

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

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

COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE

Pursuant to 40 C.F.R § 22.19(a) and the Court’s January 20, 2015 Prehearing Order, Complainant in the above-captioned matter hereby provides its Rebuttal Prehearing Exchange. This consists of the following document, and two enclosed exhibits.

A. *A statement and/or any documents in response to Respondent’s Prehearing Exchange.*

Complainant makes the following statements in response to “Respondent’s Initial Prehearing Exchange,” filed on or about March 25, 2015.

1. This document was filed by Respondents Peace Industry Group (USA), Inc. and Blue Eagle Motor Inc.
2. Respondents Zhejiang Peace Industry and Trade Co., Ltd. and Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd. filed no prehearing exchange materials whatsoever.
3. Complainant notes that as of March 27, 2015, Respondents have exchanged no documents nor exhibits for use at hearing.
4. Complainant provides the following responses to the following statements from “Respondents’ Initial Prehearing Exchange”:
 - a. “The Respondent shows that it fired MotorScience prior to any court action, once it realized MotorScience was not performing tests as required by the EPA under the Clean Air Act standards.” Respondent has not shown, and Complainant does not understand, how any actions of MotorScience are relevant to the claims in this penalty assessment proceeding.

- b. “The Respondent responds to the assertion by the Complainant that the Respondent ‘carried a very large account payable with no terms for repayment.’” This presumably makes reference to the first full paragraph on page 8 of Complainant’s Initial Prehearing Exchange. Complainant indeed has unanswered questions concerning Respondents’ accounts payable, however hereby admits that this language was mistakenly included in Complainant’s Initial Prehearing Exchange. Complainant does not have reason to think that Respondents Peace Industry Group (USA), Inc. and Blue Eagle Motor Inc. have a sole shareholder that is also a principal for Zhejiang Peace Industry and Trade Co., Ltd.
5. Complainant exchanges the enclosed four exhibits, marked CX 107 and CX 108. As explained in section B, below, Complainant introduces these exhibits to evidence that Complainant has considered, among other things, the domestic Respondents’ business size and the effect of a penalty on Respondents’ ability to continue in business. Neither these exhibits, nor any exchanged by Complainant, include the “documents which have been previously produced by Respondent” referenced on the second page of “Respondent’s Initial Prehearing Exchange.”

Complainant makes the following statements in response to “Respondent’s Initial Prehearing Exchange Supplemental Documents,” filed on or about April 9, 2015.

6. As of the date of filing of this document (the Complainant’s Rebuttal Prehearing Exchange) Complainant has not been served with Respondent’s Initial Prehearing Exchange Supplemental Documents. Complainant received a courtesy copy of the cover letter of this filing from the Hearing Clerk on April 9, 2015, but has not received the attachments referenced therein. Complainant is unable to determine whether those attachments have been provided to Complainant in settlement talks. Should the Presiding Officer recognize these attachments as Prehearing Exchange, Complainant reserves its rights to provide further Rebuttal Prehearing Exchange, as necessary, once it has had an opportunity to review these attachments.
7. Respondent’s Initial Prehearing Exchange Supplemental Documents appears to fall into the category of actions identified in the Prehearing Order in Section III, “Supplement to Prehearing Exchange.” There, the Presiding Officer ordered that any supplement to prehearing exchange be accompanied by a motion to supplement. Here, no motion of any kind accompanied Respondent’s Initial Prehearing Exchange Supplemental Documents.

C. *A statement specifying the dollar amount of the penalty Complainant proposes to assess for the violations alleged in the Complaint, and a narrative statement explaining in detail the calculation of the proposed penalty, addressing each penalty determination factor listed in the applicable statute, and describing how the specific provisions of any penalty policies and/or guidelines were applied in calculating the penalty.*

8. Complainant proposes to assess civil penalties that amount to \$1,784,203 (Proposed Penalties) for the counts alleged in the Complaint, as follows:

- a. \$525,988 for Counts 1 and 2;
- b. \$1,048,215 for Counts 3, 4, 5, and 6; and
- c. \$210,000 for Counts 7 and 8.

9. Legal Grounds for the Proposed Penalties:

- a. In determining civil penalties, the CAA requires that the EPA consider “the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator’s business, the violator’s history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator’s ability to continue in business, and such other matters as justice may require.” CAA § 205(c)(2), 42 U.S.C. § 7524(c)(2); *see also* 40 C.F.R. § 1068.125(a)(1), (b)(1) (listing these same factors).
- b. Complainant uses a penalty policy that incorporates these statutory factors and calculates civil penalties for specific cases. Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (Jan. 16, 2009) (Policy), *available at* http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf (last visited April 7, 2015).
- c. The Policy calculates civil penalties as follows. First, the Policy requires the calculation of the *preliminary deterrence amount*. This is the sum of the *economic benefit* and the *gravity*. The economic benefit is based on the vehicle and engine power; the rule of thumb for calculating the per-vehicle economic benefit is \$1 per unit of horsepower, but no less than \$15 per vehicle and engine. If a vehicle or engine is stopped upon importation and exported, or if the violation is addressed, for example, through physical modification, then that vehicle or engine is considered remediated and there is no economic benefit. Where case-specific information is available to calculate economic benefit, that information is used rather than the rule of thumb. To determine the gravity component, a base gravity figure is calculated according to horsepower, then multiplied to reflect egregiousness (using a factor of 1 for minor violations, 3.25 for moderate violations, or 6.5 for major violations), further increased by 0 – 30% for failure to remediate, scaled down according to the number of vehicles, and adjusted to

reflect business size. Second, the Policy requires the calculation of the *initial penalty target figure*. This figure is the preliminary deterrence amount, but with the gravity component adjusted to reflect the violator's degree of willfulness or negligence, degree of cooperation or non-cooperation, and history of noncompliance. Finally, the initial penalty target figure can be adjusted to account for unique factors, and such adjustments yield the *adjusted penalty target figure*.

- d. The facts alleged in the Complaint establish the eight claims stated in the Complaint. Liability for Counts 1-6 subjects the Respondents to a civil penalty that is the sum of up to \$37,500 for each and every highway motorcycle or recreational vehicle that was not covered by a COC or that violated warranty requirements, that Respondents sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing) into the United States. Complaint ¶ 17. Liability for Counts 7 and 8 subjects the Respondents to a civil penalty of up to \$37,500 for each record for each day that such record was not maintained or provided to the EPA. Complaint ¶ 18.

10. Factual Grounds for the \$525,988 civil penalty proposed for Counts 1 and 2:

- a. The preliminary deterrence amount here is \$439,723. Below is a narrative description of how this amount was calculated.
 - i. The first component of this preliminary deterrence amount, the economic benefit, is \$152,175. This amount is based on the Policy's rule of thumb and is the sum of \$15 for each and every violative vehicle that was not remediated—10,145 of the 10,707 Subject Motorcycles. The remaining 562 Subject Motorcycles were detained by United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP) at the point of importation then remediated by denying their entry to the United States markets. So, these approximately 562 vehicles generated no economic benefit for Respondents.
 - ii. Next, the Subject Motorcycles require a gravity-based penalty of approximately \$287,548. This amount is based on: the vehicles' power rating (3.20 horsepower for vehicles in Count 1, and 2.80 horsepower for vehicles in Count 2); a 6.5-fold increase for "major" egregiousness of the 10,707 certification violations based on non-conforming carburetors, catalyts, engine displacements and adjustable parameters; and an additional 30% for Respondent's failure to remediate 10,145 of the Subject Motorcycles. (This includes no additional gravity-based penalty for failure to remediate the approximately 562 vehicles that were, in fact, remediated.) This number was calculated according to the Policy's scaling factors. Specifically, the base per-vehicle gravity figure was scaled both for engine horsepower per Table 1 of the Policy and for the total number of vehicles per Table 3 of the Policy. Policy at 15-18.

b. The initial penalty target figure is \$525,988. This is the preliminary deterrence amount, but with the gravity component adjusted to reflect the Respondents' degree of willfulness or negligence and their degree of non-cooperation. Here, Complainant increased the gravity component of the preliminary deterrence amount by 20% to reflect Respondents' degree of willfulness and 10% to reflect Respondents' degree of non-cooperation. These increases are warranted for the following reasons:

i. Regarding the 20% increase to reflect Respondents' degree of willfulness: The Policy directs the EPA to increase penalties, among other factors, where respondents have control over the violations, could have foreseen the violations, failed to take reasonable precautions, knew or should have known that the violations would occur, and knew of the legal requirements that were violated. Policy at 23–24.

Here, the EPA and CBP detained, inspected, seized, and denied entry into the United States for hundreds or thousands of Respondents' vehicles throughout model years 2006, 2007, and 2008. Despite this abundant notice of noncompliance, and likely disruptions to Respondents' commercial transactions, Respondents continued to violate the Clean Air Act by importing the 10,707 noncompliant Subject Motorcycles. Next, Complainant is unaware of any reasonable precautions by Respondents to prevent violations. Lastly, the Respondents certified, manufactured, and imported the Subject Motorcycles, and therefore had total control over the events constituting the violations. In certifying the vehicles, the Respondents made repeated commitments to adhere to the CAA and its regulations, but failed to do so. These facts warrant a substantial increase for Respondents' willfulness, and the Complainant proposes 20% as authorized by the Policy.

ii. Regarding the 10% increase to reflect Respondents' non-cooperation: The Policy directs the EPA to increase penalties where respondents fail to promptly report its noncompliance and based on any other relevant facts. Policy at 24–25.

Here, Respondents have never reported any violations to the EPA. Rather, it appears that Respondents' business practice was to introduce high volumes of noncompliant vehicles into the United States in reliance on the fact that EPA and CBP are only able to detain and inspect a fraction of regulated vehicles that are imported in to the United States. As explained above, only 562 of the 10,707 Subject Motorcycles were stopped at the point of importation. More generally, on information and belief, Respondents *annually* imported over 17,000 regulated vehicles worth more than \$6 million during the period of violations alleged in the Complaint. Next, as evidenced in the exhibits accompanying this Rebuttal Prehearing Exchange, Respondent Peace Industry Group (USA) Inc. has

for nearly two years failed to provide information to substantiate their claimed inability to pay. This demonstrates substantial non-cooperation. Lastly, the foreign Respondents refused to speak with Complainant before the filing of the Complaint, and have barely made an appearance since then. These facts warrant a substantial increase for Respondents' non-cooperation, and the Complainant proposes a 10% increase as authorized by the Policy.

- c. Finally, there are no unique factors of this case to warrant any reduction of the initial penalty target figure.
- d. For the foregoing reasons, the requested civil penalty for Counts 1 and 2 of the Complaint is \$525,988.

11. Factual Grounds for the \$1,048,215 civil penalty proposed for Counts 3, 4, 5, and 6:

- a. The preliminary deterrence amount here is \$867,332. Below is a narrative description of how this amount was calculated.
 - i. The first component of this preliminary deterrence amount, the economic benefit, is \$264,390. This amount is based on the Policy's rule of thumb and is the sum of \$15 for each and every violative vehicle that was not remediated—11,718 of the 12,252 Subject Recreational Vehicles. The remaining 534 Subject Recreational Vehicles were detained by CBP at the point of importation then remediated by denying their entry to the United States markets. So, these approximately 534 vehicles generated no economic benefit for Respondents.
 - ii. Next, the subject vehicles require a gravity-based penalty of approximately \$602,942. This amount is based on: the vehicles' power rating (6.30 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); a 6.5-fold increase for "major" egregiousness of the 12,252 certification violations based on non-conforming carburetors, catalysts, engine displacements and adjustable parameters for Counts 3, 4, and 5. For Count 6, there is a 3.25-fold increase for "moderate" egregiousness of the 5,908 warranty violations. This figure also includes an additional 30% for Respondents' failure to remediate 11,718 of the Subject Recreational Vehicles. (This includes no additional gravity-based penalty for failure to remediate the approximately 534 vehicles that were, in fact, remediated.) This number was calculated according to the Policy's scaling factors. Specifically, the base per-vehicle gravity figure was scaled both for engine horsepower per Table 1 of the Policy and for the total number of vehicles per Table 3 of the Policy. Policy at 15-18.

b. The initial penalty target figure is \$1,048,215. This is the preliminary deterrence amount, but with the gravity component adjusted to reflect the Respondents' degree of willfulness or negligence and their degree of non-cooperation. Here, Complainant increased the gravity component of the preliminary deterrence amount by 20% to reflect Respondents' degree of willfulness and 10% to reflect Respondents' degree of non-cooperation. These increases are warranted for the following reasons:

i. Regarding the 20% increase to reflect Respondents' degree of willfulness: The Policy directs the EPA to increase penalties, among other factors, where respondents have control over the violations, could have foreseen the violations, failed to take reasonable precautions, knew or should have known that the violations would occur, and knew of the legal requirements that were violated. Policy at 23–24.

Here, the EPA and CBP detained, inspected, seized, and denied entry into the United States for hundreds or thousands of Respondents' vehicles throughout model years 2006, 2007, and 2008. Despite this abundant notice of noncompliance, and likely disruptions to Respondents' commercial transactions, Respondents continued to violate the Clean Air Act by importing the 12,252 noncompliant Subject Motorcycles. Next, Complainant is unaware of any reasonable precautions by Respondents to prevent violations. Lastly, the Respondents certified, manufactured, and imported the Subject Motorcycles, and therefore had total control over the events constituting the violations. In certifying the vehicles, the Respondents made repeated commitments to adhere to the CAA and its regulations, but failed to do so. These facts warrant a substantial increase for Respondents' willfulness, and the Complainant proposes 20% as authorized by the Policy.

ii. Regarding the 10% increase to reflect Respondents' non-cooperation: The Policy directs the EPA to increase penalties where respondents fail to promptly report its noncompliance and based on any other relevant facts. Policy at 24–25.

Here, Respondents have never reported any violations to the EPA. Rather, it appears that Respondents' business practice was to introduce high volumes of noncompliant vehicles into the United States in reliance on the fact that EPA and CBP are only able to detain and inspect a fraction of regulated vehicles that are imported in to the United States. As explained above, only 534 of the 12,252 Subject Recreational Vehicles were stopped at the point of importation. More generally, on information and belief, Respondents *annually* imported over 17,000 regulated vehicles worth more than \$6 million during the period of violations alleged in the Complaint. Next, as evidenced in the exhibits accompanying this Rebuttal Prehearing Exchange, Respondent Peace Industry Group (USA) Inc. has

for nearly two years failed to provide information to substantiate their claimed inability to pay. This demonstrates substantial non-cooperation. Lastly, the foreign Respondents refused to speak with Complainant before the filing of the Complaint, and have barely made an appearance since then. These facts warrant a substantial increase for Respondents' non-cooperation, and the Complainant proposes a 10% increase as authorized by the Policy.

- c. Finally, there are no unique factors of this case to warrant any reduction of the initial penalty target figure.
- d. For the foregoing reasons, the requested civil penalty for Counts 3 – 6 of the Complaint is \$1,048,215.

12. Factual Grounds for the \$210,000 civil penalty proposed for Counts 7 and 8:

- a. The requested civil penalty for the recordkeeping violations in Counts 7 and 8 is \$210,620. This is entirely a gravity-based penalty; Complainant seeks no economic benefit-based penalty for these recordkeeping violations. The Policy does not provide a method to calculate civil penalties for recordkeeping violations, so this penalty was calculated according to the statutory factors as follows. (Note, Complainant has applied this method in numerous prior cases, including Default Order and Final Decision, *In re: Jonway Motorcycle et al.*, CAA Appeal No. 14-03 (EAB Nov. 14, 2014).)

For each record Respondent failed to keep (or category of records, as appropriate), Complainant assessed a \$5,000 - \$25,000 gravity-based penalty. The amount was determined based on Complainant's review of the extent of the missing information, the disorganization of the information, the number of vehicles involved, the risk of unlawful emissions from those vehicles, and importance of the missing information to understanding vehicle emissions, assessing compliance, and facilitating recalls and other remediation. Violations were counted and penalties were assessed for each separate engine family for which there are recordkeeping violations. This approach is reasonable, especially in light of the CAA's authorization of \$37,500 per day per violation. CAA §§ 203(a)(2)(A), 205(a), 208(a), 42 U.S.C. §§ 7522(a)(2)(A), 7524(a), 7542(a); 40 C.F.R. §§ 19.4, 1068.101(a)(2).

- b. Here, as alleged in Count 7, Peace Industry Group (USA), Inc. failed to keep and maintain for three engine families:
 - i. the records of the vehicle tested for demonstrating emission compliance for certification purposes. 40 C.F.R. § 86.440-78(a)(2)(A). In order to obtain a Certificate of *Conformity*, companies must provide assurances that the vehicles they actually sell *conform* to the vehicle that was tested for emission compliance. Here, the Respondent failed to keep these

mandatory records and can provide no such assurances. Complainant assessed a \$5,000 penalty for each engine family, or \$15,000 total; and

ii. the records of the emission tests performed. 40 C.F.R. § 86.440-78(a)(2)(B). These are mandatory records that are essential to the EPA's program. Emission testing is a fundamental element of the EPA's vehicle certification program. In the absence of any records that a vehicle was even tested, the EPA and the public is deprived of information that is not only mandated by law (and which Respondent told the EPA in its certification applications that it had and would keep), but which demonstrates whether mobile sources of air pollution emit hazardous levels of air pollution. Complainant assessed a \$25,000 penalty for each engine family, or \$75,000 total.

c. Here, as alleged in Count 8, Peace Industry Group (USA), Inc. failed to keep and maintain for four engine families:

i. the records identified in 40 C.F.R. § 1051.205 but that are not required to be part of certification applications. 40 C.F.R. § 1051.250(b)(2). This includes a variety of information relevant to determining compliance with emission standards and other requirements. In sum, while the Respondent had a copy of its certification applications as submitted to the EPA, it had no other information about the source of the content of those applications. Complainant assessed a \$5,000 penalty for each engine family, or \$20,000 total; and

ii. the records of the emission test vehicle and the emission tests performed. 40 C.F.R. § 1051.250(b)(3). These are mandatory records that are essential to the EPA's program. In order to obtain a Certificate of *Conformity*, companies must provide assurances that the vehicles they actually sell *conform* to the vehicle that was tested for emission compliance. Here, the Respondent failed to keep these mandatory records and can provide no such assurances. Emission testing is a fundamental element of the EPA's vehicle certification program. In the absence of any records that a vehicle was even tested, the EPA and the public is deprived of information that is not only mandated by law (and which Respondent told the EPA in its certification applications that it had and would keep), but which demonstrates whether mobile sources of air pollution emit hazardous levels of air pollution. Complainant assessed a \$25,000 penalty for each engine family, or \$100,000 total.

d. This sums to \$210,000, which Complainant proposes for Counts 7 and 8.

13. Complainant makes the following statements with respect to each penalty determination factor listed in the applicable statute, Clean Air Act section 205(c)(2), 42 U.S.C. § 7524(c)(2); *see also* 40 C.F.R. § 1068.125(a)(1), (b)(1) (listing same factors).

- a. *“the gravity of the violation”*: Complainant considered this factor when it calculated the Proposed Penalties according to the Policy, as detailed above in ¶¶ 8–11, and when it calculated the proposed penalty for Counts 7 and 8 as described in ¶ 12.
- b. *“the economic benefit or savings (if any) resulting from the violation”*: Complainant considered this factor when it calculated the Proposed Penalty according to the Policy, as detailed above in ¶¶ 8–11.
- c. *“the size of the violator’s business”*: Complainant considered this factor when it calculated the proposed penalty according to the Policy. The Policy addresses this factor in its Sections II.B.4 and II.B.5(f). Since 2013, Complainant has requested that the domestic Respondents provide financial information to enable the Complainant, among other things, to assess their business size. They have provided some of the requested information. Complainant’s Exhibits CX 107–108 summarize Complainant’s requests and Respondents’ production. As detailed below in ¶ 13(f), below, despite a comprehensive and expert-supported analysis of the financial information the domestic Respondents produced, Complainant was unable to ascertain their business size. This is primarily due to the lack of clarity on the Respondents’ affiliations with one another and other business entities. Complainant predicts that if and when it is produced, the outstanding information may provide the necessary clarity. Under these circumstances, and based on Complainant’s judgment that the proposed penalty will have “a sufficient deterrent effect” (Policy at 15) without any increase for business size, the Complainant did not increase the penalty for business size.
- d. *“the violator’s history of compliance with this subchapter”*: Complainant considered this factor, and based on the fact that Complainant has no information that Respondents have previously committed violations similar to those alleged in the Complaint for which the EPA took an enforcement action, Complainant did not increase the penalty based on history of compliance. *See* Policy at 25–26 (explaining how penalties may be increased, but not decreased, based on history of compliance).
- e. *“action taken to remedy the violation”*: Complainant considered this factor when it calculated the proposed penalty according to the Policy, as detailed above in ¶¶ 8–11.
- f. *“the effect of the penalty on the violator’s ability to continue in business”*: Complainant considered this factor as follows. For the foreign Respondents, this issue has not been raised and, based on information provided on its websites and in certification applications to the EPA, the foreign Respondents are large manufacturing corporations with substantial assets to satisfy the Proposed Penalties with little to no effect on their ability to continue in business.

Since 2013, Complainant has requested that the domestic Respondents provide financial information to enable the Complainant, among other things, to assess the effect of the proposed penalty on their ability to continue in business. Respondent has provided some of the requested information, but not all. Complainant's Exhibits CX 107 and CX 108 summarize Complainant's requests and Respondent's production. The information requested but to date not provided is listed in CX 108.

Complainant retained an expert, Cindy T. Vu, who is a forensic accountant. Ms. Vu has reviewed all information provided by Respondents, and shared her findings with Complainant. Based on her findings, the limited financial information provided by Respondents, and all the circumstances, Complainant has determined that the proposed penalty need not be reduced based on "*the effect of the penalty on the violator's ability to continue in business.*"

Primarily, the penalty need not be reduced in part because the Complainant seeks that the penalties be assessed jointly and severally against the Respondents, as summarized in Table B on page 17 of the Complaint. The foreign Respondents have not even raised ability to pay.

Also, the penalty need not be reduced because the limited information provided to date does not allow Complainant to conclude that a reduction is appropriate. Complainant remains willing and able to receive and account for further financial information.

- g. "*such other matters as justice may require*": Complainant considered this factor when it calculated the proposed penalty according to the Policy, and considered all the facts and circumstances. The only adjustments under this factor are the increases for willfulness and non-cooperation, as detailed above in ¶¶ 8–11.

Respectfully Submitted,



Evan Belser, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building
Room 1142C, Mailcode 2242A
Washington, DC 20460
(202) 564-6850
belser.evan@epa.gov

April 10, 2015
Date

CERTIFICATE OF SERVICE

I certify that on the date below I filed electronically using the OALJ E-Filing System the foregoing Complainant's Rebuttal Prehearing Exchange *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., CAA-HQ-2014-8119.*

I certify that on the date below I sent by United States Postal Service First-Class Mail one copy of the foregoing filing to counsel of record for the following Respondents at the following address: Peace Industry Group (USA), Inc. and Blue Eagle Motor Inc.

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

I certify that on the date below I sent by United States Postal Service First-Class Mail one copy of the foregoing filing to the representative of record for the following Respondents at the following address: Zhejiang Peace Industry and Trade Co., Ltd. and Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd.

Quiping Wang
2649 Mountain Industrial Blvd.
Tucker, GA 30084

April 10, 2015
Date



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

1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building
Room 1142C, Mailcode 2242A
Washington, DC 20460
(202) 564-6850
belser.evan@epa.gov



U.S. Department of Justice

Environment and Natural Resource Division

999 18th Street
South Terrace – Suite 370
Denver, CO 80202
303-844-1365 phone

April 17, 2014

BY U.S. MAIL AND E-MAIL

G. Michael Smith
8565 Dunwoody Place
Building 15
Atlanta, Georgia 30350

Gmams@aol.com

Re: Ability to Pay Analysis for Peace Industry, *et al.*

Dear G. Michael:

On May 28, 2013—in response to your client’s claim that of an inability to pay a civil penalty—I provided you a list of preliminary information required for Ability to Pay analysis. On June 26, 2013, September 23, 2013, and February 19, 2014, I identified information originally requested in May 2013 that had not been provided by your client. After our March 20, 2014 in-person meeting, you agreed to provide the missing information by March 31, 2014. However, to date, we are still missing a significant amount of information originally requested in May 2013 identified below:

1. Audited financial statements (or unaudited financial statements if this is all the company(ies) has) for 2009 and 2010, including balance sheets, statement of operations (income statement), statement of cash flows and notes to the financial statements;
2. The statement of cash flows for the last 3 years (2011-2013);
3. A completed corporate debtor form for each corporate entity that has been signed and notarized;
4. Statements for East West Bank Standard Business Checking Account #00-63819841 and East West Bank Non-Personal Bonus MM Checking Account #86-57000538 from January to December 2013. Statements must be complete, including check images;
5. Check images for East West Bank Money Market 6 Check Option Account #86-57001288 from January to December 2013.
6. The last 2 years of Foreign Bank and Financial Accounts forms (see [http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Report-of-Foreign-Bank-and-Financial-Accounts-\(FBAR\)](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Report-of-Foreign-Bank-and-Financial-Accounts-(FBAR)));

7. A list of all shareholders of each company, and a list of any affiliates, subsidiaries or parent organizations of each company; and
8. An explanation of how payment of a penalty would affect the companies' ability to continue in business, given that Peace Industry Group (USA), Inc. does not pay for the vehicles it imports from Zhejiang Peace Industry and Trade Co., Ltd. in advance.
9. The following certification identifying all of the information submitted to the U.S., signed by an authorized corporate officer:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

After 11 months, this documentation has yet to be provided in its entirety. The United States has been patient yet persistent in its pursuit of these documents out of respect for your client's Ability to Pay claim, but cannot move forward with financial discussions based on the incomplete picture it has been provided. The United States has not, to date, been convinced that your client and his affiliated businesses are unable to pay a penalty based on EPA's Policy.

Based on our review of the documents that we have received to date, we also have the below follow-up questions and requests for documentation:

1. Provide all loan agreements (or other documentation of terms) of all transfers among Peace Industry, Blue Eagle, Mountain Realty Holdings, LLC, United Power Sports, LLC, Zhejiang Peace Industry and Trade Co., Ltd., Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd., their partners, and/or related parties from 2009-2013 whether or not identified as such on the financial statements, such as (but not limited to):
 - a. On Statement 3 of Peace Industry's Form 1120 for 2012, a [REDACTED] loan to a related party.
 - b. On Peace Industry's 2013 financial statement balance sheet, a [REDACTED] loan to United Power Sports and [REDACTED] note receivable.
2. On Peace Industry's bank statements, we see several large international wire transfers (greater than [REDACTED]) to Red Stone Inc. Provide the address for Red Stone Inc., an explanation of this company's relationship to Peace Industry, Blue Eagle, Mountain Realty Holdings, LLC, and United Power Sports, LLC, copies of any agreements with this company, and an explanation for these transfers.
3. Provide any and all indemnification agreements (or portions of relevant contractual provisions) that may relate to the [REDACTED] vehicles and engines that will be covered by the consent decree.
4. Provide any and all insurance or bonding agreements that may cover claims/losses on the [REDACTED] vehicles and engines that will be covered by the consent decree.

5. Audited financial statements (or unaudited financial statements if this is all the company has) for 2013 for United Power Sports, LLC. The financial statements should include balance sheets, statement of operations (income statement), statement of cash flows and notes to the financial statements.

I am sure that you understand that we need to have serious movement toward resolution in the coming weeks, or we will be unwilling to recommend extension of our current tolling agreement, which expires June 30, 2014, further. We expect a response to this letter, including all the information identified above, no later than April 25, 2014.

Sincerely,

s/ Kate Loyd

Kate Loyd



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Sent by Email Only

Peace Industry Group (USA), Inc., et al.
c/o G. Michael Smith
Smith & Collins LLC
8565 Dunwoody Place, Bldg 15
Atlanta, GA 30350
gmichael@scandf.com

MAR 05 2015

Re: *In the Matter of Peace Industry Group (USA), Inc., et al.*, CAA-HQ-2014-8119
Request for documents and information concerning effect of penalty on ability to
continue in business

G. Michael,

The purpose of this letter is to request information and documentation that are necessary to assess the effect of the penalty on your client's ability to continue in business in the above-referenced matter in anticipation of litigation.

As explained previously, in litigating the appropriateness of the calculated civil penalty, we are prepared to satisfy our initial burden to present evidence that we have considered the statutory factors including "the effect of the penalty on the violator's ability to continue in business," 42 U.S.C. § 7524(c)(2), and that the record supports the inference that the penalty assessment need not be reduced. Your burden will be to substantiate, by introducing specific evidence, that your client's claim that the penalty assessed will affect its ability to continue in business.

In the context of Alternative Dispute Resolution, we requested documents in response to your stated position that the penalty sought would affect your client's ability to continue in business. You provided to EPA the documents listed below. Since these materials were provided for the purpose of reaching a negotiated settlement, we request your permission to use the documents listed below as we prepare for litigation in this matter:

1. Financial Statements:
 - a. 2010 Federal 1120 & GA600 Corporate Tax Returns¹
 - b. 2011 Federal 1120 & GA600 Corporate Tax Returns²
 - c. 2012 Federal 1120 & GA600 Corporate Tax Returns³
 - d. 2011 Balance Sheet & Profit & Loss Statement;⁴
 - e. 2012 Balance Sheet & Profit & Loss Statement;⁵
 - f. 2013 Balance Sheet & Profit & Loss Statement;⁶
2. Other Financial Data:
 - a. December 2012 Wells Fargo bank statement for Account XXX8436, odd numbered pages only;⁷
 - b. December 2012 East West Bank statement for Account XXX1288;⁸
 - c. December 2012 East West Bank statement for Account XXX0538;⁹
 - d. December 2012 East West Bank statement for Account XXX9841;¹⁰
 - e. December 2012 Wells Fargo Bank statement for Account XXX8436 (even numbered pages only);¹¹
 - f. January – December 2013 East West Bank statement for account XXX9841;¹²
 - g. January 2013 East West Bank statement for account XXX0538;¹³
 - h. January – December 2013 East West Bank statement for account XXX1288;¹⁴
 - i. January – December 2013 Wells Fargo Bank statements for account XXX8436;¹⁵
 - j. Cash flow statements for 2011, 2012 & 2013;¹⁶
 - k. Corporate debtor form;¹⁷
 - l. Inventory stock status as of June 2014;¹⁸
 - m. 2012 Form 1120 Summary (abstract);¹⁹
 - n. 2013 GA estimated coupons;²⁰
 - o. Form 8821 – Tax Information Authorization;²¹

¹ 2010.pdf

² 2011_GA600.pdf

³ 2012_1120C.pdf, 2012_GA600.pdf, PeaceUSA-Responses #5c.pdf, PeaceUSA-Responses #5c Cont.pdf

⁴ Compiled_Financial_Statements_2011.pdf, PeaceUSA-Responses#s 2C-3C-4C--6C.pdf

⁵ Compiled_Financial_Statements_2012.pdf, PeaceUSA-Responses#s 2C-3C-4C--6C.pdf

⁶ Compiled_Financial_Statements_2013.pdf

⁷ bank_statement_1.pdf

⁸ bank_statement_1.pdf

⁹ bank_statement_1.pdf

¹⁰ bank_statement_1.pdf

¹¹ bank_statement_2.pdf

¹² PeaceUSA-Responses #4.pdf

¹³ PeaceUSA-Responses #4.pdf, PeaceUSA-Responses #4 cont.pdf

¹⁴ PeaceUSA-Responses #4 cont.pdf, PeaceUSA-Responses #5-8.pdf

¹⁵ WF_2013.zip, PeaceUSA-Responses #5-8.pdf

¹⁶ PeaceUSA-Responses #1-3.pdf

¹⁷ PeaceUSA-Responses #1-3.pdf, PeaceUSA-Doc-2014_6_11_14_12_24.pdf

¹⁸ PeaceUSA-Responses#s 2C-3C-4C--6C.pdf

¹⁹ PeaceUSA-Responses#s 2C-3C-4C--6C.pdf

²⁰ PeaceUSA-Responses#s 2C-3C-4C--6C.pdf

²¹ PeaceUSA-Responses#s 2C-3C-4C--6C.pdf

3. Verifications:
 - a. Verification statement about Red Stone, Inc., Verification – Indemnification, Verification – Insurance/Bonding Co., Verification – United Power Sports²²
 - b. Report of Foreign Bank and Financial Accounts (FBAR) Verification;²³
 - c. Verification – No audited financial statements for 2009 & 2010;²⁴
4. Other information:
 - a. Loan agreements between Peace Industry and Mountain Realty Holdings, LLC, as identified on Peace Industry’s 2013 financial statement balance sheet;²⁵
 - b. Shareholders of all companies and articles of incorporation;²⁶
 - c. Explanation of how payment of penalty would affect the company’s ability to continue in business;²⁷
 - d. EPA Letter of missing documentation with hand-written notes of G. Michael Smith;²⁸ & January 30, 2015 e-mail statement regarding SBA Loans, Mountain Realty Holdings, rent paid Peace Industry and loan repayment;²⁹
 - e. October 23, 2012 letter from USDOJ to Peace Industry and Peace Industry’s response;³⁰
 - f. Peace Industry Articles of Incorporation, GA State Certificate, Bylaws;³¹
 - g. Blue Eagle Annual Registration, Articles of Incorporation & Certificate of Incorporation;³²
 - h. Real estate transactions – 2649 Mountain (299 pages).³³

We also request that you provide additional documents and information to ensure that we are able to accurately assess the effect of the penalty on your client’s ability to continue in business:

1. Financial Statements:
 - a. Balance sheets (2010 & 2014), income statements (profit & loss – 2010 & 2014), and statement of cash flows as of December 31 for 2010 and 2014, including any notes to financial statements;
 - b. Signed and filed federal and state income tax returns for the years 2013-2014, including all schedules. If 2014 Corporate tax return (Form 1120) is not available yet, then see (a) above for year-end financial statements for 2014;
 - c. Detailed general ledgers from 2010 – 2014.
2. Other Financial Data:
 - a. W-2s and 1099s for years 2010-2014;

²² PeaceUSA-Responses #2B-#5B.pdf

²³ PeaceUSA-Responses #5-8.pdf

²⁴ PeaceUSA-Responses #1-3.pdf

²⁵ PeaceUSA-Response #1B.pdf

²⁶ PeaceUSA-Responses #5-8.pdf

²⁷ PeaceUSA-Responses #5-8.pdf

²⁸ PeaceUSA-Response EPA Ltr 4-17-14.pdf

²⁹ Response Cover Email-FW Verified Responses to EPA Discovery Requests-4-17-14 Notepad

³⁰ canonb05a75.enrd.doj.gov_Exchange_10_23_2012_13-34-20.pdf, PeaceResponse-EPA-12-3-12-3.pdf

³¹ 14 - Peace Industry Corporate Records.pdf

³² PeaceResponse-EPA-12-3-12-3.pdf

³³ Binder.pdf

- b. Aged accounts receivable listing (30, 60, and 90-days) as of December 31 for 2010-2014 with customer names;
 - c. Bank statements for Wells Fargo account ending in #8436 (January - December 2014), East West ending in #1288 (January – December 2014), East West account in #0538 (February 2013 – December 2014), and East West account ending in #9841 (January – December 2014);
 - d. List of inventory items as of December 31 for 2010 – 2014;
 - e. List of aging accounts payable (30, 60, 90-day) with vendor names as of December 31 for 2010 – 2014.
 - f. Detailed listing of “Loan to Related Party” from 2012 Form 1120 Corporate Tax Return Statement;
 - g. HUD Settlement Statement on the property: 2649 Mountain Industrial Blvd. Tucker, GA 30084;
 - h. Copies of other real estate leases;
 - i. Deposit images of checks from customers from January – February 2015 for East West and Wells Fargo bank accounts;
 - j. Corporate credit card statements (if any) for years 2012 – 2014;
 - k. Shipping documents (freight out to customers/not freight-in for imports) for 2013 & 2014;
 - l. Sales journals for 2013 & 2014;
 - m. Detail/itemization listing of what comprises automobile expenses and professional fees for years 2010 – 2014 if the general ledgers do not provide such details.
3. Other Company and Operating Data:
- a. Vendor agreements with Red Stone, Inc., Zhejiang Peace Industry, and any other major suppliers;
 - b. Price list (what you sell to customers) and costs (your purchase costs) of the recreational vehicles by model for 2012 – 2014;
 - c. Copies of other value indicators, including latest property tax assessments and any appraisals (of real estate, equipment, etc.) that have been performed during the last three years.
4. Answers to the following Questions:
- a. Does management anticipate any bad debts/allowance for doubtful account of accounts receivable? Do they intend to collect the balance? Are there any collectible issues?
 - b. Are there any personal expenses paid by the company that we should be aware of? If so, provide a list of transactions.
 - c. Why was there a decline of \$ [REDACTED] in sales from 2012 [REDACTED] to 2013 ([REDACTED] per financial statements compiled from the accounting firm)?
5. Related Party – Mountain Realty Holdings, LLC:
- a. Financial statements (Balance Sheet and Income Statement) for years December 31, 2012 – 2014;
 - b. Detailed general ledgers from 2012 – 2014;
 - c. Bank statements with check images for 2012-2014;
 - d. Form 1098 – Mortgage Statement as of 12/31/2014;
 - e. Real estate appraisal or annual real estate assessment bill.

Lastly, as you know, we require that your client certify the completeness and accuracy of the information of the documents you have and will provide. This certification is as follows:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

We reserve the right to request any additional documents that may be required to assess the impact of the penalty on your client's ability to continue in business.

We request that you provide this information as soon as possible. Your responses and supporting documentation must be mailed by express mail or courier service to me at the following address:

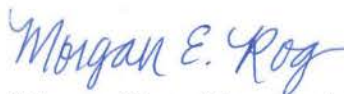
Morgan E. Rog, U.S. EPA
1200 Pennsylvania Avenue, NW
Ariel Rios South Building Room 4146A (MC 2249A)
Washington, D.C. 20460

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this letter, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential" at the time you submit your response. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

Should you fail to provide this information voluntarily, we reserve the right to seek it through discovery, both written and testimonial.

Please contact me at (202) 564-7109 or rog.morgan@epa.gov if you have any questions.

Sincerely,



Morgan Rog, Attorney Adviser
Office of Civil Enforcement