

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

In the Matter of:

Geason Enterprises, L.L.C., GE Ventures,
L.P., Hammerhead Off-Road, Inc., TJ Power
Sports L.L.C., Shanghai Howhit Machinery
Manufacture Co., Ltd., and Shanghai Tong
Jian Sports Equipment Co., Ltd.

Respondents.

Docket No.
CAA-HQ-2013-8050

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COMPLAINT

Preliminary Statement

1. This Complaint commences this administrative penalty assessment proceeding under section 205(c)(1) of the Clean Air Act (Act), 42 U.S.C. § 7524(c)(1), and the “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). 40 C.F.R. § 22.13(a).
2. Complainant in this matter is the United States Environmental Protection Agency (EPA). On the EPA’s behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute civil administrative penalty assessment proceedings under section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1); EPA Delegation 7-6-A (August 4, 1994); EPA Redelegations 7-6-A (March 5, 2013).

3. Respondents in this matter are Geason Enterprises, L.L.C., d/b/a Geason Powersports and d/b/a Hammerhead, GE Ventures, L.P., d/b/a Hammerhead Off-Road, Hammerhead Off-Road, Inc., TJ Power Sports L.L.C., Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., Ltd. (collectively Respondents).
4. On information and belief, TJ Power Sports is a limited liability company formed in 2003 that operated from 2003 to 2008 and was organized under the laws of the State of Texas.
5. On information and belief, GE Ventures, L.P., is a limited partnership formed in 2008 that operated from 2008 to 2010 and was organized under the laws of the State of Texas.
6. On information and belief, Hammerhead Off-Road, Inc., is a corporation formed in 2007 and organized under the laws of the State of Texas.
7. On information and belief, Hammerhead Off-Road, Inc., is the general partner of GE Ventures, L.P.
8. On information and belief, Geason Enterprises, L.L.C., is a limited liability company formed in 2009 and organized under the laws of the State of Texas with its principal office located at 1200 Lakeside Parkway, Flowermound, Texas, 75028.
9. On information and belief, and subject to further information, Geason Enterprises, L.L.C., is the successor in liability to TJ Powersports L.L.C., GE Ventures, L.P., and Hammerhead Off-Road, Inc.
10. On information and belief, Shanghai Howhit Machinery Manufacture Co., Ltd., is a corporation formed in 2000 and organized under the laws of the People's Republic of China and is located at No. 880 Rong Dong Road, Jinshan District, LVXiang Town, Shanghai 201518, China.

11. On information and belief, Shanghai Tong Jian Sports Equipment Co., Ltd., is a corporation organized under the laws of the People's Republic of China and is located at Ha Mi Road, Wang Yao Geng 38, Shanghai, China.
12. Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., Ltd., are the designated manufacturers of the vehicles at issue in this case, based on the information contained in the relevant certification applications.
13. Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., manufacture vehicles in China, and contract with Geason Enterprises, L.L.C., Hammerhead Off-Road, Inc., and TJ Powersports, L.L.C., to obtain EPA-issued certificates of conformity (COCs) and import vehicles for sale in the United States.
14. The EPA makes the Alleged Violations of Law, below, based on:
 - (a) approximately eight inspections of Respondents' vehicles between 2008 and 2012 performed by the EPA, EPA contractors, or employees of the United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP); and
 - (b) information Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., and TJ Powersports, L.L.C., provided to the EPA in response to the EPA's Requests for Information issued pursuant to section 208 of the Act, 42 U.S.C. § 7542.

Jurisdiction

15. This action is brought under section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1), and the Consolidated Rules, 40 C.F.R. Part 22.
16. Under the Act, the EPA may administratively assess a civil penalty if the penalty sought is less than \$295,000, unless the EPA and the United States Department of Justice (DOJ) jointly determine that a matter involving a larger penalty amount is appropriate for an administrative penalty assessment. 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 1068.125(b); *see also* 40 C.F.R. § 19.4 (adjusting the penalty cap for inflation).
17. The EPA and the DOJ jointly determined that this matter, although it may involve a penalty amount greater than \$295,000, is appropriate for an administrative penalty assessment.
18. The Environmental Appeals Board acts as the Presiding Officer for this proceeding until Respondents file an answer because Complainant commences this administrative penalty assessment proceeding at EPA Headquarters. 40 C.F.R. § 22.4(a)(1); EPA Delegation 1-38-B.

Governing Law

19. The Alleged Violations of Law, below, arise under Part A of Title II of the Act, 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, carbon monoxide, and particulate matter.
20. General Definitions:
 - (a) “Adjustable parameter” means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if

adjusted, may affect emissions or engine performance during emission testing or normal in-use operation. 40 C.F.R. § 1051.801. An operating parameter is not considered adjustable if it is permanently sealed or if it is not normally accessible using ordinary tools. 40 C.F.R. § 1051.115(c).

- (b) “All-terrain vehicle” means a nonroad vehicle that is either: (a) designed to travel on four low-pressure tires, has a seat designed to be straddled by the operator and handlebars for steering control, and is intended for use by a single operator and no other passengers; or (b) has three or more wheels and one or more seats, is designed for operation over rough terrain, is intended primarily for transportation, and has a maximum vehicle speed of 25 miles per hour or higher. 40 C.F.R. § 1051.801.
- (c) “Commerce” means commerce between any place in any State and any place outside thereof. 42 U.S.C. § 7550(6).
- (d) “Engine family” means a group of engines of a single model year that are expected to have similar emission characteristics throughout their useful life. *See* 40 C.F.R. § 1051.230.
- (e) “Manufacturer” means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad

engines received by him in commerce. 42 U.S.C. § 7550(1); 40 C.F.R.

§ 1051.801.

- (f) “Model year” means a manufacturer’s annual production period (as determined by the Administrator) which includes January first of such calendar year. If the manufacturer has no annual production period, the term model year shall mean the calendar year. 40 C.F.R. § 1051.801.
- (g) “Motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway. 42 U.S.C. § 7550(2).
- (h) “Nonroad engine” means an internal combustion engine that is not used in a motor vehicle. 42 U.S.C. § 7550(10).
- (i) “Nonroad vehicle” means a vehicle that is powered by a nonroad engine and that is not a motor vehicle. 42 U.S.C. § 7550(11).
- (j) “Off-highway motorcycle” means a two-wheeled vehicle with a nonroad engine and a seat. 40 C.F.R. § 1051.80.
- (k) “Other adjustments” include changes to a recreational vehicle’s air-fuel ratio that can be made by an experienced mechanic in less than one hour and with a few parts whose total cost is under \$50 (in 2001 dollars). 40 C.F.R. § 1051.115(d).
- (l) “Person” includes individuals, corporations, partnerships, associations, State, municipalities, and political subdivisions of a state. 42 U.S.C. § 7602(e).
- (m) “Recreational Vehicle” includes all-terrain vehicles and off-highway motorcycles. 40 C.F.R. § 1051.801.

Certification Requirements

21. Each vehicle identified herein as a “recreational vehicle” or “all-terrain vehicle” or “off-highway motorcycle,” meets the definition of such vehicle and is subject to the emission standards and other requirements set forth in 40 C.F.R. Parts 1051 and 1068.
22. Model year 2006 and later new recreational vehicles and engines with displacement less than or equal to 1,000 cc, maximum engine power less than or equal to 30 kW, and maximum vehicle speed higher than 25 miles per hour must satisfy air pollutant emission standards in 40 C.F.R. §§ 1051.101-1051.115. 40 C.F.R. § 1051.1. These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbons and exhaust opacity.
23. To demonstrate that an imported recreational vehicle satisfies emission standards, the vehicle must be covered by an EPA-issued COC. 40 C.F.R. § 1068.301(b); *see* 40 C.F.R. Part 1051 Subpart C (outlining COCs and the application requirements).
24. To obtain a COC, a manufacturer must submit an application to EPA for each model year of each engine or vehicle family that it intends to manufacture and sell in the United States. *See* 40 C.F.R. § 1051.201.
25. The application for a COC must include, among other things, identification of the covered engine family, a description of the vehicles or engines including their power, basic parameters, and emission control systems (such as catalysts), and test results demonstrating that the vehicle or engine will meet federal emissions standards. 40 C.F.R. § 1051.205.

26. EPA requires the manufacturer of a recreational vehicle to disclose in its application the presence of any adjustable operating parameters, including “adjustable parameters,” and “other adjustments.” 40 C.F.R. §§ 1051.205(q), 1051.115(d).
27. Where a vehicle or engine has adjustable parameters or other adjustments, the applicant must demonstrate that the vehicle meets emission standards throughout the physically adjustable range. 40 C.F.R. § 1051.115(c), (d).
28. In addition, COC applications for recreational vehicles must include a list of the commercial model names included in the engine family. *See* 40 C.F.R. § 1051.205(a) and Env'tl. Prot. Agency, Recommended Application Format for Certification of Off-Highway Motorcycles and All-Terrain Vehicles at p. 4 (ATV/OFMC Guidance 2 of 3) (Draft 2004) (clarifying that the certification application “should include the commercial model names, not the manufacturer’s model code names”) (hereafter referred to as “OFMC Guidance”).
29. Once issued, COCs apply to the engine family named in the COC application and specified on the COC. 40 C.F.R. § 1051.255(a).
30. Each recreational vehicle COC issued by EPA states the model names of the vehicles that are covered by the COC, and states that the COC only applies to the vehicle models named on the COC.
31. The COC applies only to engines and vehicle models produced in the stated model year, imported subsequent to the effective date of the COC, and which conform in all material respects to the specifications in the COC application. 40 C.F.R. §§ 1051.201(a), 1068.101(b)(5).

32. Vehicles may be manufactured prior to the effective date of the COC only if: (a) the vehicles conform in all material respects to the vehicles described in the application for certification; (b) the vehicles are not sold, offered for sale, introduced into commerce, or delivered for introduction into commerce prior to the effective date of the COC; and (c) EPA is notified prior to the beginning of production of the vehicles and is provided full opportunity to inspect or test the vehicles during and after their production. 40 C.F.R. § 1068.101(a)(1).
33. Section 203(a)(1) of the Act prohibits manufacturers of new motor vehicles or engines from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce—or causing any of the foregoing—any new motor vehicle or new motor vehicle engine unless the vehicle or engine is covered by a COC issued by EPA under regulations prescribed by the Act. 42 U.S.C. § 7522(a)(1).
34. Section 203(a)(1) of the Act also prohibits any person from importing, or causing another to import, a new motor vehicle or new motor vehicle engine into the United States unless that new motor vehicle or new motor vehicle engine is covered by an EPA-issued COC. 42 U.S.C. § 7522(a)(1).
35. Section 213(d) of the Act, 42 U.S.C. § 7547(d), together with the recreational vehicle regulations at 40 C.F.R. Parts 1051 and 1068, extend the prohibition set forth in Section 203(a)(1) to the sale or importation of any recreational vehicle, unless such vehicle is covered by an EPA COC. *See* 40 C.F.R. § 1068.101(a)(1), (b)(5).

Labeling Requirements

36. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import into the United States a recreational vehicle—or

cause any of the foregoing—unless that vehicle bears a compliant emission control information (ECI) label. 42 U.S.C. § 7522(a)(4)(A); 40 C.F.R. § 1068.101(a)(1).

37. An ECI label is compliant only if it states that the recreational vehicle is covered by a COC, includes specific emission-related information, identifies the emission control system, and is attached so that it is not removable without being destroyed or defaced. 42 U.S.C. § 7541(c)(3)(C); 40 C.F.R. §§ 1051.135, 1068.101(a)(1).

Recordkeeping Requirements

38. Anyone subject to any of the Act's requirements for vehicles must provide information to the EPA that the EPA may reasonably require in order to determine whether the manufacturer or other person has acted or is acting in compliance with the Act and its regulations. 42 U.S.C. § 7542(a).
39. Additionally, recreational vehicle manufacturers and COC holders must keep certain records including: (1) certification applications and accompanying summary information; (2) records specified in 40 C.F.R. § 1051.250 but not included in the COC application; (3) a detailed history of each emission data vehicle (EDV) tested for a COC; (4) production figures for each engine family divided by assembly plant; and (5) vehicle identification numbers for all the vehicles produced under each certificate. 40 C.F.R. § 1051.250(b).
40. All data specified under 40 C.F.R. § 1051.250(b) must be kept for eight years after the applicable COC is issued. 40 C.F.R. § 1051.250(c).
41. Failing to make and maintain the records required by the applicable nonroad regulations, denying EPA access to or the ability to copy the records, failure to give EPA reports or information required by the applicable nonroad regulations without delay, and failing to

perform, or to have performed, tests required by EPA, are violations of the Act. 42 U.S.C. §§ 7522(a)(2)(A), 7547(d); 40 C.F.R. § 1068.101(a)(2).

Civil Penalties

42. Certification Violations: Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a recreational vehicle that was not covered by a COC—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (c). This penalty amount increased from \$32,500 to \$37,500 for violations that occur after January 12, 2009. 40 C.F.R. § 19.4.
43. Labeling Violations: Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a recreational vehicle that was not properly labeled—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (c). This penalty amount increased from \$32,500 to \$37,500 for violations that occur after January 12, 2009. 40 C.F.R. § 19.4.
44. Recordkeeping Violations: Anyone who, between March 15, 2004, and January 12, 2009, failed to keep or maintain mandatory records or failed to provide the EPA with information reasonably required to assess their compliance with the Act is subject to a civil penalty up to \$32,500 for each day they are in violation and for each such record. 42 U.S.C. §§ 7522(a)(2)(A), 7524(a), 7542(a); 40 C.F.R. §§ 19.4, 1068.101(a)(2). This

penalty amount increased from \$32,500 to \$37,500 for violations that occur after January 12, 2009. 40 C.F.R. § 19.4.

Alleged Violations of Law

45. Respondents are each “persons.”
46. Respondents are each “manufacturers” pursuant to section 216(1) of the Act, 42 U.S.C. § 7550(1), and are subject to the prohibitions set forth in section 203 of the Act, 42 U.S.C. § 7522, and other requirements imposed on manufacturers as set forth in the Act and its implementing regulations.
47. Shanghai Howhit Machinery Manufacture Co., Ltd., and Shanghai Tong Jian Sports Equipment Co., Ltd., are the designated manufacturers of the vehicles at issue in this case.
48. Geason Enterprises, L.L.C., Hammerhead Off-Road, Inc., and TJ Powersports, L.L.C., are holders of all ten of the EPA-issued COCs at issue in this case (BGSNX.150LUV, ATJPX.250GAL, ATJPX.150GAL, 9TJPX.150GAL, 9TJPX.250GAL, 8TJPX.500UAL, 8TJPX.250GAL, 8TJPX.150GAL, 7TJPX.150150 and 7TJPX.250250).
49. Based on information in COC applications and importation records, Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., or TJ Powersports, L.L.C., were the importers of approximately 3,110 of the vehicles at issue in this case.
50. Based on the information provided by Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., and TJ Powersports, L.L.C., in response to several information requests and test orders issued by the EPA, and based on information obtained through inspections conducted by the EPA and/or CBP, the EPA alleges that, between 2007 and 2012, Respondents committed 11 recordkeeping violations and sold,

offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—approximately 4,076 recreational vehicles that did not comply with the Act (Subject Vehicles). These vehicles and their violations are set forth in Appendix A to this complaint, and are discussed further below.

51. Each of the Subject Vehicles was manufactured after the date that the relevant emissions standards promulgated by EPA became applicable to the Subject Vehicle. Thus, each of the Subject Vehicles is subject to Part A of Title II of the Act, as amended, 42 U.S.C. §§ 7521 – 7544, and the implementing regulations in 40 C.F.R. Parts 1051 and 1068.

COC Violations

52. COUNT ONE: 765 recreational vehicles purportedly covered by the COC for engine family BGSNX.150LUV.
- (a) These recreational vehicles do not materially conform to their certified configuration, and therefore are not covered by the COC for engine family BGSNX.150LUV.
 - (b) The COC application for these vehicles describes a carburetor with an idle air-fuel mixture screw that is sealed with an aluminum plug and epoxy and is not adjustable. However, the carburetors on these recreational vehicles are equipped with an idle air-fuel mixture screw that can be accessed and adjusted in a few minutes using ordinary tools and therefore is an “adjustable parameter” under 40 C.F.R. §§ 1051.115(c) and 1051.801.
 - (c) No other COC covers these recreational vehicles.
 - (d) Therefore, Respondents committed approximately 765 violations of 42 U.S.C. § 7547(d) and 40 C.F.R. § 1068.101(a)(1), (b)(5) when they sold, offered for sale,

introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to— these uncertified recreational vehicles.

53. COUNT TWO: 504 recreational vehicles purportedly covered by the COC for engine family ATJPX.250GAL.

- (a) These recreational vehicles do not materially conform to their certified configuration for two independently sufficient reasons, and therefore are not covered by the COC for engine family ATJPX.250GAL.
- (b) These recreational vehicles contain a catalyst that does not conform to the certified catalyst design for engine family ATJPX.250GAL.
- (c) Additionally, the COC application for engine family ATJPX.250GAL states that Shanghai Tong Jian Sports Equipment Co., Ltd., manufactures the vehicles in this engine family, but the first three digits of the Vehicle Identification Number for these vehicles indicate that the manufacturer is actually Taizhou Trailblazer Manufacturing Co. Ltd.
- (d) A COC covers only those vehicles that conform in all material respects to the design specifications in the application for certification, which includes the catalyst design and the identity of the manufacturer. Thus, these vehicles are not covered by the COC for engine family ATJPX.250GAL.
- (e) No other COC covers these vehicles.
- (f) Therefore, Respondents committed approximately 504 violations of 42 U.S.C. § 7547(d) and 40 C.F.R. § 1068.101(a)(1), (b)(5) when they sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or

imported—or caused the foregoing with respect to—these uncertified recreational vehicles.

54. COUNT THREE: 255 recreational vehicles purportedly covered by the COC for engine family ATJPX.150GAL.

- (a) These recreational vehicles do not materially conform to their certified configuration for two independently sufficient reasons, and therefore are not covered by the COC for engine family ATJPX.150GAL.
- (b) These recreational vehicles contain a catalyst that does not conform to the certified catalyst design for engine family ATJPX.150GAL.
- (c) The COC application for these vehicles does not disclose any “adjustable parameters” or “other adjustments.” However, these recreational vehicles have carburetors equipped with main and/or pilot jets which can be removed and replaced by an experienced mechanic in less than one hour and with a few parts (i.e., replacement jets) whose total cost is under \$50. Thus, the main and/or pilot jets are “other adjustments” under 40 C.F.R. § 1051.115(d).
- (d) No other COC covers these vehicles.
- (e) Therefore, Respondents committed approximately 255 violations of 42 U.S.C. § 7547(d) and 40 C.F.R. § 1068.101(a)(1), (b)(5) when they sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to— these uncertified recreational vehicles.

55. COUNT FOUR: 79 recreational vehicles purportedly covered by the COC for engine family 9TJPX.150GAL.

- (a) These recreational vehicles do not materially conform to their certified configuration for two independently sufficient reasons, and therefore are not covered by the COC for engine family 9TJPX.150GAL.
- (b) These recreational vehicles contain a catalyst that does not conform to the certified catalyst design for engine family 9TJPX.150GAL.
- (c) Additionally, the COC application for engine family 9TJPX.150GAL states that Shanghai Tong Jian Sports Equipment Co., Ltd., manufactures the vehicles in this engine family, but the first three digits of the Vehicle Identification Number indicate that the manufacturer is actually Shanghai Howhit Machinery Manufacture Co.
- (d) A COC covers only those vehicles that conform in all material respects to the design specifications in the application for certification, which includes the catalyst design and the identity of the manufacturer. Thus, these vehicles are not covered by the COC for engine family 9TJPX.150GAL.
- (e) No other COC covers these vehicles.
- (f) Therefore, Respondents committed approximately 79 violations of 42 U.S.C. § 7547(d) and 40 C.F.R. § 1068.101(a)(1), (b)(5) when they sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to— these uncertified recreational vehicles.

56. COUNT FIVE: 327 recreational vehicles purportedly covered by the COC for engine family 9TJPX.250GAL.

- (a) These recreational vehicles do not materially conform to their certified

configuration for two independently sufficient reasons, and therefore are not covered by the COC for engine family 9TJPX.250GAL.

- (b) These recreational vehicles contain a catalyst that does not conform to the certified catalyst design for engine family 9TJPX.250GAL.
- (c) Additionally, the COC application for engine family 9TJPX.250GAL states that Shanghai Tong Jian Sports Equipment Co., Ltd. manufactures the vehicles in this engine family, but the first three digits of the Vehicle Identification Number indicate that the manufacturer is actually Taizhou Trailblazer Manufacturing Co. Ltd.
- (d) A COC covers only those vehicles that conform in all material respects to the design specifications in the application for certification, which includes the catalyst design and the identity of the manufacturer. Thus, these vehicles are not covered by the COC for engine family 9TJPX.250GAL.
- (e) No other COC covers these vehicles.
- (f) Therefore, Respondents committed approximately 327 violations of 42 U.S.C. § 7547(d) and 40 C.F.R. § 1068.101(a)(1), (b)(5) when they sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—these uncertified recreational vehicles.

57. COUNT SIX: 288 recreational vehicles purportedly covered by the COC for engine family 8TJPX.500UAL.

- (a) These vehicles are not covered by the COC for engine family 8TJPX.500UAL because Respondents imported the vehicles prior to the effective date of the COC

for engine family 8TJPX.500UAL.

(b) No other COC covers these vehicles.

(c) Therefore, Respondents committed approximately 288 violations of 42 U.S.C. § 7547(d) and 40 C.F.R. § 1068.101(a)(1), (b)(5) when they sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—these uncertified recreational vehicles.

58. COUNT SEVEN: 1,607 recreational vehicles purportedly covered by the COC for engine family 8TJPX.250GAL.

(a) These recreational vehicles do not materially conform to their certified configuration, and therefore are not covered by the COC for engine family 8TJPX.250GAL.

(b) 1,518 of the 1,607 recreational vehicles did not contain the Pulse Air Injection Reactor (PAIR) emission control system that was specified in the COC application for engine family 8TJPX.250GAL.

(c) 89 of the 1,607 recreational vehicles contain a catalyst that does not conform to the certified catalyst design for engine family 8TJPX.250GAL.

(d) No other COC covers these vehicles.

(e) Therefore, Respondents committed approximately 1,607 violations of 42 U.S.C. § 7547(d) and 40 C.F.R. § 1068.101(a)(1), (b)(5) when they sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—these uncertified recreational vehicles.

59. COUNT EIGHT: 251 recreational vehicles purportedly covered by the COC for engine family 7TJPX.150150.

(a) These recreational vehicles are not covered by the COC for engine family 7TJPX.150150 because the commercial model name of these recreational vehicles (DN150 or Dune 150) was not listed in the COC or the COC application at the time the vehicles were imported.

(b) No other COC covers these vehicles.

(c) Therefore, Respondents committed approximately 251 violations of 42 U.S.C. § 7547(d) and 40 C.F.R. § 1068.101(a)(1), (b)(5) when they sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—these recreational vehicles.

Labeling Violations

60. COUNT NINE: 89 recreational vehicles under the COC for engine family 8TJPX.250GAL with noncompliant ECI labels (the “Misabeled Subject Vehicles”).

61. The ECI labels on these 89 Misabeled Subject Vehicles could be removed with minimal effort, without being destroyed or defaced.

62. Therefore, Respondents committed approximately 89 violations of 42 U.S.C. §§ 7541(c)(3)(C), 7547(d), and 40 C.F.R. §§ 1051.135(b)(1), 1068.101(a)(1) when they sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—these Misabeled Subject Vehicles.

Recordkeeping Violations

63. COUNT TEN: Respondents did not maintain required VIN records for all vehicles produced under recreational vehicle engine families 7TJPX.150150, 7TJPX.250250, 8TJPX.150GAL, 8TJPX.250GAL, and 8TJPX.500UAL. *See* 40 C.F.R. § 1051.250(b)(5) (requiring manufacturers to keep a list of engine identification numbers for all engines produced under each certificate of conformity).
64. COUNT ELEVEN: Respondents did not maintain required catalyst design specifications for all vehicles produced under recreational vehicle engine families 7TJPX.250250, 8TJPX.150GAL, 8TJPX.250GAL, 9TJPX.150GAL, 9TJPX.250GAL, and ATJPX.150GAL. *See* 40 C.F.R. § 1051.250(b)(2) (requiring manufacturers to keep a description of all components used in a certification application; and referencing information required by 40 C.F.R. § 1051.205 which requires a detailed description of all system components for controlling exhaust emissions).
65. By failing to maintain the required records for recreational vehicles produced and imported into the United States, Respondents committed eleven recordkeeping violations related to eight unique engine families in violation of sections 203(a)(2)(A) and 213(d), 42 U.S.C. §§ 7522(a)(2)(A) and 7547(d), and 40 C.F.R. § 1068.101(a)(2).

Relief Sought: Civil Penalty

66. Complainant seeks an administrative penalty against the Respondents, jointly and severally, for the Alleged Violations of Law.
67. Complainant makes no specific penalty demand in this Complaint, as authorized by 40 C.F.R. § 22.14(a)(4)(ii).

68. As detailed above in Paragraphs 42-43, Respondents are subject to a civil penalty that is the sum of not more than \$32,500 or \$37,500 for each and every Subject Vehicle and Mislabeled Subject Vehicles. Additionally, as detailed above in Paragraph 44, Respondents are subject to a civil penalty that is the sum of not more than \$32,500 or \$37,500 for each and every day they failed to keep or maintain a mandatory record or failed to provide the EPA with information reasonably required to assess their compliance with the Act.
69. Complainant reserves its right to seek the maximum civil penalty authorized by the Act.
70. In determining the amount of the civil penalty in this matter, the Act requires that the EPA take into account certain penalty factors, namely “the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of [Respondents’] business, [Respondents’] history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on [Respondents’] ability to continue in business, and such other matters as justice may require.” 42 U.S.C. § 7524(c)(2).
71. Regarding alleged certification and labeling violations, Complainant proposes to account for the Act’s penalty factors by using the EPA’s Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (2009) (Penalty Policy), *available at* <http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/vehicleengine-penalty-policy.pdf> (last visited June 14, 2013). This Penalty Policy calculates civil penalties based on the number of violative engines, their horsepower, the egregiousness of the violations, remedial action, and other legal and equitable factors. Generally,

certification violations are “major” egregiousness and label violations are “minor” egregiousness. Penalty Policy at 13–14. Here, Complainant alleges certification violations for 4,076 recreational vehicles and labeling violations for 89 recreational vehicles.

72. Regarding alleged recordkeeping violations, Complainant proposes to account for the Act’s penalty factors by quantifying the number of records Respondents allegedly failed to keep or provide to EPA. Then, for each record (or category of records, as appropriate), Complainant proposes an individual penalty that accounts for the egregiousness of that failure. Complainant proposes to count recordkeeping violations in this manner separately for each engine family for which there are recordkeeping violations. Thus, Complainant proposes a civil penalty for recordkeeping violations that is the sum of individually tailored penalties for each recordkeeping violation. Here, Complainant alleges at least 11 distinct recordkeeping violations.

Opportunity to Request a Hearing

73. Respondents have a right to request a Hearing on any material fact alleged in this Complaint. Respondent may request such a Hearing in a written Answer.
40 C.F.R. § 22.15(c).
74. Hearing Procedures are set out in the Consolidated Rules at 40 C.F.R. § 22.21 – 22.26. A copy of the Consolidated Rules is enclosed with this Complaint.

Answer

75. If Respondents contest material facts upon which this Complaint is based, contend that a civil penalty is inappropriate, or contend that Respondents are entitled to judgment as a matter of law, then Respondents must within thirty (30) days after receiving this

Complaint file an original and one copy of a written Answer that conforms to 40 C.F.R. § 22.15.

76. Respondents may file an Answer by any method permitted by the Consolidated Rules and the Office of Administrative Law Judges. *See* EPA Office of Administrative Law Judges, *EPA Office of Administrative Law Judges Practice Manual* 9–10, 13–14 (July 2011), available at <http://www.epa.gov/oalj/orders/alj-practice-manual.pdf> (last visited June 14, 2013); *see also* EPA Office of Administrative Law Judges, *Notice of Change of Address*, available at http://www.epa.gov/oalj/orders/MoveNotice_3_8_13.pdf (noting the new location of the Office of Administrative Law Judges). Filing options include mail, commercial delivery, overnight mail, or hand delivery, to the following addresses:

If filing by UPS, FedEx, DHL or other courier, or personal delivery, address to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

If filing by the United States Postal Service, address to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

77. Respondents must also send a copy of the Answer to the EPA attorney assigned to this matter, Meetu Kaul. The Answer shall be served personally, by USPS (including certified mail, return receipt requested, Express Mail, and Priority Mail), or by any reliable commercial delivery service. 40 C.F.R. § 22.5(b)(2). If using USPS (except Express Mail), Respondents must use the following address:

Meetu Kaul
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Ave., NW
Mailcode 2242A
Washington, DC 20460

If using USPS Express Mail or any other carrier, Respondents must use the following address:


Meetu Kaul
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Ave., NW
William Jefferson Clinton Building South, Room 3151A
Washington, DC 20004

78. Respondents' failure to request a hearing or to file a written Answer within the 30 days after receiving this Complaint may result in the waiver of the right to contest any of the allegation set forth in this Complaint or a default judgment pursuant to 40 C.F.R. § 22.17.

[Signatures on next page]


Respectfully Submitted,

7/30/13
Date


Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency
William Jefferson Clinton Bldg. South Room 1119
1200 Pennsylvania Ave., NW (MC 2242A)
Washington, DC 20460 (Courier 20004)
Tel: (202) 564-0652
Fax: (202) 564-0069
brooks.phillip@epa.gov

7/30/13
Date


Meetu Kaul, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency
William Jefferson Clinton Bldg. South Room 3151
1200 Pennsylvania Ave., NW (MC 2242A)
Washington, DC 20460 (Courier 20004)
Tel: (202) 564-5472
Fax: (202) 564-0069
kaul.meetu@epa.gov

APPENDIX A

Summary of Importation Violations by Respondents from 2007 through 2012

Alleged Engine Family	Violation	Total
BGSNX.150LUV (recreational vehicle)	E	765
ATJPX.250GAL (recreational vehicle)	A, D	504
ATJPX.150GAL (recreational vehicle)	D,E	255
9TJPX.150GAL (recreational vehicle)	A, D	79
9TJPX.250GAL (recreational vehicle)	A, D	327
8TJPX.500UAL (recreational vehicle)	C	288
8TJPX.250GAL (recreational vehicle)	D, G	89
	F	1,518
7TJPX.150150 (recreational vehicle)	B	251
Grand Total		4,076

Table Key: Description of Violations

- Violation A: Uncertified because the manufacturer of the imported vehicle does not match the manufacturer in the COC application.
- Violation B: Uncertified because the commercial model names of the imported vehicles are not listed in the respective COC application.
- Violation C: Uncertified because the vehicles were imported prior to the effective date of the COC.
- Violation D: Uncertified because the catalysts did not conform to the specifications described in the respective COC application.
- Violation E: Uncertified because the carburetors contained “adjustable parameters” or “other adjustments” not identified on their respective COC applications.
- Violation F: Uncertified because the vehicles did not contain the Pulse Air Injection Reactor (PAIR) emission control system specified in their COC applications.
- Violation G: Vehicles contained noncompliant emission control information labels.

CERTIFICATE OF SERVICE

I certify that the forgoing Complaint, dated 7/30/13 was sent this day in the following manner to the addresses listed below:

Original by Hand Delivery to:


U.S. Environmental Protection Agency
Office of the Hearing Clerk
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20460

Copy, and a Copy of the Consolidated Rules of Practice, by Certified Mail, Return Receipt Requested to:

Jason B. Hutt Bracewell & Giuliani LLP 2000 K St. N.W. Suite 500 Washington, DC 20006 Attorney for Geason Enterprises, L.L.C., GE Ventures, L.P., Hammerhead Off-Road, Inc., and TJ Power Sports, L.L.C	Geason Enterprises, L.L.C. c/o Lam, Po & Xu, CPA's, Registered Agent 1170 Corporate Drive West, Suite 204 Arlington, TX 76006
GE Ventures, L.P., Hammerhead Off-Road, Inc., and TJ Power Sports, L.L.C. c/o Holmes Ge, Registered Agent 1200 Lakeside Parkway #325 Flower Mound, TX 75028	Shanghai Howhit Machinery Manufacture Co. Ltd. c/o Geason Enterprises, L.L.C., Registered Agent Att: Holmes Ge 1200 Lakeside Parkway #325 Flower Mound, TX 75028

Shanghai Tong Jian Sports Equipment Co., Ltd. c/o Hammerhead Off-Road, Inc., Registered Agent Att: Holmes Ge 1200 Lakeside Parkway #325 Flower Mound, TX 75028	
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7/30/13
Date



Meetu Kaul, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency
William Jefferson Clinton Bldg. South Room 3151
1200 Pennsylvania Ave., NW (MC 2242A)
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