

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC

In the Matter of:

PEACE POWER SPORTS, INC.  
*doing business as* LUXE USA,

Respondent.

Docket No.  
CAA-HQ-2014-8063

2015 JAN 14 PM 2:50

**FIRST AMENDED COMPLAINT**

**Preliminary Statement**

1. This First Amended Complaint amends the Complaint, filed May 16, 2014, which commenced this administrative penalty assessment proceeding under section 205(c)(1) of the Clean Air Act (“CAA”), 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 CAA, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-6-A (Aug. 4, 1994); Office of Enforcement and Compliance Assurance Redeflegation 7-6-A (March 5, 2013); Office of Civil Enforcement Redeflegation 7-6-A (March 5, 2013).

3. Respondent in this matter is Peace Power Sports, Inc. *doing business as* LUXE USA (“Respondent”). On information and belief, Respondent also does business under the following names at the following websites (last visited April 23, 2014):
  - (a) EZ GO US, <http://usaluxe.net/t-contact.aspx>;
  - (b) Green Earth Scooter, <http://www.greenearthscooters.com/>;
  - (c) Parts Low, <http://www.partslow.com/index.php?route=common/home>;
  - (d) Peace Parts Factory, <https://www.peacepartsfactory.com/index.cfm>; and
  - (e) Wicked ATVs, <http://www.wickedatvs.com/index.cfm>.
4. Respondent is a person under section 302(e) of the CAA, 42 U.S.C. § 7602(e).
5. Respondent is a corporation organized under the laws of the State of Texas and maintains an office at 2533 Royal Lane #505, Dallas, Texas, 75229.
6. The EPA makes the Alleged Violations, below, based on approximately eight inspections of Respondent’s vehicles between April 2009 and January 2013 performed by the EPA, EPA contractors, or employees of the United States Department of Homeland Security’s Bureau of Customs and Border Protection. These inspections occurred at retail locations or at ports of the United States.

### **Jurisdiction**

7. This action is brought under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and the Consolidated Rules.
8. The EPA may administratively assess a civil penalty if the penalty sought is less than \$320,000, unless the EPA and the United States Department of Justice jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty

assessment. CAA section 205(c)(1), 42 U.S.C. § 7524(c)(1), 40 C.F.R. § 1068.125(b).  
*See also* 40 C.F.R. § 19.4 (adjusting the statutory amount for inflation).

9. The Environmental Appeals Board acts as the Presiding Officer for this proceeding until Respondent files an Answer because the 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**

10. This proceeding arises under Part A of Title II of the CAA, 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, and carbon monoxide.
  - (a) The alleged violations of law regard motor vehicles, specifically highway motorcycles, for which 40 C.F.R. Part 86 sets emission standards and CAA § 203, 42 U.S.C. § 7522, sets compliance provisions.
  - (b) The alleged violations of law also regard recreational vehicles, for which 40 C.F.R. Part 1051 sets emission standards and 40 C.F.R. Part 1068 sets compliance provisions. *See* CAA § 213, 42 U.S.C. § 7547 (delegating to the EPA the authority to implement rules for nonroad vehicles akin to the detailed provisions for motor vehicles found in the CAA itself).
11. 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.

- (b) “Commerce” means commerce between any place in any State and any place outside thereof. CAA § 216(6), 42 U.S.C. § 7550(6).
- (c) “Engine family” means a group of engines of a single model year that are expected to have similar emission characteristics throughout their useful life. 40 C.F.R. §§ 86.420-78, 1051.230.
- (d) “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. CAA § 216(1), 42 U.S.C. § 7550(1); 40 C.F.R. § 1051.801.
- (e) “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. §§ 86.402-78, 1051.801.
- (f) “Motor vehicle” has the meaning provided in section 216(2) of the CAA, 42 U.S.C. § 7550(2), and 40 C.F.R. § 85.1703.

- (g) “Motorcycle” means any motor vehicle with a headlight, taillight, and stoplight and having: Two wheels, or Three wheels and a curb mass less than or equal to 793 kilograms (1749 pounds). 40 C.F.R. § 86.402-98.
- (h) Highway motorcycles and recreational vehicles are considered “new” at the time of import. CAA § 216(3), 42 U.S.C. § 7550(3); 40 C.F.R. § 1051.801.
- (i) “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).
- (j) “Person” includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. CAA § 302(e), 42 U.S.C. § 7602(e).
- (k) “Recreational Vehicle” has the meaning provided in 40 C.F.R. § 1051.801.

12. Certification Requirements:

- (a) The EPA’s certification program is designed to ensure that every vehicle sold or imported into the United States conforms in all material respects to a vehicle that has been approved by the EPA. The EPA approves vehicles by issuing certificates of conformity (COCs).
- (b) To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each model year that it intends to manufacture and sell in the United States. 40 C.F.R. §§ 86.416-80, 1051.201(a).
- (c) The COC application must include, among other things, identification of the covered engine family, a description of the vehicles and their emission control system, and test results from a prototype emissions data vehicle (EDV) showing

that the EDV satisfies the emission standards in 40 C.F.R. § 86.410-2006 (highway motorcycles) or 40 C.F.R. § 1051.107 (all-terrain vehicles, a subset of recreational vehicles). 40 C.F.R. §§ 86.416-80, 1051.205.

- (d) In the case of highway motorcycles, the COC application must also include a description of all fuel system components and the range of available fuel and ignition system adjustments on the vehicle. 40 C.F.R. § 86.416-80. This description must specify all adjustable parameters, and the EPA has determined that adjustment of the following parameters may affect emissions: idle mixture screw (a low-speed, fuel-system adjustment of the air-to-fuel ratio) and a jet needle with multiple grooves for adjustment (a mid-range, fuel-system adjustment of the air-to-fuel ratio). In reviewing a COC application, the EPA evaluates the adjustability of the parameters based on information provided in the COC application. Upon inspection, if and when that occurs, to determine the adequacy of stops, seals, or locks, the EPA will consider whether the average operator or mechanic could deactivate the stops, seals, or locks in a reasonable amount of time using common hand tools. EPA Advisory Circular MC-6 (1978), *available at* [http://iaspub.epa.gov/otaqpub/display\\_file.jsp?docid=14384&flag=1](http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=14384&flag=1).
- (e) In the case of recreational vehicles, the COC application must also describe all adjustable parameters and other adjustments on vehicles in the engine family. 40 C.F.R. § 1051.205(q). Where a recreational vehicle has adjustable parameters or other adjustments, the applicant must demonstrate that the vehicle meets emission standards throughout the adjustable range. 40 C.F.R. § 1051.115(c), (d).

- (f) Once issued, a COC covers only those vehicles that: are within the engine family specified in the application; are marketed with a model name specified in the application; were produced during the model year; and were imported subsequent to the effective date of the COC. 40 C.F.R. §§ 86.407-78(a), 86.437(a)(2), 86.437-78(a)(2)(ii)-(iii), 86.437-78(b)(3)-(4), 1051.201(a), 1051.205, 1068.101(a)(1)(i), (b)(5), 1068.103(a), (c)(2).
- (g) The EPA issues a COC on such terms as the EPA deems necessary to ensure that any new motorcycle covered by the COC will meet the requirements of the CAA and its regulations. 40 C.F.R. § 86.437-78(a)(2)(ii), (b)(3).
- (h) By the terms on the face of each COC, a COC covers only those highway motorcycles that conform in all material respects to the EDV tested for that COC and all other specifications in the COC application. *See also* 40 C.F.R. § 86.437-78(a)(2)(iii), (b)(4).
- (i) A COC covers only those recreational vehicles that conform in all material respects to the specifications in the COC application. 40 C.F.R. § 1068.103.
- (j) The CAA prohibits manufacturers of new motor vehicles from selling, offering for sale, or introducing or delivering for introduction into commerce—or causing any of the foregoing with respect to—any new motor vehicle unless the vehicle is covered by a COC issued by the EPA under regulations prescribed by the CAA. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).
- (k) The CAA prohibits any person from importing or causing another to import a new motor vehicle into the United States unless that new motor vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).

- (l) 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 recreational vehicle is covered by an EPA-issued COC. 40 C.F.R. § 1068.101(a)(1).
13. Anyone who, since January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a highway motorcycle or 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 \$37,500 for each such vehicle. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (b)(6), (c).

#### **Alleged Violations of Law**

14. Respondent is a “person.”
15. Respondent is a “manufacturer.”
16. Highway Motorcycle Certification Violations: Complainant alleges that Respondent sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—approximately 444 uncertified highway motorcycles (“Subject Motorcycles”) in violation of sections 203(a)(1) and 213 of the CAA, 42 U.S.C. §§ 7522(a)(1) and 7547, and 40 C.F.R. § 1068.101(a)(1). Each Subject Motorcycle is subject to the CAA and its regulations. The table below details the approximate date of importation of the Subject Motorcycles, the entry number or bill of lading number that uniquely identifies the importation, the engine family under which the Subject Motorcycles are purportedly certified, the model name of the Subject Motorcycles, and the quantity of the Subject Motorcycles.



<b>Table A: Subject Motorcycles</b>				
<b>Date of Entry</b>	<b>Entry Number or Bill of Lading Number</b>	<b>Purported Engine Family</b>	<b>Model</b>	<b>Quantity</b>
4/20/2009	BOL: EGLV143995032432	9PCGC.050SAA	TPGS 811	84
4/22/2009	BOL: EGLV143995032459	9PCGC.050SAA	TPGS 803	56
5/5/2009	ES3-5003997-1	9PCGC.050SAA	TPGS 811	50
5/5/2009	ES3-5004001-1	9PCGC.050SAA	TPGS 804	50
5/11/2009	ES3-5004034-2	9PCGC.050SAA	TPGS 805	104
5/12/2009	ES3-5004033-4	9PCGC.050SAA	TPGS 840	50
8/19/2010	ES3-2045999-4	ABLEC.049PCE	TPGS 805	50
<b>Total</b>				<b>444</b>

- (a) COUNT ONE: 394 Subject Motorcycles purportedly certified under engine family 9PCGC.050SAA. Complainant alleges these vehicles are not covered by a COC for engine family 9PCGC.050SAA because they do not conform in all material respects to the specifications provided in the application for the COC that purportedly covers them. Specifically, they are equipped with carburetors whose manufacturer and part number do not match the manufacturer and part number provided in the COC application. This nonconformance is material to CAA certification requirements because a vehicle's carburetor feeds gasoline and air into its engine and affects the vehicle's emissions of regulated pollutants. In addition, these vehicles were equipped with catalytic converters which contained none or almost none of the platinum that is described in the COC application for this engine family. This nonconformance is material to CAA certification requirements because a vehicle's catalytic converter is an emission control device that, based on the presences of metals like platinum, chemically reduces and oxidizes regulated air pollutants into less harmful compounds. Lastly, these vehicles' engine displacement was 62 cubic centimeters whereas the COC

application stated that the engine displacement is 49 cubic centimeters. No other COC covers these vehicles.

- (b) COUNT TWO: 50 Subject Motorcycles purportedly certified under engine family ABLEC.049PCE. Complainant alleges these vehicles are not covered by a COC for engine family ABLEC.049PCE because they do not conform in all material respects to the specifications provided in the application for the COC that purportedly covers them. Specifically, these vehicles were equipped with adjustable parameters, namely an adjustable air-fuel mixture screw, whereas the COC application states, “There are no adjustable parameters on this engine family. There is no idle mixture adjustment.” In addition, these vehicles were equipped with carburetors whose manufacturer and part number do not match the manufacturer and part number stated in the COC application for this engine family. This nonconformance is material to CAA certification requirements because a vehicle’s carburetor feeds gasoline and air into its engine and affects the vehicle’s emissions of regulated pollutants. No other COC covers these vehicles.
17. Recreational Vehicle Certification Violations: Complainant alleges that Respondent sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—approximately 23 uncertified recreational vehicles (“Subject Recreational Vehicles”) in violation of sections 203(a)(1) and 213 of the CAA, 42 U.S.C. §§ 7522(a)(1) and 7547, and 40 C.F.R. § 1068.101(a)(1). Each Subject Recreational Vehicle is subject to the CAA and its regulations. The table below details the approximate date of importation of the Subject Recreational Vehicle,

the entry number that uniquely identifies the importation, the engine family under which the Subject Recreational Vehicles are purportedly certified, the model name of the Subject Recreational Vehicle, and the quantity of the Subject Recreational Vehicles.

<b>Table B: Subject Recreational Vehicles</b>				
<b>Date of Entry</b>	<b>Entry Number</b>	<b>Purported Engine Family</b>	<b>Model</b>	<b>Quantity</b>
12/3/2012	ES3-2066562-4	CJPSX0.28A1B	FA-D300A	23

- (a) COUNT THREE: 23 Subject Recreational Vehicles purportedly certified under engine family CJPSX0.28A1B. Complainant alleges these vehicles are not covered by a COC for engine family CJPSX0.28A1B because they do not conform in all material respects to the specifications provided in the application for the COC that purportedly covers them. Specifically, these vehicles were equipped with catalytic converters which contained less platinum than is described in the COC application for this engine family. This nonconformance is material to CAA certification requirements because a vehicle's catalytic converter is an emission control device that, based on the presences of metals like platinum, chemically reduces and oxidizes regulated air pollutants into less harmful compounds. No other COC covers these vehicles.

**Relief Sought: Civil Penalty**

18. Complainant seeks an administrative penalty against the Respondent for Counts 1–3 of the Alleged Violations of Law.
19. Complainant makes no specific penalty demand in this First Amended Complaint, as authorized by 40 C.F.R. § 22.14(a)(4)(ii).
20. As detailed above, Respondent is subject to a civil penalty that is the sum of not more than \$37,500 for each and every Subject Motorcycle and Subject Recreational Vehicle.

21. Complainant reserves its right to seek the maximum civil penalty authorized by the CAA.
22. In determining the amount of the civil penalty in this matter, the CAA 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 [Respondent’s] business, [Respondent’s] history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on [Respondent’s] ability to continue in business, and such other matters as justice may require.” CAA § 205(c)(2), 42 U.S.C. § 7524(c)(2).
23. Here, Complainant proposes to account for the CAA’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://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy\\_0.pdf](http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf) (last visited April 23, 2014). 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. Penalty Policy at 13–14. Here, Complainant alleges certification violations for 444 highway motorcycles and 23 recreational vehicles.

#### **Opportunity to Request a Hearing**

24. Respondent has a right to request a Hearing on any material fact alleged in this First Amended Complaint or the appropriateness of a civil penalty. Respondent may request such a Hearing in a written Answer. 40 C.F.R. § 22.15(c).
25. 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 First Amended Complaint.

## Answer

26. If Respondent contests material facts upon which this First Amended Complaint is based, contends that a civil penalty is inappropriate, or contends that Respondent is entitled to judgment as a matter of law, then Respondent must within 20 days after receiving this First Amended Complaint file an original and one copy of a written Answer that conforms to 40 C.F.R. § 22.15. 40 C.F.R. § 22.14(c).
27. Respondent 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 April 23, 2014); *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](http://www.epa.gov/oalj/orders/MoveNotice_3_8_13.pdf) (last visited April 23, 2014). 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., N.W.  
Washington, DC 20460

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., N.W.  
Washington, DC 20460

28. Respondent must also send a copy of the Answer to the EPA attorney assigned to this matter, Evan Belser. 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), Respondent must use the following address:

Evan Belser  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Ave., N.W.  
Mailcode 2242A  
Washington, DC 20460

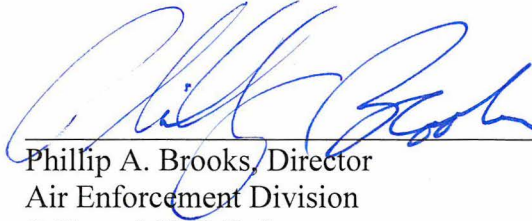
If using USPS Express Mail or any other carrier, Respondent must use the following address:

Evan Belser  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building, Room 1142  
Washington, DC 20004

29. Respondent's failure to request a Hearing or to file a written Answer within the 20 days after receiving this First Amended Complaint may result in the waiver of its right to contest allegations set forth in this First Amended Complaint or a default judgment pursuant to 40 C.F.R. §§ 22.14(c), 22.17.

Respectfully Submitted,

12/4/2014  
Date



---

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

1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building  
Room 1117, Mailcode 2242A  
Washington, DC 20460  
(202) 564-0652  
brooks.phillip@epa.gov

Dec. 3, 2014  
Date



---

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

1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building  
Room 1142C, Mailcode 2242A  
Washington, DC 20460  
(202) 564-6850  
belser.evan@epa.gov

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing First Amended Complaint *In the Matter of Peace Power Sports, Inc., doing business as LUXE USA*, was filed this day by hand delivery with the EPA Office of Administrative Law Judges at the address listed below:

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

I certify that I sent by United States Postal Service Certified Mail one copy of the foregoing First Amended Complaint and one copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, to Respondent's counsel (who provided me with his verbal consent to receive process) at the following address on the date below:

G. Michael Smith  
W. Anthony Collins, Jr.  
Smith, and Collins & Fletcher, P.A.  
8565 Dunwoody Place, Building 15, Suite B  
Atlanta, Georgia 30350

Jan. 14, 2015

Date



---

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

1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building  
Room 1142C, Mailcode 2242A  
Washington, DC 20460  
(202) 564-6850  
belser.evan@epa.gov