

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC

In the Matter of:

PEACE POWER SPORTS, INC.  
Doing business as LUXE USA,

Docket No.  
CAA-HQ-2014-8063

Respondent,

**RESPONDENT'S ANSWER**

**TO COMPLAINANT'S MOTION FOR DEFAULT**

Comes Now, the Respondent through counsel and shows upon receipt of the Complainant's filing of its First Amended Complaint, it advised the Complainant's attorney that it had no objection to the addition of added claims as provided for in the Amended Complaint. This unfortunately was not done in writing rather conveyed in conversation.

The Respondent show on or about June 23, 2014 the Respondent through counsel filed an answer to the comprehensive complaint filed by Complainant. The Respondent shows its general denial of all the allegations along with denials of more specific allegations covered the new allegations, which are just add on and slightly more specific reiterations of the original allegations and did not require an additional response.

The Respondent shows the added claims filed by the Complainant are essentially repetitive in nature and have in essence been responded to by the Respondent in its original answer and do not require additional response.

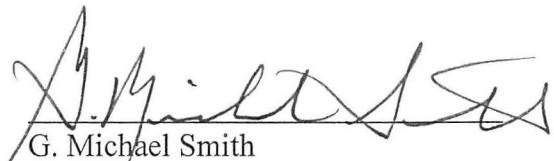
The Respondent shows since the beginning the Parties understood that the costs associated with challenging the base allegations being made by the EPA were prohibitively expensive to address as to be totally financially destructive of the Respondent's business. In fact all or most

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discussions with the EPA have involved the “ability to pay” and not whether some minor technical infractions which do not materially affect the intent and historic purpose of the Clean Air Act, may or may not have occurred.

The Respondent shows the EPA is seeking default fines against 444 vehicles, but fails to disclose to the Court that all but 23 vehicles were remediated at the port of entry and have never tainted the air in the United States.

The Respondent agrees with counsel for the EPA that the added facts may be admitted to the extent that they materially and specifically differ from the allegations which have been denied in the original answer to the EPA complaint. The Respondent hereby denies any new facts which are materially different from the original facts alleged and reaffirms that they are in fact denied as they always were.



G. Michael Smith  
Attorney for Respondent  
Peace Power Sports, Inc.

*Smith, Collins & Fletcher, P.A.*  
8565 Dunwoody Place  
Building 15  
Atlanta, Georgia 30350  
678-245-6785  
1-888-413-3031 (fax)

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATIVE HEARING OFFICER**

**In Re:  
PEACE POWER SPORTS**

**Respondents,**

**Docket No.  
CAA-HQ-2014-8063**

**RESPONDENT'S INITIAL PREHEARING EXCHANGE**

- A. The Respondent may call the following people as witnesses at a hearing. These witnesses will be primarily fact witnesses, unless identified as experts;
1. Fang (Rachel) Liu , General Manager of the Respondent. Respondent adopts Complainant's description of this individual as set forth in # 17 of Complainant's initial exchange.
  2. Pu Li, Lam -Po Xu Accountants, Respondent adopts Complainant's description of this individual as set forth in # 20 of Complainant's initial exchange.
  3. Respondent will supplement this portion of the response upon securing expert witnesses competent to testify on such technical matters deemed necessary to prove its case.
  4. David B. Eppler, EPA Officer in Region 6, Dallas, Texas to testify about his directions and purpose in taking discovery pictures at the Respondent's warehouse.
- B. Copies of all documents which have been previously produced by the Respondent as part of the record exchange to demonstrate its limited ability to pay pursuant to 42 U.S.C § 7524 9 The Respondent requests that these documents already in the possession of the Complainant be admitted for evidentiary purposes and any additional documents which are later discovered which address similar questions posed by the Complainant be admitted in hearings before the Administrative Hearing Judge.

Respondent's position regarding the numerous alleged violations in Counts 1 - 3, are not based on reasonable sampling. The respondent shows a significant number of vehicles alleged to have violated the Clean Air Act were in fact remediated by U.S. Customs at the border. Respondent shows that it believes balance of the alleged vehicles were not tested for emissions, which if properly conducted would have most probably have provided evidence of not actually violating the Clean Air Act standards set for such vehicles. This failure of the part of the Complainant should be evidence to allow for diminishment and/or obviation of the onerous penalties the EPA requests the court to impose.

The Respondent shows the Complainant brought a civil action (*and possibly a criminal action*) against MotorScience who was a testing and certifying company for many of the family of engines in question. The action was filed in Federal District Court and the Complainant obtained a judgment against MotorScience in the amount of Three Million Dollars. The Respondent shows 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. The Respondent shows this in fact evidences its cooperation.

The Respondent shows it has produced hundreds of pages of documents have been provided to the Complainant as part of a voluntary evidence submission to facilitate the Complainant's research into "ability to pay". The Complainant's claim that the Respondent did not provide this information is untrue and incorrect. The Respondent would assert that Complainant did not like the evidence supplied as it in fact did prove that Respondent is without the resources to pay the outrageous penalty the EPA seeks to have the court impose.

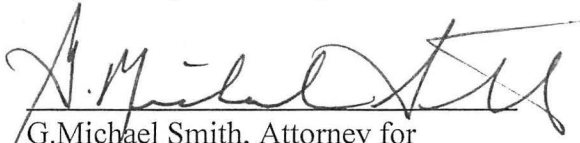
Finally, the Respondent shows it has no control over the Respondent factories in China. The Respondent shows that over the past few years the Chinese factories have realized the necessity for strict compliance and to the best of this Respondent's knowledge and belief they are now doing so. As an aside the Respondent draws the court's attention to the various news reporting showing the Chinese government in general is realizing its failure to observe good policy about Clean Air has allowed for the extreme air pollution which exist in that country. This governmental failure and generally poor attitude about clean air quality may account for the Chinese factories lack of regard for compliance in the past.

Location: The Respondent shows it is a Texas Corporation doing business in Dallas. The Respondent shows the proper venue for any hearings should be set in the Dallas area. The respondent shows the EPA has presence in Dallas Texas as evidenced by the appearance of its local agent David B. Eppler at the Respondent's warehouse to take pictures of the warehouse and inventory, producing his card indicating EPA has an address in Dallas, Texas at 1445 Ross Avenue, Dallas, Texas, 75202 and thus any hearing should be held in Dallas, Texas. Having the hearing in Dallas, Texas will not negatively impact the Complainant. Conversely, hearings held in Washington, DC is a *forum non-conveniens* for this Respondent who has no offices or business affiliation in Washington, unlike the Complainant which has offices in both cities. Additionally, The Respondent shows it intends to have live demonstrations conducted of the dismantling of a subject vehicle, the removal of the carburetor and the removal of the protective cap and needle valve. The best location for such a live demonstration is at the Respondent's facility in Dallas.

Confidential Business Information :

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

Respectfully submitted,



G. Michael Smith, Attorney for  
Respondent, Peace Power Sports, Inc.  
Smith, Collins & Fletcher, P.A.  
8565 Dunwoody Place, Bldg# 15  
Atlanta, Georgia 30350  
678-245-6785  
gmichael@scandf.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATIVE HEARING OFFICER

**In Re:**  
**PEACE POWER SPORTS, INC.**

**Respondents,**

**Docket No.**  
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**RESPONDENT'S ANSWER TO COMPLAINANT'S MOTION FOR DEFAULT  
&  
RESPONDENT'S INITIAL PREHEARING EXCHANGE**

CERTIFICATE OF SERVICE

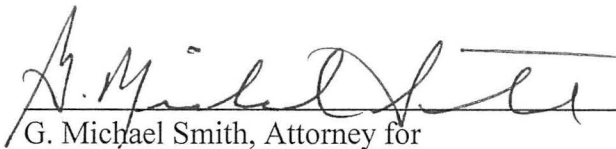
I hereby certify that I have this day served a copy of the within and foregoing Respondent's Initial Prehearing Exchange upon the following named individuals concerned of record to this matter by depositing a true and correct copy of same in the United States Mail, proper postage pre-paid, addressed to and by electronic submission using the online OALJE-Filing System.

Sybil Anderson, Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Ave., N.W.  
Washington DC 20460

M. Lisa Buschmann Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Ave., N.W.  
Washington DC 20460

Evan Belser, Esq., Attorney for Complainant  
Air Enforcement Division  
Office of Civil Enforcement  
1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building  
Room 1142C, Mailcode 2242A  
Washington, DC 20460

Served this 26<sup>th</sup> day of March, 2015.

A handwritten signature in black ink, appearing to read "G. Michael Smith", is written over a horizontal line.

G. Michael Smith, Attorney for  
Respondent, Peace Industry Group(USA), Inc.  
Smith, Collins & Fletcher, P.A.  
8565 Dunwoody Place, Bldg# 15  
Atlanta, Georgia 30350  
678-245-6785  
gmichael@scandf.com