

MELANIE SHEPHERDSON  
Senior Counsel  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3923

**\*\* FILED \*\***  
07 AUG 2020  
U.S.EPA - REGION IX

SYLVIA QUAIST  
Regional Counsel  
United States Environmental Protection Agency, Region IX

Attorneys for Complainant

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

_____ )	Docket No. CAA-09-2020-0047
In the Matter of: )	
China Motorparts Import, Inc., )	CONSENT AGREEMENT AND
Respondent )	FINAL ORDER PURSUANT TO
_____ )	40 C.F.R. §§ 22.13 and 22.18

**I. CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative penalty assessment proceeding instituted under Section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1) and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and attached Final Order simultaneously initiates and concludes this matter.

2. Complainant is the United States Environmental Protection Agency (“EPA”). On the EPA’s behalf, Claire Trombadore, Assistant Director of the Air, Waste & Analysis Branch of the Enforcement and Compliance Assurance Division, EPA Region IX, has been duly delegated the authority to initiate and settle civil administrative penalty assessment proceedings under Section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

3. Respondent is China Motorparts Import, Inc. (“Respondent”). Respondent imports recreational vehicles into the United States and thereafter introduces those vehicles into commerce.

4. Respondent is a corporation organized under the laws of the State of California with a business address at 1151 Spruce St., Riverside, CA 92507.

5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement and attached Final Order without adjudication of any issues of law or fact herein and agree to comply with the terms of this Consent Agreement and attached Final Order.

## B. GOVERNING LAW

### Clean Air Act

6. This proceeding arises under Part A of Title II of the CAA, Sections 202 to 219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen, and carbon monoxide. The Alleged Violations of Law, stated below, regard import of vehicles in violation of Title II of the CAA. What follows is a summary of the law that governs these allegations.

7. A manufacturer is prohibited by Section 203(a)(1) of the CAA from selling, offering for sale, introducing, or delivering for introduction into commerce, or any person from importing, any new motor vehicle or engine manufactured after the applicable effective date of the regulations unless such vehicle or engine is covered by a Certificate of Conformity (“COC”) issued by the EPA. 42 U.S.C. § 7522(a)(1).

8. Section 213(d) of the CAA, 42 U.S.C. § 7547(d), provides that nonroad vehicle and engine emission standards shall be enforced in the same manner as the standards prescribed under Section 202 of the CAA for new motor vehicles and new motor vehicle engines, and that the Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under Section 213.

9. The term “manufacturer,” as defined under Section 216 of the CAA, includes persons who import vehicles or engines for resale. 42 U.S.C. § 7550.

10. Beginning with model year 2006, all-terrain vehicles and go-karts are regulated under the provisions at 40 C.F.R. Part 1051 for the *Control of Emissions from Recreational Engines and Vehicles* 40 C.F.R. § 1051.1(a). Under 40 C.F.R. § 1051.801 (*manufacturer*), “Manufacturer” is defined as any person who manufactures a recreation vehicle for sale in the United States, and includes a person who imports recreational vehicles in the United States for resale. Further, Section 1051.15(c) provides that anyone who manufactures, imports, installs, owns, operates, or rebuilds any of the vehicles subject to 40 C.F.R. Part 1051 is also subject to the *General Compliance Provisions for Highway, Stationary, and Nonroad Programs* under 40 C.F.R. Part 1068.

11. Manufacturers may not sell, offer for sale, or introduce or deliver into commerce in the United States, nor may any person import into the United States, any engine or vehicle

unless such engine or vehicle is covered by a valid, EPA-issued COC for its model year and bears the required, permanently affixed EPA emission control information (“ECI”) label, or is properly exempted or excluded from the certification requirements. 40 C.F.R. §§ 1068.101(a)(1) and (b)(5). *See also* 40 C.F.R. § 1068.301(b).

12. Nonroad engines and vehicles are considered not covered by a COC unless they are in a configuration as described in the manufacturer’s application for certification (“AFC”). 40 C.F.R. § 1068.101(a)(1)(i). Nonroad engines and vehicles are not covered by a COC unless they are produced during the period specified in the COC and conform to the specifications described in the COC and the AFC. 40 C.F.R. § 1068.103.

13. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a recreational vehicle unless it is covered by a COC and properly labeled or is otherwise exempt from certification and labeling requirements. 40 C.F.R. § 1068.101(a)(1). A person who violates 40 C.F.R. § 1068.101(a)(1) after November 2, 2015, is subject to a civil penalty of up to \$48,192 for each such vehicle, if a penalty is assessed on or after January 13, 2020. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1).

14. The EPA may assess a civil penalty through its own administrative process if the penalty sought is less than \$385,535. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. §§ 19.4, 1068.125(b). The Civil Penalty in this case is less than \$385,535.

### C. STIPULATED FACTS

15. The vehicles subject to this Consent Agreement and attached Final Order are recreational vehicles, as defined above, and are subject to the emission standards and compliance provisions of the CAA and its regulations. CAA §§ 203, 213(d), 42 U.S.C. §§ 7522, 7547(d).

- 16. Respondent is a “person” as defined above.
- 17. Respondent is a “manufacturer” as defined above.
- 18. Respondent imported all the vehicles subject to this Consent Agreement and attached Final Order.
- 19. Respondent imported into the United States 164 off-highway motorcycles (the “Subject Vehicles”) as described in Table 1 below.

**Table 1: Subject Vehicles**

<b>Type</b>	<b>Manufacturer</b>	<b>Model</b>	<b>Model Year</b>	<b>Quantity</b>
Off-highway motorcycle	Zhejiang Easy Vehicle Co. Ltd	BMS PRO 110A	2019	164

20. On or about October 23, 2019, Respondent imported into the United States at the Port of Long Beach, California, the Subject Vehicles under Entry Number ES3-2555445-0.

21. The Subject Vehicles are not covered by an EPA-issued COC.

22. Respondent is not authorized to import BMS PRO 110A off-highway motorcycles under the claimed racing exemption number: 2018-NOVEMBER-MCATV-M-10494.

**D. VIOLATIONS OF LAW ALLEGED BY THE EPA**

Complainant alleges:

23. By importing the Subject Vehicles that are not covered by a COC, Respondent committed violations of CAA §§ 203(a)(1) and 213, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and the corresponding regulations codified at 40 C.F.R. §§ 1068.101(a)(1) and (b)(5).

## E. TERMS OF CONSENT AGREEMENT

24. For the purpose of this proceeding, as required by 40 C.F.R. 22.18(b)(2),

Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement and over Respondent;
- b. admits to the stipulated facts contained in Section I.C. of this Consent Agreement;
- c. neither admits nor denies the specific factual allegations contained in Section I.D. of this Consent Agreement;
- d. consents to the assessment of a civil penalty under this Section, as stated below;
- e. consents to the conditions specified in this Consent Agreement;
- f. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to and issue of fact or law set forth in this Consent Agreement, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

### Civil Penalty

25. Respondent agrees to:

- a. pay the civil penalty of FIVE THOUSAND DOLLARS (\$5,000) (“EPA Penalty”) within 30 calendar days of the Effective Date of this Consent Agreement and attached Final Order. The EPA Penalty has been reduced to reflect the Respondent’s demonstrated limited ability to pay a larger

civil penalty. The EPA has determined that the Respondent has a limited ability to pay a larger civil penalty after having conducted an evaluation and analysis of financial information provided by the Respondent;

- b. pay the EPA Penalty using either the “Vendor Express” or “Fedwire” methods provided on the website

<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying the payment with “CAA-09-2020-0047”; and

- c. Within 24 hours of payment of the EPA Penalty, send electronic proof of payment to Daniel Haskell at [Haskell.Daniel@epa.gov](mailto:Haskell.Daniel@epa.gov) (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “CAA-09-2020-0047”).

26. If Respondent fails to pay the civil administrative penalty specified in Paragraph 25(a) of this Consent Agreement within 30 days after the Effective Date of this Consent Agreement and attached Final Order, then Respondent shall pay to the EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues plus the penalty sum specified in Paragraph 25(a), upon written demand by the EPA.

27. If Respondent fails to timely pay any portion of the penalty assessed under this Consent Agreement and attached Final Order, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established

pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

- b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

28. For purposes of this proceeding, the parties each agree that:

- a. this Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
- b. the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement;



- c. this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as full and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement;
- d. each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations under this Consent Agreement and attached Final Order; and
- e. each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

F. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

29. The provisions of this Consent Agreement and attached Final Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assignees. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successors or assignees.

30. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and attached Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

31. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

32. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

33. The EPA reserves the right to revoke this Consent Agreement and attached Final Order and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement and attached Final Order, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

#### G. EFFECTIVE DATE

34. Respondent and Complainant agree to issuance of the Consent Agreement and attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement and attached Final Order to Respondent by electronic mail. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of China Motorparts Import, Inc., Docket No. CAA-09-2020-0047 is hereby stipulated, agreed, and approved for entry.

FOR RESPONDENT:

7/15/2020  
Date

Fion Kim  
Signature

Printed Name: Fion Kim  
Title: President, China Motorparts Import, Inc.  
Address: 1151 Spruce St.  
Riverside, CA 92507  
fionkim@bmsmotor.com

The foregoing Consent Agreement In the Matter of China Motorparts Import, Inc., Docket No. CAA-09-2020-0047 is hereby stipulated, agreed, and approved for entry.

FOR COMPLAINANT:

\_\_\_\_\_  
Date

CLAIRE TROMBADORE Digitally signed by CLAIRE  
TROMBADORE  
Date: 2020.07.21 15:09:02 -07'00'

Claire Trombadore  
Assistant Director, Air, Waste & Analysis Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

II. FINAL ORDER

EPA Region IX and China Motorparts Import, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2020-0047) be entered, and Respondent shall pay a civil administrative penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) and otherwise comply with the terms set forth in the CAFO.

\_\_\_\_\_  
Date

**STEVEN JAWGIEL**

Digitally signed by STEVEN  
JAWGIEL  
Date: 2020.08.07 10:24:29 -07'00'

\_\_\_\_\_  
STEVEN JAWGIEL  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region IX

1 **CERTIFICATE OF SERVICE**

2 This is to certify that the forgoing CONSENT AGREEMENT AND FINAL ORDER in the  
3 matter of China Motorparts Import Inc. (CAA-09-2020-0047) was filed with the Regional  
4 Hearing Clerk and sent to the parties as follows:

5 ELECTRONIC MAIL

6 Respondent: Fion Kim  
7 President  
8 China Motorparts Import Inc.  
9 [fionkim@bmsmotor.com](mailto:fionkim@bmsmotor.com)

10 ELECTRONIC MAIL

11 Complainant: Melanie Shepherdson, Attorney Advisor  
12 United States Environmental Protection Agency  
13 Region IX – Office of Regional Counsel  
14 [Shepherdson.Melanie@epa.gov](mailto:Shepherdson.Melanie@epa.gov)

15 Dated: \_\_\_\_\_

16 **Steven  
17 Armsey**

Digitally signed by  
Steven Armsey  
Date: 2020.08.07  
18:29:13 -07'00'

18 Steven Armsey  
19 Regional Hearing Clerk  
20 U.S. EPA, Region 9  
21  
22  
23  
24  
25