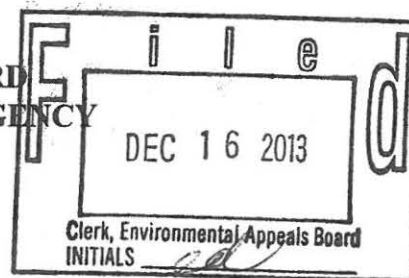


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re: _____)
)
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.)
_____)

Docket No. CAA-HQ-2013-8050

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ORDER

On July 30, 2013, U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance ("EPA") filed a complaint in the above-captioned matter pursuant to section 22.13 of EPA's Consolidated Rules of Practice. *See generally* 40 C.F.R. pt. 22 (containing rules governing the administrative assessment of civil penalties under a number of EPA-administered statutes, including the Clean Air Act). The complaint listed six respondents. Four of the respondents filed a joint answer on September 30, 2013. Another respondent separately filed an answer on that same date. The sixth respondent, Shanghai Tong Jian Sports Equipment Co., Ltd., has not filed an answer in this matter.

On November 6, 2013, EPA filed a motion for default with the Hearing Clerk at the Office of the Administrative Law Judges pursuant to 40 C.F.R. § 22.17 against Shanghai Tong Jian Sports Equipment Co., Ltd. based on respondent's failure to file an answer. The Hearing Clerk subsequently forwarded the motion to the Environmental Appeals Board ("Board"). It was received on December 3, 2013.

Under the Consolidated Rules of Practice, once an answer is filed in an enforcement case commenced at EPA Headquarters, one of EPA's administrative law judges ("ALJs") acts as the presiding officer in the matter. *See id.* §§ 22.3, 4(a). Before an answer is filed in such a case, however, the Board generally acts as the presiding officer in the matter. *See id.* § 22.4(a). The CROP does not directly speak to who should act as the presiding officer when answers have been filed by some, but not all, of the respondents in a matter, which is the current situation in this case. *See generally id.*

In exercising its duties under the Consolidated Rules of Practice, the Board "may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding." *Id.* § 22.4(a)(2); *accord id.* § 22.4(c)(10) (containing the same language when the Board is acting as the presiding officer); *see also id.* § 22.1(c) ("Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the * * * Board * * *.") The Board believes that, in this case, it would be more efficient as well as more consistent with the intent of the Consolidated Rules of Practice to send this motion for default to the Office of the Administrative Law Judges for consideration. This would allow the ALJ assigned to conduct the proceedings in connection with the five respondents who have filed answers to also decide the motion for default. It makes more sense for the same ALJ to consider the default issues associated with the sixth respondent, especially as there are likely to be similar or overlapping liability and/or penalty issues related to the allegations brought against each of the six respondents.

Accordingly, in light of the ambiguity of the part 22 rules and upon consideration of the facts and circumstances of this case, the Board directs the Hearing Clerk to send the motion for

default to the Office of the Administrative Law Judges for action consistent with this order. This order is not intended in any way to be a determination on the merits of the motion. The Board notes that it has added the address for the sixth respondent to the attached certificate of service, using the address listed in the complaint for this respondent. It appears that the motion for default may not have been served on this respondent.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: December 16, 2013

By: Randolph L. Hill
for Catherine R. McCabe
Environmental Appeals Judge

¹ The three-member panel deciding this matter is composed of Environmental Appeals Judges Randolph L. Hill, Catherine R. McCabe, and Kathie A. Stein. See 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order 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., Docket No. CAA-HQ-2013-8050, were sent to the following persons in the manner indicated:

By Interoffice Mail:

Sybil Anderson (1900R)
Headquarters Hearing Clerk
Office of Administrative Law Judges

Meetu Kaul (2242A)
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

By First Class Mail:

Jason B. Hutt
Michael Weller
Bracewell & Giuliani LLP
2000 K St. NW, Suite 500
Washington, DC 20006

Ronald J. Tenpas
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Ave. NW
Washington, DC 20006

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

Dated: DEC 13 2013



Annette Duncan
Secretary