

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

2015 FEB 27 PM 3:15

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 INITIAL 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 Initial Prehearing Exchange. This consists of the following document, and 320 enclosed exhibits.

- A. The names of any witnesses the party intends to call at the hearing, identifying each as a fact witness or an expert witness, and a brief narrative summary of the expected testimony of each witness, or a statement that no witnesses will be called.*

Complainant may call the following people as witnesses at hearing. All would be fact witnesses, unless identified below as an expert.

1. Amelie Isin, United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA), Office of Civil Enforcement (OCE), Air Enforcement Division (AED), Mobile Source Enforcement Branch (MSEB), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Ms. Isin is a Professional Engineer who served as the EPA's lead investigator in this matter. She personally performed some of the vehicle inspections in this matter, and coordinated other inspections performed by other EPA inspectors, EPA contractors or other federal employees.
2. EXPERT: Mario Jorquera, EPA/OECA/OCE/AED/MSEB, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Mr. Jorquera is a Professional Engineer involved in some of the inspections in this matter. Mr. Jorquera's career has been focused on a wide range of matters concerning air pollution, air pollution control, and compliance assessments of imported products.
3. Ross Ruske, EPA/OECA/OCE/AED/MSEB, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Mr. Ruske served as the EPA's Project Officer for some of

- the relevant contracts with The Bionetics Corporation. He may speak to the contractual arrangement under which this contractor performed vehicle inspections in this matter.
4. Sounjay Gairola, EPA/OECA/OCE/AED/MSEB, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Mr. Gairola served as the EPA's Project Officer for some of the relevant contracts with The Bionetics Corporation. He may speak to the contractual arrangement under which this contractor performed vehicle inspections in this matter.
 5. Cleophas Jackson, EPA, Office of Air and Radiation, Office of Transportation and Air Quality, Compliance Division, Gasoline Engine Compliance Center, 2000 Traverwood Drive, Ann Arbor, MI 48105. Mr. Jackson directs the operations of the relevant EPA office that receives and reviews applications for EPA Certificates of Conformity (COCs), and grants COCs. He may speak about the EPA COCs at issue in this matter.
 6. Emily Chen, EPA, Office of Air and Radiation, Office of Transportation and Air Quality, Compliance Division, Gasoline Engine Compliance Center, 2000 Traverwood Drive, Ann Arbor, MI 48105. Ms. Chen works in the relevant EPA office that receives and reviews applications for EPA COCs, and grants COCs. She may speak about the EPA COCs at issue in this matter.
 7. EXPERT: Don Smith, EPA National Enforcement Investigations Center, PO Box 25227, Denver Federal Center, Denver, CO, 80225. Mr. Smith is knowledgeable about laboratory testing and reporting for catalyst testing, and may speak to the catalyst testing performed in this matter.
 8. EXPERT: Jennifer Suggs, EPA National Enforcement Investigations Center, PO Box 25227, Denver Federal Center, Denver, CO, 80225. Ms. Suggs is knowledgeable about laboratory testing and reporting for catalyst testing, and may speak to the catalyst testing performed in this matter.
 9. EXPERT: Benjamin Burns, EPA National Enforcement Investigations Center, PO Box 25227, Denver Federal Center, Denver, CO, 80225. Mr. Burns is knowledgeable about laboratory testing and reporting for catalyst testing, and may speak to the catalyst testing performed in this matter.
 10. Shayne Harrel, Applications Development Scientist, Analytical Instruments Division, Olympus Scientific Solutions Americas, 48 Woerd Avenue, Waltham MA 02543. Mr. Harrel is knowledgeable about some of the equipment used by the EPA and its contractors to analyze the composition of catalytic converters.
 11. United States Department of Homeland Security's Bureau of Customs and Border Protection: These current and former federal employees are familiar with import processes generally, and specifically the circumstances surrounding some of the vehicle inspections in this matter.

- a. Dallas/Ft. Worth: 7501 Esters Blvd., Suite 160, Irving, TX 75063: Officer Juanita Gonzales; Officer Martin Lopez; Officer Ronald Wood; Officer Patrick Kirkman; Officer Brent Foster; Officer Terrence Regan.
 - b. Los Angeles/Long Beach: 301 E. Ocean Blvd., Long Beach, CA 90802; Danny Johnson (now retired)
12. Former employees of The Bionetics Corporation, 101 Production Dr., Suite 101, Yorktown, VA 23693, (757) 865-6214.
- a. Benjamin E. Foster: Mr. Foster performed inspection work under the contracts between The EPA and the Bionetics Corporation.
 - b. Lewis Hooper: Mr. Hooper performed inspection work under the contracts between the EPA and The Bionetics Corporation.
 - c. Tim Mackie: Mr. Mackie performed inspection work under the contracts between the EPA and The Bionetics Corporation.
 - d. Travis Parker: Mr. Parker performed inspection work under the contracts between the EPA and The Bionetics Corporation.
 - e. Angela Rana: Ms Rana managed contracts under which The Bionetics Corporation conducted inspections and otherwise supported the EPA's inspections of Respondent.
 - f. Charles Woolford: Mr. Woolford performed inspection work under the contracts between the EPA and The Bionetics Corporation.
 - g. John Zeno: Mr. Zeno performed inspection work under the contracts between the EPA and The Bionetics Corporation.
13. Andy Loll, Eastern Research Group, Inc., 14555 Avion Parkway, Suite 200, Chantilly, VA 20151. Mr. Loll maintains custody of tangible evidence. Mr. Loll also conducts and oversees catalyst analysis.
14. Colin Wang, Eastern Research Group, Inc., 14555 Avion Parkway, Suite 200, Chantilly, VA 20151. Mr. Wang maintains custody of tangible evidence. Mr. Wang also conducts and oversees catalyst analysis.
15. EXPERT: Cindy T. Vu, Vu Forensics & Advisory, LLC, 6830 Elm Street Suite #1, McLean, VA 22101. Ms. Vu may serve as Complainant's expert witness on matters concerning the statutory penalty factor, "the effect of the penalty on the violator's ability to continue in business," and other matters concerning Respondents' finances and accounting.
16. Zeliang Lu, Officer, Zhejiang Peace Industry and Trade Co., Ltd., No. 7 Lanhua Road, Baihuashan Industrial Park, Economy Development Zone, Wuyi, Zhejiang,

- China. On information and belief, Mr. Lu could speak to the circumstances surrounding the establishment of Peace Industry Group (USA), Inc. as a business entity, including its initial capitalization, because he was an initial director of that Respondent. Mr. Lu could also speak to recent and current financial aspects of Respondents' business because he is an officer of one of Peace Industry Group (USA), Inc.'s primary vendors.
17. Dong Lu, Officer, Zhejiang Peace Industry and Trade Co., Ltd., No. 7 Lanhua Road, Baihuashan Industrial Park, Economy Development Zone, Wuyi, Zhejiang, China. On information and belief, Mr. Lu could speak to the information provided by his company in its applications for COCs because he identified himself there as a point of contact for the EPA. He could also speak to recent and current financial aspects of Respondents' business because he is an officer of one of Peace Industry Group (USA), Inc.'s primary vendors.
 18. Wenqian Wu, Officer, Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd., No. 1 Kangchao Road, Banan District, Chongqing, China. On information and belief, Mr. Wu could speak to the information provided by his company in its applications for COCs because he identified himself there as a point of contact for the EPA. He could also speak to recent and current financial aspects of Respondents' business because he is an officer of one of Peace Industry Group (USA), Inc.'s primary vendors.
 19. Quiping (Byron) Wang, President, Peace Industry Group (USA) and Blue Eagle Motor Inc., 2649 Mountain Industrial Blvd., Tucker, GA 30084. On information and belief, Mr. Wang could speak to all aspects of the establishment, finances, recordkeeping, compliance oversight, and business operations of his companies. He could also speak to the information provided by his companies in its applications for COCs because he identified himself there as a point of contact for the EPA.
 20. Yuping Lu, Director, Blue Eagle Motor Inc., 2649 Mountain Industrial Blvd., Tucker, GA 30084. On information and belief, Ms. Lu could speak to the establishment, finances, recordkeeping, compliance oversight, and business operations of her company.
 21. Meiredith Huang, Operations Controller, Peace Industry Group (USA), Inc., 2649 Mountain Industrial Blvd., Tucker, GA 30084. On information and belief, Ms. Huang could speak to all aspects of the establishment, finances, recordkeeping, compliance oversight, and business operations of her employer.
 22. James Xu, Manager, Stanley marketing & Consulting LLC, P. O. Box 3483, Blaine, WA 98231. Mr. Xu acted as consultant for Respondents to prepare applications for and otherwise obtain from some of the EPA COCs at issue in this matter. On information and belief, he could speak to the contents of those applications, including representations about the design of the vehicles at issue in this matter and representations about compliance matters made by Respondents.

B. Copies of all documents and exhibits intended to be introduced into evidence at the hearing. Included among the documents produced shall be a curriculum vita or resume for each identified expert witness. The documents and exhibits shall be identified as Complainant's or Respondent's exhibit, as appropriate, and numbered with Arabic numerals(e.g., CX 1 or RX 1). The copies may be printed double-sided.

Enclosed are 320 Exhibits, each in portable document format (PDF). These are all documents and exhibits Complainant may introduce into evidence at the hearing. Each are identified in the document's footer as "CX #" where the "#" is an assigned exhibit number. Exhibit numbers fall into three categories:

- Stand-alone Arabic numerals, assigned sequentially from 1 – 106. Exhibits labeled this way include all exhibits that do not fall into the following two categories.
- Arabic numerals preceded by "IMP" (short for "importation"), assigned sequentially from 001 – 192. These exhibits are records of the importation of the vehicles identified by the Complaint in this matter. These are scanned copies of the original records, as produced to the EPA by one or more Respondents in 2010 and 2011. For ease of reference, the labels on these exhibits also include "COUNT #" to identify which Count in the Complaint each such exhibit supports. Similarly, the labels on these exhibits also include the entry number or bill of lading number that uniquely identifies the shipment of vehicles for customs and commercial purposes.
- Arabic numerals preceded by "RFI" (short for "request for information"), assigned sequentially from 1 – 22. These exhibits are records (but not the records of importation as described in the preceding bullet) that one or more Respondents provided to the EPA in response to the EPA's October 13, 2010 Request for Information (which itself is provided as "CX RFI 01").

For ease of reference, Complainant has also bates stamped these exhibits so that no page has the same bates number as any other. This numbering begins with 000001 and ends with 005374.

Generally: Exhibits 1 – 45 concern Count One of the Complaint; Exhibits 46 – 52 concern Count Two; Exhibits 53 – 56 concern Counts Three and Six; Exhibits 57 – 62 concern Count Four; and Exhibits 63 – 76 concern Count Five; and Exhibits 102 – 106 are curriculum vitae for the above-identified potential expert witnesses.

C. A statement of the city or county in which the party prefers the hearing to be held, and an estimate of the time needed to present its direct case. See 40 C.F.R. §§ 22.19(d), 22.21 (d). Also, a statement of whether translation services are necessary for the testimony of any anticipated witness(es), and if so, the language to be translated.

Complainant prefers the hearing be held in Washington DC. Complainant estimates it will need 32 hours to present its direct case. Complainant anticipates a need for English-Mandarin translation services.

D. A copy of any documents in support of each of the factual allegations in the First Amended Complaint which were not admitted by Respondent.

Complainant's enclosed Exhibits support the factual allegations of the Complaint.

E. A copy, or a statement of the internet address (URL), of any EPA guidance documents, policies, and any preambles to regulations which support Complainant's application of regulations to the particular alleged facts and findings of violation in the First Amended Complaint.

Complainant's enclosed Exhibits ## 77 – 86 include all documents that meet this description.

F. A statement as to all factual information Complainant deems relevant to the assessment of a penalty. The statement also must specify the total number of violations, and the number of days of each violation, for which a penalty is sought

As stated in ¶¶ 34 – 40 of the Complaint, Complainant seeks a civil penalty in this proceeding.

For Counts One through Six, Complainant proposes to account for the Clean Air Act's penalty factors and otherwise arrive at an appropriate civil penalty by application of the EPA's Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements (2009) (Policy), available at http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf (last visited February 19, 2015). 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.

For Counts Seven and Eight, Complainant proposes to arrive at an appropriate civil penalty as described in ¶ 40 of the Complaint.

Here, with its forthcoming Rebuttal Prehearing Exchange, Complainant will propose a specific dollar amount for, and a narrative statement explaining in detail, a civil penalty for the violations alleged by the Complaint. For present purposes, Complainant states the following facts that are relevant to the assessment of a penalty:

- Respondents allegedly committed 22,959 certification violations in this matter—one violation for each of the noncompliant vehicles identified in Counts One through Five that it imported or otherwise introduced into commerce. Respondents allegedly committed 5,908 warranty violations for each vehicle in Count Six. committed Penalties for these violations accrue on a per-vehicle basis but not a per-day basis.
- The 7,895 vehicles at issue in Count One are rated to achieve 3.22 horsepower; the 2,812 vehicles at issue in Count Two are rated to achieve 2.82 horsepower; the 5,908 vehicles at issue in Counts Three and Six are rated to achieve 6.30 horsepower; the 6,122 vehicles at issue in Count Four are rated to achieve 6.30 horsepower; and the vehicles at issue in Count Five are rated to achieve 7.00 horsepower.
- All alleged certification violations (counts One through Five) qualify as “major egregiousness” under the Policy because they “are violations where excess emissions are likely to occur” or “there is no information about the emissions from these vehicles or engines.” Policy at 13.
- Complainant considers the alleged warranty violations in Count Six to be of “moderate” egregiousness. Policy at 13 – 14.
- Of the vehicles at issue in the following Counts, the following quantity were stopped at the point of importation, and on information and belief have not been used in the United States: 562 vehicles in Count One; 408 vehicles in Count Four; and 126 vehicles in Count Five. This is a basis to consider these vehicles “remediated” under the Policy. In contrast, all remaining vehicles were not stopped at the point of importation and, on information and belief, have been used in the United States and have not been remediated.
- As detailed in ¶ 40 of the Complaint, Complainant alleges at least 14 distinct recordkeeping violations, which accrue on a per-day basis. The violations alleged by Counts Seven and Eight concern Respondent’s failure to keep records of vehicle emission testing—a fundamental element of the EPA’s certification program. Complainant therefore considers these violations to be highly egregious.
- Complainant considers Respondent to have been non-cooperative, as discussed in the Policy at pages 24 – 25. For example, despite numerous instances—spanning years—where the EPA and Customs and Border Protection detained, inspected, and seized noncompliant vehicles at the point of importation, Respondents continued to introduced into United States commerce uncertified vehicles. Also, despite numerous requests and clear need for the sake of a negotiated resolution, Respondent Peace Industry Group (USA), Inc. failed to timely produce information reasonably requested so Complainant could assess the company’s claimed limited ability to pay a penalty. That company also

repeatedly refused to answer questions from the EPA about missing aspects of their response to the EPA's 2010 Request for Information. Finally, both foreign Respondents in this proceeding have been non-cooperative when, for years pre-filing, they refused to speak with the EPA. Post filing, they have barely engaged.

- On information and belief, Respondent's sole shareholder is also the principal for the Respondent's primary vehicle vendor (Zhejiang Peace Industry and Trade Co., Ltd). Respondent pays this vendor for its vehicles as cash flow allows, and for years has carried a very large account payable with no terms for repayment. Under these and related circumstances, a civil penalty in this matter would have little to no effect on Respondent's ability to continue in business because Respondent could continue to obtain vehicles and pay for them only as cash flow allows—an arrangement demonstrated to be agreeable to Respondent's primary vendor.

G. A copy, or a statement of the internet address (URL), of any penalty policies and/or guidelines, and any amendment, appendix or clarification thereto, considered or intended to be considered in assessing a penalty. Complainant need not submit a copy of any penalty policy that was enclosed with the Complaint, or of the Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule.

The applicable penalty policy is enclosed as Exhibit CX 81. It is also available online. EPA's Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements (2009), available at http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf (last visited February 19, 2015).

Respectfully Submitted,

Feb. 27 2015

Date



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

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William J. Clinton Federal Building
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Washington, DC 20460
(202) 564-6850
belser.evan@epa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I filed by hand delivery with the Headquarters Hearing Clerk at the following location the original and one copy of the foregoing Complainant's Initial Prehearing Exchange *In the Matter of peace Industry Group (USA), Inc.*, CAA-HQ-2014-8119. This included hard-copies of this document and compact discs containing Complainant's 320 enclosed PDF exhibits.

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

I certify that on the date below I filed by hand delivery with the Presiding Officer at the following location one copy of the foregoing Complainant's Initial Prehearing Exchange. This included a hard-copy of this document and a compact disc containing Complainant's 320 enclosed PDF exhibits.

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

I certify that on the date below I sent to the following Respondents' counsel at the address below by United States Postal Service Certified Mail Return Receipt Requested two copies of the foregoing Complainant's Initial Prehearing Exchange. This included hard-copies of this document and compact discs containing Complainant's 320 enclosed PDF exhibits: 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

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I certify that on the date below I sent to the following Respondents' representative at the address below by United States Postal Service Certified Mail Return Receipt Requested two copies of the foregoing Complainant's Initial Prehearing Exchange. This included hard-copies of this document and compact discs containing Complainant's 320 enclosed PDF exhibits: Zhejiang Peace Industry and Trade Co., Ltd. and Chongqing Astronautic Bashan Motorcycle Manufacturing Co., Ltd.

Quiqing Wang
2649 Mountain Industrial Blvd.
Tucker, GA 30084

Feb. 27 2015
Date



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