

**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

COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE

Pursuant to 40 C.F.R § 22.19(a) and the Court’s January 13, 2015 Prehearing Order, Complainant in the above-captioned matter hereby provides its Rebuttal Prehearing Exchange. This consists of the following document, and four enclosed exhibits.

A. *A statement and/or any documents in response to Respondent’s Prehearing Exchange.*

Complainant makes the following statements in response to Respondent’s documents, filed together, entitled “Respondent’s Answer to Complainant’s Motion for Default” and “Respondent’s Initial Prehearing Exchange.”

1. Respondent filed these documents on April 2, 2015. This is 13 days after March 20, 2015, which was the deadline ordered by the Court’s January 13, 2015 Prehearing Order for Respondent’s Prehearing Exchange.
2. Complainant reaffirms its February 26, 2015 Motion for a Default Order. Even assuming that the document entitled “Respondent’s Answer to Complainant’s Motion for Default” could be construed as an *answer* under 40 C.F.R. § 22.15, it came 52 days after the February 9, 2015 deadline for Respondent to answer the First Amended Complaint.
3. Complainant notes that Respondent’s failure to comply with the information exchange requirements as ordered by the Presiding Officer provides additional and independently sufficient grounds for a default order. 40 C.F.R. §§ 22.17(a), 22.19(g)(3).
4. Even assuming that the document entitled “Respondent’s Answer to Complainant’s Motion for Default” could be construed as a *response* to Complainant’s Motion for a Default Order, it came 31 days after service of that motion which is 16 days more than the 15 days allotted for a party’s response to a motion. 40 C.F.R. § 22.16(b).

5. The document entitled “Respondent’s Answer to Complainant’s Motion for Default” is unclear on whether Respondent admits or denies the language in the First Amended Complaint that is not also in the Complaint. Respondent addresses this issue on the second page of its “Answer to Complainant’s Motion for Default” with two directly conflicting sentences (“The Respondent agrees with counsel for the EPA that the added facts may be admitted to the extent that they materially and specifically differ from the allegations which have been denied in the original answer to the EPA’s complaint. The Respondent hereby denies any new facts which are materially different from the original facts alleged and reaffirms that they are in fact denied as they always were.”).
6. Although Respondent’s Prehearing Exchange is dated March 26, 2015, circumstances show that it was instead signed on March 27, 2015. For example, Respondent references David Eppler’s visit to Respondent’s facilities, which did not occur until the morning of March 27, 2015.
7. Although respondent’s counsel certified that he filed Respondent’s Prehearing Exchange, in part, using the OALJ E-Filing System, he in fact did not.
8. Complainant notes that Respondent has exchanged no documents nor exhibits for use at hearing.
9. Complainant cannot agree to the following statements from Respondent’s documents entitled “Respondent’s Answer to Complainant’s Motion for Default” and “Respondent’s Initial Prehearing Exchange”:
 - a. “. . . the Parties understood that the costs associated with challenging the base allegations being made by the EPA were prohibitively expensive to address as to be totally financially destructive of the Respondent’s business.” This is not and has never been Complainant’s understanding, as addressed in section B, below.
 - b. “The Respondent shows the EPA . . . fails to disclose to the Court that all but 23 vehicles were remediated at the port of entry and have never tainted the air in the United States.” To the contrary, Complainant disclosed the fact that all but 23 vehicles were remediated in ¶ 47(a)(ii) of its Motion for a Default Order.
 - c. “The Respondent shows that it fired MotorScience prior to any court action, once it realized MotorScience was not performing tests as required by the EPA under the Clean Air Act Standards.” First, Respondent has not shown, and Complainant does not understand, how any actions of MotorScience are relevant to the claims in this penalty assessment proceeding. Second, Complainant is not aware of any instance when Respondent worked with or fired MotorScience.
10. Complainant exchanges the enclosed four exhibits, marked CX 77, CX 78, CX 79, and CX 80. As explained in section B, below, Complainant introduces these exhibits to evidence that Complainant has considered, among other things, Respondent’s business size and the effect of a penalty on Respondent’s ability to continue in business. Neither

these exhibits, nor any exchanged by Complainant, include the “documents which have been previously produced by Respondent” referenced on the first page of “Respondent’s Initial Prehearing Exchange.”

B. *A statement specifying the dollar amount of the penalty Complainant proposes to assess for the violations alleged in the First Amended Complaint, and a narrative statement explaining in detail the calculation of the proposed penalty, addressing each penalty determination factor listed in the applicable statute, and describing how the specific provisions of any penalty policies and/or guidelines were applied in calculating the penalty.*

11. Complainant proposes to assess a civil penalty of \$169,613 for the violations alleged in the First Amended Complaint.
12. Complainant directs the reader’s attention to ¶¶ 46–47 of Complainant’s February 26, 2015 Motion for a Default Order. There, Complainant provides a narrative statement explaining in detail the calculation of the proposed penalty and describes how the specific provisions of any penalty policies and guidelines were applied in calculating the penalty. To avoid repetitive filings in this matter, Complainant incorporates by reference those statements and descriptions into this Rebuttal Prehearing Exchange.
13. Complainant makes the following statements with respect to each penalty determination factor listed in the applicable statute, Clean Air Act section 205(c)(2), 42 U.S.C. § 7524(c)(2); *see also* 40 C.F.R. § 1068.125(a)(1), (b)(1) (listing same factors).
 - a. *“the gravity of the violation”*: Complainant considered this factor when it calculated the proposed penalty according an applicable penalty policy, Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (Jan. 16, 2009) (Policy), *available at* http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf (last visited April 3, 2015). The Policy addresses this factor in its Section II.B. Complainant applied the Policy to the facts of this case as described in ¶ 47(a)(ii) of Complainant’s February 26, 2015 Motion for a Default Order.
 - b. *“the economic benefit or savings (if any) resulting from the violation”*: Complainant considered this factor when it calculated the proposed penalty according to the Policy. The Policy addresses this factor in its Section II.A. Complainant applied in the Policy to the facts of this case as described in ¶ 47(a)(i) of Complainant’s February 26, 2015 Motion for a Default Order.
 - c. *“the size of the violator’s business”*: Complainant considered this factor when it calculated the proposed penalty according to the Policy. The Policy addresses this factor in its Sections II.B.4 and II.B.5(f). Since February 2014, Complainant has requested that Respondent provide financial information to enable the Complainant, among other things, to assess Respondent’s business size. Respondent has provided some of the requested information. Complainant’s

Exhibits 77–79 summarize Complainant’s requests and Respondent’s production. As detailed below in ¶ 13(f), below, despite a comprehensive and expert-supported analysis of the financial information Respondent produced, Complainant was unable to ascertain Respondent’s business size. This is primarily due to the fact that Respondent does not appear to follow generally accepted accounting principles, Respondent has not explained their accounting procedures, and there is significant ambiguity concerning the size and meaning of Respondent’s accounts payable. Under these circumstances, and based on Complainant’s judgment that the proposed penalty will have “a sufficient deterrent effect” (Policy at 15) without any increase for business size, the Complainant did not increase the penalty for business size.

- d. “*the violator’s history of compliance with this subchapter*”: Complainant considered this factor, and based on the fact that Complainant has no information that Respondent has previously committed violations similar to those alleged in the First Amended Complaint, Complainant did not increase the penalty based on history of compliance. *See* Policy at 25–26 (explaining how penalties may be increased, but not decreased, based on history of compliance).
- e. “*action taken to remedy the violation*”: Complainant considered this factor when it calculated the proposed penalty according to the Policy. The Policy addresses this factor in its Sections II.B.1(c) and II.B.5(e). Complainant applied the Policy to the facts of this case as described in ¶ 47(a)(ii) of Complainant’s February 26, 2015 Motion for a Default Order.
- f. “*the effect of the penalty on the violator’s ability to continue in business*”: Complainant considered this factor as follows. Since February 2014, Complainant has requested that Respondent provide financial information to enable the Complainant, among other things, to assess the effect of the proposed penalty on the Respondent’s ability to continue in business. Respondent has provided some of the requested information, but not all. Complainant’s Exhibits 77–79 summarize Complainant’s requests and Respondent’s production. The information requested but to date not provided is listed in CX 79. This missing information includes answers to fundamental questions about Respondent’s finances, and certifications that the information that was provided is complete and accurate.

Complainant retained an expert, Cindy T. Vu, who is a forensic accountant. Ms. Vu has reviewed all information provided by Respondents, and shared her findings with Complainant. Based on her findings, the limited and uncertified financial information provided by Respondents, and all the circumstances, Complainant has determined that the proposed penalty need not be reduced based on “*the effect of the penalty on the violator’s ability to continue in business.*”

On information and belief, Respondent’s sole shareholder, Mr. Zeliang Lu, 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 (many times larger than the proposed penalty) 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.

Despite repeated, clear requests, Mr. Zeliang Lu has refused to speak with Complainant, answer questions concerning Respondent's business operations and finances, or certify the completeness and accuracy of the information that has been provided.

Also, on information and belief, Respondent does not follow generally accepted accounting principles. After a forensic review of the financial information provided by Respondent, Complainant has concluded that there are large discrepancies with Respondent's account payable. Respondent has failed to explain the reason for these discrepancies.

In its most recent effort to consider the effect of the proposed penalty on Respondent's ability to continue in business, Complainant arranged for an EPA inspector, David Eppler, to inspect Respondent's facility in Dallas, Texas. Mr. Eppler's report on his visit is enclosed as CX 80. That report shows that Respondent remains in business with hundreds of vehicles in inventory. This further supports the inference that the proposed penalty need not be reduced.

- g. *"such other matters as justice may require"*: Complainant considered this factor when it calculated the proposed penalty according to the Policy, and considered all the facts and circumstances. The only adjustment under this factor is a 10 percent increase for non-cooperation, as detailed in ¶ 47(b) of Complainant's February 26, 2015 Motion for a Default Order.

Respectfully Submitted,



Evan Belser, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., N.W.
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Room 1142C, Mailcode 2242A
Washington, DC 20460
(202) 564-6850
belser.evan@epa.gov

April 3, 2015
Date


CERTIFICATE OF SERVICE

I certify that on the date below I filed electronically using the OALJ E-Filing System the foregoing Complainant's Rebuttal Prehearing Exchange *In the Matter of Peace Power Sports, Inc., doing business as LUXE USA*, CAA-HQ-2014-8063.

I certify that on the date below I sent to Respondent's counsel at the address below by United States Postal Service Certified Mail Return Receipt Requested one copy of the foregoing Complainant's Rebuttal Prehearing Exchange.

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

April 3, 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

Belser, Evan

From: Belser, Evan
Sent: [REDACTED]
To: [REDACTED]
Subject: FW: Peace Power Sports: Request for documents and information concerning inability to pay penalty claim

From: Belser, Evan
Sent: Friday, February 28, 2014 5:28 PM
To: 'Gmams'
Cc: Isin, Amelie
Subject: Peace Power Sports: Request for documents and information concerning inability to pay penalty claim

Sent by Email Only

Peace Power Sports, Inc. dba Luxe USA
c/o G. Michael Smith
Smith & Collins LLC
8565 Dunwoody Place, Bldg 15
Atlanta, GA 30350
gmams@aol.com

Re: Administrative Settlement Agreement, AED/MSEB # 8063
Request for documents and information concerning inability to pay penalty claim

G. Michael,

The United States Environmental Protection Agency (EPA) requests the following financial information to evaluate the claims you made for your client, Peace Power Sports, that the company lacks an ability to pay the [REDACTED] civil penalty that the EPA has offered as a settlement in the above-referenced Agreement.

1. Complete copies of the company's signed and filed federal and state tax returns for 2011, 2012, and 2013, including all schedules, all as submitted to the IRS and state authorities;
2. A signed copy of IRS Form 8821, appointing EPA to inspect or receive confidential tax information from any office of the IRS for the tax matters listed on the form;
3. Financial statements (audited, if available) for the last five years; and
4. Copies of any bank statements for the company for the last three months.
5. A list of all shareholders of each company, and a list of any affiliates, subsidiaries or parent organizations of each company.

Lastly, as we discussed, please know that we have unanswered questions about the affiliation between Peace Power Sports and the foreign vehicle manufacturers including Zhejiang Peace Industry Group Co, Ltd. For example, it appears Zeliang Lu is the sole Director of Peace Power Sports, and has been since the company was formed. This person uses the same address in Zhejiang Province as Zhejiang Peace Industry Group Co, Ltd.

Also, it appears that Peace Power Sports does business as “Peace Parts Factory”: they do business from the same address (<http://www.peacepartsfactory.com/contact.cfm>); and they explicitly state “We are owned by the Peace Sports Factory in China. That means that we are truly factory direct and have the full support of the manufacturer, since we are owned by the manufacturer.” (<http://www.peacepartsfactory.com/about.cfm>). We will require information about these matters in order to assess “the effect of the penalty on [Peace Power Sports’] ability to continue in business.” 42 U.S.C. § 7524(c)(2).

This information must be submitted under cover letter with the following certification signed by an authorized corporate officer:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Your responses and supporting documentation must be mailed by express mail or courier service to me at the following address:

Evan M. Belser, U.S. EPA
1200 Pennsylvania Avenue, NW
Ariel Rios South Building Room 1142C
Washington, D.C. 20460 (20004 is using non-USPS courier)

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this letter, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

Finally, in order to resolve this matter in an expeditious manner, please provide your written response to this letter by March 14, 2014. Please contact me at (202) 564-6850 or belser.evan@epa.gov if you have any questions.

Sincerely,

/s/ Evan M. Belser

Evan M. Belser, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Sent by Email Only

Peace Power Sports, Inc. dba Luxe USA
c/o G. Michael Smith
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8565 Dunwoody Place, Bldg 15
Atlanta, GA 30350
gmams@aol.com

SEP 10 2014

Re: *In the Matter of Peace Power Sports dba LUXE USA*, CAA-HQ-2014-8063
Request for documents and information concerning inability to pay penalty claim

G. Michael,

By this letter, I request certain information and documents that are necessary to assess your client's claimed limited ability to pay a penalty in the above-referenced matter.

I have previously requested most of this information and documents, but have received incomplete answers or no answers whatsoever. My requests began on February 28, 2014, and were reiterated by email on April 2, 2014, and May 12, 2014. For ease of reference, I am restating portions of that correspondence here in the following bullets:

- *Respond in detail to each of the questions and points raised below, in my April 2 email. [these are excerpted below under points (A) through (D)].*

(A) As I wrote on 3/18/14:

Lastly, as we discussed, please know that we have unanswered questions about the affiliation between Peace Power Sports and the foreign vehicle manufacturers including Zhejiang Peace Industry Group Co, Ltd. For example, it appears Zeliang Lu is the sole Director of Peace Power Sports, and has been since the company was formed. This person uses the same address in Zhejiang Province as Zhejiang Peace Industry Group Co, Ltd. Also, it appears that Peace Power Sports does business as "Peace Parts Factory": they do business from the same address (<http://www.peacepartsfactory.com/contact.cfm>); and they explicitly state "We are owned by the Peace Sports Factory in China. That means that we are truly factory direct and have the full support of the manufacturer, since we are owned

by the manufacturer.” (<http://www.peacepartsfactory.com/about.cfm>). We will require information about these matters in order to assess “the effect of the penalty on [Peace Power Sports’] ability to continue in business.” 42 U.S.C. § 7524(c)(2).

(B) As I wrote 3/21/14:

Regarding Ms. Liu’s statement that Peace Power is not affiliated with any other companies: Zeliang Lu is the company’s Director and sole shareholder. He is also the owner of Zhejiang Peace Industry and Trade Co., Ltd. (<http://www.gmdu.net/corp-876175.html>; <http://www.machinery-factory.com/zhejiang-peace-industry-and-trade-co-ltd-6201.html>; www.860579.com). This is consistent with Mr. Lu’s proffered address on Peace Power’s TX Sec. of State records (No. 7 Lanhua RD Baihuashan Industrial Park, Economy Development Zone, Wuyi, Zhejiang, China) which is the address for Zhejiang Peace Industry and Trade Co., Ltd. He has also signed as the President for Peace Power Sports in recent Secretary of State records in Florida, Louisiana, and Connecticut.

How is this not an affiliation between Peace Power and Zhejiang Peace?

(C) Your client informed our inspector that Peace Power imports very few of the vehicles it sells, but its bank accounts show that payment goes directly to Zhejiang Peace. Peace Industry in Georgia is supposedly the importer for most or all these vehicles, and is on record explaining that it pays Zhejiang Peace for these vehicles. Which is it?

(D) Finally, I will ask that your client explain the financial relationship and affiliation with the following entities. I need to know if these are assumed names of Peace Power, and how their finances relate to those of Peace Power:

- Peace Parts Factory
 - Parts Low
 - EZ GO US
 - Wicked ATVs
 - Green Earth Scooter
-
- In approximately 2010, Zeliang Lu loaned the Peace Power approximately [REDACTED]. What was the purpose of this loan? Did Peace Power repay this loan? If not, does it remain as an unpaid loan, or is it now considered a capital investment (“paid-in capital” is how it appears to be described on you 2012 balance sheet)?
 - Does Peace Power operate with any loans or lines of credit?
 - What is Peace Power’s ability to borrow? From Zeliang Lu?
 - What is Peace Power’s ability to receive additional capital investments from Zeliang Lu?

- *How do you purchase vehicles from Zhejiang Peace Industry and Trade Co. Ltd? Who is your point of contact? Is there a contract? When is the sales price of the vehicles determined? How and when do you pay for these vehicles?*
- *You said that you pay 30% of the sales price to confirm the order, then the remaining 70% once the goods arrive in the United States. Is this an accurate description? Looking to the attached December 2013 bank statement, there are three large wire transfers to Zhejiang Peace, but they don't appear to be in 30% and 70% increments. Please explain exactly why Peace Power transferred these amounts ([REDACTED] [REDACTED] and [REDACTED]).*

Based on initial review by our financial analyst we've retained in this litigation, we have additional information that is necessary to assess your client's claimed limited ability to pay a penalty in the above-referenced matter. That information is as follows:

1. 2009 Corporate tax returns
2. Detail general ledger for 2011-2013
3. Copies of customers' checks that are being deposited into the Chase and East/West bank accounts- January – April 2014
4. American Express credit card statements-2011 to 2013
5. Chase credit card statements-2011 to 2013
6. Purchase orders for all vendors- 2011 to April 2014
7. Sales journals and any credit memos (refunds) - 2011 to 2013
8. A/P aging list (30, 60, 90-day with vendor names and amounts)-as of 12/31/2013
9. Inventory list as of 12/31/2013 and current (if available)
10. Price/product list
11. Bank reconciliation with details of outstanding checks and deposit-in-transit as of 12/31/2013
12. W-2s and 1099s from 2011 to 2013
13. Shipping documents (freight records) from 2011 to 2013

As explained previously, my initial burden at litigation will be to demonstrate that I have considered the statutory factors including "the effect of the penalty on the violator's ability to continue in business," 42 U.S.C. § 7524(c)(2), and that the record supports the inference that the penalty assessment need not be reduced. I am confident that I will easily satisfy this initial burden. Then, substantiating an inability to pay is your burden. I have requested, and am now requesting, this information for purposes of reaching a negotiated settlement.

Lastly, as you know, your client has not signed the certification we require as a matter of course in analyzing ability to pay. This certification is as follows:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that

there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

The refusal of Zeliang Lu, the sole shareholder of—and primary vendor to—Respondent, to even speak with the EPA is of great concern to us, and this underscores the importance of getting a certification to the completeness and accuracy of the information and documents you have and will provide.

We request that you provide this information as soon as possible so the parties may make the best of our limited amount of time for Alternative Dispute Resolution.

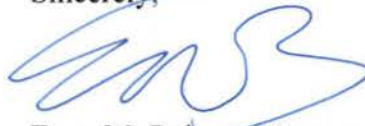
Your responses and supporting documentation must be mailed by express mail or courier service to me at the following address:

Evan M. Belser, U.S. EPA
1200 Pennsylvania Avenue, NW
Ariel Rios South Building Room 1142C
Washington, D.C. 20460 (20004 is using non-USPS courier)

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this letter, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

Please contact me at (202) 564-6850 or belser.evan@epa.gov if you have any questions.

Sincerely,



Evan M. Belser, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Sent by Email Only

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FEB 02 2015

Re: *In the Matter of Peace Power Sports dba LUXE USA*, CAA-HQ-2014-8063
Request for documents and information concerning effect of penalty on ability to
continue in business

G. Michael,

The purpose of this letter is to request information and documentation that are necessary to assess the effect of the penalty on your client's ability to continue in business in the above-referenced matter in anticipation of litigation.

As explained previously, in litigating the appropriateness of the calculated civil penalty, we are prepared to satisfy our initial burden to present evidence that we have considered the statutory factors including "the effect of the penalty on the violator's ability to continue in business," 42 U.S.C. § 7524(c)(2), and that the record supports the inference that the penalty assessment need not be reduced. Your burden will be to substantiate, by introducing specific evidence, that your client's claim that the penalty assessed will affect its ability to continue in business.

In the context of Alternative Dispute Resolution, we requested documents in response to your stated position that the penalty sought would affect your client's ability to continue in business. You provided to EPA the documents listed below. Since these materials were provided for the purpose of reaching a negotiated settlement, we request your permission to use the documents listed below as we prepare for litigation in this matter:

1. 2009 Corporate tax returns¹
2. Detail general ledger for 2011 - 2013²
3. Customer check that was being deposited into the Chase and East/West bank accounts³
4. Purchase orders for all vendors 2011 – 2013⁴
5. A/P aging list (30, 60, 90-day) – as of 12/31/2013⁵
6. Inventory list as of 12/31/2013⁶
7. W-2s and 1099s from 2011 to 2013⁷
8. Shipping document (freight record)⁸

We also request that you provide additional documents and information to ensure that we are able to accurately assess the effect of the penalty on your client's ability to continue in business:

1. 2014 Corporate tax returns
2. Detail general ledger for 2014
3. Copies of customers' checks that are being deposited into the Chase and East/West bank accounts – January – April 2014
4. American Express credit card statements – 2011 to 2014
5. Chase credit card statements – 2011 to 2014
6. Purchase orders for all vendors – 2014
7. Sales journals and any credit memos (refunds) – 2011 to 2014
8. Vendor names for the A/P aging lists already provided (#5 above)
9. A/P aging list (30, 60, 90-day with vendor names and amounts) – as of 12/31/2014
10. Inventory list as of 12/31/2014
11. Price/product list
12. Bank reconciliation with details of outstanding checks and deposit-in-transit as of 12/31/2013
13. W-2s and 1099s from 2014
14. Shipping documents (freight records for items shipped out to customers for sale) from 2011-2014

¹ 2009TaxReturn.pdf

² GL – 2011 –Peace.pdf; GL – 2012 –Peace.pdf; GL – 2013 –Peace.pdf

³ customercheckcopylist_sample.png

⁴ 2012purchaseorderlist.pdf; 2012purchaseorderlist.xls; 2013Purchaseorder_maxtrade.pdf;

2013Purchaseorder_Peace.pdf

⁵ Peace-Texas-2013 Aging report.pdf; Aging Report_90Days.pdf; Aging Report_30days.pdf; Aging Report.pdf;

Aging Report_120Days.pdf

⁶ 2014Purchaseinventorylist.pdf; Dec_inventory_2013.pdf

⁷ W3- ER- Peace Power- 12.pdf; W3 ER -11 –Peace.pdf; W3 & W2- ER- 2013 –Peace.pdf; 1099- EE-2013 –Peace (1).pdf; 1096- ER- Peace Power- 12.pdf; 1096 -11 –Peace.pdf

⁸ Shipping Docs_Sample.pdf

15. Detailed answers to the following questions (which have been asked in previous correspondence from February 28, 2014 through September 2014) specifically from Zeliang Lu, who appears to be the only person with knowledge of most or all of these issues:

- a. Based on the information previously provided to EPA, explain the affiliation between Peace Power and Zhejiang Peace.
- b. Your client informed our inspector that Peace Power imports very few of the vehicles it sells, but its bank accounts show that payment goes directly to Zhejiang Peace. Peace Industry in Georgia is supposedly the importer for most or all these vehicles, and is on record explaining that it pays Zhejiang Peace for these vehicles. Which is it?
- c. Explain the financial relationship and affiliation with the following entities. We need to know if these are assumed names of Peace Power, and how their finances relate to those of Peace Power:
 - i. Peace Parts Factory
 - ii. Parts Low
 - iii. EZ GO US
 - iv. Wicked ATVs
 - v. Green Earth Scooter
- d. In approximately 2010, Zeliang Lu loaned the Peace Power approximately [REDACTED]. What was the purpose of this loan? Did Peace Power repay this loan? If not, does it remain as an unpaid loan, or is it now considered a capital investment ("paid-in capital" is how it appears to be described on you 2012 balance sheet)?
- e. Does Peace Power operate with any loans or lines of credit?
- f. What is Peace Power's ability to borrow? From Zeliang Lu?
- g. What is Peace Power's ability to receive additional capital investments from Zeliang Lu?
- h. How do you purchase vehicles from Zhejiang Peace Industry and Trade Co. Ltd? Who is your point of contact? Is there a contract? When is the sales price of the vehicles determined? How and when do you pay for these vehicles?
- i. You have said that you pay 30% of the sales price to confirm the order, then the remaining 70% once the goods arrive in the United States. Is this an accurate description? Looking to the attached December 2013 bank statement, there are three large wire transfers to Zhejiang Peace, but they don't appear to be in 30% and 70% increments. Please explain exactly why Peace Power transferred these amounts ([REDACTED], [REDACTED], and [REDACTED]).

Lastly, as you know, we require that your client certify the completeness and accuracy of the information of the documents you have and will provide. This certification is as follows:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

We reserve the right to request any additional documents that may be required to assess the impact of the penalty on your client's ability to continue in business.

We request that you provide this information as soon as possible. Your responses and supporting documentation must be mailed by express mail or courier service to me at the following address:

Morgan E. Rog, U.S. EPA
1200 Pennsylvania Avenue, NW
Ariel Rios South Building Room 4146A (MC 2249A)
Washington, D.C. 20460

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this letter, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential" at the time you submit your response. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

Should you fail to provide this information voluntarily, we reserve the right to seek it through discovery, both written and testimonial.

Please contact me at (202) 564-7109 or rog.morgan@epa.gov if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Morgan Rog". The signature is written in a cursive, flowing style.

Morgan Rog, Attorney Adviser
Office of Civil Enforcement

Peace Power Sports, dba LUXE USA

INVESTIGATION

March 27, 2015

On Friday, March 27, 2015, I, David Eppler, an Enforcement Officer in the Air Toxics Section of the US EPA Compliance Assurance and Enforcement Division of Region 6 in Dallas, Texas, conducted an investigation to ascertain, in basic, whether Peace Power Sports, dba LUXE USA (Peace), was still doing business at 2533 Royal Lane, Suite #505, in Dallas, Texas 75229. Specifically, I was also to obtain, if possible, a current inventory list from Peace if they were still doing business at the Royal Lane location. I conducted the investigation under the direction of Ms. Amelie Isin, and Mr. Evan Belser, EPA OECA, Mobile Source Enforcement Branch in EPA Headquarters.

At about 9:30 am I arrived at the 2533 Royal Lane location in Dallas, Texas, and entered what appeared to be the main office for the off-road vehicle importer. I walked through the office door and observed a man at a desk, to whom I introduced myself, showed my credentials and asked to speak to a supervisor or manager. The man went to a private office, and came out with another man. The other man approached me, to whom I introduce myself and showed my credentials. I asked him if this was the office of Peace Power Sports, to which question the second man answered yes. I then stated the purpose of my visit, which was to obtain a list of the current inventory of Peace. The man proceeded to escort me to his private office. I asked him for his name, and he stated his name was John Xiao. I asked him if he was the facility manager, and he said no. I asked him if he was the facility supervisor, and he said no. I discussed this issue with him for a few minutes, and finally stated that I would list him as the 'acting manager' in my log if that was okay with him, to which he said yes. I again asked him for a current inventory list, and he stated he could not give it to me, and I asked him why not. He stated he did not have access to the computer to print it out, as the manager was out of the office for a doctor appointment, and I would need to wait for an hour or so.

I asked for permission to take photos of the facility, and Mr. Xiao granted me permission. I asked for an escort, and he said I did not need to be escorted, but I stated that I needed an escort for safety reasons. Mr. Xiao agreed to escort me through the showroom and warehouse. After taking several photos of the warehouse, showroom, and exterior views, I excused myself to go outside to make a phone call to Mr. Evan Belser of EPA, to ask for direction to proceed.

I explained the circumstances to Mr. Belser (that Peace was obviously still very much in business with what appeared to be hundreds of units in inventory), and that the current person in charge (Mr. Xiao) could not access the inventory in the computer. Mr. Belser stated I had seen enough to show that Peace was still doing business, and that I did not need to wait for the manager, Ms. Rachel (Fang) Liu, to return to get a current inventory list.

I went back inside and explained to Mr. Xiao that I could not wait for an hour for Ms. Liu, the manager to return from her doctor appointment. I gave him my business card, and confirmed that he could recognize my e-mail address on my card, and asked if he could have Ms. Liu e-mail me the inventory list, to which Mr. Xiao replied that he would do that. I asked for a telephone number for Mr. Xiao, and he gave me the number [REDACTED]. I asked for any evidence of Peace working out of the 2533 Royal Lane address, such as a Peace letterhead or brochure, and Mr. Xiao gave me a Peace brochure, upon which I later noted the date and location of its receipt by me. I asked Mr. Xiao about the other business names on the signs on the front of the building (Eagle Scooter and ATV Moped) to which Mr. Xiao replied that one was the same as Peace (Eagle), and the other was the business next door (ATV Moped). I shook hands with Mr. Xiao, thanked him for working with me, and left the site at about 10:10 am.

David Eppler



Enforcement Officer, US EPA Region 6

4/2/15



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Official Photograph Log

Investigation Photographs,

Peace Power Sports, dba LUXE USA

Dallas, Texas

Investigation Conducted on March 27, 2015

Photographer: David Epler

Date: 03/27/15

Time: 09:55

Direction: (facing) East

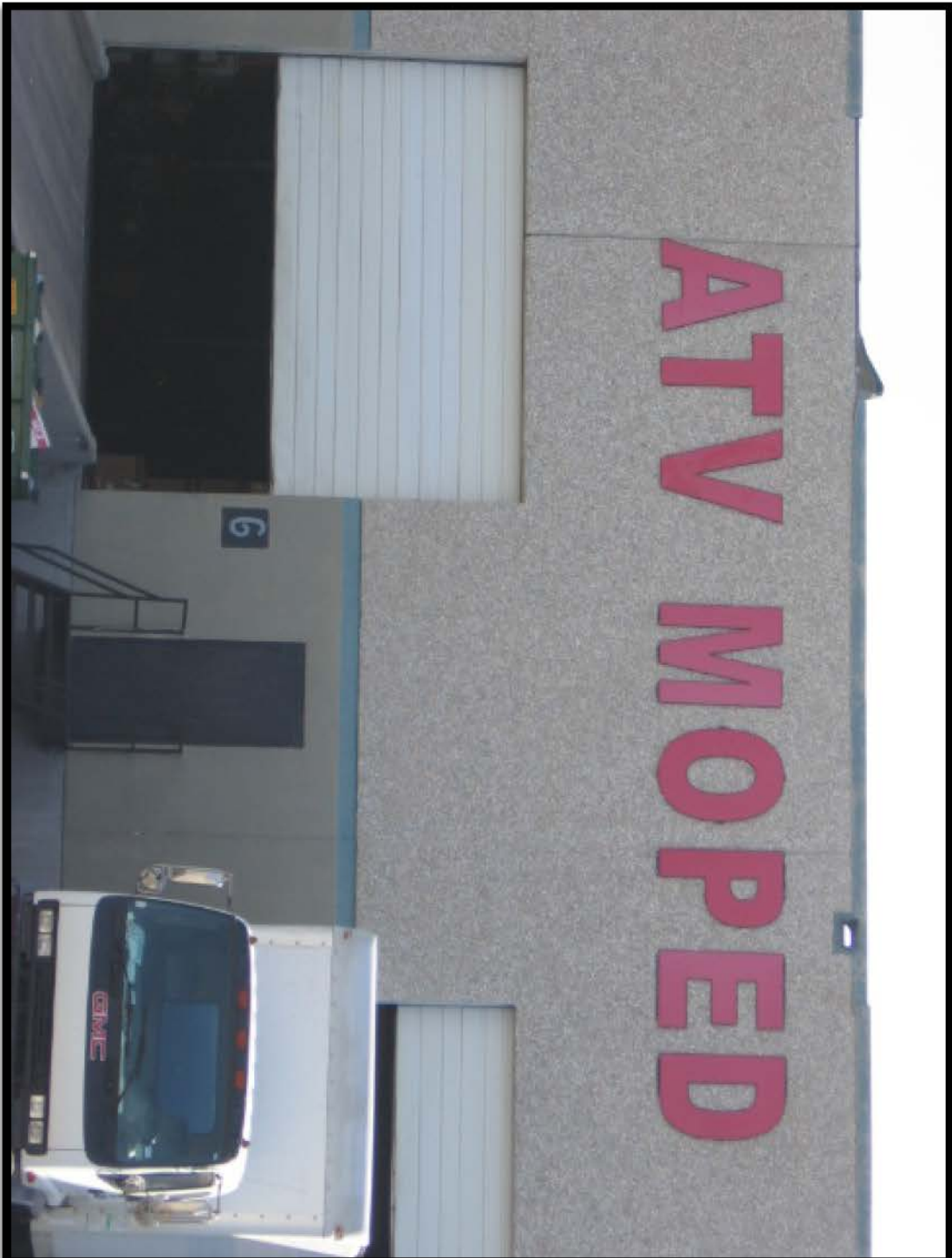
City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Facility Entrance

Photo ID: #1



CX 80 1458

Photographer: David Epler

Date: 03/27/15

Time: 09:54

Direction: (facing) East

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Facility Entrance

Photo ID: #2



Photographer: David Epler

Date: 03/27/15

Time: 09:53

Direction: (facing) East

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Facility Entrance

Photo ID: #3



Photographer: David Epler

Date: 03/27/15

Time: 09:52

Direction: (facing) East

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Facility Entrance

Photo ID: #4



Photographer: David Eppler

Date: 03/27/15

Time: 09:48

Direction: (facing) West

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Warehouse, from rear NE corner (parts area)

Photo ID: #5



Photographer: David Eppler

Date: 03/27/15

Time: 09:48

Direction: (facing) West

City/Country: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Warehouse, towards rear area

Photo ID: #6



Photographer: David Epler

Date: 03/27/15

Time: 09:47

Direction: (facing) Southeast

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Warehouse, from front, neighboring business

Photo ID: #7



Photographer: David Eppler

Date: 03/27/15

Time: 09:45

Direction: (facing) East

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Warehouse, from front, South aisle

Photo ID: #8



Photographer: David Epler

Date: 03/27/15

Time: 09:43

Direction: (facing) East Northeast

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Warehouse, from front, Center aisle

Photo ID: #9



CX 80 1466

Photographer: David Epler

Date: 03/27/15

Time: 09:42

Direction: (facing) East Southeast

City/Country: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Warehouse, from front, Center aisle

Photo ID: #10



Photographer: David Epler

Date: 03/27/15

Time: 09:41

Direction: (facing) North Northwest

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Warehouse, at front, toward Showroom

Photo ID: #11



CX 80 1468

Photographer: David Epler

Date: 03/27/15

Time: 09:39

Direction: (facing) East

City/County: Dallas, Dallas

State: Texas

Location: 2533 Royal Lane, #505

Subject: Showroom Area, between Office & Warehouse

Photo ID: #12

