representative" and any shortcomings in the proof of service.

IV. Complainant Filed Proof of Service.

On January 15, 2014, Complainant filed Proof of Service in this matter. Unlike *Taylor* and *Geason*, this prerequisite for default has plainly been satisfied. The return receipt clearly shows that Tina Yang signed for the service materials on November 23, 2013. This is a "properly executed receipt." While it does not fully evidence that Tina Yang is a "representative," proper service need not be "readily apparent from the return receipt." *Herman Roberts*, 2000

EPA RJO LEXIS at *n.7. Given that it is dated, it provides more information than the return receipt that was acceptable in *A.B.E.F.*, at 13.

In ordering this Supplemental Brief, the Board explained that it has “indicated that, to be ‘properly executed,’ the return receipt must be signed by someone authorized to receive service.” As explained above, Tina Yang was authorized to receive the service materials on behalf of Xiaotong Qi as his representative, so her signature makes the return receipt “properly executed.” Complainant further maintains that whether service of complaints satisfy the Consolidated Rules does not depend on whether return receipt is “properly executed.” The plain language of section 22.5(b)(1) is that the requirement to file proof of service does not in any way impose additional requirements for service of the complaint. Courts have held that service of the complaint satisfied the Consolidated Rules and ordered default (and presumably therefore held that the return receipt was “properly executed”) even where the return receipt was illegible and the recipient never identified. *E.g.*, *Ross*, 2014 EPA App. LEXIS 16; *Pan Am. Growers*, 2010 EPA ALJ LEXIS at n.2.

Respectfully Submitted,



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Sept. 19 2014
Date

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Supplemental Brief in Support of Complainant's Motion for a Default Order *In the Matter of Jonway Motorcycle (USA) Co., et al.*, was filed this day by hand delivery with the EPA Environmental Appeal Board at the address listed below:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Building, 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 Supplemental Brief in Support of Complainant's Motion to each of the six Respondents at the following address on the date below:

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

Sept. 19, 2014
Date



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