

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

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In the Matter of:

CFMOTO POWERSPORTS, INC., and  
CFMOTO AMERICA, INC.,

Docket No.  
CAA-HQ-2013-8038

Respondents.

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**ANSWER AND REQUEST FOR HEARING**

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CFMOTO Powersports, Inc., and CFMOTO America Inc. (hereinafter "CFMOTO"), for their answer to the Complaint and Notice of Opportunity for Hearing, which was received by CFMOTO, on April 8, 2013, deny each and every matter set forth in the Complaint and allege:

1. CFMOTO denies that CFMOTO violated the sections of Clean Air Act ("CAA") set forth in the complaint.
2. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 1 of the Complaint.
3. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 2 of the Complaint.
4. CFMOTO denies paragraph 3 of the Complaint and states that CFMOTO America, Inc., is a New Jersey corporation dissolved by the State of New Jersey in February of 2012.

5. CFMOTO admits paragraph 4 of the Complaint to the extent Complainant asserts that CFMOTO Powersports, Inc. is a Minnesota corporation, but denies that CFMOTO America was a Michigan corporation, and puts Complainant to the strict proof thereof.

6. CFMOTO denies paragraph 5 of the Complaint and puts Complainant to the strict proof thereof. CFMOTO Powersports, Inc., is a successor and assignee of CFMOTO America, Inc., only for purposes of submitting applications to and holding certificates of conformity ("COC") issued by the USEPA. CFMOTO Powersports, Inc., and CFMOTO America, Inc., have at all times during their existence maintained separate and different ownership, officers and governance personnel, and have conducted completely separate and different business operations. As a result, there is no legal successor relationship for purposes of drawing or assessing liability by the administrator in this matter.

7. CFMOTO admits paragraph 6 of the Complaint.

8. CFMOTO denies paragraph 7 of the Complaint and puts Complainant to the strict proof thereof. CFMOTO Powersports, Inc., is an importer while CFMOTO America, Inc., was not an importer. In addition, Chunfeng Holding Group Co. Ltd., is not a motor vehicle manufacturer.

9. CFMOTO denies paragraph 8 of the Complaint and puts Complainant to the strict proof thereof. CFMOTO states that the vehicles listed in Appendix A to the complaint have no connection with the inspections performed that are described in paragraph 8. In particular, the vehicles subject to the April and May 2009 inspections were subsequently part of a seizure and then released to CFMOTO under a settlement agreement reached with EPA and CBP. The vehicles brought into the Seattle Service Port were subject to exemption granted by the EPA compliance division director.

10. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 9 of the Complaint.

11. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 10 of the Complaint and puts Complainant to its strict proof thereof.

12. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 11 of the Complaint and puts Complainant to its strict proof thereof.

13. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 12 of the Complaint.

14. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 13 of the Complaint.

15. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 14 because said paragraph contains legal arguments, summaries and conclusions to be determined in this proceeding and therefore puts Complainant to its strict proof thereof.

16. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 15 because said paragraph contains legal arguments, summaries and conclusions to be determined in this proceeding and therefore puts Complainant to its strict proof thereof.

17. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 16 because said paragraph contains legal arguments, summaries and conclusions to be determined in this proceeding and therefore puts Complainant to its strict proof thereof.

18. CFMOTO is without sufficient information so as to either admit or deny the allegations set forth in paragraph 17 because said paragraph contains legal arguments and conclusions to be determined in this proceeding and therefore puts Complainant to its strict proof thereof.

19. CFMOTO admits paragraph 18 of the Complaint.

20. CFMOTO denies paragraph 19 of the Complaint and puts Complainant to the strict proof thereof. CFMOTO Powersports Inc., admits that it is an importer. CFMOTO America Inc., on information and belief, was not an importer or a manufacturer for purposes of this proceeding.

21. CFMOTO denies paragraph 20 of the Complaint and puts Complainant to the strict proof thereof. 19 C.F.R. §12.73 provides for importation of complying vehicles into the U.S. in the following two manners:

(b) Importation of complying vehicles

(1) Labeled vehicles. Vehicles which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer's label showing such conformity and other EPA-required information shall be deemed in compliance with applicable emission requirements for the purpose of Customs admissibility and entry liquidation determinations. This paragraph does not apply to importations of ICI's covered by paragraph (d) of this section.

(2) Pending certification. Vehicles otherwise covered by paragraph (b)(1) of this section which were manufactured for compliance with applicable emission requirements but for which an application for a certificate of conformity is pending with the EPA may be conditionally released from Customs custody pending production of the certificate of conformity within 20 days of release.

There is no dispute that all of the vehicles at issue in this matter have an EPA issued COC and that the vehicles were manufactured for compliance with applicable emission requirements and that a certificate of conformity was pending with the EPA at the time of the vehicle's arrival at U.S. port. The issue of importation, as it relates to the timing of the COC issuance, is really a question for U.S. Customs and Border Patrol not EPA. This is based on the fact that the only potential violation with respect to Count One relates to early importation of certified vehicles,

which process is allowed for under 19 C.F.R. §12.73 (EPA regulation) and 40 CFR §85.1504 (CBP regulation, which provides for conditional admission of up to 120 days pending final certification of the vehicle by EPA). EPA approved all of the vehicles for sale in the US via issuance of a valid COC, so this is a unique case in terms of penalty application and enforcement.

22. CFMOTO denies paragraph 21 of the Complaint and puts Complainant to the strict proof thereof. Please see Answer to paragraph 20 above. In addition, with respect to the claimed 5 recreational vehicles imported without any applicable COC or exemption, CFMOTO is not able to identify the vehicles in question with any specificity based on the information set forth in the complaint, but believes the subject vehicles to be in fact subject to an exemption letter from the director of the EPA compliance division.

23. CFMOTO denies paragraph 22 of the Complaint and puts Complainant to the strict proof thereof. According to the data in the possession of EPA, the VECI label for the vehicles at issue contain a symbol which is a listed and approved abbreviation for identification of the exhaust emission control system under 40 C.F.R. §86.413-2006. CFMOTO, on information and belief, submitted all of the labels in question to EPA as part of the certification process and received no objection from EPA to the label configuration and designation. The VECI label is therefore in compliance with 40 C.F.R. §86.413-2006.

24. Paragraphs 23-28 do not appear to require a response, but to the extent of any allegations contained or incorporated therein CFMOTO denies same and puts Complainant to the strict proof thereof.

25. In response to paragraph 29, CFMOTO requests that a hearing be scheduled pursuant to CAA and applicable regulations so that evidence may be presented on all of the

issues set forth above. CFMOTO further requests that a settlement conference be scheduled as soon as reasonably possible to discuss settlement of this matter.

29. Paragraphs 30-34 do not appear to require a response, but to the extent of any allegations contained or incorporated therein CFMOTO denies same and puts Complainant to the strict proof thereof.

#### AFFIRMATIVE DEFENSES

As additional affirmative defenses, separate from those expressed, inferred or implied above, CFMOTO hereby further alleges:

1. Complainant's claims are barred by the applicable statute of limitations, unclean hands, waiver, estoppels and accord and satisfaction.
2. Complainant has delayed an unreasonable length of time in filing of the complaint, all to the detriment and disadvantage of CFMOTO, and the complaint should be deemed barred by laches and the failure of complainant to proceed within a reasonable period of time.
3. Complainant has failed to properly identify the vehicles it deems to be in violation and subject to penalty.
4. The proposed penalty is not proper having due regard to the gravity of the violation and the size of CFMOTO's business and the effect on CFMOTO's ability to continue in business.
5. The gravity of the alleged violation, the nature and size of CFMOTO's business, and the absence of any prior violations make a Notice of Warning the appropriate remedy under the scope and intent of CAA, rather than a civil penalty.
6. CFMOTO alleges that the Complaint and each count thereof, fail to state a claim upon which relief could be granted.

7. The claims asserted by Complainant may be barred by any or all of the affirmative defenses contemplated by Federal Rules of Civil Procedure. To the extent that Complainant's claims may be barred by one or more of said affirmative defenses not specifically set out above, such defenses cannot be determined until there is further discovery. Defendant therefore incorporates all such affirmative defenses as set forth in Federal Rules of Civil Procedure.

PRAYERS FOR RELIEF

WHEREFORE, CFMOTO respectfully prays for the following relief:

1. That the Complaint be dismissed in its entirety based on unreasonable delay and applicable statute of limitations.
2. That the Complaint be dismissed in its entirety for failure to state a violation of the Act.
3. For an award of CFMOTO's attorneys fees.
4. For such other and further relief as may be deemed just and equitable.
5. CFMOTO requests that a hearing be scheduled pursuant to CAA and applicable regulations so that evidence may be presented on all of the issues set forth above.

Respectfully submitted,

**PARKER & WENNER, P.A.**

Dated: May 1, 2013

By:   
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Attorneys for Respondents

## CERTIFICATE OF SERVICE

I Veronica Rosas, certified that the foregoing Answer, dated May 1, 2013, was sent this day in the following manner to the addresses listed below:

Original via Federal Express to:

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

Copy of the Answer was sent via Federal Express to:

Meetu Kaul, Attorney Advisor  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Avenue, NW  
Ariel Rios Building 1147  
Washington, DC 20004



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Veronica Rosas

Subscribed and sworn to before me  
this 1<sup>st</sup> day of May 2013.

Robert Andrew Hill  
Notary Public

