



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:
Peace Power Sports, Inc.
doing business as LUXE USA,
Respondent.

Docket No. CAA-HQ-2014-8063

Dated: January 13, 2015

ORDER GRANTING MOTION TO AMEND COMPLAINT

The Complaint in this matter was issued on May 16, 2014 pursuant to the authority of Complainant, the United States Environmental Protection Agency, under Section 205(c)(1) of the Clean Air Act ("CAA"), 42 U.S.C. §7524(c)(1). The Complaint alleges three counts of violation of Sections 203(a)(1) and 213 of the CAA, 42 U.S.C. §§ 7522 and 7547, and 40 C.F.R. § 1068.101(a)(1), in connection with Respondent's alleged sale, delivery or import of highway motorcycles and recreational vehicles. Respondent filed an Answer to the Complaint on June 23, 2014, denying allegations in the Complaint, and thereafter the parties engaged in Alternative Dispute Resolution in an attempt to settle this matter. A settlement not having been reached, on November 13, 2014, the undersigned was designated to preside in this matter.

On December 5, 2014, Complainant submitted a Motion to Amend Complaint, seeking to include additional separate and independently sufficient grounds for the claims in the Complaint that the subject motorcycles are not covered by certificates of conformity. The original Complaint alleges in Counts 1 and 2 that certain subject motorcycles are not covered by a certificate of conformity (COC) for the particular engine family because they do not conform in all material respects to the specifications provided in the application for the COC, and each count specifies a provision of the COC application with which the motorcycles do not conform. The proposed amendments specify for Count 1 two additional provisions in the COC application with which the motorcycles do not conform, and for Count 2 one additional provision in the COC application with which the motorcycles do not conform. 1 Complainant points out that these

1 Specifically, Complainant moves to insert the following language to supplement Count One:

"In addition, these vehicles were equipped with catalytic converters which contained none or almost none of the platinum that is described in the COC (certificate of conformity) application for this engine family. This nonconformance is material to CAA certification because a vehicle's catalytic converter is an emission control device that, based on the presence of materials like platinum, chemically reduces and oxidizes regulated air pollutants into less harmful compounds. Lastly, these vehicles' engine

additions do not increase the number of counts nor the number of vehicles at issue. A proposed Amended Complaint is attached to the Motion. Respondent did not file any response to the Motion within the 15-day time period provided in the applicable procedural rules, 40 C.F.R. Part 22 (“Rules”) for filing responses to motions. 40 C.F.R. § 22.16(b).

The Rules provide that once an answer has been filed, “the complainant may amend the complaint only upon motion granted by the Presiding Officer.” 40 C.F.R. § 22.14(c). The Rules do not provide any standard for granting leave to amend a complaint, but the Federal Rules of Civil Procedure (“FRCP”) and federal court decisions interpreting the FRCP provide guidance. FRCP 15(a) provides that “[t]he court should freely give leave” to amend a complaint “when justice so requires.” In *Foman v. Davis*, 371 U.S. 178, 182 (1962), the Supreme Court stated:

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be “freely given.”

There is no undue delay, bad faith, dilatory motive, futility of amendment, or repeated failure to cure deficiencies apparent in this case. Further, the Motion was filed early in this proceeding, the hearing has not yet been scheduled, and the proposed changes to the Complaint do not cause any undue prejudice to Respondent.

The Rules provide at 40 C.F.R. § 22.14(c) that “Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.”

Accordingly, **IT IS ORDERED THAT:**

1. The Motion to Amend Complaint is **GRANTED**.
2. Complainant shall file the First Amended Complaint and serve it on the Respondent on or before **January 19, 2015**.
3. Respondent shall have 20 days from the date of service of the First Amended Complaint to file an answer thereto.



M. Lisa Buschmann
Administrative Law Judge

displacement was 62 cubic centimeters whereas the COC application stated that engine displacement is 49 cubic centimeters. No other COC covers these materials.”

Complainant also moves to insert the following language alleging to supplement Count Two: “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.”

In the Matter of *Peace Power Sports, Inc., d/b/a LUXE USA*, Respondents.
Docket No. CAA-HQ-2014-8063

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Motion To Amend Complaint**, dated January 13, 2015, was sent this day in following manner to the addresses listed below:



Sybil Anderson
Office of Administrative Law Judges
U.S. Environmental Protection Agency
(202)564-6261

Dated: **January 13, 2015**

One Copy by Electronic and Regular Mail to

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